IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: GRACEWAY PHARMACEUTICALS, LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 11-13036 (MFW) Joint Administration Pending **Proposed Bidding Procedures Objection Deadline:**[2] **[October 11] at [12:00] p.m.** **Proposed Bidding Procedures Hearing:** **[October 14, 2011] at [____] .m.** **Proposed Sale Objection Deadline:** **[November 1] at [4:00] p.m.** **Proposed Sale Hearing:** **[November 7, 2011] at [____] .m.**

DEBTORS' MOTION FOR ENTRY OF (I) AN ORDER APPROVING AND AUTHORIZING (A) BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF CERTAIN ASSETS OF THE DEBTORS, (B) STALKING HORSE BID PROTECTIONS, (C) THE FORM AND MANNER OF NOTICE OF THE SALE HEARING AND (D) RELATED RELIEF; AND (II) AN ORDER AUTHORIZING (A) THE SALE OF CERTAIN ASSETS OF THE DEBTORS FREE AND CLEAR OF ALL CLAIMS, LIENS, LIABILITIES, RIGHTS, INTERESTS AND ENCUMBRANCES; (B) THE DEBTORS TO ENTER INTO AND PERFORM THEIR OBLIGATIONS UNDER THE ASSET PURCHASE AGREEMENT; (C) THE DEBTORS TO ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (D) GRANTING RELATED RELIEF

("Sale Motion")

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1 The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).

2 All hearing dates and objections deadlines are subject to the Court's availability. A notice with the confirmed dates and times for such hearings and objection deadlines will be separately filed.

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Graceway Pharmaceuticals, LLC and the other above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**" or the "**Company**"), submit this motion for entry of the Bidding Procedures Order attached hereto as **Exhibit A** and the Sale Order attached hereto as **Exhibit B** (as such terms are each defined herein). In support of this motion, the Debtors submit the *Declaration of Daniel Aronson in Support of the Debtors' Motion for Entry of an Order Approving and Authorizing (A) Bidding Procedures in Connection with the Sale of Certain Assets of the Debtors, (B) Stalking Horse Bid Protections, (C) the Form and Manner of Notice of the Sale Hearing and (D) Other Related Relief* (the "**Aronson Declaration**") attached hereto as **Exhibit C** and also respectfully state as follows in support of this motion (the "**Motion**"):

Jurisdiction

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases (as defined below).

2. The statutory bases for the relief requested herein are Sections 105(a), 363, 365, 503, 507 and, if applicable, 1146(a) of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rules 2002-1, 6004-1 and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**").

Introduction

3. On September 29, 2011 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "**Chapter 11 Cases**").

The Debtors are operating their business and managing their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases, and no committees have been appointed or designated. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of these Chapter 11 Cases.

Relief Requested

4. *First*, by this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the "**Bidding Procedures Order**"):

a. authorizing and approving bidding procedures in connection with the receipt and analysis of competing bids for certain assets of the Debtors, substantially in the form attached as **Exhibit 1** to the Bidding Procedures Order (the "**Bidding Procedures**"), including customary bid protections for the Stalking Horse Bidder (defined herein) pursuant to the Asset Purchase Agreement, dated September 27, 2011, by and among the Debtors, as sellers, and Galderma, S.A., as buyer (the "**APA**"), attached hereto as **Exhibit D**;[3]

b. authorizing and approving procedures for the assumption and assignment of the Assigned Agreements (defined below) in connection with the sale of certain assets of the Debtors (the "**Sale**");

c. approving the form and manner of notice of the Sale and hearing thereon, substantially in the form attached to the Bidding Procedures Order as **Exhibit 2** (the "**Sale Notice**");

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3 The schedules to the APA have not been attached due to the confidential, competitive and/or proprietary nature of certain information contained therein. However, a non-redacted version of such schedules or, as applicable, such confidential, competitive and/or proprietary information, will be provided to: (a) potential bidders party to an appropriate confidentiality agreement with the Debtors in accordance with the Bidding Procedures; (b) the Court, *in camera*; (c) the U.S. Trustee; (d) counsel to the any official statutory committees appointed by the U.S. Trustee, subject to the prior execution of a confidentiality agreement reasonably satisfactory to the Debtors; and (e) financing counsel to the agent (the "**First Lien Agent**") to the lenders party to the Debtors' prepetition first lien credit agreement (the "**First Lien Lenders**"); (f) special bankruptcy and restructuring counsel to the First Lien Agent; and (g) counsel to the agent (the "**Second Lien Agent**") to the lenders party to the Debtors' prepetition second lien credit agreement (the "**Second Lien Lenders**").

d. establishing the following dates and deadlines, subject to modification as needed, relating to competitive bidding and approval of the Sale:[4]

- Sale Objection Deadline: November 1, 2011 at 4:00 p.m. prevailing Eastern Time, as the deadline to object to the Sale transactions and/or the assumption and assignment of Assigned Agreements or cure amounts related thereto (the "**Sale Objection Deadline**");

- Bid Deadline: November 1, 2011 at 4:00 p.m. prevailing Eastern Time, as the deadline by which all binding bids must be actually received pursuant to the Bidding Procedures (the "**Bid Deadline**");

- Auction: November 3, 2011 at 9:00 a.m. prevailing Eastern Time, as the date and time the auction, if one is needed (the "**Auction**"), which will be held at the offices of Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022; and

- Sale Hearing: November 7, 2011, as the date of the sale hearing (the "**Sale Hearing**") which will be held before the Honorable Judge Mary F. Walrath, United States Bankruptcy Judge for the United States Bankruptcy Court for the District of Delaware, at: 824 North Market Street, Courtroom 4, Wilmington, Delaware 19801.

5. *Second*, by this Motion, the Debtors also seek entry of an order, substantially in the form attached hereto as **Exhibit B** (the "**Sale Order**"), authorizing (a) the sale of certain assets of the Debtors free and clear of all claims, liens, liabilities, rights, interests and encumbrances, (b) the Debtors to enter into and perform their obligations under the APA, (c) the Debtors to assume and assign certain executory contracts and unexpired leases; and (d) granting related relief.

Factual Background

I. The Debtors' Business and Operations

6. A description of the Debtors' business, the reasons for commencing these Chapter 11 Cases, and the relief sought from this Court to allow for a smooth transition into chapter 11

[4] All hearing dates and objections deadlines set forth in this section are subject to the Court's availability. A notice with the confirmed dates and times for such hearings and objection deadlines will be separately filed.

(including the facts and circumstances supporting this motion) are set forth in the *Declaration of Gregory C. Jones in Support of Chapter 11 Petitions and First Day Motions* filed contemporaneously herewith (the "**First Day Declaration**").

II. Decision to Sell the Debtors' Assets; Selection of Stalking Horse Bidder

7. In March 2010, the Debtors retained Lazard Frères & Co. LLC ("**Lazard**") as an investment banker to assist the Debtors in addressing their financial situation and exploring potential financing and restructuring alternatives. Additionally, in March 2010, the Debtors retained Alvarez and Marsal North America, LLC ("**Alvarez**") to perform a variety of restructuring related services. Prior to filing these Chapter 11 Cases, the Debtors, with the assistance of Lazard and Alvarez, and in consultation with certain of the First Lien Lenders, pursued a range of options to address the Debtors' concerns about their ability to service their debt going forward, including new financing, refinancing and the sale of certain or all of the Debtors' assets or business. After exploring the strategic alternatives available to them, the Debtors determined that the best way to maximize the value of their assets for the benefit of their creditors was to seek a sale of substantially all of their assets pursuant to Section 363 of the Bankruptcy Code.

III. Prepetition Marketing Process

8. In April 2011, Lazard began an extensive marketing and sale process for the Debtors' assets, aggressively canvassing the marketplace to locate potential financial purchasers, including both strategic and financial buyers. Lazard contacted 60 potential investors in the first round of outreach, all of whom reviewed preliminary, non-confidential solicitation materials. Of those initially contacted, 21 executed confidentiality agreements with the Debtors and received access to an electronic data room to review confidential information and to serve as the basis for discussions towards potential bids (the "**Data Room Participants**"). Approximately 11 Data

Room Participants responded with preliminary letters of interest (the "**Potential Purchasers**"). Of the 11 Potential Purchasers, seven (7) responded with preliminary letters of interest in which they expressed an interest in purchasing the entire Company, and the remaining four (4) responded with preliminary letters of interest in which they expressed an interest in purchasing specific assets of the Company.

9. The preliminary letters of interest came from a variety of Potential Purchasers with wide-ranging bids. After evaluating these preliminary letters of interest, as well as the seriousness of the Potential Purchasers' interest and their ability to move expeditiously to consummate the transaction, the Debtors, in consultation with Lazard, opted to pursue further discussions with four of the Potential Purchasers. Each of these four Potential Purchasers received access to additional information in an electronic data room and also received a management presentation beginning on or about June 29, 2011. Following those presentations and initial diligence conducted by the Potential Purchasers, on August 5, 2011, the Debtors received one binding bid to purchase certain assets of the Company (the "**First Bid**"). Subsequently, on September 5, 2011, the Debtors received another binding bid to purchase certain assets of the Company (the "**Second Bid**").

IV. Negotiation of Stalking Horse Bid and Selection of Stalking Horse Bidder

10. From August 5, 2011 until September 5, 2011, the Debtors negotiated extensively with the bidder that submitted the First Bid regarding the terms and conditions of the proposed acquisition. Beginning on September 5, 2011, when the Second Bid was received, the Debtors, in consultation with their advisors, engaged in parallel arm's-length negotiations with each bidder and such bidder's respective counsel and advisors. For three weeks following the receipt of the Second Bid, the Debtors and Lazard, along with the Debtors' other advisors and counsel,

continued extensive negotiations regarding the terms and conditions of both the First Bid and Second Bid, which ultimately resulted in materially improved contract terms for the Debtors.

11. Following these extensive negotiations regarding the terms and conditions of each offer, the Debtors, with the assistance of Lazard and their other advisors, conducted a final side-by-side analysis of the proposals and, ultimately, made the considered determination that the offer of the bidder that submitted the Second Bid, Galderma S.A., a Switzerland corporation, was the highest and/or best offer presented and was an acceptable offer to serve as the stalking horse bid. On September 23, 2011, the special committee of the Board of Managers of Graceway Holdings, LLC (the "**Special Committee**") held a meeting and voted to recommend that the Board of Managers of Graceway Holdings, LLC approve Galderma S.A. as the stalking horse bidder pursuant to the terms of the Second Bid. Following the meeting of the Special Committee, the full Board of Managers of Graceway Holdings, LLC (conducted concurrently with meetings of the boards of managers and directors of the various other Seller entities) held a meeting to consider the recommendation of the Special Committee, and voted to select Galderma S.A. as the stalking horse bidder (the "**Stalking Horse Bidder**").

12. Thereafter, the Debtors and the Stalking Horse Bidder entered into the APA, among the Debtors, as sellers, and the Stalking Horse Bidder, as buyer. Pursuant to the APA: (i) the Stalking Horse Bidder agreed to pay $275,000,000 (the "**Cash Purchase Price**"), and to assume certain liabilities (together with the Cash Purchase Price, the "**Stalking Horse Bid**") to acquire the Acquired Assets (as defined in the APA), subject to the outcome of the Auction, if one is needed, and Court approval; and (ii) the Debtors agreed to provide the Bid Protections (as described herein).

V. Sale Supported By Majority Of First Lien Lenders

13. Throughout the pre-petition marketing process, the Debtors and their advisors have kept special restructuring and bankruptcy counsel to the First Lien Agent, as well as the First Lien Lenders who were willing to become restricted, fully apprised of the implementation and effectuation of the marketing process. The Debtors shared the First Bid and the Second Bid with special restructuring and bankruptcy counsel to the First Lien Agent. Prior to the ultimate selection by the Board of Managers of Graceway Holdings, LLC of the Stalking Horse Bidder, special restructuring and bankruptcy counsel to the First Lien Agent represented to the Debtors' counsel that certain of the First Lien Lenders preferred the Stalking Horse Bid over the final bid submitted by the other bidder.

14. To that end, on September 28, 2011, certain first lien lenders (the "**Consenting First Lien Lenders**"), who hold at least 40% of the outstanding first lien obligations under the first lien credit agreement, executed a sale support agreement attached hereto as **Exhibit E** (the "**Sale Support Agreement**") evidencing their support of the Sale to the Stalking Horse Bidder or Successful Bidder (as defined in the APA).

15. In the Sale Support Agreement and subject to the terms and conditions set forth therein, the Consenting First Lien Lenders have agreed to both support the Sale and allow the Debtors to use cash collateral and the proceeds of the Sale to, among other things, permit the Debtors to operate in the ordinary course of business through the consummation of the Sale and upon the consummation of the Sale, repay the intercompany debtor-in-possession loan, pay accrued administrative expenses, fund the orderly wind-down of the Debtors' estates and confirm a plan of liquidation.

16. Under the Sale Support Agreement and subject to the terms and conditions set forth therein, the Debtors have agreed to seek prompt approval of the Sale pursuant to various

deadlines set forth in the Sale Support Agreement, which are consistent with the various deadlines set forth in the APA. The Sale Support Agreement recognizes the Debtors' fiduciary obligations to maximize value for all creditors, and, as such, does not impair the Debtors' ability to consider Alternative Transactions (as defined in the Sale Support Agreement), regardless of whether such Alternative Transaction results from the bid and auction procedures provided for in the APA or otherwise. Similarly, the Sale Support Agreement allows the Debtors to withdraw from the Sale Support Agreement in the event that the Board of Managers of Graceway Holdings, LLC reasonably determines that proceeding with or consummating the Sale would be inconsistent with the exercise of their respective fiduciary duties.

17. Accordingly, with a stalking horse bidding floor and APA in place (the key terms of which have already been subject to a comprehensive market test) and with the support of the majority of their First Lien Lenders, the Debtors now seek to promptly effectuate the Sale to the Stalking Horse Bidder, subject to a competitive bidding process that is consistent with the Debtors' fiduciary duties to maximize value for their estates, stakeholders and parties in interest.

Overview of the Proposed Sale

I. Material Terms of the APA

18. The principal terms of the APA are summarized in the following chart:[5]

APA Provision	Summary Description
APA Parties	Sellers: Graceway Pharmaceuticals, LLC; Chester Valley Holdings, LLC; Chester Valley Pharmaceuticals, LLC; Graceway Canada Holdings, Inc.; Graceway International, Inc.; Graceway Canada Company[6]

5 This summary is provided for the convenience of the Court and parties in interest. To the extent there is any conflict between this summary and the APA, the latter governs in all respects. Capitalized terms used but not defined in this chart have the meaning ascribed in the APA.

6 Graceway Canada Company is a non-Debtor affiliate of the other Sellers, all of whom are Debtors in these Chapter 11 Cases. The Debtors will file a separate motion to value the assets of Graceway Canada Company and to establish the procedures for other parties in interest to object to the Debtors' valuation, if appropriate, so that at the closing of the Sale the portion of the sale proceeds attributed to the assets of Graceway Canada Company can be remitted directly by the Buyer to Graceway Canada Company.

APA Provision	Summary Description
	Buyer: Galderma S.A.
Consideration	Cash in the amount of $275,000,000.00 plus the assumption of the Assumed Liabilities. **See APA, §§ 1.1; 3.1**
Acquired Assets	The APA sets forth the assets to be purchased by the Stalking Horse Bidder (the "**Acquired Assets**"), including, without limitation, (a) all Inventory; (b) the Assigned Agreements; (c) all Permits and pending applications therefor; (d) all Business Intellectual Property; (e) all Pre-Paid Expenses; (f) all goodwill associated with the Acquired Assets; (g) all Documents (other than those described in Section 2.2(c) of the APA) to the extent available and permitted by applicable Laws, *provided* that Sellers may retain copies of such Documents; (h) all Claims and Proceedings (including, for the avoidance of doubt, the Nycomed Litigation and all claims for past infringement or misappropriation of Business Intellectual Property) of Sellers as of the Closing other than Claims and Proceedings (i) primarily related to or constituting any Excluded Asset or Excluded Liability or (ii) against Sellers (regardless of whether or not such claims and causes of action have been asserted by Sellers) and all rights of indemnity, warranty rights, rights of contribution, rights to refunds (other than Tax refunds), rights of reimbursement and other rights of recovery, including insurance proceeds, possessed by Sellers as of the Closing (regardless of whether such rights are currently exercisable) to the extent related to any Product or other Acquired Asset or any of the Assumed Liabilities; and (i) all rights of Sellers under non-disclosure or confidentiality, non-compete, or non-solicitation agreements relating to any Product or Acquired Asset (or any portion thereof). **See APA, § 2.1.**
Excluded Assets	The APA sets forth the assets that will be not be purchased by the Stalking Horse Bidder, including, without limitation,, (a) each Seller's rights under the APA (including the right to receive the Purchase Price delivered to Sellers pursuant to the APA); (b) all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit and other bank deposits, securities, securities entitlements, instruments and other investments of Sellers and all bank accounts and securities accounts, including any cash collateral that is collateralizing any letters of credit; (c) all Documents prepared in connection with the APA or the transactions contemplated by the APA or relating to the Bankruptcy Case or the Canadian Proceedings, all minute books, corporate records (such as stock registers) and organizational documents of Sellers and the Retained Subsidiaries, Tax Returns, other Tax work papers, and all other Documents not related to the Products or the Acquired Assets; (d) any Contract that is not an Assigned Agreement, including the Contracts listed or described on Schedule 2.2(d) of the APA, which Schedule may be modified from the Effective Date through one (1) Business Day prior to the Sale Hearing in accordance with Section 7.9 of the APA; (e) any Tax refunds, rebates or credits of Sellers; (f) all Claims and Proceedings of Sellers (other than those described in Section 2.1(h) of the APA; (g) all Seller Employees and all of the funding vehicles and assets of any Benefit Plan; (h) the Avoidance Actions or similar Proceedings, including but not limited to Proceedings under Sections 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code; (i) any security deposits or pre-paid expenses not associated with the Acquired Assets; (j) all insurance policies and binders, all claims, refunds and credits from insurance policies or binders due or to become due with respect to such policies or binders and all rights to proceeds thereof (other than as described in Section 2.1(h) of the APA); (k) all shares of capital stock or other equity interests of any Seller or Retained Subsidiary or securities convertible into or exchangeable or exercisable for shares of capital stock or other equity interests of any Seller or Retained Subsidiary; (l) the Equipment; (m) all Accounts

APA Provision	Summary Description
	Receivable; (n) all Real Property; (o) any assets, properties and rights of any Sellers other than the Acquired Assets, including those set forth on Schedule 2.2(o) of the APA; (p) the Excluded Intellectual Property; (q) any Inventory that is part of a split lot of and in the possession of Sellers as of the Filing; and (r) the Intercompany Loan and all interest thereon **See APA, § 2.2.**
Assumed Liabilities	The APA sets forth the liabilities that will be assumed by the Stalking Horse Bidder (the "**Assumed Liabilities**"), including, without limitation, (a) all Liabilities arising from the ownership of the Acquired Assets or the sale of Products by Buyer, in each case after the Closing Date, it being understood that Liabilities arising from the ownership of the Acquired Assets or the operation of the Business prior to the Closing Date (including the sale of Products by Sellers and their Affiliates prior to the Closing Date) will not constitute Assumed Liabilities regardless of when the obligation to pay such Liabilities arises, other than as set forth in Section 2.3(e) of the APA and Section 8.1 of the APA; (b) all Liabilities under the Assigned Agreements arising after the Closing; (c) the Cure Costs associated with any Contracts (i) added by Buyer to Schedule 1.1(a) of the APA after the Effective Date, *provided* that such Contract (A) is listed on Schedule 2.2(d) of the APA as of the Effective Date or (B) arose in the Ordinary Course of Business after the Effective Date and was approved by Buyer in writing as an "Assigned Agreement" or (ii) added by Buyer to Schedule 1.1(a) of the APA after the Auction; (d) all Liabilities of Sellers for any claims entitled to administrative expense priority in the Bankruptcy Case in accordance with the applicable provisions of the Bankruptcy Code arising out of any Contract removed by Buyer from Schedule 1.1(a) of the APA in accordance with Section 7.9 that is listed on Schedule 2.3(d) of the APA; and (e) all Liabilities for Transfer Taxes, as provided in Section 8.1 of the APA. **See APA, § 2.3.**
Excluded Liabilities	The APA sets forth the liabilities that will be not be assumed by the Stalking Horse Bidder, including the Liabilities of Sellers that are not an Assumed Liability, including, without limitation, any Liability incurred by Sellers for returns, government Rebates, commercial Rebates and obligations arising under any patient coupon program, in each case, with respect to Product sold by Sellers prior to Closing and whether such Liabilities arise prior to, on or after the Closing Date. **See APA, § 2.4.**
Assumption of Executory Contracts and Assignment to the Stalking Horse Bidder	All Assigned Agreements and Permits owned by the Sellers that are proposed to be assigned to Buyer pursuant to Section 365 of the Bankruptcy Code in connection with the Sale transactions set forth in the APA are listed on Schedule 1.1(a) to the APA (as the same may be revised, amended and supplemented from time to time by Buyer from the Effective Date through one (1) Business Day prior to the Sale Hearing pursuant to § 7.9 of the APA, collectively, the "**Assigned Agreements**"). **See APA, §§ 2.1; 2.5.**
Payment of Cure Amounts	The APA provides that the Sellers are responsible for payment of all Cure Costs other than those with respect to a Contract that is (i) added by Buyer to Schedule 1.1(a) of the APA after the Effective Date, *provided* that such Contract (A) is listed on Schedule 2.2(d) to the APA as of the Effective Date or (B) arose in the Ordinary Course of Business after the Effective Date and was approved by Buyer in writing as an "Assigned Agreement" or (ii) added by Buyer to Schedule 1.1(a) after the Auction. **See APA, §§ 2.3(c); 2.5.**
Employment Provisions	All Seller Employees and related Benefit Plans are Excluded Assets. **See APA, § 2.2(g).**
Closing Conditions	The APA includes closing conditions typical and customary for transactions of this kind, including, without limitation:

APA Provision	Summary Description
	• Buyer: (i) the representations and warranties of the Sellers in Article V of the APA must be true and correct as of the Closing Date or, if not true, would not reasonably be expected to have a Material Adverse Effect, (ii) Sellers must perform and comply in all material respects with the covenants and agreements required by the APA prior to Closing, (iii) no Closing Legal Impediment may be in effect, (iv) any applicable waiting period under the HSR Act and any other material waiting period under any applicable antitrust or competition Law must have expired or been terminated and any other material approval under any applicable antitrust or competition Law must have been received, (v) each of the deliveries required to be made to Buyer pursuant to Section 4.3 of the APA must have been so delivered, (vi) the Bankruptcy Court must have entered the Sale Order and the Sale Order must be a Final Order, and (vii) the Canadian Court must have entered the Canadian Sale and Vesting Order and the Canadian Sale and Vesting Order must be a Final Order. • Sellers: (i) the representations and warranties of Buyer contained in the APA must be true and correct as of the Closing Date or, if not true, would not reasonably be expected to prevent or materially impair the ability of Buyer to consummate the transactions contemplated by this Agreement, (ii) the Bankruptcy Court must have entered the Sale Order and the Sale Order must be a Final Order, (iii) the Canadian Court must have entered the Canadian Sale and Vesting Order and the Canadian Sale and Vesting Order must be a Final Order, (iv) Buyer must have performed and complied with in all material respects the material covenants and agreements that Buyer is required to perform or comply with pursuant to the APA at or prior to the Closing, (v) no Closing Legal Impediment may be in effect, (vi) any applicable waiting period under the HSR Act and any other material waiting period under any applicable antitrust or competition Law must have expired or been terminated and any other material approval under any applicable antitrust or competition Law must have been received, and (vii) each of the deliveries required to be made to Sellers pursuant to Section 4.2 of the APA must have been so delivered. **See APA, §§ 9.1-9.7; 10.1-10.7.**
Representations, Warranties and Covenants	The APA includes representations, warranties and covenants made or agreed to by the parties typical and customary for transactions of this kind, including, without limitation, representations, warranties and covenants relating to (i) organization/good standing, (ii) authorization of transaction, (iii) non-contravention, (iv) environmental and health and safety matters, (v) title to and condition of Acquired Assets, (vi) taxes, (vii) legal proceedings, (viii) compliance with laws and permits, (ix) intellectual property, (x) the Assigned Agreements, (xi) regulatory matters, (xii) brokers or finders fees, (xiii) affiliate transactions, (xiv) insurance, (xv) certain issues with respect to 3M, (xvi) inventory and products, (xvii) the Canadian Competition Act, (xviii) financial statements, and (xix) availability of funds and solvency of Buyer, and (xx) Sellers' operations prior to the Closing Date. **See APA, §§ 5.1-5.19; 6.1-6.6; 7.2.**
Bid Protections	The APA provides for a Break-Up Fee equal to $8,250,000. **See APA, § 7.6(a).** The APA further provides a cap for reimbursable expenses of $1,500,00 which, if the Break-Up Fee is determined payable, reduces the Break-Up Fee to the extent paid. **See APA, § 7.6(b)** The Bidding Procedures also provide that any Overbid after the Opening Bid must be made in increments of at least $2,500,000 (or such other amount the Debtors determine to facilitate the Auction).

APA Provision	Summary Description
Deposit	$27,500,000 to be held in escrow. **See APA, § 3.2.**

II. Provisions to Be Highlighted under the Local Rules

19. The APA contains the following terms, conditions and provisions that are to be highlighted pursuant to Local Rule 6004-1(b):

a. **Sale to Insider**. Not applicable.

b. **Management Agreements**. None.

c. **Releases**. The APA contains provisions releasing all past, present or future director, manager, officer, employee, incorporator, member, unitholder, partner or equityholder of any Seller from liability for any claim based on, in respect of, or by reason of the transactions contemplated by the APA and a covenant by the Buyer, on behalf of itself and its affiliates, not to sue with respect to any such claim. See APA, § 12.11. The Debtors believe these provisions are typical and customary for transactions of this kind. In any event, the marketing process and Sale negotiations were conducted in consultation with the Debtors' advisors in an appropriate manner and the Sale was approved by the board members as a sound discharge of their fiduciary duties to these estates and creditors.

d. **Private Sale/No Competitive Bidding**. Not applicable.

e. **Closing and Other Deadlines**. The APA contains provisions allowing for its termination by the Buyer or Sellers if the Closing has not occurred by January 27, 2012. See APA, § 11.1(a)(iii). In addition, the APA contains provisions allowing for its termination by the Buyer if (a) the Bidding Procedures Order has not been entered on or before forty-five days after the date of execution of the APA (or is vacated or stayed as of such date) or (b) the Sale Order has not been entered on or before January 2, 2012 (or is vacated or stayed as of such date). See APA, § 11.1(b)(iv) and (v). The Debtors believe these provisions are typical and customary for transactions of this kind. In any event, the marketing process and Sale negotiations were conducted in consultation with the Debtors' advisors in an appropriate manner and the Sale was approved by the board members as a sound discharge of their fiduciary duties to these estates and creditors.

f. **Good Faith Deposit**. The APA contains provisions requiring a good faith deposit by the Buyer in the amount of $27,500,000 to be placed in escrow. See APA, § 3.2. The Debtors believe these provisions are typical and customary for transactions of this kind. In any event, the marketing process and Sale negotiations were conducted in consultation with the Debtors' advisors in an appropriate manner and the Sale was approved by

the board members as a sound discharge of their fiduciary duties to these estates and creditors.

g. **Interim Arrangements with Proposed Buyer**. The APA provides that after the Effective Date and prior to the Closing Date the Buyer, at the Buyer's sole cost and expense and in accordance with reasonable procedures to be established in good faith by mutual agreement of Sellers' Interim Access Manager and Buyer's Interim Access Manager, will be afforded certain access to the Sellers' facilities, employees and books and records and will be furnished certain information by the Sellers. See APA, § 7.1.

h. **Use of Proceeds**. The proposed Sale Order provides that the Cash Consideration from the Sale, less the Break-Up Fee (if any) paid pursuant to the terms of the APA, shall be paid directly by the Successful Bidder to the First Lien Agent (as defined below) on the Closing Date for distribution to the First Lien Claimholders (as defined in the DIP Order), except for certain exceptions and holdbacks. Sale Order, ¶ 27. Any contingent payments under the APA not yet due and payable on the Closing Date, in each case, will be paid by the Successful Bidder directly to the First Lien Agent for distribution to the First Lien Claimholders. See Sale Order, ¶ 27.

i. **Tax Exemption**. Not applicable.

j. **Record Retention**. The Debtors will have access to their books and records sufficient to administer the bankruptcy estate. See APA, § 8.8.

k. **Sale of Avoidance Actions**. Not applicable.

l. **Requested Findings as to Successor Liability**. The proposed Sale Order provides that the Buyer shall not be deemed, as a result of any action taken in connection with the APA, the consummation of the Transactions (as defined in the Sale Order) contemplated by the APA, or the transfer or operation of the Acquired Assets to (a) be a legal successor, or otherwise be deemed a successor to the Debtors (other than, for Buyer, with respect to any obligations as an assignee under the Assigned Agreements arising after the Closing); (b) have, *de facto* or otherwise, merged with or into the Debtors; or (c) be an alter ego or a mere continuation or substantial continuation of the Debtors. See Sale Order, ¶¶ T, U, W, 8, 15, 16, 18.

m. **Sale Free and Clear of Unexpired Leases**. The APA requires that the Sale Order provide, and the proposed Sale Order provides, that the Acquired Assets, are being sold free and clear of all Encumbrances, with certain exceptions. See APA, § 5.5; Sale Order, ¶¶ T, U, V, 8-14.

n. **Credit Bid**. Not applicable. The Bidding Procedures permit the Debtors' secured lenders to credit bid, subject to certain requirements.

o. **Relief from Bankruptcy Rule 6004(h)**. The proposed Sale Order provides that, notwithstanding Bankruptcy Rule 6004(h), there is no just reason for delay in the implementation of the Sale Order and expressly directs entry of the Sale Order and authorizes implementation thereof immediately after entry. See Sale Order, ¶¶ B, 29, 36.

Bidding Procedures Order

III. Outline of the Bidding Procedures

20. The Bidding Procedures are intended to permit a fair and efficient competitive sale process, consistent with the timeline of these cases, to confirm that the Stalking Horse Bid is, indeed, the highest or otherwise best offer, or promptly identify the alternative bid that is higher or otherwise better. Because the Bidding Procedures are attached as **Exhibit 1** to the Bidding Procedures Order, they are not restated in their entirety herein. The Bidding Procedures establish, among other things:[7]

- the requirements a Potential Bidder must satisfy to be entitled to participate in the bidding process and become a Qualified Bidder (See Bid. Proc., at 3-4);
- the availability of, access to, and conduct during due diligence by Potential Bidders (See Bid. Proc., at 4);
- the deadlines and requirements for submitting a competing bid and the method and criteria (including minimum consideration and other required elements) by which such a competing bid is to become entitled to be a Qualified Bid sufficient to trigger an Auction (See Bid. Proc., at 5-6);
- the procedures for conducting the Auction, if any (See Bid. Proc., at 6-9);
- the criteria by which the Successful Bidder will be selected by the Debtors (See Bid. Proc., at 8-9); and
- various other matters relating to the Sale process generally, including regarding the Sale Hearing, requirements for credit bids, designation of a Back-Up Bidder, payment of the Bid Protections, return of any Good Faith Deposits and certain reservations of rights (See Bid. Proc., at 9-12).

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7 Capitalized terms used but not defined in this Paragraph 20 shall have the meanings set forth in the Bidding Procedures.

21. Importantly, the Bidding Procedures recognize the Debtors' fiduciary obligations to maximize sale value, and, as such, do not impair the Debtors' ability to consider all qualified bid proposals, and preserve the Debtors' right to modify the Bidding Procedures as necessary or appropriate to maximize value for their estates in consultation with key parties set forth therein.

IV. Provisions to Be Highlighted Under the Local Rules

22. The Bidding Procedures contain the following provisions that are to be highlighted pursuant to Local Rule 6004-1(c), which are more fully described in the Bidding Procedures and the proposed Bidding Procedures Order:[8]

a. **Provisions Governing Qualification of Bidders**. "Potential Bidders" must, on or before November 1, 2011, satisfy the "Participant Requirements" by submitting to the Debtors certain documents, including an executed confidentiality agreement and preliminary proof of the Potential Bidder's financial capacity to close the proposed transaction. See Bid. Proc., at 2-3.

b. **Provisions Governing Qualified Bids**. To participate in the Auction, each Bidder must deliver to the Debtors in writing by 4:00 p.m. (prevailing Eastern Time) on November 1, 2011 an irrevocable, good faith and bona fide offer to purchase all or a substantial portion of the Assets and payment or assumption of all or a substantial portion of the liabilities to be paid or assumed under the APA, for an aggregate amount of at least the sum of the cash "Purchase Price" and assumed liabilities provided for under the APA, in the aggregate, plus the "Initial Minimum Overbid Increment" and include with such offer (i) a marked copy of the APA reflecting the proposed amendments and modifications from the APA executed with the Stalking Horse Bidder, which may not be materially more burdensome to the Debtors; (ii) identification of the executory contracts and unexpired leases for which assumption and assignment is required and the corresponding cure amounts associated with the assumption and assignment of such leases and contracts; (iii) no contingencies, including among other things, obtaining financing; shareholder, board or other approval; regulatory contingencies (other than that any applicable waiting period under The Hart-Scott-Rodino Antitrust Improvements Act of 1976 (Public Law 94-435)) or the outcome or review of diligence; (iv) a commitment to close within the time specified

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8 All hearing dates and objections deadlines set forth in this section are subject to the Court's availability. A notice with the confirmed dates and times for such hearings and objection deadlines will be separately filed.

in the APA; (v) written evidence of a firm commitment for financing or other evidence of the Bidder's financial wherewithal and ability to consummate the proposed purchase and which the Debtors reasonably believe to be sufficient to satisfy the standards to provide adequate assurance of future performance of any contracts or leases to be assumed and assigned under Section 365 of the Bankruptcy Code; (vi) no request or entitlement that the Bidder receive any transaction or break-up fee, expense reimbursement, termination or similar type of fee or payment, and (vi) a cash deposit equal to $27,500,000. See Bid. Proc., at 4-5. Such offer must remain irrevocable until five (5) business days after the Assets have been sold pursuant to the closing of the sale or sales approved by the Bankruptcy Court in a final, non-appealable order. See Bid. Proc., at 5. The Stalking Horse Bidder and each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Bidding Procedures or, (a) as to the Stalking Horse Bidder, the terms of the sale of the Assets shall be set forth in the APA, or (b) as to another Successful Bidder, the terms of the sale of the Assets shall be set forth in the applicable purchase agreement. See Bid. Proc., at 10. Furthermore, the Bidding Procedures include additional provisions allowing credit bidding by the First Lien Lenders and the Second Lien Lenders subject to the requirements that, among other things, any credit bid (i) provide for payment in cash at closing and/or the assumption of the unpaid administrative expense claims of the Debtors owning such collateral incurred from the Petition Date through and including the date on which the closing of the sale occurs, (ii) provide for payment in cash at closing of the Break-Up Fee, (iii) with respect to the First Lien Lenders, provide for payment in cash at closing of all claims that are senior to the claims of the First Lien Lenders pursuant to the DIP Financing Order or otherwise, (iv) include a description of all assets to be purchased that are not subject to a valid and perfected security interest held by the agent for the First Lien Lenders or the Second Lien Lenders, as the case may be, (v) provide for payment in cash in an amount equal to the fair value of such unencumbered assets, (vi) provide for payment in cash of the Lazard Success Fee, and (vii) with respect to the Second Lien Lenders, provide for payment in cash at closing of all obligations owed to the First Lien Lenders and to other the holders of claims with claims senior to those of the Second Lien Lenders pursuant to the Interim Cash Collateral Order or otherwise. See Bid. Proc., at 9-10.

c. **Provisions Providing Bid Protections to the Stalking Horse Bidder**. The Bidding Procedures provide that if the APA terminates because the Debtors have accepted or selected, and the Bankruptcy Court has approved, the Bid or Bids (including a credit bid) of any Qualified Bidder(s) other than Stalking Horse Bidder to purchase all or a substantial portion of the Debtors' Assets, and such transaction or transactions contemplated by any such Bid or Bids has been consummated, the Debtors shall pay the Stalking Horse Bidder out of the proceeds of such transaction or transactions the Break-Up Fee of $8,250,000. See Bid. Proc., at 9; Bid Proc. Order, ¶¶ B, 9. In addition, the Stalking Horse Bidder will be reimbursed for its reasonable out-of-pocket costs and expenses incurred in connection with the Sale up to a $1,500,000 cap if certain conditions are satisfied, provided that if the Break-Up Fee (defined below) is subsequently determined to be payable, the Break-Up Fee will be reduced by the amount of the expense reimbursement. See Bid Proc. Order, ¶¶ B, 9. Furthermore, to be a Qualified Bid, bids must offer the Initial Minimum Bid Increment of at least the aggregate of (i) the cash Purchase Price; (ii) the Assumed Liabilities; (iii) the Break-Up Fee; and (iv) a cash amount of $2,500,000. See Bid. Proc., at 6. In the event of an Auction, subsequent bids shall be made in minimum increments of $2,500,000, and the Stalking Horse Bidder shall receive a credit equal to the sum of the Break-Up Fee in each round of bidding when bidding at the Auction. See Bid. Proc., at 7-8; Bid Proc. Order, ¶ B.

d. **Modification of Bidding and Auction Procedures.** The Debtors, in their reasonable discretion, may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction and that are not inconsistent with the Bidding Procedures, the Bidding Procedures Order or the Bankruptcy Code. The Bidding Procedures may be materially modified only upon the express written consent of the Debtors and the Stalking Horse Bidder (such consent not to be unreasonably withheld), or by order of the Bankruptcy Court. See Bid. Proc., at 12. The Debtors may (a) determine which Qualified Bid, if any, is the highest, best, and/or otherwise financially superior offer; and (b) reject at any time before entry of orders of the Bankruptcy Court approving a Qualified Bid, any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of sale, or (iii) contrary to the best interests of the Debtors, their estates and creditors. See Bid. Proc., at 11-12. At or before the Sale Hearing, the Debtors may impose such other terms and conditions as the Debtors may determine to be in the best interests of their estate and creditors and other parties in interest thereof that are not inconsistent with the Bidding Procedures Order, the Bidding Procedures or the Bankruptcy Code. See Bid. Proc., at 12. The Debtors reserve the right as they may determine to be in the best interests of their estates to: (a) determine which Potential Bidders are Qualified Bidders; (b) determine which Bids are

Qualified Bids; (c) determine which Qualified Bid is the highest and best proposal and which is the next highest and best proposal; (d) reject any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures Order or the requirements of the Bankruptcy Code or any other orders entered by the Bankruptcy Court, or (iii) contrary to the best interests of the Debtors and their estates or stakeholders, as applicable; (e) impose additional terms and conditions with respect to any or all Potential Bidders other than the Stalking Horse Bidder; (f) adjourn the Auction and/or Sale Hearing in open court without further notice; and (h) with the consent of the Stalking Horse Bidder, remove a portion of the Assets from the Auction. See Bid. Proc., at 12. Without limiting the foregoing, the Debtors may determine to distribute or not distribute copies of other Qualified Bids to other Qualified Bidders prior to or during the Auction other than with respect to the distribution of the Opening Bid as set forth in the Bidding Procedures. See Bid. Proc., at 12.

e. **Closing with Alternative Back-Up Bidders.** The Bidding Procedures provide that following the approval of the Sale of the Assets to the Successful Bidder at the Sale Hearing, if such Successful Bidder fails to consummate an approved Sale within fourteen (14) days after the entry of the Sale Order (except where the sole cause of any delay in closing is as a result of default by the Debtor), the Debtors shall be authorized, but not required, to deem the Back-Up Bid, as disclosed at the Sale Hearing, the Successful Bid and the Debtors shall be authorized, but not required, to consummate the Sale with the Back-Up Bidder submitting such Back-Up Bid without further notice or orders of the Court. If the Stalking Horse Bidder is not the Successful Bidder at the Auction but is designated as the bidder that has submitted the Back-Up Bid, then such Back-Up Bid must remain open until the earlier of the consummation of the transaction with the Successful Bidder and 30 days after the conclusion of the Sale Hearing. If any other bidder submits the Back-Up Bid, such Back-Up Bid must remain open until the consummation of the Sale to the Successful Bidder. See Bid. Proc., at 11.

f. **Provisions Governing the Auction**. The Bidding Procedures provide that if one or more Qualified Bids are received by the Bid Deadline, then the Debtors shall conduct the Auction, and the Auction shall commence on November 3, 2011 at the offices of Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022-4834 at 9:00 a.m. (prevailing Eastern Time). See Bid. Proc. Order, at 6.

V. Summary of the Assumption Procedures

23. The Debtors are also seeking approval of certain procedures to facilitate the fair and orderly assumption and assignment of the Assigned Agreements in connection with the Sale (the "**Assumption Procedures**"). The Assumption Procedures are as set forth below:

i. **Designation Deadline**. On or before one day prior to the Sale Hearing, the Stalking Horse Bidder or other Successful Bidder shall have the right to (a) designate any Contract to be an Assigned Agreement by amending Schedule 1.1(a) to the APA (Assigned Agreements) to add such Contract and (b) designate any Contract to not be an Assigned Agreement by amending Schedule 1.1(a) to the APA (Assigned Agreements) to remove such Contract; provided that, following the conclusion of the Auction, the Stalking Horse Bidder or such other Successful Bidder (i) may designate any Contract to be an Assigned Agreement by amending Schedule 1.1(a) to add such Contract to Schedule 1.1(a) and (ii) may not remove any Contract that was on Schedule 1.1(a) as of the conclusion of the Auction from Schedule 1.1(a).

ii. **Notices for Assigned Agreements**. As soon as practicable, the Debtors shall serve on all non-Debtor counterparties to any Contract (the "**Contract Notice Parties**") that may be assumed by the Debtors and assigned to the Successful Bidder, a "**Contract Notice**" in the form attached to the Bidding Procedures Order as **Exhibit 3** that identifies, to the extent applicable (a) the Contract that may be an Assigned Agreement, (b) the name of the counterparty to such Contract, (c) any applicable cure amount for such Contract if it becomes an Assigned Agreement, and (d) the deadline by which any such Contract counterparty must file a "**Contract Objection**" to the proposed assumption and assignment; provided, however, that the presence of a Contract on a Contract Notice does not constitute an admission that such Contract is an executory contract. As soon as practicable after the conclusion of the Auction, the Debtors shall file with the Court and serve on the Contract Notice Parties party to an Assigned Agreement identified by the Successful Bidder a further notice in the form attached to the Bidding Procedures Order as **Exhibit 4** (the "**Assumption Notice**") identifying the Successful Bidder and stating which Contracts will be Assigned Agreements, and no other or further notice will be required with respect to the Assigned Agreements. If the Successful Bidder designates any additional Contracts during the period between the Auction and the day prior to the Sale Hearing pursuant to subsection (i) above, the Debtors shall file with the Court and serve on such additionally affected Contract Notice Parties a revised Assumption Notice.

iii. **Objections to Assumption and Assignment of Contracts**. For all non-Debtor counterparties to an Assigned Agreement served a Contract Notice in accordance with this Order more than 14 days prior to the Sale Hearing, to which no Contract Objection was timely filed within 14 days after mailing of the Contract Notice, the counterparty to such Assigned Agreement shall be deemed to have waived and released any right to assert an objection to the assignment and assumption of such Assigned Agreement and to have otherwise consented to such assumption and assignment and cure amount, and the assignment will be deemed effective in accordance with the Sale Order. For all non-Debtor counterparties to an Assigned Agreement served with a Contract Notice 14 days or less prior to the Sale Hearing, if a timely filed Contract Objection is not received at or prior to the Sale Hearing, the counterparty to such Assigned Agreement shall be deemed to have waived and released any right to assert an objection to the assignment and assumption of such Assigned Agreement and to have otherwise consented to such assumption and assignment and cure amount, and the assignment will be deemed effective in accordance with the Sale Order. If any counterparty timely files a Contract Objection that cannot be resolved by the Debtors and the counterparty, the Court shall resolve such Contract Objection prior to assumption and assignment of such designated Contract, and upon entry of an order by the Court resolving such Contract Objection, the assignment shall be deemed effective in accordance with the Sale Order.

24. Any party failing to timely file an objection to the assumption and assignment of any contract or lease or related cure amount specified on a Contract Notice will be barred from objecting thereto, including asserting any additional cure or other default amounts against the Debtors or any of the Debtors' estates, the Stalking Horse Bidder or other Successful Bidder with respect to such executory contract(s) or unexpired lease(s) and shall be deemed to consent to the Sale and the assumption and assignment of such executory contract(s) or unexpired lease(s) effectuated in connection therewith.

Basis for Relief

VI. The Bidding Procedures Order Should be Entered on the Terms Proposed.

A. The Bidding Procedures Are Fair, Appropriate and Should be Approved.

25. "When conducting an asset sale, the ultimate responsibility of the debtor, and the primary focus of the bankruptcy court, is the maximization of the value of the assets sold." John

J. Jerome & Robert D. Drain, Bankruptcy Court Is Newest Arena for M&A Action, N.Y.L.J., June 3, 1991. "Under Delaware law, the business judgment rule operates as a presumption 'that directors making a business decision, not involving self-interest, act on an informed basis, in good faith and in the honest belief that their actions are in the corporation's best interest.'" Continuing Creditors' Committee of Star Telecomms., Inc. v. Edgecomb, 385 F. Supp. 2d 449, 462 (D. Del. 2004) (quoting Grobow v. Perot, 539 A.2d 180, 187 (Del. 1988)); see also Ad Hoc Committee of Equity Holders of Tectonic Network, Inc. v. Wolford, 554 F. Supp. 2d 538, 555 n.111 (D. Del. 2008). Thus, this Court should grant the relief requested in this Motion if the Debtors demonstrate a sound business justification therefor. See In re Delaware Hudson Ry. Co., 124 B.R. 169, 179 (Bankr. D. Del. 1991).

26. Here, the Debtors submit that the Bidding Procedures are fair and appropriate under the circumstances, consistent with procedures routinely approved by courts in this district and in the best interest of the Debtors' estates, and that the Debtors have sound business justifications for selling the Acquired Assets at this time. The Bidding Procedures are designed to facilitate orderly yet competitive bidding to maximize the net value realized from the Sale by the Debtors' estates. In particular, the Bidding Procedures contemplate an open and fair auction process with minimum barriers to entry and provide potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid.

27. The Bidding Procedures provide the Debtors with an adequate opportunity to consider competing bids and select the highest and best offer for the Acquired Assets. Entering into the APA with the Stalking Horse Bidder ensures that the Debtors obtain the highest and best consideration for the Acquired Assets by setting the minimum purchase price which will be

tested a second time in the marketplace. As such, the Debtors and their creditors can be assured that, taking into account the financial condition of the business and the economy, the consideration obtained will be fair and reasonable and at or above market.

B. The Bid Protections Have Sound Business Purpose and Should be Approved.

28. The Debtors are also requesting approval of (a) a break-up fee equal to three percent (3%) of the Cash Purchase Price (the "**Break-Up Fee**") which is equal to $8,250,000 and (b) an expense reimbursement to reimburse the Stalking Horse Bidder for its reasonable out-of-pocket costs and expenses incurred in connection with the Sale up to a $1,500,000 cap, if certain conditions are satisfied (the "**Expense Reimbursement Amount**" and together with the Break-Up Fee, the "**Bid Protections**"); provided that, if the Break-Up Fee is subsequently determined to be payable, the Break-Up Fee shall be reduced by the Expense Reimbursement Amount to be paid to the Stalking Horse Bidder upon the occurrence of certain "triggering events" typical and customary for transactions of this kind, including, among other things, consummation of a competing transaction or an uncured breach of the APA. The Bidding Procedures also provide that any Overbid (as defined in the Bidding Procedures) after the Opening Bid (as defined in the Bidding Procedures) must be made in increments of at least $2,500,000 (or such other amount the Debtors determine to facilitate the Auction).

29. Pursuant to Bankruptcy Rule 6004(f)(1), a sale of property outside the ordinary course of business may be by private sale or by public auction. The Debtors believe that having the ability to offer the Bid Protections (as outlined in the Bidding Procedures) to the Stalking Horse Bidder will likely maximize the realizable value of the Acquired Assets for the benefit of the Debtors' estates, creditors and other parties-in-interest.

30. Approval of the Bid Protections is governed by standards for determining the appropriateness of bid protections in the bankruptcy context. Courts have identified at least two

instances in which bid protections may benefit the estate. First, a break-up fee or expense reimbursement may be necessary to preserve the value of the estate if assurance of the fee "promote[s] more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.), 181 F.3d 527, 537 (3d Cir. 1999) (hereinafter, "O'Brien"). Second, if the availability of break-up fees and expense reimbursements were to induce a bidder to research the value of the debtor and convert the value to a dollar figure on which other bidders can rely, the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth. Id.; see also In re Reliant Energy Channel View LP, 594 F.3d 200, 206-08 (3d Cir. 2010) (reasoning that a break-up fee should be approved if it is necessary to entice a party to make the first bid or if it would induce a stalking horse bidder to remain committed to a purchase).

31. In O'Brien, the court reviewed the nine factors set forth by the lower court as relevant in deciding whether to award a break-up fee. Such factors are as follows:

a. the presence of self-dealing or manipulation in negotiating the break-up fee;

b. whether the fee harms, rather than encourages, bidding;

c. the reasonableness of the break-up fee relative to the purchase price;

d. whether the unsuccessful bidder placed the estate property in a "sales configuration mode" to attract other bidders to the auction;

e. the ability of the request for a break-up fee to serve to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders, or attract additional bidders;

f. the correlation of the fee to a maximization of value of the debtor's estate;

g. the support of the principal secured creditors and creditors committees of the break-up fee;

h. the benefits of the safeguards to the debtor's estate; and

i. the substantial adverse impact of the break-up fee on unsecured creditors, where such creditors are in opposition to the break-up fee.

See O'Brien, 181 F.3d at 536.

32. Stalking Horse Bidder Bid Protections. The Bid Protections set forth in the Bidding Procedures will enable the Debtors to secure an adequate floor for the Acquired Assets and, thus, insist that competing bids be materially higher or otherwise better than the APA and attracts other potential buyers to bid for all of the Acquired Assets subject to the APA – a clear benefit to the Debtors' estates. Moreover, the Stalking Horse Bidder would not agree to act as a stalking horse without the Bid Protections, and there has been no showing of any self-dealing or manipulation in the negotiation of the Bid Protections. Without the Bid Protections, the Debtors might lose the opportunity to obtain the highest or best offer for the Acquired Assets and would certainly lose the downside protection that will be afforded by the existence of the Stalking Horse Bidder. Furthermore, without the benefit of the Stalking Horse Bidder, the bids received at the Auction for the Acquired Assets could be substantially lower than the Stalking Horse Bid.

33. Moreover, payment of the Break-Up Fee will not diminish the Debtors' estates. The Break-Up Fee is only payable if a Sale to a bidder other than the Stalking Horse Bidder is consummated, and the Initial Minimum Overbid Increment under the Bidding Procedures includes the addition of the Break-Up Fee, among other things, to the Cash Purchase Price under the APA.

34. The Debtors further believe, and are advised, that, relative to the total purchase price under the APA, the amount of each of the Bid Protections is comparable to bid protections approved by courts in this and other districts. See, e.g., In re NEC Holdings Corp., No. 10-11890 (PJW) (Bankr. D. Del. July 30, 2010) (breakup fee and expense reimbursement of approximately 3.5% of stalking horse purchase price); In re Global Motorsport Group, Inc., No. 08-10192 (KJC) (Bankr. D. Del. Feb. 14, 2008) (breakup fee of approximately 4% of sale price); In re Dura Auto. Sys., Inc., No. 06-11202 (KJC) (Bankr. D. Del. July 24, 2007); In re New Century TRS Holdings, Inc., No. 07-10416 (KJC) (Bankr. D. Del. Apr. 20, 2007); In re Three A's Holdings, L.L.C., No. 06-10886 (BLS) (Bankr. D. Del. Sept. 7, 2006); In re Radnor Holdings, No. 06-10894 (Bankr. D. Del. Sept. 22, 2006) (aggregate fee and expense reimbursement of 3% permitted); In re Riverstone Networks, No. 06-10110 (Bankr. D. Del. Feb. 24, 2006) (expense reimbursement up to $1 million where the stalking horse purchase price was $170 million); In re Great Kansas City Paper, Inc., No. 03-10048 (Bankr. D. Me. Feb. 18, 2003) (expense reimbursement up to $750,000 in addition to a break-up fee of 5.4%, the aggregate value of which was $5 million); In re FSC Corp., No. 00-04659 (Bankr. N.D. Ill. Feb. 28, 2000) (expense reimbursement up to $500,000 in addition to a break-up fee of 3.4%, valued at $1,500,000).[9]

35. Accordingly, the Debtors submit that the Bid Protections reflect a sound business purpose, are fair and appropriate under the circumstances and, because the standard used by courts in this district in approving similar protections has been satisfied here, the Debtors respectfully submit that the Bid Protections should be approved.

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9 Because of the voluminous nature of the orders cited herein, they are not attached to the Motion. Copies of these orders are available on request of the Debtors' counsel.

C. The Assumption Procedures Are Appropriate and Should be Approved.

36. In connection with the assumption and assignment of the Assigned Agreements, the Debtors believe it is necessary to establish a process by which (i) the Debtors and counterparties to Assigned Agreements can reconcile cure obligations, if any, in accordance with Section 365 of the Bankruptcy Code, and (ii) such counterparties can object to the assumption and assignment of Assigned Agreements and/or related cure amounts.

37. As set forth in the Bidding Procedures Order, the Debtors are also requesting that any party that fails to object to the proposed assumption and assignment of any Assigned Agreement be deemed to consent to the assumption and assignment of the applicable Assigned Agreement pursuant to Section 365 of the Bankruptcy Code on the terms set forth in the Sale Order, notwithstanding any anti-alienation provision or other restriction on assignment. See, e.g., Hargrave v. Township of Pemberton (In re Tabone, Inc.), 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to sale motion, creditor deemed to consent); Pelican Homestead v. Wooten (In re Gabel), 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (same).

38. The Debtors believe that the Assumption Procedures are fair and reasonable, provide sufficient notice to parties to the Assigned Agreements and provide certainty to all parties in interest regarding their obligations and rights in respect thereof. Accordingly, the Debtors request that the Court approve the Assumption Procedures set forth in the Bidding Procedures Order.

D. The Form and Manner of the Sale Notice Should be Approved.

39. Pursuant to Bankruptcy Rule 2002(a), the Debtors are required to provide their creditors with 21 days' notice of the Sale Hearing. Pursuant to Bankruptcy Rule 2002(c), such notice must include the time and place of the Auction and the Sale Hearing and the deadline for filing any objections to the relief requested herein.

40. Within three (3) business days after entry of the Bidding Procedures Order or as soon thereafter as practicable, the Debtors will serve the Sale Notice upon the following parties: (a) the United States Trustee for the District of Delaware; (b) the members of and counsel to the Unsecured Creditors Committee; (c) financing counsel to the administrative agent for the lenders under the Debtors' prepetition first lien credit facility; (d) special restructuring and bankruptcy counsel to the administrative agent for the lenders under the Debtors' prepetition first lien credit facility; (e) local counsel to the administrative agent for the lenders under the Debtors' prepetition first lien credit facility; (f) counsel to the administrative agent for the lenders under the Debtors' prepetition second lien credit facility; (g) counsel to the administrative agent for the lenders under the Debtors' prepetition unsecured mezzanine credit facility; (h) the Food and Drug Administration; (i) the attorneys general for each of the States in which the Debtors conduct operations; (i) all taxing authorities having jurisdiction over any of the Acquired Assets, including the Internal Revenue Service; (j) the Environmental Protection Agency; (k) the Tennessee Environmental Protection Agency; (l) the Pension Benefit Guaranty Corporation; (m) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002; (n) any parties who have expressed an interest in acquiring all or a substantial portion of the Acquired Assets; (o) parties who are known or reasonably believed to have asserted any lien, encumbrance, claim or other interest in the Acquired Assets, (p) all governmental agencies that is an interested party with respect to the Sale and transactions proposed thereunder; (q) the U.S. Public Health Service; (r) all non-Debtor parties to the Assigned Agreements; (s) the Centers for Medicare and Medicaid Services; and (t) all other known creditors of the Debtors.

41. Additionally, within five (5) business days after entry of the Bidding Procedures Order or as soon thereafter as practicable, the Debtors will publish the Sale Notice once in the *Wall Street Journal*.

42. The Debtors submit that notice of this motion and the related hearing to consider entry of the Bidding Procedures Order coupled with service of the Sale Notice as provided for herein, constitutes good and adequate notice of the Sale and the proceedings with respect thereto in compliance with, and satisfaction of, the applicable requirements of Bankruptcy Rule 2002 and Local Rule 2002-1. Accordingly, the Debtors request that this Court approve the form and manner of the Sale Notice proposed herein.

VII. The Sale Order Should be Entered on the Terms Proposed.

A. The Sale Should be Approved as an Exercise of the Debtors' Sound Business Judgment.

43. Section 363(b) of the Bankruptcy Code provides that a debtor may sell property of the estate outside the ordinary course of business after notice and a hearing. Although Bankruptcy Code section 363 does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, courts in this district and elsewhere have found that a debtor's sale or use of assets outside the ordinary course of business should be approved if the debtor can demonstrate a sound business justification for the proposed transaction. See, e.g., Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996); In re Abbotts Dairies of Penn., Inc., 788 F.2d 143 (3d Cir. 1986); In re Eagle Picher Holdings, Inc., 2005 Bankr. LEXIS 2894, at *3 (Bankr. S.D. Ohio 2005); In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983); In re Boston Generating, LLC, 440 B.R. 302, 321 (Bankr. S.D.N.Y. 2010). Once the Debtors articulate a valid business justification, "[t]he business judgment rule 'is a presumption that in making the business decision the directors of a corporation acted on an

informed basis, in good faith and in the honest belief that the action was in the best interests of the company.'" In re S.N.A. Nut Co., 186 B.R. 98 (Bankr. N.D. Ill. 1995); see also In re Integrated Res., Inc., 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992); In re Johns-Manville Corp., 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) ("a presumption of reasonableness attaches to a Debtor's management decisions").

44. The sale of a debtor's assets is appropriate where there are sound business reasons behind such a determination. See Myers, 91 F.3d at 395; see also Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp., (In re Montgomery Ward Holding Corp.), 242 B.R. 147, 153 (Bankr. D. Del. 1999); In re Del. & Hudson Ry. Co., 124 B.R. 169, 176 (D.D.C. 1991); Stephens Indus., Inc. v. McClung, 789 F.2d 386 (6th Cir. 1986) (sale of substantially all assets of estate authorized where "a sound business purpose dictates such action"). The Debtors have a sound business justification for selling the Acquired Assets pursuant to the Bidding Procedures at this time. Based on the results of their analysis of the Debtors' ongoing and future business prospects, the Debtors' management and team of financial advisors have concluded that a sale of all of the Acquired Assets in accordance with the Bidding Procedures is the best method to maximize recoveries to the estates. Maximization of the Acquired Assets' value is a sound business purpose warranting authorization of any proposed sale.

45. The Debtors have proposed a fair and open process for achieving the objective of obtaining the highest or best offer and sale of the Acquired Assets for the benefit of the Debtors' estates and their creditors. The sale of the Acquired Assets will be subject to competing bids, enhancing the Debtors' ability to receive the highest or otherwise best value for the Acquired Assets. Consequently, the fairness and reasonableness of the consideration to be received by the

Debtors will ultimately be demonstrated by a second "market check" through the Auction, which is the best means for establishing whether a fair and reasonable price is being paid.[10]

46. In addition, all creditors and parties-in-interest will receive adequate notice of the Bidding Procedures and Sale Hearing as set forth above. Such notice is reasonably calculated to provide timely and adequate notice to the Debtors' major creditor constituencies, those parties most interested in these Chapter 11 Cases, those parties potentially interested in bidding on the Acquired Assets who have not already been contacted and others whose interests are potentially implicated by a proposed Sale. Accordingly, consummating the Sale as soon as possible is in the best interests of the Debtors and its creditors and parties-in-interest.

(i) A Sound Business Purpose Exists for the Sale.

47. The Debtors have a sound business justification for entering into this transaction, including converting underperforming assets into cash that can be used to pay creditors or fund the estates through confirmation a chapter 11 plan of liquidation that effectuates a discharge of the remaining claims, interests, liens and other "Excluded Liabilities" not assumed as part of the sale pursuant to Sections 541 and 1141 of the Bankruptcy Code.

48. Notably, it was not without extensive consideration that the APA was executed. Indeed, it was only after (a) potential alternatives were evaluated, (b) the transaction was aggressively marketed, (c) multiple rounds of competing proposals were evaluated and analyzed and (d) all of the foregoing was presented to the Special Committee and the members of the Board of Managers of Graceway Holdings, LLC (who, in conjunction with advice from experienced professionals, discharged their fiduciary duties, exercised sound and appropriate business judgment and determined to pursue the Sale on the terms of the APA, subject to

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10 The Debtors reserve all rights to not submit any bid which is not acceptable to the Debtors for approval to the Bankruptcy Court.

competitive bidding sanctioned by the Court), that the Debtors and the Stalking Horse Bidder entered into, and agreed to be bound by, the APA.

49. Thus, for the reasons set forth herein, as will be further shown at the Sale Hearing, because the APA (or any marked APA, as the case may be) constitutes (or will constitute) the highest or otherwise best offer for the Acquired Assets and provides greater recovery for these estates than any known or practicably available alternative, the Debtors submit that the execution thereof represents sound reasonable business judgment.

(ii) Adequate and Reasonable Notice of the Sale Will be Provided.

50. As described above, the Sale Notice (a) will be served in a manner that provides at least 21-days notice of the date, time and location of the Sale Hearing, (b) informs interested parties of the deadlines for objecting to the Sale and (c) otherwise includes all information relevant to parties interested in or affected by the Sale. Significantly, the form and manner of the Sale Notice will have been approved by this Court pursuant to the Bidding Procedures Order after notice and a hearing before it is served on parties in interest, and, as such, the Debtors are confident the Sale Notice will be properly vetted by the time of service thereof.

(iii) The Sale and Purchase Price Reflects a Fair Value Transaction.

51. It is a well-settled that, where there is a court-approved auction process, a full and fair price is presumed obtained for the assets sold, as the best way to determine value is exposure to the market. See Bank of Am. Nat'l Trust & Sav. Ass'n. v. LaSalle St. P'ship, 526 U.S. 434, 457 (1999); see also In Re Trans World Airlines, Inc., No. 01-00056, 2001 Bankr. Lexis 980, at *13 (Bankr. D. Del. April 2, 2001) (while a "§ 363(b) sale transaction does not require an auction procedure," "the auction procedure has developed over the years as an effective means for producing an arm's length fair value transaction"). This is especially true here, where the proposed sale of the Acquired Assets has been subjected to an extensive prepetition marketing

process, reviewed by outside professionals firms and intensively scrutinized by the Debtors and their retained advisors.

52. Moreover, even as the Debtors move forward with the Sale, after entry of the Bidding Procedures Order, Lazard will continue to market the transaction and solicit other offers for the Acquired Assets consistent with the Bidding Procedures and subject to the APA, including, for example, by contacting previously solicited parties, providing acceptable bidders with data room access and requested information and otherwise assisting the Debtors with all efforts to increase transaction value. In this way, the number of bidders that are eligible to participate in a competitive auction process will be maximized, or, if no Auction is held because no Auction is necessary, the APA purchase price will, conclusively, be fair value.

(iv) The Sale Has Been Proposed in Good Faith and Without Collusion and the Stalking Horse Bidder or Successful Bidder Is a "Good Faith Purchaser

53. While the Bankruptcy Code does not define "good faith," the Third Circuit has held that "the phrase encompasses one who purchases in 'good faith' and for 'value.'" In re Abbotts Dairies, 788 F.2d at 147 (to constitute lack of good faith, a party's conduct in connection with the sale must usually amount to fraud, collusion between the purchaser and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders); see also In re Bedford Springs Hotel, Inc., 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989); In re Perona Bros., Inc., 186 B.R. 833, 839 (D.N.J. 1995).

54. In other words, a party would have to show fraud or collusion between the buyer and the debtor in possession or trustee or other bidders in order to demonstrate a lack of good faith. See Kabro Assocs. of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.), 111 F.3d 269, 276 (2d Cir. 1997) ("[t]ypically, the misconduct that would destroy a [buyer]'s good faith status at a judicial sale involves fraud, collusion between the [buyer] and other bidders

or the trustee, or an attempt to take grossly unfair advantage of other bidders"); see also In re Angelika Films, 57th, Inc., 1997 WL 283412, *7 (S.D.N.Y. 1997); In re Balcalis, 220 B.R. 525, 537 (Bankr. E.D.N.Y. 1998). Due to the absence of a bright line test for good faith, the determination is based on the facts of each case, concentrating on the "integrity of [an actor's] conduct in the course of the sale proceedings." In re Pisces Leasing Corp., 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting In re Rock Indus. Mach. Corp., 572 F.2d 1195, 1998 (7th Cir. 1978)).

55. The Debtors submit the Stalking Horse Bidder, or other successful bidder arising from the Auction, is or would be a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code and the APA, or any marked version thereof, is or would be a good faith agreement on arm's-length terms entitled to the protections of section 363(m) of the Bankruptcy Code.[11] First, the consideration to be received by the Debtors pursuant to the APA is substantial, fair and reasonable. Second, the parties entered into the APA in good faith, and after extensive, arm's-length negotiations, during which both parties were represented by competent counsel. Third, there is no indication of any "fraud, collusion between the purchaser and other bidders or the Debtors, or an attempt to take grossly unfair advantage of other bidders" or similar conduct that would cause or permit the Sale or APA to be avoided under section 363(n) of the Bankruptcy Code. Finally, the Stalking Horse Bidder's offer was evaluated and approved by the Board of Managers of Graceway Holdings, LLC in consultation with the Debtors' professionals. Accordingly, the Debtors believe that the Stalking Horse Bidder (or other successful bidder) and

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11 Section 363(m) of the Bankruptcy Code provides that:

> [t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease or property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

See 11 U.S.C. § 363(m).

the APA (or marked APA) should be entitled to the full protections of Section 363(m) of the Bankruptcy Code.

B. The Sale Should be Approved "Free and Clear" Under § 363(f).

56. Section 363(f) of the Bankruptcy Code permits the Debtors to sell assets free and clear of all liens, claims, interests, charges and encumbrances (with any such liens, claims, interests, charges, and encumbrances attaching to the net proceeds of the sale with the same rights and priorities therein as in the sold assets). As Bankruptcy Code section 363(f) is stated in the disjunctive, when proceeding pursuant to section 363(b), it is only necessary to meet one of the five conditions of section 363(f). Citicorp Homeowners Servs., Inc. v. Elliot, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988); (stating that Bankruptcy Code section 363(f) is written in the disjunctive; holding that if any of the five conditions of § 363(f) are met, the trustee has the authority to conduct the sale free and clear of all liens). The Debtors believe that they will be able to demonstrate at the Sale Hearing that they have satisfied one or more of these conditions.

57. As noted above, in excess of 50% of the First Lien Lenders have executed the Sale Support Agreement evidencing their support for the Sale.

C. Assumption and Assignment of Contracts Should be Approved.

(i) The Assumption of the Contacts Reflects Business Judgment.

58. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor-in-possession "subject to the court's approval, may assume or reject any executory contract or [unexpired] lease of the debtor." 11 U.S.C. § 365(a). The standard governing bankruptcy court approval of a debtor's decision to assume or reject an executory contract or unexpired lease is whether the debtor's reasonable business judgment supports assumption or rejection. See e.g., In re Stable Mews Assoc., Inc., 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984). If the debtor's business judgment has been reasonably exercised, a court should approve the assumption or rejection of

an unexpired lease or executory contract. See Group of Institutional Investors v. Chicago M. St. P. & P.R.R. Co., 318 U.S. 523 (1943); Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp., 872 F.2d 36, 39-40 (3d. Cir. 1989). The business judgment test "requires only that the trustee [or debtor-in-possession] demonstrate that [assumption or] rejection of the contract will benefit the estate." Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.), 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987) (quoting In re Stable Mews Assoc., 41 B.R. at 596). Any more exacting scrutiny would slow the administration of a debtor's estates, increase costs, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten this Court's ability to control a case impartially. See Richmond Leasing Co. v. Capital Bank, NA., 762 F.2d 1303, 1311 (5th Cir. 1985). Moreover, pursuant to section 365(b)(1) of the Bankruptcy Code, for a debtor to assume an executory contract, it must "cure, or provide adequate assurance that the debtor will promptly cure," any default, including compensation for any "actual pecuniary loss" relating to such default. 11 U.S.C. § 365(b)(1).

59. Once an executory contract is assumed, the trustee or debtor-in-possession may elect to assign such contract. See In re Rickel Home Center, Inc., 209 F.3d 291, 299 (3d Cir. 2000) ("[t]he Code generally favors fee assignability as a means to maximize the value of the debtor's estate"); see also In re Headquarters Doge, Inc., 13 F.3d 674, 682 (3d Cir. 1994) (noting purpose of section 365(f) is to assist trustee in realizing the full value of the debtor's assets).

60. Section 365(f) of the Bankruptcy Code provides that the "trustee may assign an executory contract . . . only if the trustee assumes such contract . . . and adequate assurance of future performance is provided." 11 U.S.C. § 365(f)(2). The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given

"practical, pragmatic construction." See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc., 103 B. R. 524, 538 (Bankr. D.N.J. 1989); see also In re Natco Indus., Inc., 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent). Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. See, e.g., In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when a prospective assignee of a lease from debtors has financial resources and has expressed willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding).

61. Upon Closing (as defined in the APA), the Stalking Horse Bidder will have financial resources that are more than sufficient to perform under any executory contracts it seeks to have assumed by the Debtors under the APA. Moreover, if necessary, the Debtors will adduce facts at the hearing on any objection demonstrating the financial wherewithal of the Stalking Horse Bidder or any Successful Bidder, and their willingness and ability to perform under the contracts to be assumed and assigned to them. The Sale Hearing therefore will provide this Court and other interested parties ample opportunity to evaluate and, if necessary, challenge, the ability of any Successful Bidder to provide adequate assurance of future performance under the Assigned Agreements that it seeks to assume.

62. The Debtors respectfully submit that the proposed Assumption Procedures are appropriate and reasonably tailored to provide Contract Notice Parties with adequate notice in the form of the Assumption Notice or Cure Notice, as applicable, of the proposed assumption and/or assignment of their applicable contract, as well as proposed Cure Amounts, if applicable. Such Contract Notice Parties will then be given an opportunity to object to such notice. If an

objection is filed, such objection will be heard at the Sale Hearing or at a later hearing, as determined by the Debtors.

63. Furthermore, to the extent that any defaults exist under any executory contract or unexpired lease that is to be assumed and assigned in connection with the Sale of the Acquired Assets, the Debtors (or, in certain cases, the Stalking Horse Bidder, as applicable under the APA) will cure any such default prior to such assumption and assignment. Moreover, the Debtors will adduce facts at the Sale Hearing demonstrating the financial wherewithal of the Successful Bidder, its experience in the industry, and its willingness and ability to perform under the contracts to be assumed and assigned to it.

64. Accordingly, the Debtors submit that implementation of the proposed Assumption Procedures is appropriate in these cases. This Court therefore should have a sufficient basis to authorize the Debtors to assume and assign contracts as may be set forth in the APA or any Successful Bidder's asset purchase agreement.

Notice

65. The Debtors, through the Debtors' proposed claims, noticing, soliciting and balloting agent, BMC Group, Inc., have provided notice of this Motion to: (a) the United States Trustee for the District of Delaware; (b) financing counsel to the First Lien Agent; (c) special restructuring and bankruptcy counsel to the First Lien Agent; (d) counsel to the Second Lien Agent; (e) the administrative agent for the lenders under the Debtors' prepetition unsecured mezzanine credit facility; (f) the creditors listed on the Debtors' consolidated list of 30 largest unsecured creditors, as filed with the Debtors' chapter 11 petitions; (g) the Food and Drug Administration; (h) the Internal Revenue Service; (i) the U.S. Public Health Service; (j) the Centers for Medicare and Medicaid Services; (k) all parties requesting notice pursuant to Bankruptcy Rule 2002; (l) all parties who are known or reasonably believed to have asserted any

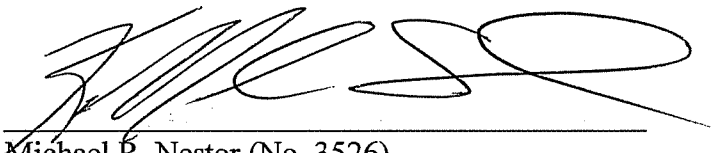
lien, encumbrance, claim or other interest in the Acquired Assets; and (m) counsel to the Stalking Horse Bidder. In light of the nature of the relief requested, the Debtors submit that no further notice is required or needed under the circumstances.

66. A copy of the Motion is available on the Court's website: www.deb.uscourts.gov. Additional copies of the Motion are available for free on the website of the Debtors' proposed claims, noticing, soliciting and balloting agent, BMC Group, Inc., at www.bmcgroup.com/graceway, or can be requested by calling (888) 909-0100 from within the United States or +1 310 321 5555 if calling from outside the United States.

WHEREFORE, the Debtors respectfully request that this Court enter the Bidding Procedures Order and the Sale Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, granting the applicable relief requested herein, and granting such other and further relief as is just and proper.

Dated: September 29, 2011
Wilmington, Delaware

Respectfully Submitted,



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PROPOSED ATTORNEYS FOR DEBTORS AND DEBTORS-IN-POSSESSION

Exhibit A

Proposed Bidding Procedures Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
GRACEWAY PHARMACEUTICALS, LLC, *et al.*,[1]	Case No. 11-_____ (____)
	Jointly Administered
Debtors.	**Related Docket No. ____**

ORDER APPROVING AND AUTHORIZING (A) BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF CERTAIN ASSETS OF THE DEBTORS, (B) STALKING HORSE BID PROTECTIONS, (C) FORM AND MANNER OF NOTICE OF THE SALE HEARING AND (D) RELATED RELIEF

Upon the portion of the motion (the "**Motion**")[2] of Graceway Pharamaceuticals, LLC and its affiliates, as debtors and debtors-in-possession (collectively, the "**Debtors**"), for entry of an order approving and authorizing (a) bidding procedures, including stalking horse bidder protections, in connection with the receipt and analysis of competing bids for certain assets of the Debtors, (b) procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale, (c) the form and manner of notice of the Sale and scheduling the sale hearing and setting related dates and deadlines, and (d) other related relief, pursuant to sections 105(a), 363, 365, 503(b), 507 and, if applicable, 1146(a) of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rules 2002-1, 6004-1 and 9006-1(b) of

1 The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).

2 All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Motion.

the Local Bankruptcy Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"); and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and a hearing having been held on ____ __, 2011 (the "**Bidding Procedures Hearing**"); and this Court having reviewed the Motion and the exhibits thereto and the arguments of counsel made and the evidence proffered or adduced, as applicable, at the Bidding Procedures Hearing; and this Court having determined that the legal and factual bases set forth in the Motion and at the Bidding Procedures Hearing establish just cause for the relief granted herein; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and this Court having found the form and manner of notice of the Bidding Procedures Hearing is good, sufficient and appropriate under the circumstances and that no other or further notice need be provided or is necessary; and after due deliberation and sufficient cause appearing therefor, this Court FINDS AND DETERMINES THAT:[3]

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3 The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

A. Bidding Procedures. The Debtors have articulated good and sufficient reasons for authorizing and approving the Bidding Procedures attached as **Exhibit 1** hereto (the "**Bidding Procedures**"), which are fair, reasonable and appropriate under the circumstances and represent the best method for maximizing the recovery on, and realizable value of, the Acquired Assets.

B. Stalking Horse Bid Protections. The Debtors have demonstrated a compelling and sound business justification for authorizing the payment of the Break-Up Fee and the Expense Reimbursement Amount and establishing the Initial Minimum Overbid Increment (collectively, the "**Bid Protections**") to the Stalking Horse Bidder under the circumstances, including, without limitation, that:

i. the Bid Protections are the product of negotiations among the Debtors and the Stalking Horse Bidder conducted in good faith and at arm's-length, and the APA (including the Bid Protections) is the culmination of a process undertaken by the Debtors and their professionals to negotiate a transaction with a bidder who was prepared to pay the highest or otherwise best purchase price to date for the Acquired Assets in order to maximize the value of the Debtors' estates;

ii. the Break-Up Fee and the Expense Reimbursement Amount are an actual and necessary cost and expense of preserving the respective Debtors' estates, within the meaning of Sections 503(b) and 507(a)(2) of the Bankruptcy Code;

iii. the Bid Protections are fair, reasonable and appropriate in light of, among other things, the size and nature of the proposed Sale under the APA and comparable transactions, the substantial efforts that have been and will be expended by the Stalking Horse Bidder, notwithstanding that the proposed Sale is subject to higher or better offers, and the substantial benefits the Stalking Horse Bidder has provided to the Debtors, their estates and creditors and all parties in interest herein, including, among other things, by increasing the likelihood that the best possible price for the Acquired Assets will be received;

iv. the protections afforded to the Stalking Horse Bidder by way of the Bid Protections were material inducements for, and express conditions of, the Stalking Horse Bidder's willingness to enter into, and to continue to be bound by, the APA, and were necessary to ensure that the Stalking Horse

Bidder would continue to pursue the proposed acquisition on terms acceptable to the Debtors in their sound business judgment, subject to competitive bidding; and

v. the assurance of the payment of the Break-Up Fee and/or the Expense Reimbursement Amount, as applicable, (I) has promoted more competitive bidding by inducing the Stalking Horse Bidder's bid, which otherwise would not have been made, without which competitive bidding would be limited, and which may be the highest and best available offer for the Acquired Assets, and has induced the Stalking Horse Bidder to conduct due diligence with respect to the Debtors' business, assets, operations and liabilities, and propose the Sale contemplated by the APA, including, among other things, submission of a bid that will serve as a minimum or floor bid on which all other bidders can rely and (II) increases the likelihood that the final purchase price reflects the true value of the Acquired Assets.

C. Assumption Procedures. The Motion, this Order, and the Contract Notice are reasonably calculated to provide counterparties to the Assumed Contracts with proper notice of the intended assumption and assignment of their executory contracts or unexpired leases, any Cure Amounts relating thereto and the Assumption and Assignment Procedures.

D. Sale Notice. The Sale Notice is reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale, including, without limitation: (i) the date, time and place of the Auction (if one is held); (ii) the Bidding Procedures and the dates and deadlines related thereto; (iii) the objection deadline for the sale motion and the date, time and place of the Sale Hearing; (iv) reasonably specific identification of the Acquired Assets; (v) instructions for promptly obtaining a copy of the APA; (vi) representations describing the Sale as being free and clear of liens, claims, interests and other encumbrances, with all such liens, claims, interests and other encumbrances attaching with the same validity and priority to the sale proceeds; (vi) the commitment by the Stalking Horse Bidder to assume certain liabilities of the Debtors; and (vii) notice of the proposed assumption and assignment of contracts and leases to the Stalking Horse Bidder pursuant to the APA (or to another Successful Bidder arising

from the Auction, if any), the proposed cure amounts relating thereto and the right, procedures and deadlines for objecting thereto, and no other or further notice of the Sale shall be required.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is granted to the extent set forth herein.

2. All objections to the relief requested in the Motion that have not been withdrawn, waived or settled as announced to the Court at the hearing on the Motion or by stipulation filed with the Court, are overruled.

I. Important Dates and Deadlines

3. **Sale Hearing**. _____ __, 2011, at _:00 _.m. prevailing Eastern Time, is the date and time the sale hearing (the "**Sale Hearing**") will be held before the Honorable Judge [_____], United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at: 824 North Market Street, [__] Floor, Wilmington, Delaware 19801. At the Sale Hearing, the Debtors will seek the entry of an order of this Court approving and authorizing the Sale to the Stalking Horse Bidder or the Successful Bidder (if other than the Stalking Horse Bidder), as applicable. Any obligations of the Debtors set forth in the APA that are intended to be performed prior to the Sale Hearing and/or entry of the Sale Order pursuant to the APA are authorized as set forth herein and are fully enforceable as of the date of entry of this Order. **Please take notice that:** the Sale Hearing (or any portion thereof) may be adjourned by this Court or the Debtors from time to time without further notice other than by announcement in open court, on this Court's calendar or through the filing of a notice or other document on this Court's docket.

4. **Sale Objection Deadline**. _____ __, 2011 at 4:00 p.m. prevailing Eastern Time, is the deadline to object to the relief requested in the Motion, including entry of the proposed Sale Order (the "**Sale Objection Deadline**"). Objections, if any, **must**: (i) be in writing;

(ii) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (iv) be filed with this Court and served so *actually received* no later than the Sale Objection Deadline by (A) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002 and (B) the following parties (the "**Notice Parties**"):

Debtors	**Counsel to Debtors**
Graceway Pharmaceuticals, LLC 340 Martin Luther King Jr. Blvd. Suite 500 Bristol, Tennessee 37620 Attn: John Bellamy	Latham & Watkins LLP 233 South Wacker Drive Chicago, IL 60606 Attn: Josef S. Athanas, Esq. and Matthew L. Warren, Esq. Young Conaway Stargatt & Taylor, LLP 1000 West Street, 17th Floor Wilmington, Delaware 19801 Attn: Michael R. Nestor, Esq. and Kara Hammond Coyle, Esq.
Special Bankruptcy and Restructuring Counsel to the Agent for the First Lien Lenders	**United States Trustee**
Wachtell, Lipton, Rosen & Katz 51 West 52nd Street New York, NY 10019 Attn: Scott K. Charles, Esq. and Michael S. Benn, Esq. DLA Piper LLP 919 North Market Street, 15th Floor Suite 1500 Wilmington, DE 19801 Attn: Stuart M. Brown, Esq.	Office of the United States Trustee for the District of Delaware 844 King Street J. Caleb Boggs Federal Building Room 2207, Lockbox 35 Wilmington, DE 19801 Attn: Juliet Sarkessian, Esq.
Financing Counsel to the Agent for the First Lien Lenders	**Counsel to the Creditors' Committee**
Morgan Lewis 225 Franklin Street, 16th Floor Boston, Massachusetts 02110 Attn: Sula Fiszman, Esq.	
Counsel to the Agent for the Second Lien Lenders	**Counsel to the Stalking Horse Bidder**
Sidley Austin LLP One South Dearborn, Chicago, IL 60603 Attn: Larry Nyhan, Esq.	Debevoise & Plimpton LLP 919 Third Avenue New York, NY 10022 Attn: My Chi To, Esq. and Kevin A. Rinker, Esq. Morris, Nichols, Arsht & Tunnell LLP 1201 North Market Street, 18th Floor Wilmington, DE 19801 Attn: Gregory W. Werkheiser, Esq.

Notwithstanding anything to the contrary in this paragraph 4, the Sale Objection Deadline may be extended by the Debtors in consultation with the Stalking Horse Bidder.

5. **The failure to timely file an objection in accordance with this Order shall forever bar the assertion of any objection to the Motion, entry of the Sale Order and/or consummation of the Sale, including the assumption and assignment of contracts and leases to the Successful Bidder pursuant to the APA, and shall be deemed to constitute any such party's consent to entry of the Sale Order and consummation of the Sale and all transactions related thereto.**

6. **Reply Deadline**. _____ __, 2011 at 4:00 p.m. prevailing Eastern Time, is the deadline for the Debtors, the Stalking Horse Bidder and other parties in interest to file replies to any timely-filed objection to entry of the Sale Order with this Court; *provided*, that such deadline may be extended by agreement of the Debtors and the affected objecting party.

7. **Competitive Bidding**. The following dates and deadlines regarding competitive bidding are hereby established (subject to modification as needed):

a. **Bid Deadline**: _____ __, 2011 at _:00 _.m. prevailing Eastern Time, is the deadline by which all "Qualified Bids" (as defined in the Bidding Procedures) must be *actually received* by the parties specified in the Bidding Procedures (the "**Bid Deadline**"); and

b. **Auction**: _____ __, 2011 at _:00 _.m. prevailing Eastern Time, is the date and time of the Auction, if one is needed, will be held at the offices of counsel to the Debtors: Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022-4834.

II. Bidding Procedures and Related Relief

A. Bidding Procedures

8. The Bidding Procedures, substantially in the form annexed hereto as **Exhibit 1** and incorporated by reference as though fully set forth herein, are hereby approved in their

entirety. The Bidding Procedures shall govern the submission, receipt and analysis of all bids relating to the proposed Sale, and any party desiring to submit a higher or better offer for the Acquired Assets shall do so strictly in accordance with the terms of the Bidding Procedures and this Order. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.

9. The Bid Protections described in the Motion are hereby approved. The Debtors are authorized to pay any and all amounts owing to the Stalking Horse Bidder in accordance with the terms of the APA, including the Break-Up Fee and the Expense Reimbursement Amount, without further order of this Court, except as otherwise provided herein. The Debtors' obligation to pay the Bid Protections to the Stalking Horse Bidder shall constitute an administrative expense claim in accordance with Sections 105(a), 503 and 507 of the Bankruptcy Code, senior to all other superpriority administrative expense claims in the Debtors' Bankruptcy Cases.

10. No person or entity other than the Stalking Horse Bidder shall, pursuant to the Bidding Procedures or otherwise, be entitled to any expense reimbursement, break-up fees, "topping," termination or other similar fee or payment in connection with the sale of the Acquired Assets pursuant to the terms of this Order.

11. As described in the Bidding Procedures, if the Debtors do not receive any Qualified Bids other than from the Stalking Horse Bidder or if no Qualified Bidder other than the Stalking Horse Bidder indicates its intent to participate in the Auction, the Debtors will not hold the Auction, the Stalking Horse Bidder will be named the Successful Bidder and the Debtors will seek approval of the APA at the Sale Hearing. If one or more Qualified Bids is timely received from a Qualified Bidder (other than the Stalking Horse Bidder) in accordance with the Bidding Procedures, the Debtors shall conduct the Auction as set forth herein.

12. If the Auction is conducted, each Qualified Bidder participating in the Auction shall be required to confirm that it has not engaged in any collusion with respect to the bidding process or the Sale, the Auction will be conducted openly and the Auction shall be transcribed or videotaped.

III. Assumption Procedures

13. The following procedures regarding the assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale are hereby approved to the extent set forth herein, and shall govern the assumption and assignment of all executory contracts and unexpired leases proposed to be assumed by the Debtors pursuant to Section 365(b) of the Bankruptcy Code and assigned to the Stalking Horse Bidder (or other Successful Bidder following the Auction, if any) pursuant to Section 365(f) of the Bankruptcy Code under the APA:

c. **Designation Deadline.** On or before one day prior to the Sale Hearing, the Stalking Horse Bidder or other Successful Bidder shall have the right to (a) designate any Contract to be an Assigned Agreement by amending Schedule 1.1(a) to the APA (Assigned Agreements) to add such Contract and (b) designate any Contract to not be an Assigned Agreement by amending Schedule 1.1(a) to the APA (Assigned Agreements) to remove such Contract; provided that, following the conclusion of the Auction, the Stalking Horse Bidder or such other Successful Bidder (i) may designate any Contract to be an Assigned Agreement by amending Schedule 1.1(a) to add such Contract to Schedule 1.1(a) and (ii) may not remove any Contract that was on Schedule 1.1(a) as of the conclusion of the Auction from Schedule 1.1(a).

d. **Notices for Assigned Agreements.** As soon as practicable, the Debtors shall serve on all non-Debtor counterparties to any Contract (the "**Contract Notice Parties**") that may be assumed by the Debtors and assigned to the Successful Bidder, a "**Contract Notice**" in the form attached hereto as **Exhibit 3** that identifies, to the extent applicable (a) the Contract that may be an Assigned Agreement, (b) the name of the counterparty to such Contract, (c) any applicable cure amount for such Contract if it becomes an Assigned Agreement, and (d) the deadline by which any such Contract counterparty must file a "**Contract Objection**" to the proposed assumption and assignment; provided, however, that the

presence of a Contract on a Contract Notice does not constitute an admission that such Contract is an executory contract. As soon as practicable after the conclusion of the Auction, the Debtors shall file with the Court and serve on the Contract Notice Parties party to an Assigned Agreement identified by the Successful Bidder a further notice in the form attached hereto as **Exhibit 4** (the "**Assumption Notice**") identifying the Successful Bidder and stating which Contracts will be Assigned Agreements, and no other or further notice will be required with respect to the Assigned Agreements. If the Successful Bidder designates any additional Contracts during the period between the Auction and the day prior to the Sale Hearing pursuant to subsection (a) above, the Debtors shall file with the Court and serve on such additionally affected Contract Notice Parties a revised Assumption Notice. The Contract Notice, substantially in the form attached hereto as **Exhibit 3**, is hereby approved. The Assumption Notice, substantially in the form attached hereto as **Exhibit 4**, is hereby approved.

e. **Objections to Assumption of Contracts**. For all non-Debtor counterparties to an Assigned Agreement served a Contract Notice in accordance with this Order more than 14 days prior to the Sale Hearing, to which no Contract Objection was timely filed within 14 days after mailing of the Contract Notice, the counterparty to such Assigned Agreement shall be deemed to have waived and released any right to assert an objection to the assignment and assumption of such Assigned Agreement and to have otherwise consented to such assumption and assignment and cure amount, and the assignment will be deemed effective in accordance with the Sale Order. For all non-Debtor counterparties to an Assigned Agreement served with a Contract Notice 14 days or less prior to the Sale Hearing, if a timely filed Contract Objection is not received at or prior to the Sale Hearing, the counterparty to such Assigned Agreement shall be deemed to have waived and released any right to assert an objection to the assignment and assumption of such Assigned Agreement and to have otherwise consented to such assumption and assignment and cure amount, and the assignment will be deemed effective in accordance with the Sale Order. If any counterparty timely files a Contract Objection that cannot be resolved by the Debtors and the counterparty, the Court shall resolve such Contract Objection prior to assumption and assignment of such designated Contract, and upon entry of an order by the Court resolving such Contract Objection, the assignment shall be deemed effective in accordance with the Sale Order.

14. Any party failing to timely file a Contract Objection shall be forever barred and estopped from objecting thereto, including asserting against the Debtors or any of the Debtors' estates, the Stalking Horse Bidder or other Successful Bidder that any additional cure or default

amounts are due or conditions to assumption and assignment must be satisfied under such executory contract(s) or unexpired lease(s) and shall be deemed to consent to the Sale and the assumption and assignment of such executory contract(s) or unexpired lease(s) effectuated in connection therewith.

15. A properly filed and served Contract Objection will reserve such objecting party's rights against the Debtors with respect to the relevant cure objection, but will not constitute an objection to the remaining relief requested in the Motion.

A. Sale Hearing Notice and Related Relief

16. The Sale Notice, substantially in the form annexed hereto as **Exhibit 2**, is hereby approved. Within three (3) business days of the entry of this Order or as soon thereafter as practicable, the Debtors shall cause the Sale Notice to be served upon, without limitation, (i) the U.S. Trustee; (ii) counsel to the Committee; (iii) financing counsel to the agent for the First Lien Lenders; (iv) special bankruptcy and restructuring counsel to the agent for the First Lien Lenders; (v) local counsel to the agent for the First Lien Lenders, (vi) counsel to the agent for the Second Lien Lenders, (vii) the attorneys general for each of the States in which the Debtors conduct operations; (viii) all taxing authorities having jurisdiction over any of the Acquired Assets, including the Internal Revenue Service; (ix) the Environmental Protection Agency; (x) the Tennessee Environmental Protection Agency, (xi) the Pension Benefit Guaranty Corporation; (xii) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002; (xiii) all parties that are known or reasonably believed to have expressed an interest in acquiring all or a substantial portion of the Acquired Assets; (xiv) all parties that are known or reasonably believed to have asserted any lien, encumbrance, claim or other interest in the Acquired Assets; (xv) all governmental agencies that are an interested party with respect to

the Sale and transactions proposed thereunder; (xvi) all non-Debtor parties to the Assigned Agreements and (xvii) all other known creditors of the Debtors.

17. Within five (5) business days of the entry of this Order or as soon as practicable thereafter, the Debtors shall publish the Sale Notice once in *The Wall Street Journal*, and such publication notice shall be deemed proper notice to any other interested parties whose identities are unknown to the Debtors.

18. Compliance with the foregoing notice provisions shall constitute sufficient notice to all parties in interest, including those whose identities are unknown to the Debtors, of the Sale of the Acquired Assets, the contemplated assumption and assignment of the Assigned Agreements and the cure amounts, and no additional notice of such contemplated transactions need be given.

19. The Debtors are authorized to execute and deliver all instruments and documents, and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated by this Order.

20. The Court finds that the requirements set forth in Local Rules 6004-1 and 9013-1 are hereby satisfied or waived.

21. Notwithstanding any applicability of Bankruptcy Rule 6004(h), 6006(d), 7062 or 9014, the terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

22. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from, based upon or related to this Order.

Date: _____, 2011
Wilmington, Delaware

_____
United States Bankruptcy Judge

EXHIBIT 1

Bidding Procedures

BIDDING PROCEDURES

Set forth below are the bidding procedures (the "Bidding Procedures") to be employed with respect to the potential sale (the "Sale") of certain assets (the "Assets") of Graceway Pharmaceuticals, LLC, and certain of its subsidiaries, as debtors and debtors-in-possession (collectively, the "Debtors"), in jointly administered case no. [_____] under chapter 11 of the Bankruptcy Code pending in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). Pursuant to the Bidding Procedures Order (defined below), the Bankruptcy Court has approved Galderma S.A. or its assignee(s) or designee(s) as the stalking horse bidder (the "Stalking Horse Bidder") for the Assets as set forth more fully in that certain Asset Purchase Agreement among Galderma S.A., the Debtors and Graceway Canada Company, dated as of September 27, 2011 (the "APA").

On September [__], 2011, the Debtors filed a motion pursuant to 11 U.S.C. §§ 105(A), 363, 365, 503, and 507 and Federal Bankruptcy Rules 2002, 6004, 6006, and 9014: (a) approving and authorizing (i) bidding procedures in connection with the sale of certain assets of the Debtors; (ii) stalking horse bid protections; (iii) form and manner of notice of the sale hearing and (iv) related relief; and (b) authorizing (i) the sale of such assets free and clear of all claims, liens, liabilities, rights, interests and encumbrances; (ii) the Debtors to enter into and perform their obligations under the APA; (iii) the Debtors to assume and assign certain executory contracts; and (iv) related relief. On [_____] [__], 2011 the Bankruptcy Court entered an order approving the Bidding Procedures set forth herein (the "Bidding Procedures Order"). The Bidding Procedures Order also set [_____], 2011 as the date the Bankruptcy Court will conduct the Sale Hearing (as defined below). At the Sale Hearing, the Debtors may seek entry of an order from the Bankruptcy Court authorizing and approving the Sale of the Assets to the Stalking Horse Bidder or another Qualified Bidder (as defined below) that the Debtors determine to have made the highest or best offer for the Assets.

Assets to be Sold

The Debtors are offering to sell in one or more transactions the Assets and Qualified Bidders may submit bids for all or substantially all of the Assets. The Debtors shall retain all rights to the Assets that are not subject to a bid accepted by the Debtors and approved by the Bankruptcy Court at the Sale Hearing.

Bid Deadline

All offers, solicitations, or proposals (each, a "Bid") must be submitted in writing so that they are actually **received** no later than 4:00 p.m. (Eastern Time) on **[____], 2011** (the "Bid Deadline"). Prior to the Bid Deadline, a Qualified Bidder that wants to make a Bid shall deliver written copies of its Bid to investment bankers for the Debtors, Lazard Freres & Co., LLC ("Lazard"), 190 South LaSalle Street, 31st Floor, Chicago, Illinois 60603, Attn: Daniel Aronson, Daniel.aronson@lazard.com and Sachin Lulla, sachin.lulla@lazard.com, and Lazard will promptly (and in no event later than twenty-four (24) hours of receipt) deliver such Bid to: (a) the Debtors, c/o Graceway Holdings, LLC, 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, Tennessee 37620, Attn: John Bellamy, john.bellamy@gracewaypharma.com; (b) co-counsel to the Debtors, (i) Latham & Watkins LLP, 233 South Wacker Drive, Suite 5800,

Chicago, Illinois 60606, Attn: David Heller, Josef Athanas, and Zak Judd, david.heller@lw.com, josef.athanas@lw.com, zachary.judd@lw.com; and (ii) Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17th Floor, Wilmington, Delaware 19801, Attn: Michael R. Nestor and Kara Hammond Coyle, mnestor@ycst.com and kcoyle@ycst.com; (c) co-counsel to the Stalking Horse Bidder, (i) Debevoise & Plimpton LLP, 919 Third Avenue, New York, New York 10022, Attn: Kevin Rinker and My Chi To, karinker@debevoise.com and mcto@debevoise.com and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 18th Floor, Wilmington, DE 19801, Attn: Gregory W. Werkheiser, gwerkheiser@mnat.com; (d) financing counsel to the agent (the "First Lien Agent") to the lenders party to the Debtors' prepetition first lien credit agreement (the "First Lien Lenders"), Morgan Lewis, 225 Franklin Street, 16th Floor, Boston, Massachusetts 02110, Attn: Sula Fiszman, sfiszman@morganlewis.com; (e) special bankruptcy and restructuring counsel to the First Lien Agent, Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019, Attn: Scott K. Charles and Michael S. Benn, SKCharles@wlrk.com and MSBenn@wlrk.com; (f) counsel to the agent (the "Second Lien Agent") to the lenders party to the Debtors' prepetition second lien credit agreement (the "Second Lien Lenders"), Sidley Austin LLP, One South Dearborn, Chicago, IL 60603, Attn: Larry Nyhan, lnyhan@sidley.com; (g) local counsel to the First Lien Agent, DLA Piper LLP, 919 North Market Street, 15th Floor, Suite 1500, Wilmington, Delaware 19801, Attn: Stuart M. Brown, stuart.brown@dlapiper.com; and (h) counsel to the Official Committee of Unsecured Creditors, [_____], Attn: [_____] (collectively, the "Notice Parties"), by the Bid Deadline. A Bid received after the Bid Deadline shall not constitute a Qualified Bid (as defined below). A Bid shall be delivered to all Notice Parties at the same time. Interested bidders requesting information about the qualification process, including a form asset purchase agreement, and information in connection with their due diligence, should contact Sachin Lulla, Lazard Freres & Co., LLC, 190 South LaSalle Street, 31st Floor, Chicago, Illinois 60603, (312) 407-6626, Sachin.Lulla@lazard.com.

Participant Requirements

To participate in the process detailed by the Bidding Procedures and to otherwise be considered for any purpose hereunder, each Bid and each bidder submitting a Bid (a "Potential Bidder") must be determined by the Debtors to have satisfactorily provided the Debtors with each of the following (unless such requirement other than the "Confidentiality Agreement requirement set forth in clause (c) below is waived by the Debtors) on or before the Bid Deadline (the "Participant Requirements"):

(a) Identification of Potential Bidder. Identification of the Potential Bidder and any Principals (defined below), and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;

(b) Corporate Authority. Written evidence of the Potential Bidder's chief executive officer or other appropriate senior executive's approval of the contemplated transaction and acceptance of the terms set forth in the Bidding Procedures; *provided, however*, that, if the Potential Bidder is an entity specially formed for the purpose of effectuating the contemplated transaction (an "Acquisition Entity"), then the Potential Bidder must

furnish written evidence reasonably acceptable to the Debtors of the approval of the contemplated transaction by the equity holder(s) of such Potential Bidder (the "Principals");

(c) Confidentiality Agreement. An executed confidentiality agreement (the "Confidentiality Agreement") in form and substance acceptable to the Debtors and their counsel;

(d) Proof of Financial Ability to Perform. Written evidence upon which the Debtors may reasonably conclude that the Potential Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. Such information should include, among other things, the following:

(i) the Potential Bidder's or, in the case of an Acquisition Entity, the Principals', current financial statements (audited if they exist);

(ii) contact names and numbers for verification of financing sources;

(iii) evidence of the Potential Bidder's or Principals' internal resources and written evidence of a commitment for debt or equity funding that is needed to close the contemplated transaction; and

(iv) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors demonstrating that such Potential Bidder has the ability to close the contemplated transaction; provided, however, that the Debtors shall determine, in their reasonable discretion, in consultation with their advisors, whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Potential Bidder's financial qualifications.

Designation as Qualified Bidder

A "Qualified Bidder" is a Potential Bidder (or combination of Potential Bidders whose Bids for the Assets do not overlap and who agreed to have their Bids combined for purposes of the determination of whether such Potential Bidders together constitute a Qualified Bidder, and who shall also be referred to herein as a single Qualified Bidder) that delivers the documents described in paragraphs (a) through (d) above, and that the Debtors in their reasonable determination and with assistance from their advisors (after consultation with special bankruptcy and restructuring counsel to the First Lien Agent and counsel to the Official Committee of Unsecured Creditors) determine is reasonably likely to submit a bona fide offer that would result in greater cash value being received for the benefit of the Debtors' creditors than under the APA and to be able to consummate a sale if selected as a Successful Bidder (defined below) within the approximate overall time frame contemplated by the APA.

Upon the receipt from a Potential Bidder of the information required under paragraphs (a) through (d) above, as soon as is practicable, the Debtors shall, in consultation with special bankruptcy and restructuring counsel to the First Lien Agent and counsel to the Official Committee of Unsecured Creditors, determine and notify the Potential Bidder with respect to whether such Potential Bidder is a Qualified Bidder.

The Stalking Horse Bidder is a Qualified Bidder.

Access to Due Diligence Materials

Only Potential Bidders that execute the Confidentiality Agreement are eligible to receive due-diligence access or additional non-public information; provided, however, if the Debtors determine in their reasonable discretion that a Potential Bidder who has satisfied the Participant Requirements does not constitute a Qualified Bidder, then such Potential Bidder's right to receive due-diligence access or additional non-public information shall terminate. The Debtors will designate an employee or other representative to coordinate all reasonable requests for additional information and due-diligence access from such Qualified Bidders. The Debtors shall not be obligated to furnish any due diligence information after the Bid Deadline. The Debtors are not responsible for, and will bear no liability with respect to, any information obtained by Qualified Bidders in connection with the sale of the Assets. If the Debtors furnish any material information related to the Debtors not theretofore given to the Stalking Horse Bidder, then the Debtors shall place such information in one of the data rooms.

Due Diligence From Bidders

Each Potential Bidder and Qualified Bidder (collectively, a "Bidder") shall comply with all reasonable requests for additional information and due-diligence access by the Debtors or their advisors regarding such Bidder and its contemplated transaction. Failure by a Potential Bidder to comply with requests for additional information and due-diligence access will be a basis for the Debtors to determine that the Potential Bidder is not a Qualified Bidder. Failure by a Qualified Bidder to comply with requests for additional information and due-diligence access will be a basis for the Debtors to determine that a Bid made by a Qualified Bidder is not a Qualified Bid.

Bidding Process

The Debtors and their advisors shall: (a) determine whether a Potential Bidder is a Qualified Bidder; (b) coordinate the efforts of Bidders in conducting their due-diligence investigations, as permitted by the provisions herein; (c) receive offers from Qualified Bidders; and (d) negotiate any offers made to purchase the Assets. Subject to the Bidding Procedures Order, the Debtors shall have the right to adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein), that, in the Debtors' reasonable discretion, will better promote the goals of the Bidding Process.

Bid Requirements

To participate in the Auction (as defined below), each Bid (including any credit bid by the First Lien Agent (other than with respect to clause (h) below) or the Second Lien

Agent) and Qualified Bidder submitting such a Bid must be determined by the Debtors to satisfy each of the following conditions:

(a) Written Submission of APA and Commitment to Close. Qualified Bidders must submit by the Bid Deadline a blackline of the APA reflecting their proposed changes, and a written commitment that they intend to close on the terms and conditions set forth therein;

(b) Identification of Executory Contracts and Leases to be Assumed. Qualified Bidders must submit by the Bid Deadline a comprehensive list of all executory contracts and leases that they will assume and the corresponding cure amounts associated with the assumption and assignment of such leases and contracts;

(c) Irrevocable. A Bid must be irrevocable until five (5) business days after the Assets have been sold pursuant to the closing of the sale or sales approved by the Bankruptcy Court in a final, non-appealable order (the "Termination Date") unless such Bid is designated as the Back-Up Bid (defined below);

(d) Contingencies. A Bid may not be conditioned on obtaining financing, regulatory contingencies (other than on the condition that any applicable waiting period under The Hart–Scott–Rodino Antitrust Improvements Act of 1976 (Public Law 94-435) be satisfied, which may occur subsequent to the date of the Bid Deadline), any internal approval or on the outcome or review of due diligence. Any other contingencies or conditions associated with a Bid may not be more burdensome taken as a whole than those set forth in the APA taken as a whole;

(e) Financing Sources. A Bid must contain written evidence of a firm commitment for financing or other evidence of the financial wherewithal and ability to consummate the sale and which the Debtors reasonably believe to be sufficient to satisfy the standards to provide adequate assurance of future performance under Bankruptcy Code Section 365, with appropriate contact information for such financing sources;

(f) No Fees Payable to Qualified Bidder. A Bid may not request or entitle the Qualified Bidder to any break-up fee, expense reimbursement fee or similar type of payment. Further, by submitting a Bid, a Bidder shall be deemed to waive its right to pursue a substantial contribution claim under Section 503 of the Bankruptcy Code or in any way related to the submission of its Bid or the Bidding Procedures;

(g) Good-Faith Deposit. Each Bid must be accompanied by a deposit (the "Good Faith Deposit") in the form of a certified check or cash payable to the order of Graceway Pharmaceuticals, LLC in the amount of not less

than $27,500,000 to be held in escrow by the Debtors until the Termination Date;

(h) Minimum Overbid. The consideration proposed by the Bid may include only cash and assumed liabilities. The aggregate consideration must equal or exceed the sum of the cash "Purchase Price" and assumed liabilities provided for under the APA, in the aggregate, plus the cash amount of the Break-Up Fee ($8,250,000) (defined below), *plus* the cash amount of $2,500,000 (the "Initial Minimum Overbid Increment");

(i) Terms. A Bid must be on terms that, taken as a whole, are determined by the Debtors not to be materially more burdensome or conditional than the terms of the APA taken as a whole; and

(j) Purchase of Assets and Assumption of Liabilities. A Bid must provide for the purchase of all or a substantial portion of the Assets and payment or assumption of all or a substantial portion of the liabilities to be paid or assumed under the APA.

A Bid received from a Qualified Bidder before the Bid Deadline that meets the above requirements, and that satisfies the Bid Deadline requirement above, shall constitute a "Qualified Bid," if the Debtors believe, in their reasonable discretion (after consultation with special bankruptcy and restructuring counsel to the First Lien Agent and counsel to the Official Committee of Unsecured Creditors), that such Bid would be consummated if selected as the Successful Bid (as defined below). For purposes herein, the APA shall constitute a Qualified Bid. A Qualified Bid shall be considered such Qualified Bidder's "Baseline Bid."

If any Bid is determined by the Debtors not to be a Qualified Bid, the Bidder shall be refunded its Good Faith Deposit and all accumulated interest thereon within three (3) business days after that determination.

Any Bid that is not deemed a Qualified Bid shall not be considered by the Debtors.

Auction

Only if a Qualified Bid (other than that of the Stalking Horse Bidder) is received by the Bid Deadline shall the Debtors conduct an auction (the "Auction") to determine the highest and/or best bid with respect to the Assets. The Auction shall commence on [_____], 2011, at 10:00 a.m. (Eastern Time), at the offices of Latham & Watkins, LLP, 885 Third Avenue, Suite 1000, New York, New York 10022-4834.

If no such Qualified Bid is received by the Bid Deadline, then (i) the Auction will not be held, (ii) the Stalking Horse Bidder will be deemed the Successful Bidder, (iii) the APA will be the Successful Bid, and (iv) at the Sale Hearing on **[_____, 2011** at _:00 _.m.] (Eastern Time), the Debtors will seek approval of and authority to consummate the proposed sale to the Stalking Horse Bidder as contemplated by the APA.

The Auction shall be conducted according to the following procedures:

(a) Participation At The Auction

Only a Qualified Bidder that has submitted a Qualified Bid is eligible to participate at the Auction. Only the authorized representatives of each of the Qualified Bidders, the Debtors, the official committee of unsecured creditors and the First Lien Agent shall be permitted to attend. During the Auction, bidding shall begin initially with the highest Qualified Bid (the "Opening Bid") and subsequently continue in minimum increments of at least $2,500,000 (or such other amount the Debtors determine to facilitate the Auction). At least two (2) business days prior to the Auction, each Qualified Bidder that has submitted a Qualified Bid must inform the Debtors whether it intends to participate at the Auction. The Debtors shall provide copies of the Opening Bid to the Stalking Horse Bidder and all Qualified Bidders that have indicated their intent to participate at the Auction at least one (1) business day prior to the Auction.

(b) The Debtors Shall Conduct The Auction

The Debtors and their professionals shall direct and preside over the Auction. The determination of which Qualified Bid constitutes the Opening Bid shall take into account any factors the Debtors reasonably deem relevant to the value of the Qualified Bid to the estate, including, among other things, the following: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities; (iii) the ability of the Qualified Bidder to close the proposed transaction; (iv) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (v) any purchase-price adjustments; (vi) the impact of the contemplated transaction on any actual or potential litigation; (vii) the net economic effect of any changes from the APA, if any, contemplated by the contemplated transaction documents (the "Contemplated Transaction Documents"); (viii) the net after-tax consideration to be received by the Debtors' estates; and (ix) such other considerations the Debtors deem relevant in their reasonable discretion (collectively, the "Bid Assessment Criteria"). All Bids made thereafter shall be Overbids (as defined below) and shall be made and received on an open basis, and all material terms of each Bid shall be fully disclosed to all other Qualified Bidders. The Debtors shall arrange for the actual bidding at the Auction to be transcribed or videotaped. Each Qualified Bidder participating in the Auction will be required to confirm that it has not engaged in any collusion regarding the Bidding Procedures, the Auction or the proposed transaction.

(c) Terms of Overbids

An "Overbid" is any Bid made at the Auction subsequent to the Debtors' announcement of the Opening Bid. To submit an Overbid for purposes of this Auction, a Qualified Bidder must comply with the following conditions:

(i) Minimum Overbid Increment

Any Overbid after the Opening Bid shall be made in increments of at least $2,500,000 (or such other amount the Debtors determine to facilitate the Auction).

(ii) Remaining Terms are the same as for Qualified Bids

Except as modified herein, an Overbid must comply with the conditions for a Qualified Bid set forth above, *provided, however*, that the Bid Deadline and the Initial Minimum Overbid Increment shall not apply. Any Overbid made by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (A) the Debtors accept a higher Qualified Bid as an Overbid and (B) such Overbid is not selected as the Back-up Bid (as defined below).

To the extent not previously provided (which shall be determined by the Debtors), a Qualified Bidder submitting an Overbid must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtor) demonstrating such Qualified Bidder's ability to close the transaction proposed by such Overbid.

(iii) Consideration of Overbids

The Debtors reserve the right, in their reasonable business judgment, to make one or more adjournments in the Auction to, among other things: (A) facilitate discussions between the Debtors and individual Qualified Bidders; (B) allow individual Qualified Bidders to consider how they wish to proceed; (C) consider and determine the current highest and best Overbid at any given time during the Auction; and (D) give Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment, may require that the Qualified Bidder (other than Stalking Horse Bidder) has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. The Break-Up Fee will be taken into account in each round of bidding. For the avoidance of doubt, during the Auction, any bid by the Stalking Horse Bidder shall be deemed to be increased by the amount of the Break-Up Fee, *provided* that in the event that the Stalking Horse Bidder is the Successful Bidder and its Successful Bid includes the Break-Up Fee, the Stalking Horse Bidder shall be entitled to credit the amount of the Break-Up Fee against the purchase price.

(d) Additional Procedures

The Debtors, in their reasonable discretion, may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the Bidding Procedures, the Bidding Procedures Order or the Bankruptcy Code.

(e) Closing the Auction

Upon conclusion of the bidding, the Auction shall be closed, and the Debtors shall (i) immediately review the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale, and (ii) identify the highest, best, and/or otherwise financially superior offer for the Assets (the "Successful Bid" and the entity submitting such Successful Bid, the "Successful Bidder"), which highest, best and/or otherwise financially superior offer will provide the greatest amount of net cash value to the Debtor, and the next highest or otherwise best offer after the Successful Bid (the "Back-up Bid"), and advise

the Qualified Bidders and Notice Parties of such determination. No additional bids may be considered following the closing of the Auction. If the Stalking Horse Bidder's final Bid is deemed to be highest and best at the conclusion of the Auction, the Stalking Horse Bidder will be the Successful Bidder, and such Bid, the Successful Bid.

Within one (1) day after the closing of the Auction, the Debtors shall file with the Bankruptcy Court and serve upon all Qualified Bidders and entities that have requested notice in the Bankruptcy Cases a notice identifying the Successful Bidder.

(f) Consent to Jurisdiction as Condition to Bid.

All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Auction, and the construction and enforcement of the Bidder's Contemplated Transaction Documents, as applicable.

(g) Terms of Break-Up Fee

If the APA terminates because the Debtors have accepted or selected, and the Bankruptcy Court has approved, the Bid or Bids (including a credit bid) of any Qualified Bidder(s) other than Stalking Horse Bidder to purchase all or a substantial portion of the Debtors' Assets, and such transaction or transactions contemplated by any such Bid or Bids has been consummated, the Debtors shall pay the Stalking Horse Bidder out of the proceeds of such transaction or transactions at the closing the "Break-Up Fee".

Acceptance of Successful Bid

The Debtors shall sell the Assets to the Successful Bidder upon the approval of the Successful Bid by the Bankruptcy Court. The Debtors' presentation of a particular Qualified Bid to the Bankruptcy Court for approval does not constitute the Debtors' acceptance of the Bid. The Debtors will be deemed to have accepted a Bid only when the Bid has been approved by the Bankruptcy Court.

Credit Bidding by First Lien Lenders

In the event the Bankruptcy Court permits the First Lien Lenders to credit bid, in addition to the requirements set forth in the section titled "Bid Requirements" above (other than with respect to clause (h) of such section), in order to be a Qualified Bid, a credit bid must provide for (a) the payment in cash at the closing of the Break-Up Fee, (b) the payment in cash at closing and/or the assumption of the unpaid administrative expense claims of the Debtors owning such collateral (other than the Break-Up Fee and the Lazard Success Fee (as defined in the Interim Cash Collateral Order)) incurred from the Petition Date through and including the date on which the closing of the sale occurs, (c) the payment in cash at closing of all claims that are senior to the claims of the First Lien Lenders pursuant to the DIP Financing Order or otherwise, (d) a description of all assets to be purchased that are not subject to a valid and perfected security interest held by the agent for the First Lien Lenders, (e) payment in cash in an amount equal to the fair value of such unencumbered assets and (f) payment in cash of the Lazard Success Fee. In the event the agent for the First Lien Lenders submits a credit bid for all

of its collateral pursuant to these Bidding Procedures at the Auction, the Debtors reserve their rights to not consult with the agent for the First Lien Lenders as to whether a Potential Bidder is a Qualified Bidder with respect to such Assets.

Credit Bidding by Second Lien Lenders

In the event that the Bankruptcy Court permits the Second Lien Lenders to credit bid, in addition to the requirements set forth in the section titled "Bid Requirements" above, in order to be a Qualified Bid, a credit bid by the Second Lien Lenders must provide for (a) the payment in cash at closing of the Break-Up Fee, (b) the payment in full in cash of all obligations owed to the First Lien Lenders and to other the holders of claims with claims senior to those of the Second Lien Lenders pursuant to the Interim Cash Collateral Order or otherwise, (c) the payment in cash at closing and/or the assumption of the unpaid administrative expense claims of the Debtors owning such collateral incurred from the Petition Date through and including the date on which the closing of the sale occurs, (d) a description of all assets to be purchased that are not subject to a valid and perfected first priority security interest held by the agent for the Second Lien Lenders, (d) payment in cash in an amount equal to the fair value of such unencumbered assets and (e) payment in cash of the Lazard Success Fee. In the event the agent for the Second Lien Lenders submits a credit bid for all of its collateral pursuant to these Bidding Procedures at the Auction, the Debtors reserve their rights to not consult with the agent for the Second Lien Lenders as to whether a Potential Bidder is a Qualified Bidder with respect to such Assets. Notwithstanding the right to credit bid afforded them in the Bidding Procedures, the Second Lien Agent and the Second Lien Lenders shall be deemed to have consented and waived any and all applicable rights under Bankruptcy Code Section 363(f).

"As Is, Where Is"

The sale of the Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtors, their agents or estates except to the extent set forth in the APA or the purchase agreement of another Successful Bidder. The Stalking Horse Bidder and each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures and (a) as to the Stalking Horse Bidder, the terms of the sale of the Assets set forth in the APA, or (b) as to another Successful Bidder, the terms of the sale of the Assets set forth in the applicable purchase agreement.

Free Of Any And All Encumbrances

Except as otherwise provided in the APA or another Successful Bidder's purchase agreement, all of the Debtors' right, title, and interest in and to the Assets subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options,

and interests thereon and there against (collectively, the "Encumbrances") in accordance with 11 U.S.C. § 363, with such Encumbrances to attach to the net proceeds of the sale of the Assets.

Sale Hearing

A hearing to approve the sale of the Assets to the Successful Bidder shall be conducted by the Bankruptcy Court on **[_____,2011**, at _:00 _.m.] (Eastern Time), located at 824 North Market Street, [_]th Floor, Courtroom No. [_] Wilmington, Delaware (the "Sale Hearing"). Following the approval of the sale of the Assets to the Successful Bidder at the Sale Hearing, if such Successful Bidder fails to consummate an approved sale within fourteen (14) days after entry of order by the Bankruptcy Court approving the sale of the Assets (except where the sole cause of any delay in closing is as a result of default by the Debtors), the Debtors shall be authorized, but not required, to deem the Back-up Bid, as disclosed at the Sale Hearing, the Successful Bid and the Debtors shall be authorized, but not required, to consummate the sale with the Qualified Bidder submitting such Back-up Bid without further notice or orders of the Bankruptcy Court. The Sale Hearing may be adjourned or rescheduled without notice other than by announcement of the adjourned date at the Sale Hearing. If the Stalking Horse Bidder is not the Successful Bidder at the Auction but is designated as the bidder that has submitted the Back-Up Bid, then such Back-Up Bid must remain open until the earlier of the consummation of the transaction with the Successful Bidder and 30 days after the conclusion of the Sale Hearing. If any other bidder submits the Back-Up Bid, such Back-Up Bid must remain open until the consummation of the Sale to the Successful Bidder.

Return of Good Faith Deposit

The Good Faith Deposit of the Successful Bidder shall be applied to the purchase price of such transaction at closing. Good Faith Deposits of all other Qualified Bidders shall be held by the Debtors until five (5) business days after closing of the transactions contemplated by the Successful Bid, and thereafter returned to the respective Qualified Bidders. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtors shall be entitled to retain the Good Faith Deposit as part of their damages resulting from the breach or failure to perform by the Successful Bidder. Notwithstanding anything herein to the contrary, the terms under which the Stalking Horse Bidder provided a Good Faith Deposit and the terms of its use, release and return to the Stalking Horse Bidder shall be governed by the APA.

Modifications and Reservations

The Debtors may (a) determine which Qualified Bid, if any, is the highest, best, and/or otherwise financially superior offer; and (b) reject at any time before entry of orders of the Bankruptcy Court approving a Qualified Bid, any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of sale, or (iii) contrary to the best interests of the Debtors, their estates and creditors.

At or before the Sale Hearing, the Debtors may impose such other terms and conditions as the Debtors may determine to be in the best interests of their estate and creditors

and other parties in interest thereof that are not inconsistent with the Bidding Procedures Order, the Bidding Procedures or the Bankruptcy Code.

The Bidding Procedures may be materially modified only upon the express written consent of the Debtors and the Stalking Horse Bidder (such consent not to be unreasonably withheld), or by order of the Bankruptcy Court.

Reservation of Rights

Subject to the Bidding Procedures Order, the Debtors reserve the right as they may determine to be in the best interests of their estates to: (a) determine which Potential Bidders are Qualified Bidders; (b) determine which Bids are Qualified Bids; (c) determine which Qualified Bid is the highest and best proposal and which is the next highest and best proposal; (d) reject any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures Order or the requirements of the Bankruptcy Code or any other orders entered by the Bankruptcy Court, or (iii) contrary to the best interests of the Debtors and their estates or stakeholders, as applicable; (e) impose additional terms and conditions with respect to any or all Potential Bidders other than the Stalking Horse Bidder; (f) adjourn the Auction and/or Sale Hearing in open court without further notice; and (h) with the consent of the Stalking Horse Bidder, remove a portion of the Assets from the Auction. Without limiting the foregoing, the Debtors may determine to distribute or not distribute copies of other Qualified Bids to other Qualified Bidders prior to or during the Auction other than with respect to the distribution of the Opening Bid as set forth above.

EXHIBIT 2

Sale Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: GRACEWAY PHARMACEUTICALS, LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 11-_____ (____) Jointly Administered

NOTICE OF PUBLIC AUCTION AND SALE HEARING

("**Sale Notice**")

PLEASE TAKE NOTICE that the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**"), have entered into an asset purchase agreement, dated September 27, 2011 (the "**APA**")[2], with Galderma S.A., a Switzerland Corporation (the "**Stalking Horse Bidder**") to sell certain assets of the Debtors free and clear of all liens, claims, encumbrances and other interests to the Stalking Horse Bidder, subject to the submission of higher or better offers in an auction process (the "**Auction**").

PLEASE TAKE FURTHER NOTICE that in connection with the proposed sale (the "**Sale**") to the Stalking Horse Bidder, on [_____], 2011, the Debtors filed a motion [Docket No. [___]] (the "**Motion**") seeking a court order for approval and authorization of, among other things, (a) bidding procedures governing the Sale, (b) payment of a break-up fee and reimbursable expenses to the Stalking Horse Bidder in certain instances under the terms and conditions set forth in the APA, including if the Stalking Horse Bidder is not the successful bidder at the Auction, (c) the form and manner of notices related to the Sale, and (d) procedures related to the assumption and assignment of executory contracts and unexpired leases in connection with the Sale.

PLEASE TAKE FURTHER NOTICE that, on [_____], 2011, the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**") entered an order [Docket No. [___]] (the "**Bidding Procedures Order**") approving the bidding procedures (the "**Bidding Procedures**"), which set the key dates and times related to the Sale. All interested bidders should carefully read the Bidding Procedures. The summary of the Bidding Procedures contained in this Sale Notice is provided for convenience only. To the extent that there are any

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[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).

[2] All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the APA.

inconsistencies between the Bidding Procedures and the summary description in this Sale Notice, the terms of the Bidding Procedures shall control.

PLEASE TAKE FURTHER NOTICE that copies of the Motion, Bidding Procedures and Bidding Procedures Order, as well as all related exhibits including the APA, are available on the website of the Court-appointed claims, noticing soliciting and balloting agent for the Debtors' chapter 11 cases, BMC Group, Inc., at www.bmcgroup.com/graceway, or can be requested by calling (888) 909-0100 from within the United States or +1 310 321 5555 from outside the United States.

PLEASE TAKE FURTHER NOTICE that, if the Debtors receive one or more qualified competing bids that satisfy the requirements and time frame specified by the Bidding Procedures, the Debtors will conduct the Auction to determine the highest or otherwise best bid for the purchased assets on [_____], 2011 at 10:00 a.m. prevailing Eastern Time at the offices of Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022, or at any such other location as the Debtors may hereafter designate (with notice of such alternate location given to all qualified bidders under the Bidding Procedures).

PLEASE TAKE FURTHER NOTICE that the Debtors will seek approval of the Sale before the Honorable [_____], United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at: 824 North Market Street, [__]th Floor, Wilmington, Delaware 19801, on [_____], 2011 at [_____] [_].m. prevailing Eastern Time.

PLEASE TAKE FURTHER NOTICE that objections to the Motion if any, **must**: (i) be in writing; (ii) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules for the United States Bankruptcy Court for the District of Delaware; (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (iv) be filed with the Court and served so *actually received* no later than [____], 2011 at 4:00 p.m. prevailing Eastern Time by all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002 and the following parties:

Debtors	Counsel to Debtors
Graceway Pharmaceuticals, LLC 340 Martin Luther King Jr. Blvd. Suite 500 Bristol, Tennessee 37620 Attn: John Bellamy	Latham & Watkins LLP 233 South Wacker Drive Chicago, IL 60606 Attn: Josef S. Athanas, Esq. and Matthew L. Warren, Esq. Young Conaway Stargatt & Taylor, LLP 1000 West Street, 17th Floor Wilmington, Delaware 19801 Attn: Michael R. Nestor, Esq. and Kara Hammond Coyle, Esq.

Special Bankruptcy and Restructuring Counsel to the Agent for the First Lien Lenders	United States Trustee
Wachtell, Lipton, Rosen & Katz 51 West 52nd Street New York, NY 10019 Attn: Scott K. Charles, Esq. and Michael S. Benn, Esq. DLA Piper LLP 919 North Market Street, 15th Floor Suite 1500 Wilmington, DE 19801 Attn: Stuart M. Brown, Esq.	Office of the United States Trustee for the District of Delaware 844 King Street J. Caleb Boggs Federal Building Room 2207, Lockbox 35 Wilmington, DE 19801 Attn: Juliet Sarkessian, Esq.
Financing Counsel to the Agent for the First Lien Lenders	**Counsel to the Creditors' Committee**
Morgan Lewis 225 Franklin Street, 16th Floor Boston, Massachusetts 02110 Attn: Sula Fiszman, Esq.	[to come]
Counsel to the Agent for the Second Lien Lenders	**Counsel to the Stalking Horse Bidder**
Sidley Austin LLP One South Dearborn, Chicago, IL 60603 Attn: Larry Nyhan, Esq.	Debevoise & Plimpton LLP 919 Third Avenue New York, NY 10022 Attn: My Chi To, Esq. and Kevin A. Rinker, Esq. Morris, Nichols, Arsht & Tunnell LLP 1201 North Market Street, 18th Floor Wilmington, DE 19801 Attn: Gregory W. Werkheiser, Esq.

CONSEQUENCES OF FAILING TO TIMELY FILE AND SERVE AN OBJECTION

ANY PARTY OR ENTITY WHO FAILS TO TIMELY FILE AND SERVE AN OBJECTION TO THE SALE ON OR BEFORE THE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE PROPERTY FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS AFFECTED THEREUNDER.

NO SUCCESSOR OR TRANSFEREE LIABILITY

The proposed Sale Order provides that the purchaser in the Sale (the "**Purchaser**") will have no responsibility for, and the assets will be sold free and clear of, any successor liability, including the following:

The Purchaser shall not be deemed, as a result of any action taken in connection with the APA, the consummation of the Transactions (as defined in the Sale Order) contemplated by the APA, or the transfer or operation of the Acquired Assets, to (a) be a legal successor, or otherwise be deemed a successor to the Debtors (other than, for the Purchaser, with respect to any obligations as an assignee under the Assigned Agreements arising after the Closing); (b) have, *de facto* or otherwise, merged with or into the Debtors; or (c) be an alter ego or mere continuation or substantial continuation of the Debtors including, without limitation, within the meaning of any foreign, federal, state or local revenue law, pension law, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the WARN Act (29 U.S.C. §§ 2101 et seq., the Comprehensive Environmental Response Compensation and Liability Act ("**CERCLA**"), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended), the National Labor Relations Act, 29 U.S.C. § 151, et seq., environmental liabilities, debts, claims or obligations arising from conditions first existing on or prior to Closing (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including, without limitation, under CERCLA, any liabilities, debts or obligations of or required to be paid by the Debtors for any taxes of any kind for any period, labor, employment, or other law, rule or regulation (including without limitation filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine. Other than as expressly set forth in the APA with respect to Assumed Liabilities, the Purchaser shall not have any responsibility for (a) any liability or other obligation of the Debtors or related to the Acquired Assets or (b) any remaining Claims (as defined in the Sale Order) against the Debtors or any of their predecessors or affiliates. The Purchaser shall have no liability whatsoever with respect to the Debtors' (or their predecessors' or affiliates') respective businesses or operations or any of the Debtors' (or their predecessors' or affiliates') obligations based, in whole or part, directly or indirectly, on any theory of successor or vicarious liability of any kind or character, or based upon any theory of antitrust, environmental, successor or transferee liability, *de facto* merger or substantial continuity, labor and employment or products liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Acquired Assets prior to the Closing.

IF YOU HAVE ANY QUESTIONS REGARDING THIS SALE NOTICE, PLEASE CONTACT THE RESTRUCTURING HOTLINE ESTABLISHED IN CONNECTION WITH THE DEBTORS' CHAPTER 11 CASES AT (888) 909-0100 FROM WITHIN THE UNITED STATES OR +1 310 321 5555 FROM OUTSIDE THE UNITED STATES

EXHIBIT 3

Contract Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: GRACEWAY PHARMACEUTICALS, LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 11-_____ (____) Jointly Administered **Sale Hearing: [____] 2011 at [___] [].m. (ET)** **Objection Deadline: [____] 2011 at [___] [_].m. (ET)**

NOTICE OF (I) CURE AMOUNT WITH RESPECT TO EXECUTORY CONTRACTS TO BE ASSUMED AND ASSIGNED AND (II) POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. Pursuant to the *Order Approving and Authorizing (A) Bidding Procedures in Connection with the Sale of Certain Assets of the Debtors, (B) Stalking Horse Bid Protections, (C) Form and Manner of Notice of the Sale Hearing and (D) Related Relief* [Docket No. ___] (the "**Bidding Procedures Order**") entered by the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**") on [_____], 2011, the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**") hereby provide notice that they are a party to various executory contracts and unexpired leases as set forth on Exhibit 1 attached hereto (individually, a "**Contract**", collectively the "**Contracts**") and they intend to seek to assume and assign some or all of the Contracts (individually, a "**Potentially Assumed**

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).

Contract", collectively, the "**Potentially Assumed Contracts**") to the Successful Bidder[2] in connection with the proposed sale of certain of the Debtors' assets.

2. You have been identified as a party to a Potentially Assumed Contract. If your Contract is **actually** to be assumed or assigned, a separate notice of such assumption and assignment will be provided.

3. The Potentially Assumed Contract with respect to which you have been identified as a non-Debtor counterparty, and the corresponding proposed amount the Debtors' records reflect is owing to cure any and all defaults under such Potentially Assumed Contract so as to permit the assumption and assignment of such Potentially Assumed Contract (if designated for assumption and assignment by the Successful Bidder) pursuant to 11 U.S.C. § 365 (the "**Cure Amount**"), have been set forth on Exhibit 1, as attached hereto. The Debtors' records reflect, as of the date hereof, that all postpetition amounts owing under your Potentially Assumed Contract have been paid and will continue to be paid and that there are no other defaults under the Potentially Assumed Contract. Amounts due and owing under the Contracts with respect to the period after the petition date and after the closing date of the Sale are not included in the calculation of the Cure Amounts.

4. Objections, if any, to the proposed Cure Amount, or to the possible assumption and assignment of any Potentially Assumed Contract, must be made in writing, filed with the United States Bankruptcy Court for the District of Delaware, at: 824 North Market Street, [__]th

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[2] Capitalized terms not otherwise defined in this notice shall have the meanings set forth in the Bidding Procedures approved as part of the Bidding Procedures Order. All documents filed with the Bankruptcy Court in connection with these Chapter 11 Cases, including orders of the Bankruptcy Court, are available for free on the website of the Court-appointed claims, noticing, soliciting and balloting agent in these Chapter 11 Cases, BMC Group, Inc., at www.bmcgroup.com/graceway, or can be requested by calling (888) 909-0100 from within the United States or +1 310 321 5555 if calling from outside the United States.

Floor, Wilmington, Delaware 19801, and served so as to be received on or before [_____] [_].m. on [_____], 2011 (the "**Objection Deadline**"). Service should be made by mail to:

Debtors	Counsel to Debtors
Graceway Pharmaceuticals, LLC 340 Martin Luther King Jr. Blvd. Suite 500 Bristol, Tennessee 37620 Attn: John Bellamy	Latham & Watkins LLP 233 South Wacker Drive Chicago, IL 60606 Attn: Josef S. Athanas, Esq. and Matthew L. Warren, Esq. Young Conaway Stargatt & Taylor, LLP 1000 West Street, 17th Floor Wilmington, Delaware 19801 Attn: Michael R. Nestor, Esq. and Kara Hammond Coyle, Esq.
Special Bankruptcy and Restructuring Counsel to the Agent for the First Lien Lenders	**United States Trustee**
Wachtell, Lipton, Rosen & Katz 51 West 52nd Street New York, NY 10019 Attn: Scott K. Charles, Esq. and Michael S. Benn, Esq. DLA Piper LLP 919 North Market Street, 15th Floor Suite 1500 Wilmington, DE 19801 Attn: Stuart M. Brown, Esq.	Office of the United States Trustee for the District of Delaware 844 King Street J. Caleb Boggs Federal Building Room 2207, Lockbox 35 Wilmington, DE 19801 Attn: Juliet Sarkessian, Esq.
Financing Counsel to the Agent for the First Lien Lenders	**Counsel to the Creditors' Committee**
Morgan Lewis 225 Franklin Street, 16th Floor Boston, Massachusetts 02110 Attn: Sula Fiszman, Esq.	[to come]
Counsel to the Agent for the Second Lien Lenders	**Counsel to the Stalking Horse Bidder**
Sidley Austin LLP One South Dearborn, Chicago, IL 60603 Attn: Larry Nyhan, Esq.	Debevoise & Plimpton LLP 919 Third Avenue New York, NY 10022 Attn: My Chi To, Esq. and Kevin A. Rinker, Esq. Morris, Nichols, Arsht & Tunnell LLP 1201 North Market Street, 18th Floor Wilmington, DE 19801 Attn: Gregory W. Werkheiser, Esq.

5. An objection to any Cure Amount must (i) be in writing; (ii) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules for the United States Bankruptcy Court for the District of Delaware; and (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor.

6. If an objection to the Cure Amount, or the possible assumption and assignment, is timely filed and cannot be resolved by the Debtors and the counterparty to the Potentially Assumed Contract, a hearing with respect to the objection will be held before the Honorable [_____], United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at: 824 North Market Street, [__]th Floor, Wilmington, Delaware 19801, on [_____], 2011 at [_____] [].m. prevailing Eastern Time or at a later hearing, as determined by the Debtors. A hearing regarding objections to a Cure Amount, if any, may be continued at the sole discretion of the Debtors.

7. Regardless of whether a Potentially Assumed Contract will be assumed and assigned at the closing of the Sale as provided for in the APA, unless a non-debtor party to any Potentially Assumed Contract files an objection to the Cure Amount by the Objection Deadline, then such counterparty shall be (i) forever barred from objecting to the Cure Amount or the assumption and assignment of such Potentially Assumed Contract; and (ii) forever barred and estopped from asserting or claiming any amounts under the Contracts outstanding as of the effective date of assumption and assignment to the Successful Bidder, other than the Cure Amount on Exhibit 1, against the Debtors, any Successful Bidder or any other assignee of the relevant contract.

8. The Debtors will file and serve a further notice that identifies any Successful Bidder and provides notice of the particular Potentially Assumed Contracts that the Debtors will seek to assume and assign at the Sale Hearing (the "**Assumption Notice**").

9. At the Sale Hearing, the Debtors shall present evidence necessary to demonstrate adequate assurance of future performance by the Successful Bidder. At the Sale Hearing, you

will have the opportunity to evaluate and, if necessary, challenge, the ability of the Successful Bidder to provide adequate assurance of future performance under the Assumed Contracts.

10. The presence of a contract, lease or other agreement on Exhibit 1, as attached hereto, does not constitute an admission that such contract, lease or other agreement is an executory contract or unexpired lease or that such contract or lease will be assumed by the Debtors and assigned to any Successful Bidder. The Debtors reserve all of their rights, claims and causes of action with respect to the contracts, leases and other agreements listed on Exhibit 1, as attached hereto.

Dated: _____, 2011
Wilmington, Delaware

Respectfully Submitted,

_____

Michael R. Nestor (No. 3526)
Kara Hammond Coyle (No. 4410)
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PROPOSED ATTORNEYS FOR DEBTORS AND DEBTORS-IN-POSSESSION

EXHIBIT 4

Assumption Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
GRACEWAY PHARMACEUTICALS, LLC, *et al.*,[1]	Case No. 11-_____ (____)
	Jointly Administered
Debtors.	**Hearing Date: [_____], 2011 at [___] [].m. (ET)**

NOTICE OF ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On [_____], 2011, the United States Bankruptcy Court for the District of Delaware (this "**Court**") entered the *Order Approving and Authorizing (A) Bidding Procedures in Connection with the Sale of Certain Assets of the Debtors, (B) Stalking Horse Bid Protections, (C) Form and Manner of Notice of the Sale Hearing and (D) Related Relief* [Docket No. _____] (the "**Bidding Procedures Order**").

2. Pursuant to the Bidding Procedures Order, the Debtors have accepted the bid of [_____] (the "**Successful Bidder**") for the purchase of certain of the assets (the "**Assets**") related to the Debtors' business (the "**Sale**"). The terms of the bid are set forth in that certain asset purchase agreement (the "**APA**"), dated as of [_____], 2011 among the Debtors and the Successful Bidder, as filed with the Court [Docket No. _____].

3. The Bidding Procedures Order, among other things, authorized procedures for the Debtors to assume and assign certain executory contracts and unexpired leases (the "**Assumed**

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1 The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).

Contracts") to the Successful Bidder. Attached hereto as Exhibit 1 is a list of the Assumed Contracts that the Debtors will assign to the Successful Bidder in connection with the closing of the Sale and the cure amount, if any, with respect to each Assumed Contract.

4. As set forth in the Bidding Procedures Order, the hearing to approve the Sale will be held on [_____], 2011, at [_____] [].m. prevailing Eastern Time before the Honorable [_____], United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at: 824 North Market Street, [__]th Floor, Wilmington, Delaware 19801.

5. All documents filed with this Court in connection with these Chapter 11 Cases, including orders of this Court, are available for free on the website of the Court-appointed claims, noticing, soliciting and balloting agent in these Chapter 11 Cases, BMC Group, Inc., at www.bmcgroup.com/graceway, or can be requested by calling (888) 909-0100 from within the United States or +1 310 321 5555 from outside the United States.

Dated: _____, 2011
Wilmington, Delaware

Respectfully Submitted,

_____

Michael R. Nestor (No. 3526)
Kara Hammond Coyle (No. 4410)
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-and-

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PROPOSED ATTORNEYS FOR DEBTORS AND DEBTORS-IN-POSSESSION

EXHIBIT 1

ASSUMED CONTRACTS

Exhibit B

Proposed Sale Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
GRACEWAY PHARMACEUTICALS, LLC, *et al.*,[1]	Case No. 11-_____ (____)
	Joint Administration Requested
Debtors.	**Related Docket No. ____**

ORDER AUTHORIZING (A) THE SALE OF CERTAIN ASSETS OF THE DEBTORS FREE AND CLEAR OF ALL CLAIMS, LIENS, LIABILITIES, RIGHTS, INTERESTS AND ENCUMBRANCES; (B) THE DEBTORS TO ENTER INTO AND PERFORM THEIR OBLIGATIONS UNDER THE ASSET PURCHASE AGREEMENT; (C) THE DEBTORS TO ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (D) GRANTING RELATED RELIEF

Upon the portion of the motion (the "**Motion**")[2] of Graceway Holdings, LLC and the other above-captioned debtors, as debtors and debtors-in-possession (collectively, the "**Debtors**") for entry of orders, pursuant to sections 105(a), 363, 365, 503 and 507 of the United States Bankruptcy Code (the "**Bankruptcy Code**"), and Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") authorizing and approving the following:

(i) the sale of certain assets of the Debtors;

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1 The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).

2 Unless indicated otherwise, capitalized terms used but not defined herein have the meanings ascribed to them in the APA (as defined below).

(ii) the entry into, performance under and terms and conditions of the Asset Purchase Agreement dated as of September 27, 2011 (collectively with all related agreements, amendments, documents or instruments and all exhibits, schedules and addenda to any of the foregoing, the "**APA**"), substantially in the form attached hereto as **Exhibit A**, whereby the Debtors have agreed to sell, and Galderma S.A. ("**Buyer**") has agreed to buy, certain of the Debtors' assets (specifically as set forth and defined in the APA, the "**Acquired Assets**"), free and clear of all Claims (as defined below), Liens (defined below), liabilities, rights, interests, setoff rights and encumbrances except where the Debtors have agreed to transfer and Buyer has expressly agreed to assume certain of the Debtors' liabilities (specifically as set forth and defined in the APA, the "**Assumed Liabilities**") (collectively, and including all actions taken or required to be taken in connection with the implementation and consummation of the APA, the "**Transactions**");

(iii) the assumption and assignment to Buyer or an Affiliate (as defined in the APA) of Buyer of certain executory contracts and unexpired leases of the Debtors designated for assumption and assignment as Assigned Agreements in accordance with this Order, the Bidding Procedures Order (defined below) and the APA (collectively the "**Assigned Agreements**"); and

(iv) other related relief;

and the Court having entered an order approving the bidding procedures and granting certain related relief on [_____], 2011 [Docket No. _____] (the "**Bidding Procedures Order**"); an auction having been conducted in accordance with the Bidding Procedures Order (the "**Auction**") and Buyer having submitted the highest and best offer; and the Court having conducted a hearing on the Motion commencing on [_____], 2011 (the "**Sale Hearing**") at which time all interested parties were offered an opportunity to be heard with respect to the Motion; and the Court having reviewed and considered the Motion, the APA, the Bidding Procedures Order, the record of the hearing before the Court on [_____] (the "**Bidding Procedures Hearing**") at which the Bidding Procedures Order was approved, and all objections to the Transactions and the APA filed in accordance with the Bidding Procedures Order; and the appearance of all interested parties and all responses and objections to the Sale Motion having been duly noted in the record of the Sale Hearing; and upon the record of the Sale Hearing, and

having heard statements of counsel and the evidence presented in support of the relief requested in the Motion at the Sale Hearing; and upon all of the proceedings had before the Court, and all objections and responses to the relief requested in the Motion having been heard and overruled, continued or resolved on the terms set forth in this Order, and it appearing that due notice of the Motion, the APA, the Bidding Procedures Order and the Auction having been provided; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their stakeholders and all other parties-in-interest; and it appearing that the Court has jurisdiction over this matter; and it further appearing that the legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein; and after due deliberation thereon,

THE COURT EXPRESSLY FINDS AS FOLLOWS:[3]

Jurisdiction, Venue and Final Order

A. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h), 6006(d) and 7062, and to the extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of this Order as set forth herein.

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3 All findings of fact and conclusions of law announced by the Bankruptcy Court at the Sale Hearing in relation to the Sale Motion are hereby incorporated to the extent not inconsistent herewith.

Notice of the Transactions, APA, Sale Hearing, Auction and the Cure Costs

C. As evidenced by the affidavits of service and publication previously filed with this Court, proper, timely, adequate and sufficient notice of the Motion, the Auction, the Sale Hearing, the APA and the Transactions has been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9014. The Debtors have complied with all obligations to provide notice of the Motion, the Auction, the Sale Hearing, the APA and the Transactions as required by the Bidding Procedures Order. The aforementioned notices are good, sufficient and appropriate under the circumstances, and no other or further notice of the Motion, the Auction, the Sale Hearing, the APA or the Transactions is required for the entry of this Order.

D. A reasonable opportunity to object or to be heard regarding the relief requested in the Motion was afforded to all interested persons and entities.

E. In accordance with the Bidding Procedures Order, the Debtors have served a notice (as amended, modified or otherwise supplemented from time to time, the "**Contract Notice**") of the potential assumption and assignment of the Assigned Agreements and of the Cure Costs upon each non-Debtor counterparty to an Assigned Agreement. The service and provision of the Contract Notice was good, sufficient and appropriate under the circumstances and no further notice need be given in respect of assumption and assignment of the Assigned Agreements or establishing a Cure Cost for the respective Assigned Agreements. Non-Debtor counterparties to the Assigned Agreements have had an adequate opportunity to object to assumption and assignment of the applicable Assigned Agreements and the Cure Cost set forth in the Contract Notice (including objections related to the adequate assurance of future performance and objections based on whether applicable law excuses the non-Debtor counterparty from accepting performance by, or rendering performance to, Buyer for purposes of section 365(c)(1)

of the Bankruptcy Code). The deadline to file an objection to the assumption and assignment to Buyer of any Assigned Agreement (a "**Contract Objection**") has expired and to the extent any such party timely filed a Contract Objection, all such Contract Objections have been resolved, withdrawn, overruled, or continued to a later hearing by agreement of the parties. To the extent that any such party did not timely file a Contract Objection by the Contract Objection deadline, such party shall be deemed to have consented to (i) the assumption and assignment of the Assigned Agreement, and (ii) the proposed Cure Cost set forth on the Contract Notice.

Highest or Otherwise Best Offer

F. As demonstrated by the evidence proffered or adduced at the Sale Hearing and the representations of counsel made on the record at the Sale Hearing, the Debtors have otherwise complied in all respects with, the Bidding Procedures Order. The Auction was duly noticed and conducted in a noncollusive, fair and good faith manner and the Auction process set forth in the Bidding Procedures Order afforded a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase all of the Acquired Assets and assume all of the Assumed Liabilities.

G. The Acquired Assets were adequately marketed by the Debtors, and the consideration provided by Buyer under the APA constitutes the highest and best offer and provides fair and reasonable consideration to the Debtors for the sale of all Acquired Assets and the assumption of all Assumed Liabilities. The consideration provided by Buyer under the APA will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the consideration provided by Buyer under the APA constitutes the highest and best offer for the Acquired Assets constitutes a valid and sound exercise of the Debtors' business judgment.

H. Approval of the Motion and the APA and the consummation of the Transactions contemplated thereby are in the best interests of the Debtors, their respective creditors, estates and other parties in interest. The Debtors have demonstrated good, sufficient and sound business reasons and justifications for entering into the Transactions and the performance of their obligations under the APA.

I. Entry of an order approving the APA and all the provisions thereof is a necessary condition precedent to Buyer's consummation of the Transactions.

J. The APA was not entered into, and none of the Debtors or Buyer has entered into the APA or propose to consummate the Transactions, for the purpose of hindering, delaying or defrauding the Debtors' present or future creditors. None of the Debtors or Buyer is entering into the APA, or proposing to consummate the Transactions, fraudulently, for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

K. The offer of Buyer, upon the terms and conditions set forth in the APA, including the form and total consideration to be realized by the Debtors pursuant to the APA: (i) is the highest and best offer received by the Debtors; (ii) is fair and reasonable; (iii) is in the best interests of the Debtors' creditors and estates and (iv) constitutes fair value, fair, full and adequate consideration, reasonably equivalent value and reasonable market value for the Acquired Assets.

L. Buyer is the Successful Bidder for the Acquired Assets in accordance with the Bidding Procedures Order. Buyer has complied in all respects with the Bidding Procedures

Order and any other applicable order of this Court in negotiating and entering into the APA, and the sale and the APA likewise comply with the Bidding Procedures Order and any other applicable order of this Court.

Good Faith of Debtors and Buyer

M. The sales process conducted by the Debtors, including without limitation, the Bidding Procedures set forth in the Bidding Procedures Order, was at arms' length, non-collusive, in good faith, and substantively and procedurally fair to all parties.

N. The Debtors, Buyer and their respective professionals have complied, in good faith, in all respects with the Bidding Procedures Order. As demonstrated by (i) any testimony and other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, substantial marketing efforts and a competitive sale process were conducted in accordance with the Bidding Procedures Order, the Debtors (a) afforded all creditors and other parties in interest and all potential purchasers a full, fair and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase the Acquired Assets, (b) provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Acquired Assets, and (c) considered any bids submitted on or before the Bid Deadline (as defined in the Bidding Procedures).

O. The APA and the Transactions contemplated thereunder were proposed, negotiated and entered into by and among the Debtors and Buyer without collusion, in good faith and at arms' length. None of the Debtors or Buyer has engaged in any conduct that would cause or permit the APA or the Transactions to be avoided under section 363(n) of the Bankruptcy Code.

P. Neither Buyer nor any of its affiliates, present or contemplated members, officers, directors, shareholders or any of their respective successors and assigns is an "insider" of any of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code. Buyer is entering into the Transactions in good faith and is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to the full protection of that provision, and otherwise has proceeded in good faith in all respects in connection with this proceeding. Neither the Debtors nor Buyer have engaged in any action or inaction that would cause or permit the APA to be avoided or impose any costs or damages under section 363(n) of the Bankruptcy Code.

Section 363 Is Satisfied

Q. The Debtors have demonstrated a sufficient basis and compelling circumstances requiring them to (i) enter into the APA, and (ii) sell the Acquired Assets and assume and assign the Assigned Agreements and such actions are appropriate exercises of the Debtors' business judgment and in the best interests of the Debtors, their estates and their creditors. Such business reasons include, but are not limited to, the fact that (i) the APA constitutes the highest and best offer for the Acquired Assets; (ii) the APA presents the best opportunity to realize the value of the Debtors; and (iii) unless the sale is concluded expeditiously as provided for in the Motion and pursuant to the APA, recoveries of creditors may be diminished.

R. The Debtors have, to the extent necessary, satisfied the requirements of Bankruptcy Code section 363(b)(1). Accordingly, appointment of a consumer privacy ombudsman pursuant to Bankruptcy Code sections 363(b)(1) or 332 is not required with respect to the relief requested in the Motion.

S. The Acquired Assets constitute property of the Debtors' estates and title thereto is presently vested in the Debtors' estates within the meaning of Bankruptcy Code section 541(a).

T. The sale of all Acquired Assets to Buyer under the terms of the APA meets the applicable provisions of section 363(f) of the Bankruptcy Code such that the sale of the Acquired Assets will be free and clear of any and all Claims, and except as expressly provided in the APA with respect to the Assumed Liabilities, the (i) transfer of the Acquired Assets to Buyer and (ii) assumption and/or assignment to Buyer or an Affiliate of Buyer of the Assigned Agreements and Assumed Liabilities will be free and clear of all Claims and will not subject Buyer or any of Buyer's assets to any liability for any Claims whatsoever (including, without limitation, under any theory of equitable law, antitrust, setoff, or successor or transferee liability). All holders of Claims who did not object, or withdrew their objections to the Transactions, are deemed to have consented to the Transactions pursuant to section 363(f)(2) of the Bankruptcy Code, and all holders of Claims are adequately protected — thus satisfying section 363(e) of the Bankruptcy Code — by having their Claims, if any, attach to the proceeds of the Transactions ultimately attributable to the property against or in which they assert a Claim or other specifically dedicated funds, in the same order of priority and with the same validity, force and effect that such Claim holder had prior to the Transactions, subject to any rights, claims and defenses of the Debtors or their estates, as applicable, or as otherwise provided herein; provided, however, that setoff rights will be extinguished to the extent there is no longer mutuality after the consummation of the Transactions.

U. Buyer would not have entered into the APA and would not consummate the sale of all Acquired Assets, thus adversely affecting the Debtors, their estates, creditors, employees and other parties in interest, if the sale of the Acquired Assets was not free and clear of all Claims or if Buyer would, or in the future could, be liable for any Claims, including, without limitation and as applicable, certain liabilities that expressly are not assumed by Buyer as set

forth in the APA or in this Order. Buyer asserts that it will not consummate the Transactions unless the APA specifically provides, and this Court specifically orders, that none of Buyer, its assets or the Acquired Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any (i) Claim or (ii) any successor or transferee liability for any of the Debtors other than the Assumed Liabilities.

V. The transfer of the Acquired Assets to Buyer under the APA will be a legal, valid and effective transfer of all of the legal, equitable and beneficial right, title and interest in and to the Acquired Assets free and clear of all Claims. The Debtors may sell their interests in the Acquired Assets free and clear of all Claims because, in each case, one or more of the standards set forth in section 363(f) of the Bankruptcy Code has been satisfied. The transfer of the Acquired Assets to Buyer will vest Buyer with good and marketable title to the Acquired Assets.

W. Buyer is not a successor to the Debtors or their respective estates by reason of any theory of law or equity and Buyer shall not assume or in any way be responsible for any liability or obligation of any of the Debtors or their respective estates, except as otherwise expressly provided in the APA or this Sale Order. Buyer is not a continuation of the Debtors or their respective estates and there is no continuity between Buyer and the Debtors. Buyer is not holding itself out to the public as a continuation of the Debtors or their respective estates and the Transactions do not amount to a consolidation, merger or *de facto* merger of Buyer and the Debtors.

X. There is no legal or equitable reason to delay the Transactions. The Transactions must be approved and consummated promptly in order to preserve the value of the Debtors' assets.

Y. The Debtors have demonstrated both (i) good, sufficient and sound business purposes and justifications and (ii) compelling circumstances for the Transactions pursuant to section 363(b) of the Bankruptcy Code prior to, and outside of, a plan of reorganization in that, among other things, absent the immediate consummation of the Transactions, the value of the Debtors' assets will be harmed. To maximize the value of the Purchased Assets, it is essential that the Transactions occur within the timeframe set forth in the APA. Time is of the essence in consummating the Transactions.

Z. The sale and assignment of the Acquired Assets outside of a plan of reorganization pursuant to the APA neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan for the Debtors. Neither the APA nor the transactions contemplated thereby constitute a sub rosa chapter 11 plan.

Assumption and Assignment of the Assigned Agreements

AA. The assumption and assignment of the Assigned Agreements (as such Assigned Agreements may be amended, supplemented or otherwise modified prior to assumption and assignment without further order of the Court with the consent of the Debtors, the contract counterparty and Buyer) that are designated for assumption and assignment pursuant to the terms of this Order and the APA are integral to the APA, are in the best interests of the Debtors and their respective estates, creditors and other parties in interest, and represent the reasonable exercise of sound and prudent business judgment by the Debtors.

BB. No section of any Assigned Agreement which purports to prohibit, restrict, or condition the use, consideration or assignment of any such Assigned Agreement in connection with the Transactions shall have any force or effect.

CC. The Debtors have met all requirements of section 365(b) of the Bankruptcy Code for each of the Assigned Agreements. The Debtors (and, in certain cases, Buyer, as applicable under the APA) have (a) cured and/or provided adequate assurance of cure of any default existing prior to the Closing under all of the Assigned Agreements, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code; and (b) provided compensation or adequate assurance of compensation to any counterparty for actual pecuniary loss to such party resulting from a default prior to the Closing under any of the Assigned Agreements, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. Each of the Assigned Agreements is free and clear of all Claims against Buyer.

DD. Buyer has demonstrated adequate assurance of its future performance under the relevant Assigned Agreements within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code. Pursuant to section 365(f) of the Bankruptcy Code, the Assigned Agreements to be assumed and assigned under the APA shall be assigned and transferred to, and remain in full force and effect for the benefit of, Buyer notwithstanding any provision in the contracts or other restrictions prohibiting their assignment or transfer.

EE. No defaults exist in the Debtors' performance under the Assigned Agreements as of the date of this Sale Order other than the failure to pay amounts equal to the Cure Costs or defaults that are not required to be cured as contemplated in section 365(b)(1)(A) of the Bankruptcy Code.

THEREFORE, IT IS HEREBY ORDERED THAT:

General Provisions

1. The Motion is granted in its entirety and approved in all respects.

2. All objections to the Motion or the relief requested therein that have not been withdrawn, waived or settled as announced to the Court at the Sale Hearing or by stipulation

filed with the Court or as resolved in this Order, and all reservations of rights included therein, are hereby overruled on the merits with prejudice. All persons and entities given notice of the Motion that failed to timely object thereto are deemed to consent to the relief sought therein including without limitation all non-Debtor parties to the Assigned Agreements.

3. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Approval of the APA

4. The APA, all of the terms and conditions thereof, and all of the Transactions contemplated therein are approved in all respects. The failure specifically to include any particular provision of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the APA be authorized and approved in its entirety. The transfer of the Acquired Assets by the Debtors to Buyer shall be a legal, valid and effective transfer of the Acquired Assets. The consummation of the Transactions is hereby approved and authorized under section 363(b) of the Bankruptcy Code.

5. The Debtors are authorized to (a) take any and all actions necessary or appropriate to perform, consummate, implement and close the Transactions, including the sale to Buyer of all Acquired Assets, in accordance with the terms and conditions set forth in the APA and this Order, including without limitation executing, acknowledging and delivering such deeds, assignments, conveyances and other assurance, documents and instruments of transfer and taking any action for purposes of assigning, transferring, granting, conveying, and confirming to Buyer, or reducing to possession, any or all of the Acquired Assets and (b) to assume and assign any and

all Assigned Agreements. The Debtors are further authorized to pay, without further order of this Court, whether before, at or after the Closing, any expenses or costs that are required to be paid in order to consummate the Transactions or perform their obligations under the APA. [Except for the Break Up Fee (as defined in the APA), which is only payable out of the proceeds of an Alternative Transaction (as defined in the APA), any amounts, including the Expense Reimbursement Amount, that become payable by the Debtors to Buyer pursuant to the APA, (and related agreements executed in connection therewith) shall constitute administrative expenses of the Debtors' estates under sections 503(b) and 507(a)(l) of the Bankruptcy Code (to the extent set forth in the Bidding Procedures Order, the APA and such related agreements) and shall be treated with such priority if the above-captioned bankruptcy cases convert to cases under chapter 7 of the Bankruptcy Code.][4]

6. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with, or which would be inconsistent with, the ability of the Debtors to transfer the Acquired Assets to Buyer in accordance with the APA and this Order.

Sale and Transfer Free and Clear of Claims

7. Except as otherwise expressly provided in the APA and the terms of this Order with respect to Assumed Liabilities, the Acquired Assets shall be sold free and clear of all claims, Liens, liabilities, interests, rights and encumbrances, including, without limitation, the following: all mortgages, restrictions (including, without limitation, any restriction on the use, voting rights, transfer rights, claims for receipt of income or other exercise of any attributes of ownership), hypothecations, charges, indentures, loan agreements, instruments, leases, licenses,

[4] Note to draft: to be revised after determination of Successful Bidder.

options, deeds of trust, security interests, equity interests, conditional sale rights or other title retention agreements, pledges, judgments, demands, rights of first refusal, consent rights, offsets, contract rights, rights of setoff, recoupment rights, rights of recovery, reimbursement rights, contribution claims, indemnity rights, exoneration rights, product liability claims, alter-ego claims, environmental rights and claims (including, without limitation, toxic tort claims), labor rights and claims, employment rights and claims, pension rights and claims, tax claims, regulatory violations by any governmental entity, decrees of any court or foreign or domestic governmental entity, charges of any kind or nature, debts arising in any way in connection with any agreements, acts, or failures to act, reclamation claims, obligation claims, demands, guaranties, option rights or claims, rights, contractual or other commitment rights and claims, rights of licensees or sublicensees under section 365(n) of the Bankruptcy Code or any similar statute, and all other matters of any kind and nature, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of this Bankruptcy Case (but, for the avoidance of doubt, in each case arising from the ownership of the Acquired Assets or the operation of the Business prior to the Closing Date), and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under any theory, law or doctrine of successor liability or related theories (all of the foregoing collectively being referred to in this Order as "**Claims**", and, as used in this Order, the term Claims includes, without limitation, any and all "claims" as that term is defined and used in the Bankruptcy Code, including section 101(5) thereof), with all such Claims to attach to the proceeds of the

Transactions to be received by the Debtors with the same validity, force, priority and effect which they now have as against the Acquired Assets and subject to any claims and defenses the Debtors or other parties may possess with respect thereto; provided, however, that setoff rights will be extinguished to the extent there is no longer mutuality after the consummation of the Transactions. As used in this Order, the term "**Liens**" includes, without limitation, any statutory lien on real and personal property and any and all "liens" as that term is defined and used in the Bankruptcy Code, including section 101(37) thereof.

8. At Closing, all of the Debtors' right, title and interest in and to, and possession of, the Acquired Assets shall be immediately vested in Buyer pursuant to sections 105(a), 363(b), 363(f) and 365 of the Bankruptcy Code free and clear of any and all Claims except for Assumed Liabilities. Such transfer shall constitute a legal, valid, binding and effective transfer of such Acquired Assets. All person or entities, presently or on or after the Closing, in possession of some or all of the Acquired Assets are directed to surrender possession of the Acquired Assets to Buyer or its designees on the Closing or at such time thereafter as Buyer may request.

9. This Order (a) shall be effective as a determination that, as of the Closing, (i) no Claims (other than Assumed Liabilities) will be capable of being asserted against Buyer or any of its assets (including the Acquired Assets), (ii) the Acquired Assets shall have been transferred to Buyer free and clear of all Claims and (iii) the conveyances described herein have been effected; and (b) is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of

law, the duties of their office or contract, to accept, file, register or otherwise record or release any documents or instruments; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA. The Acquired Assets are sold free and clear of any reclamation rights.

10. Except as otherwise expressly provided in the APA with respect to the Assumed Liabilities, all persons and entities (and their respective successors and assigns), including, but not limited to, all debt security holders, equity security holders, affiliates, governmental, tax and regulatory authorities, lenders, customers, vendors, employees, trade creditors, litigation claimants and other creditors holding Claims arising under or out of, in connection with, or in any way relating to, the Debtors, the Acquired Assets, the ownership, sale or operation of the Acquired Assets and the Business prior to Closing or the transfer of the Acquired Assets to Buyer, are hereby forever barred, estopped and permanently enjoined from asserting such Claims against Buyer, its successors or assigns, their property or the Acquired Assets. Following the Closing, no holder of any Claim shall interfere with Buyer's title to or use and enjoyment of the Acquired Assets based on or related to any such Claim, or based on any action the Debtors may take in their Chapter 11 cases.

11. If any person or entity that has filed financing statements, mortgages, mechanic's Claims, *lis pendens* or other documents or agreements evidencing Claims against or in the Acquired Assets shall not have delivered to the Debtors prior to the Closing of the Transactions, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Claims that the person or entity has with respect to the Acquired Assets or otherwise, then only with regard to the Acquired Assets that are purchased by

Buyer pursuant to the APA and this Order (a) the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Acquired Assets and (b) Buyer is hereby authorized to file, register or otherwise record a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Claims against Buyer and the applicable Acquired Assets; and (c) Buyer may seek in this Court or any other court to compel appropriate parties to execute termination statements, instruments of satisfaction, and releases of all Claims with respect to the Acquired Assets other than Assumed Liabilities. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department or office. Notwithstanding the foregoing, the provisions of this Order authorizing the sale and assignment of the Acquired Assets free and clear of Claims shall be self-executing, and none of the Debtors nor Buyer shall be required to execute or file releases, termination statements, assignments, consents or other instruments in order to effectuate, consummate and implement the provisions of this Order.

12. To the maximum extent permitted under applicable law, Buyer shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtors with respect to the Acquired Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to Buyer as of the Closing Date.

13. To the extent permitted by Bankruptcy Code section 525, no governmental unit may revoke or suspend any permit or license relating to the operation of the Acquired Assets

sold, transferred, assigned or conveyed to Buyer on account of the filing or pendency of these chapter 11 cases or the consummation of the Transactions.

No Successor or Transferee Liability

14. Buyer shall not be deemed, as a result of any action taken in connection with the APA, the consummation of the Transactions contemplated by the APA, or the transfer or operation of the Acquired Assets to (a) be a legal successor, or otherwise be deemed a successor to the Debtors (other than, for Buyer, with respect to any obligations as an assignee under the Assigned Agreements arising after the Closing); (b) have, *de facto* or otherwise, merged with or into the Debtors; or (c) be an alter ego or a mere continuation or substantial continuation of the Debtors including, without limitation, within the meaning of any foreign, federal, state or local revenue law, pension law, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act ("**COBRA**"), WARN (defined below), CERCLA (defined below), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended), the National Labor Relations Act, 29 U.S.C. § 151, *et seq.* (the "**NLRA**"), environmental liabilities, debts, claims or obligations arising from conditions first existing on or prior to Closing (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including, without limitation, under CERCLA, any liabilities, debts or obligations of or required to be paid by the Debtors for any taxes of any kind for any period, labor, employment, or other law, rule or regulation (including without limitation filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine.

15. Other than as expressly set forth in the APA with respect to Assumed Liabilities, Buyer shall not have any responsibility for (a) any liability or other obligation of the Debtors or related to the Acquired Assets or (b) any remaining Claims against the Debtors or any of their predecessors or affiliates. Buyer shall have no liability whatsoever with respect to the Debtors' (or their predecessors' or affiliates') respective businesses or operations or any of the Debtors' (or their predecessors' or affiliates') obligations (as described herein, "**Successor or Transferee Liability**") based, in whole or part, directly or indirectly, on any theory of successor or vicarious liability of any kind or character, or based upon any theory of antitrust, environmental, successor or transferee liability, *de facto* merger or substantial continuity, labor and employment or products liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Acquired Assets prior to the Closing. Buyer shall have no liability or obligation under the WARN Act (29 U.S.C. §§ 2101 et seq.) ("**WARN**") or the Comprehensive Environmental Response Compensation and Liability Act ("**CERCLA**"), or any foreign, federal, state or local labor, employment, or environmental law whether of similar import or otherwise by virtue of Buyer's purchase of the Acquired Assets or assumption of the Assumed Liabilities by Buyer or an Affiliate of Buyer.

16. Nothing in this Order or the APA shall require Buyer to (a) continue or maintain in effect, or assume any liability in respect of any employee, collective bargaining agreement, pension, welfare, fringe benefit or any other benefit plan, trust arrangement or other agreements to which the Debtors are a party or have any responsibility therefor including, without limitation, medical, welfare and pension benefits payable after retirement or other termination of

employment; or (b) assume any responsibility as a fiduciary, plan sponsor or otherwise, for making any contribution to, or in respect of the funding, investment or administration of any employee benefit plan, arrangement or agreement (including but not limited to pension plans) or the termination of any such plan, arrangement or agreement.

17. Effective upon the Closing, all persons and entities are forever prohibited and enjoined from commencing or continuing in any matter any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against Buyer, or its assets (including the Acquired Assets), with respect to any (a) Claim or (b) Successor or Transferee Liability including, without limitation, the following actions with respect to clauses (a) and (b): (i) commencing or continuing any action or other proceeding pending or threatened; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (iii) creating, perfecting or enforcing any lien, claim, interest or encumbrance; (iv) asserting any setoff, right of subrogation or recoupment of any kind; (v) commencing or continuing any action, in any manner or place, that does not comply with, or is inconsistent with, the provisions of this Sale Order or other orders of this Court, or the agreements or actions contemplated or taken in respect hereof; or (vi) revoking, terminating or failing or refusing to renew any license, permit or authorization to operate any of the Acquired Assets or conduct any of the businesses operated with such assets.

Good Faith of Buyer

18. The Transactions contemplated by the APA are undertaken by Buyer without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the sale shall not affect the validity of the Transactions (including the assumption and assignment of the Assigned Agreements), unless such authorization and consummation of

the sale are duly and properly stayed pending such appeal. Buyer is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

19. Neither the Debtors nor Buyer have engaged in any action or inaction that would cause or permit the Transactions to be avoided or costs or damages to be imposed under section 363(n) of the Bankruptcy Code. The consideration provided by Buyer for the Acquired Assets under the APA is fair and reasonable and the Transactions may not be avoided under section 363(n) of the Bankruptcy Code.

20. Buyer is not an "insider" as that term is defined in section 101(31) of the Bankruptcy Code.

Assumption and Assignment of Assigned Agreements

21. The Debtors are authorized and directed at to assume and assign each of the Assigned Agreements upon the Closing of the Transactions, free and clear of all Claims. The payment of the applicable Cure Costs by the Debtors (or, in certain cases, Buyer, as applicable under the APA) shall (a) effect a cure of all defaults existing thereunder as of the Closing Date, (b) compensate for any actual pecuniary loss to such non-Debtor counterparty resulting from such default, and (c) together with the assumption of the Assigned Agreements by the Debtors and the assignment of the Assigned Agreements to Buyer or an Affiliate of Buyer, constitute adequate assurance of future performance thereof.

22. Any provisions in any Assigned Agreement that prohibit or condition the assignment of such Assigned Agreement or allow the counterparty to such Assigned Agreement to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Assigned Agreement, constitute unenforceable anti-assignment provisions that are void and of no force and effect. All other requirements and

conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to Buyer or an Affiliate of Buyer of the Assigned Agreements have been satisfied. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, Buyer shall be fully and irrevocably vested with all right, title and interest of the Debtors under the Assigned Agreements, and such Assigned Agreements shall remain in full force and effect for the benefit of Buyer. Each non-Debtor counterparty to the Assigned Agreements shall be forever barred, estopped, and permanently enjoined from (a) asserting against the Debtors or Buyer or their respective property any assignment fee, acceleration, default, breach or claim or pecuniary loss, or condition to assignment existing, arising or accruing as of the Closing Date or arising by reason of the Closing, including any breach related to or arising out of change-in-control in such Assigned Agreements, or any purported written or oral modification to the Assigned Agreements and (b) asserting against Buyer (or its property, including the Acquired Assets) any claim, counterclaim, defense, breach, condition, setoff asserted or capable of being asserted against the Debtors existing as of the Closing Date or arising by reason of the Closing except for the Assumed Liabilities.

23. Upon the Closing and the payment of the relevant Cure Costs, Buyer shall be deemed to be substituted for the Debtors as a party to the applicable Assigned Agreements and the Debtors shall be released, pursuant to section 365(k) of the Bankruptcy Code, from any liability under the Assigned Agreements. There shall be no assignment fees, increases or any other fees charged to Buyer or the Debtors as a result of the assumption and assignment of the Assigned Agreements.

24. Each non-Debtor party to an Assigned Agreement is forever barred, estopped and permanently enjoined from asserting against Buyer, or its property (including without limitation

the Acquired Assets), any default existing as of the date of the Sale Hearing, or any counterclaim, defense, setoff or other claim asserted or capable of being asserted against the Debtors. Other than the Assigned Agreements, Buyer assumed none of the Debtors' other contracts or leases and shall have no liability whatsoever thereunder.

25. The assignments of each of the Assigned Agreements are made in good faith under sections 363(b) and (m) of the Bankruptcy Code.

Other Provisions

26. In connection with the Closing of the Transactions, the Cash Consideration from the Sale[, less the Break Up Fee paid to Buyer pursuant to the terms of the APA (the "**Net Cash Consideration**")][5], shall be paid directly by the Successful Bidder to the First Lien Agent (as defined in the *Interim Order (I) Authorizing Debtors to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to the Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364; (III) Authorizing Debtors to Obtain Postpetition Financing Pursuant to 11 U.S.C. § 364 and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(B)* [Docket No. ___], entered on _____, 2011, and the *Final Order (I) Authorizing Debtors to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to the Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364 and (III) Authorizing Debtors to Obtain Postpetition Financing Pursuant to 11 U.S.C. § 364* [Docket No. ____], entered on ____, 2011, and any amendments to each of the foregoing (collectively, the "**DIP Order**")) on the Closing Date for distribution to the First Lien Claimholders (as defined in the DIP Order), except that:

[5] NTD: This provision will be included/excluded after the Successful Bidder is determined.

(i) $[•] shall be funded into a segregated escrow account to pay the applicable Debtors' Cure Costs in accordance with the APA (the "**Cure Account**");

(ii) $[•] (the "**Canadian Cash Consideration**"), constituting the portion of the [Net][6] Cash Consideration allocated by the Bankruptcy Court to the Acquired Assets of Graceway Canada Company ("**Graceway Canada**") less any Cure Costs required to be paid by Graceway Canada in accordance with the APA, shall be paid directly to the Receiver from Graceway Canada's payment of its creditors and equity holders in accordance with applicable law;

(iii) the sum of the outstanding principal amount and all capitalized or accrued interest thereon under the $6,000,000 postpetition intercompany term loans authorized pursuant to the DIP Order from Graceway Canada to Graceway Pharmaceuticals, LLC (the "**Intercompany Loan Balance**") shall be paid to Graceway Canada;

(iv) solely to pay the Sale Transaction Fee due and owing to Lazard Freres & Co. LLC ("**Lazard**") as defined in and pursuant to the terms of that certain engagement letter, dated March 12, 2010, between Lazard and Graceway Pharmaceuticals, LLC (the "**Success Fee**"), an amount equal to the Success Fee shall be paid directly by the Successful Bidder to Lazard on the Closing Date if permitted by the Bankruptcy Court or, if not so permitted on the Closing Date deposited into a segregated interest bearing account (the "**Lazard Account**") to be maintained at, and at all times under the control of, the First Lien Agent pending approval by the Bankruptcy Court of the Success Fee for distribution to Lazard;

(v) only after the Intercompany Loan Balance shall be paid to Graceway Canada in accordance with sub-clause (iii) above, an amount equal to(A) $11,234,000 *plus* (B) any unpaid amounts incurred and earned prior to the Closing Date under each of the Debtors' Professionals Carve-Out Cap and the Committee Professionals Carve-Out Cap (each as defined in the DIP Order) (including, without limitation, any unbilled amounts) *plus* (C) the lesser of $10,500,000 and any unpaid amounts incurred and accrued prior to the Closing Date on account of allowed priority claims, administrative claims and allowed prepetition claims authorized to be paid by the Bankruptcy Court pursuant to the orders approving the Prepetition Claims Motions (as defined below), excluding amounts described in clause (B) above, liabilities on account of chargebacks, channel management agreements, product returns and consumer rebates and liabilities for which funds have been deposited pursuant to paragraphs (iv) and (vii) of this paragraph 26, *plus* (D) any unpaid amounts incurred and accrued prior to the Closing Date on account of claims arising under Section 503(b)(9) of the Bankruptcy Code (the aggregate of such amounts in subclauses (A), (B), (C) and (D), the "**Total Amount**") *minus* (E) the sum of (1) any Cash Collateral (as defined in the DIP Order), (2) the amount of all

[6] NTD: This word will be included/excluded after the Successful Bidder is determined.

retainers, if any, held by professionals retained by the Debtors and/or Graceway Canada and not applied prior to the closing of the sale and (3) $2,616,007 (or $0 if the amount of Cash Collateral on hand immediately prior to the Closing Date, *plus* the amount of all such retainers, *plus* $2,616,007 is greater than or equal to the Total Amount) shall be deposited into a separate interest bearing account (the "**Designated Account**") to be maintained at, and all times under the control of, the First Lien Agent for purposes of funding any shortfall with respect to (X) the Carve-Out (as defined in the DIP Order) (less the amount of the Success Fee) and (Y) solely to the extent a Carve-Out Trigger Notice (as defined in the DIP Order) has not been delivered or a plan of reorganization or liquidation in the Bankruptcy Case is confirmed, distributions on account of (I) allowed priority claims and allowed administrative claims (including, without limitation, claims arising under Section 503(b)(9) of the Bankruptcy Code, but excluding liabilities on account of chargebacks, channel management agreements, product returns and consumer rebates) not to exceed in the aggregate $15,852,000 (excluding any amounts approved under Section 330 of the Bankruptcy Code to the extent of the Carve-Out) and (II) allowed prepetition claims (excluding liabilities on account of chargebacks, channel management agreements, product returns and consumer rebates) authorized to be paid by the Bankruptcy Court pursuant to the orders approving those certain documents, motions and pleadings, filed by the Debtors with the Bankruptcy Court on the Petition Date (as defined in the DIP Order), pursuant to which the Debtors sought authorization to pay the prepetition obligations specifically described therein or any motions filed by the Debtors after the Petition Date consented to by the Approving Majority First Lien Lenders (as defined in the DIP Order) that seek authorization to pay the prepetition obligations specifically described therein (the "**Prepetition Claims Motions**") and not paid as of the Closing Date, not to exceed in the aggregate $250,000; provided, however, that nothing contained herein shall be construed as prohibiting the Debtors from paying any allowed prepetition claims authorized to be paid by the Bankruptcy Court pursuant to the orders approving the Prepetition Claims Motions, allowed priority claims and allowed administrative claims, in each case, incurred in the ordinary course of business prior to delivery of a Carve-Out Trigger Notice;

(vi) an amount equal to one percent (1.0%) of the portion of the [Net] Cash Consideration allocated to the Acquired Assets of the Debtors in accordance with the procedures set forth in the Sale Motion net of the sum of (A) the amount equal to the Intercompany Loan Balance, (B) any Cure Costs required to be paid in accordance with the APA and (C) the Canadian Cash Consideration, shall be deposited into a separate interest bearing account (the "**1.0% Holdback Account**") to be maintained at, and at all times under the control of, the First Lien Agent;

(vii) an amount equal to $2,616,007 less (A) the amount of all severance and liabilities under the provisions of the Consolidated Omnibus Budget Reconciliation Act, as set forth in Section 4980B of the Code, or any other similar state law ("**COBRA**") paid by the Debtors during the period from and including the Petition Date to and

including the Closing Date and (B) any amounts paid during the period from and including the Petition Date to and including the Closing Date to the Debtors' employees on account of vacation, personal and sick days, holidays and permitted time off for service on a jury, service in the military or bereavement, in each case, under the Debtors' paid time off plans existing during the period from and including the Petition Date to and including the Closing Date (it being understood that the amounts described in subclauses (A) and (B) of this clause shall not in the aggregate exceed $2,616,007) shall be deposited into a separate interest bearing account (the "**Employee Account**" and, together with the Cure Account, Lazard Account, Designated Account and 1.0% Holdback Account, the "**Reserve Accounts**") to be maintained at, and all times under the control of, the First Lien Agent for purposes of funding the Debtors' severance and COBRA liabilities budgeted for under the DIP Order; and

(viii) an amount equal to $17,684,000 shall be deposited into a separate interest bearing account (the "**CCR Account**") to be maintained at, and all times under the control of, the First Lien Agent for purposes of paying liabilities on account of chargebacks, channel management agreements, product returns and consumer rebates constituting allowed (A) prepetition claims authorized to be paid by the Bankruptcy Court pursuant to the orders approving the Prepetition Claims Motions or (B) administrative claims, in each case, unpaid as of the Closing Date or arising thereafter.

Any contingent payments under the APA not yet due and payable on the Closing Date shall be paid by the Successful Bidder as and when they become due and payable following the Closing Date directly to the First Lien Agent for distribution to the First Lien Claimholders

27. Without limiting any provision hereunder, it is hereby acknowledged and agreed that (i) the liens of the First Lien Agent, for the benefit of the First Lien Claimholders and other secured creditors, if any, shall attach in the same priority and to the same extent as existed on the Acquired Assets prior to the consummation of the transactions contemplated by the APA to each of the Reserve Accounts (provided, that distributions, if any, of the funds in such Reserve Accounts in accordance with paragraph 26 shall be distributed free and clear of any liens, claims, interests or encumbrances of the First Lien Agent or any liens, claims, interests or encumbrances junior in priority thereto), and (ii) to the extent any such funds (and any interest accruing thereon) remain in such segregated interest bearing Reserve Accounts (other than the 1%

Holdback Account) after the final payment of all amounts for which such funds are designed (as specified herein), any such excess funds shall be paid to the First Lien Agent for prompt distribution to the First Lien Claimholders. Notwithstanding anything to the contrary in this Order, the funds in the 1.0% Holdback Account shall be distributed to the First Lien Administrative Agent for prompt distribution to the First Lien Lenders upon the earlier of the effective date of a plan of reorganization or liquidation in the Chapter 11 Cases and July 31, 2012.

28. From and after the Closing Date to an including the effective date of its plan of reorganization or liquidation, each Debtor shall deposit with the First Lien Agent on a bi-weekly basis all collections in respect of accounts receivable received by such Debtor during each such two-week period. Each Debtor shall make such deposits on every second Friday, commencing with Friday, February 10, 2012 and on the effective date of its plan of reorganization or liquidation. All amounts so deposited shall be applied by the First Lien Agent to reduce the amount of the claims of the First Lien Claimholders outstanding under, and in accordance with the terms of, the First Lien Credit Agreement (as defined in the DIP Order).

29. The requirements set forth in Bankruptcy Rules 6003(b), 6004 and 6006 and Local Bankruptcy Rules 6004-1 and 9013-1 have been satisfied or otherwise deemed waived.

30. Buyer shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the APA or any other sale-related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence, provided however that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

31. Notwithstanding anything to the contrary contained in the APA, the Acquired Assets shall not include any causes of action concerning directors' and officers' liability. In addition to the foregoing, neither the APA, nor this Order shall transfer to Buyer any avoidance claims or causes of action under the Bankruptcy Code or applicable law, including all such rights and avoidance actions of the Debtors' estates arising under chapter 5 of the Bankruptcy Code.

32. This Order is binding upon and inures to the benefit of any successors and assigns of the Debtors or Buyer, including any trustee appointed in any subsequent case of the Debtors under chapter 7 of the Bankruptcy Code.

33. The provisions of this Order and the APA are non-severable and mutually dependent.

34. The APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates.

35. The Court shall retain exclusive jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the APA, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtors are a party or which has been assigned by the Debtors to Buyer, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Transactions. This Court retains jurisdiction to compel delivery of the Acquired Assets, to protect Buyer and its assets, including the Acquired Assets, against any Claims and Successor and Transferee Liability and to enter orders, as appropriate, pursuant to sections 105, 363 or 365

(or other applicable provisions) of the Bankruptcy Code necessary to transfer the Acquired Assets and the Assigned Agreements to Buyer.

36. As provided by Bankruptcy Rules 7062 and 9014, the terms and conditions of this Order shall be effective immediately upon entry and shall not be subject to the stay provisions contained in Bankruptcy Rules 6004(h) and 6006(d). Time is of the essence in closing the sale and the Debtors and Buyer intend to close the sale as soon as possible. Therefore, any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay or risk their appeal being foreclosed as moot.

37. This Order and the APA shall be binding in all respects upon all creditors of (whether known or unknown), and holders of equity interests in, any Debtor, any holders of Claims in, against or on all or any portion of the Acquired Assets, all non-Debtor counterparties to the Assigned Agreements, all successors and assigns of Buyer, the Debtors and their affiliates and subsidiaries and any subsequent trustees appointed in these chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code, and shall not be subject to rejection. Nothing contained in any chapter 11 plan confirmed in these chapter 11 cases, any order confirming any such chapter 11 plan or any order approving wind-down or dismissal of these chapter 11 cases or any subsequent chapter 7 cases shall conflict with or derogate from the provisions of the APA or this Order, and to the extent of any conflict or derogation between this Order or the APA and such future plan or order, the terms of this Order and the APA shall control.

38. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

39. To the extent any provisions of this Order conflict with, or are otherwise inconsistent with, the terms and conditions of the APA or the Bidding Procedures Order, this Order shall govern and control.

Dated: [_____], 2011
Wilmington, Delaware

_____

UNITED STATES BANKRUPTCY JUDGE

Exhibit A

APA

Asset Purchase Agreement attached as Exhibit D to the Sale Motion

Exhibit C

Aronson Declaration

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: GRACEWAY PHARMACEUTICALS, LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 11-_____ (____) Joint Administration Pending

DECLARATION OF DANIEL ARONSON IN SUPPORT OF DEBTORS' MOTION FOR ENTRY OF AN ORDER APPROVING AND AUTHORIZING (A) BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF CERTAIN ASSETS OF THE DEBTORS ASSETS, (B) STALKING HORSE BID PROTECTIONS, (C) THE FORM AND MANNER OF NOTICE OF THE SALE HEARING AND (D) RELATED RELIEF

I, Daniel Aronson, being duly sworn, state the following under penalty of perjury.

1. I am a Managing Director of Lazard Frères & Co. LLC ("**Lazard**") which has its principal office at 30 Rockefeller Plaza, New York, New York 10020.

2. I am authorized on behalf of Lazard to submit this declaration (the "**Declaration**") in support of the motion (the "**Motion**")[2] of the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**" or the "**Company**") in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**"), seeking entry of an order approving and authorizing (a) bidding procedures in connection with the sale of substantially all of the assets of the Debtors, (b) stalking horse bid protections, (c) the form and manner of notice of the sale hearing and (d) other related relief.

---

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).

[2] All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Motion.

3. Unless otherwise stated, all facts and circumstances set forth in this Declaration are based upon my personal knowledge, my discussions with other members of the Lazard team, discussions with Debtors' senior management, my review of relevant documents or my opinion based upon my experience and knowledge of financial restructuring. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

Qualifications

4. Lazard is the U.S. operating subsidiary of a preeminent international financial advisory and asset management firm. Lazard, together with its predecessors and affiliates, has been advising clients around the world for over 150 years. Lazard employs dedicated professionals who provide restructuring services to its clients.

5. Lazard is an investment banking firm focused on providing investment banking, financial advice, and transaction execution on behalf of its clients. Lazard's broad range of corporate advisory services includes general financial advice, corporate restructurings, domestic and cross-border mergers and acquisitions, divestitures, privatizations, special committee assignments, takeover defenses, and strategic partnerships/joint ventures.

6. The current managing directors, directors, vice presidents and associates of Lazard have extensive experience working with financially troubled companies in complex financial restructurings out-of-court and in Chapter 11 proceedings, and with sales of assets under Section 363 of title 11 of the United States Code (the "**Bankruptcy Code**"). Lazard and its principals have been involved as advisors to debtor, creditor and equity constituencies and government agencies in many reorganization cases. Since 1990, Lazard's professionals have been involved in over 250 restructurings, representing over $1 trillion in debtor assets.

7. In March 2010, the Debtors engaged Lazard as their investment banker. Lazard has sought to be retained as the investment banker to the Debtors pursuant to the *Debtors' Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code for an Order Authorizing the Debtors to Retain and Employ Lazard Frères & Co. LLC as Investment Banker for the Debtors Nunc Pro Tunc to the Petition Date* filed concurrently herewith.

8. I am one of the principal managing directors at Lazard providing services to the Debtors. By virtue of such role, I am familiar with the business operations, assets and financial affairs of the Debtors and, in particular, with the Debtors' decision to sell all or substantially all of the assets of the Debtors. I actively participated, along with the Debtors' counsel and the other members of Lazard, in the formulation of the Bidding Procedures and Bidding Process which are the subject of the Motion. Furthermore, after the Bidding Procedures are approved by this Court, as part of its services to the Debtors, Lazard will, together with the Debtors and Debtors' counsel, continue the Sale process and conduct the Sale of the Debtors' assets.

9. I have extensive hands-on experience in matters relating to corporate restructuring, having worked as a restructuring professional for approximately twenty three years. Prior to joining Lazard in 2000, I was an Associate Director with Peter J. Solomon's Restructuring Practice. I joined Peter J. Solomon Company in 1999 from Ernst & Young, where I was a Partner in the Restructuring Practice. I began my career as a financial professional in 1988 with Ernst & Young Entrepreneurial Services Group, where I provided clients with audit, tax, and systems consulting. Over the course of my career as a financial professional, I have been involved in a broad range of financial advisory assignments and engagements.

The Prepetition Marketing Process and Selection of Stalking Horse Bidder

10. Prior to filing these Chapter 11 Cases, the Debtors, with the assistance of Lazard and in consultation with certain of the Debtors' prepetition senior secured lenders, pursued a range of options to address the Debtors' concerns about their ability to service their debt going forward, including new financing, refinancing and the sale of certain or all of the Debtors' assets or business as a going concern. After exploring the strategic alternatives available to them, the Debtors have determined that the best way at this time to maximize the value of their assets for the benefit of their creditors is to seek a sale of substantially all of their assets pursuant to Section 363 of the Bankruptcy Code.

11. In April 2011, Lazard began an extensive marketing and sale process for the Debtors' assets, aggressively canvassing the marketplace to locate potential purchasers, including both strategic and financial buyers. Lazard contacted 60 potential investors in the first round of outreach, all of whom reviewed preliminary, non-confidential solicitation materials. Of those initially contacted, 21 executed confidentiality agreements with the Debtors and received access to an electronic data room to review confidential information and to serve as the basis for discussions towards potential bids (the "**Data Room Participants**"). Approximately 11 Data Room Participants responded with preliminary letters of interest (the "**Potential Purchasers**"). Of the 11 Potential Purchasers, seven (7) responded with preliminary letters of interest in which they expressed an interest in purchasing the entire Company, and the remaining four (4) responded with preliminary letters of interest in which they expressed an interest in purchasing specific assets of the Company.

12. The preliminary letters of interest came from a variety of Potential Purchasers with wide-ranging bids. After evaluating these preliminary letters of interest, as well as their

financial wherewithal and their ability to move expeditiously to consummate the transaction, the Debtors, in consultation with Lazard, opted to pursue further discussions with four of the Potential Purchasers. Each of these four Potential Purchasers received access to additional information in an electronic data room and also received a management presentation beginning on or about June 29, 2011. Following those presentations and initial diligence conducted by the Potential Purchasers, on August 5, 2011, the Debtors received one binding bid to purchase certain assets of the Company (the "**First Bid**"). Subsequently, on September 5, 2011, the Debtors received another binding bid to purchase certain assets of the Company (the "**Second Bid**").

13. The Debtors engaged in arm's-length, good faith negotiations with counsel and advisors to the each of the two parties that submitted a bid. In connection with these negotiations, I was tasked with leading, developing and implementing a strategy for evaluating the options presented to the Debtors and maximizing the value that the Debtors could receive pursuant to a sale.

14. From August 5, 2011 until September 5, 2011, the Debtors negotiated extensively with the bidder that submitted the First Bid regarding the terms and conditions of the proposed acquisition. Beginning on September 5, 2011, when the second bid was received, the Debtors, in consultation with their advisors, engaged in parallel, but individual, arm's-length negotiations with each bidder and such bidder's counsel and advisors. For three weeks following the receipt of the second bid, the Debtors and Lazard, along with the Debtors' other advisors and counsel, continued extensive negotiations regarding the terms and conditions of both the First Bid and Second Bid, which ultimately resulted in materially improved contract terms for the Debtors.

15. Following these extensive negotiations regarding the terms and conditions of each offer, the Debtors, with the assistance of Lazard and their other advisors, conducted a final side-by-side analysis of the proposals and, ultimately, made the considered determination that the offer of the bidder that submitted the Second Bid, Galderma S.A., a Switzerland corporation, was the highest and/or best offer presented and was an acceptable offer to serve as the stalking horse bidder. On September 23, 2011, Lazard and the Debtors' other advisors attended both a meeting of the special committee of the Board of Managers of Graceway Holdings, LLC and of the full Board of Managers of Graceway Holdings, LLC (conducted concurrently with meetings of the boards of managers and directors of various subsidiaries and affiliates) and were asked to provide their advice regarding a potential transaction. At both meetings, on behalf of Lazard, I shared my opinion that the bid of the Second Bidder, Galderma S.A., should be accepted as the stalking horse bid. The special committee of the Board of Managers of Graceway Holdings, LLC recommended and ultimately the full Board of Managers (and the boards of managers and directors of various subsidiaries and affiliates) voted to select Galderma S.A. as the stalking horse bidder (the "**Stalking Horse Bidder**").

16. Thereafter, the Debtors and the Stalking Horse Bidder entered into the Asset Purchase Agreement dated September 27, 2011, among the Debtors, as sellers, and the Stalking Horse Bidder, as buyer (the "**APA**"). Pursuant to the APA: (i) the Stalking Horse Bidder agreed to pay $275,000,000 (the "**Cash Purchase Price**"), and to assume certain assumed liabilities (together with the Cash Purchase Price, the "**Stalking Horse Bid**") for the Acquired Assets (as defined in the APA), subject to the outcome of the Auction, if one is needed, and Court approval; and (ii) the Debtors agreed to provide the Bid Protections (as described herein).

17. I believe that starting with its implementation of a robust marketing process and continuing through its shepherding the deal to consummation, Lazard created a dynamic and competitive bidding process that resulted in both a purchase price that I do not believe we could have exceeded under the current circumstances and contract terms that are more favorable to the Debtors than those initially proposed by either bidder.

Bidding Procedures

18. Contemporaneously with the sale process discussed above, the Debtors, with the assistance of Lazard and their other advisors, developed the bidding procedures annexed as Exhibit 1 to the order approving the Motion (the "**Bidding Procedures**") to facilitate the competitive bidding process during these Chapter 11 Cases. I believe the Bidding Procedures will streamline the acquisition process by providing an adequate basis by which to compare and evaluate bids and that the Bidding Procedures constitute a reasonable and effective method of maximizing a return on the Debtors' assets through a competitive, fair and open sale process.

19. Among other things, the Bidding Procedures require prospective purchasers (other than the Stalking Horse Bidder) to deliver on or before the Bid Deadline (as defined below): (i) documentation identifying the potential bidder and any principals and representatives authorized to appear and act on the potential bidder's behalf, (ii) written evidence of corporate approval of the contemplated transaction, (iii) an executed confidentiality agreement in form and substance acceptable to the Debtors and their counsel, and (iv) written evidence upon which the Debtors may reasonably conclude that the potential bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. If a potential bidder submits such documentation and the Debtors determine, in their reasonable determination and with assistance

from their advisors, counsel to the Official Committee of Unsecured Creditors and counsel to certain of the Debtors' prepetition secured lenders, that such potential bidder is reasonably likely to submit a bona fide offer that would result in greater cash value being received for the benefit of the Debtors' creditors than under the APA and is able to consummate a sale within the approximate overall time frame contemplated by the APA, the potential bidder will be deemed a "**Qualified Bidder**" consistent with the Bidding Procedures.

20. The Bidding Procedures provide that Qualified Bidders are eligible to receive due-diligence access and additional non-public information about the Debtors' assets, and must comply with all requests for additional information and due-diligence access by the Debtors or their advisors. Qualified Bidders, in their discretion, may submit binding offers through and until the bid deadline specified in the Bidding Procedures (the "**Bid Deadline**"). To participate in the auction, all Qualified Bidders (with the exception of the Stalking Horse Bidder) must deliver to the Debtors a Bid that must, among other things:

- include only cash and assumed liabilities and must equal or exceed the sum of the Cash Purchase Price and assumed liabilities provided for under the APA, in the aggregate, plus the cash amount of the Break-Up Fee ($8,250,000), plus the cash amount of $2,500,000 (the "**Initial Minimum Overbid Increment**");

- not be conditioned on obtaining financing or any internal approval or on the outcome or review of due diligence and any other contingencies associated with a Bid may not be more burdensome than those set forth in the APA;

- be irrevocable until five (5) business days after the assets have been sold pursuant to the closing of the sale or sales approved by the Bankruptcy Court in a final, non-appealable order (the "**Termination Date**");

- be accompanied by a blackline of the APA reflecting the Qualified Bidder's proposed changes to the APA, and a written commitment that the Qualified Bidder intends to close on the terms and conditions set forth therein;

- include a comprehensive list of all executory contracts and leases that the Qualified Bidder will assume and the corresponding cure amounts associated with the assumption and assignment of such leases and contracts; and

- include a deposit in the form of a certified check or cash in the amount of note less than $27,500,000 to be held in escrow by the Debtors until the Termination Date.

- be on terms that, taken as a whole, are determined by the Debtors not to be materially more burdensome or conditional than the terms of the APA taken as a whole.

21. In my opinion, the Bidding Procedures establish reasonable "ground rules" to ensure orderly yet competitive bidding by financially capable parties to maximize sale value in as expeditious a manner as possible, while respecting the Debtors' fiduciary obligations to their estates. Given the extensive pre-petition marketing process and competitive process by which the Stalking Horse Bidder was selected, the Bidding Procedures were necessary and appropriate under the circumstances. I also believe the Bidding Procedures are consistent with those regularly approved by bankruptcy courts in comparable situations and will streamline the sale process by providing an adequate basis by which to compare and evaluate bids and setting a floor for the purchase of the assets.

Stalking Horse Bid Protections

22. Pursuant to the Stalking Horse Bid, the Debtors have agreed to pay the Stalking Horse Bidder (a) a break-up fee equal to 3 percent (3%) of the Cash Purchase Price (the "**Break-Up Fee**") which is equal to $8,250,000 and (b) an expense reimbursement to reimburse the Stalking Horse Bidder for its reasonable out-of-pocket costs and expenses incurred in connection with the Sale up to a $1,500,000 cap, if certain conditions are satisfied, which, if the Break-Up Fee is subsequently determined to be payable, shall reduce the Break-Up Fee by the amount paid the Stalking Horse Bidder (together with the Break-Up Fee, the "**Bid Protections**"). The Break-Up Fee is only due and payable in the event that an Alternative Transaction (as defined in the APA) is approved by the bankruptcy court and consummated, and is payable directly from the proceeds of such Alternative Transaction. On balance, I believe the amounts of the Bid

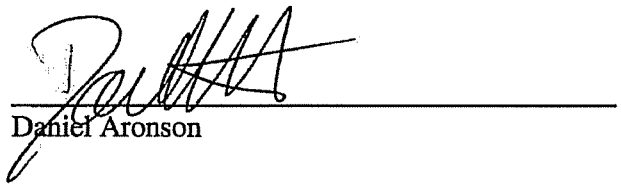
Protections ultimately agreed to by the parties appropriately balance the benefits realized by the Debtors from having the Stalking Horse Bid and the risks faced by, and costs of, the Stalking Horse Bidder in making such a commitment.

23. Importantly, the Bid Protections were material inducements for, and conditions of, the Stalking Horse Bidder's agreement to enter into the APA. The Stalking Horse Bidder would not have expended the extensive efforts necessary to evaluate the Debtors' businesses and related assets and enter into the APA, subject to higher and better offers, without being able to recover its out-of-pocket costs in the event another bidder ultimately prevails.

24. Moreover, it is my opinion that the Bid Protections are reasonable relative to the size and complexity of this transaction are appropriate and warranted under the circumstances present and are comparable to terms approved by courts in this district generally. Finally, I believe that the Debtors' entry into the APA on the terms and conditions set forth therein, including the Bid Protections, will maximize value for all creditors in these Chapter 11 Cases.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of September, 2011



Daniel Aronson

Exhibit D

Asset Purchase Agreement

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

DATED AS OF SEPTEMBER 27, 2011

BY AND BETWEEN

GALDERMA S.A.

AND

GRACEWAY PHARMACEUTICALS, LLC

AND

THE OTHER PARTIES SIGNATORY HERETO

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made as of September 27, 2011 (the "Effective Date"), by and between **GALDERMA S.A.**, a Switzerland corporation ("Buyer"), and **GRACEWAY PHARMACEUTICALS, LLC**, a Delaware limited liability company, and its Subsidiaries set forth on Annex A hereto (collectively, "US Sellers" and each individually a "US Seller"), and **GRACEWAY CANADA COMPANY**, a Nova Scotia unlimited liability company ("Canadian Seller" and collectively with US Sellers, "Sellers" and each individually a "Seller"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in Article I.

RECITALS

WHEREAS, Sellers are engaged in the business of developing, licensing and selling the Products in the Territory (such business, as conducted by Sellers as of the date hereof, the "Business");

WHEREAS, (i) US Sellers intend to file a voluntary petition for relief (the "Filing") commencing a case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") and (ii) Canadian Seller intends to make an application to the Ontario Superior Court of Justice (Commercial List) in Toronto, Ontario, Canada and, if so reasonably requested by Buyer, to any other courts of any other provinces in which Canadian Seller has Acquired Assets material to the Business as conducted by Canadian Seller (collectively, the "Canadian Court"), for the appointment of a receiver, and, if so reasonably requested by Buyer, for recognition in any other provinces in which Canadian Seller has Acquired Assets material to the Business as conducted by Canadian Seller and such recognition is necessary for the transfer of such Acquired Assets (the "Canadian Proceedings") to oversee the sale of the assets of Canadian Seller;

WHEREAS, Sellers desire to sell to Buyer all of the Acquired Assets and transfer to Buyer the Assumed Liabilities and Buyer desires to purchase from Sellers all of the Acquired Assets and assume all of the Assumed Liabilities, upon the terms and conditions hereinafter set forth;

WHEREAS, the execution and delivery of this Agreement and Sellers' ability to consummate the transactions set forth in this Agreement are subject to, among other things, the entry of the Sale Order under, *inter alia*, Sections 363 and 365 of the Bankruptcy Code, and the issuance of the Canadian Sale and Vesting Order in the Canadian Proceedings; and

WHEREAS, the Parties desire to consummate the proposed transaction as promptly as practicable after the Bankruptcy Court enters the Sale Order and the Canadian Court issues the Canadian Sale and Vesting Order.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Definitions. For purposes of this Agreement, the following terms have the meanings specified or referenced below.

"Accounts Receivable" means, with respect to Sellers, all trade accounts receivable and other rights to payment from customers of Sellers to the extent arising out of the Business.

"Acquired Assets" shall have the meaning set forth in Section 2.1.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such other Person. For purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have correlative meanings. For purposes of this Agreement, Affiliates of Buyer shall not include Nestlé S.A. or L'Oréal S.A., and their Affiliates (other than Galderma Pharma, S.A. and its Subsidiaries).

"Agreement" shall have the meaning set forth in the Preamble.

"Allocation Schedule(s)" shall have the meaning set forth in Section 3.5.

"Alternative Transaction" means a transaction or series of related transactions pursuant to which Sellers accept a bid for all or a substantial portion of the Acquired Assets or any group of assets that includes all or a substantial portion of the Acquired Assets, from a Person other than Buyer, as the highest or best offer, in accordance with the Bidding Procedures Order or otherwise, but does not mean the sale of Products by Sellers conducted in the Ordinary Course of Business.

"Assigned Agreements" means the Contracts listed or described in Schedule 1.1(a) (as may be amended pursuant to Section 7.9).

"Assignment and Assumption Agreement" shall have the meaning set forth in Section 4.2(d).

"Assumed Liabilities" shall have the meaning set forth in Section 2.3.

"Auction" shall have the meaning set forth in the Bidding Procedures.

"Audited Financial Statements" shall have the meaning set forth in Section 5.18.

"Avoidance Actions" means any and all claims for relief of Sellers under chapter 5 of the Bankruptcy Code, or state fraudulent conveyances, fraudulent transfer or other similar state laws, or under Sections 95 to 101.1 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

"Bankruptcy Case" means the bankruptcy case to be commenced by Sellers under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

"Bankruptcy Code" means Title 11 of the United States Code, Sections 101 *et seq*.

"Bankruptcy Court" shall have the meaning set forth in the Recitals.

"Benefit Plan" means any plan, program, policy or arrangement of Seller or any of its Affiliates by which compensation or employee benefits are provided to any Seller Employee.

"Bidding Procedures" means the bidding procedures substantially in the form attached as Exhibit 1 to the Bidding Procedures Order, to be approved by the Bankruptcy Court pursuant to the Bidding Procedures Order.

"Bidding Procedures Order" means the Order of the Bankruptcy Court, pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code: (a) authorizing and scheduling the Auction; (b) approving procedures for the submission of Qualified Bids; (c) in the case of any subsequent Qualified Bids, approving the initial overbid of at least $10,750,000 and further incremental overbids of at least $2,500,000; (d) approving the Break-Up Fee and the Expense Reimbursement Amount; (e) scheduling a hearing to consider approval of such sale; and (f) approving the form and manner of notice of the Auction procedures and Sale Hearing, which Order shall be substantially in the form attached hereto as Exhibit A with such changes as Buyer and Sellers find reasonably acceptable.

"Bill of Sale" means the bill of sale substantially in the form attached hereto as Exhibit B.

"Break-Up Fee" shall have the meaning set forth in Section 7.6(a).

"Business" shall have the meaning set forth in the Recitals.

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

"Business Intellectual Property" means all Intellectual Property owned by Sellers or any of their Subsidiaries, other than the Excluded Intellectual Property.

"Buyer" shall have the meaning set forth in the Preamble.

"Buyer Default Termination" shall have the meaning set forth in Section 3.2.

"Buyer Required Code" shall have the meaning set forth in Section 8.4(a).

"Buyer Termination Notice" shall have the meaning set forth in Section 11.1(b)(i).

"Buyer's Interim Access Manager" shall have the meaning set forth in Section 7.1.

"Canadian Assets" shall have the meaning set forth in Section 3.5.

"Canadian Bidding Procedures Order" shall have the meaning set forth in Section 7.4(b).

"Canadian Bill of Sale" means the bill of sale substantially in the form attached hereto as Exhibit C.

"Canadian Court" shall have the meaning set forth in the Recitals.

"Canadian Orders" means the Canadian Receivership Order, the Canadian Bidding Procedures Order, the Canadian Sale and Vesting Order and all other Orders sought by Canadian Seller in the Canadian Proceedings relating to this Agreement and the transactions contemplated therein.

"Canadian Proceedings" shall have the meaning set out in the Recitals.

"Canadian Receivership Order" shall have the meaning set forth in Section 7.4(b).

"Canadian Sale and Vesting Order" shall have the meaning set forth in Section 7.4(c).

"Canadian Seller" shall have the meaning set forth in the Preamble.

"Cash Consideration" means cash in U.S. dollars in the amount of Two Hundred Seventy-Five Million United States Dollars (USD $275,000,000.00).

"Chargebacks" means all chargebacks, credits, reimbursements and related adjustments, in each case other than Rebates, that are charged by wholesalers, group purchasing organizations, managed care entities and distributors.

"CJA" means *Courts of Justice Act*, R.S.O. 1990, c. C.43.

"Claims" means all claims, causes of action, choses in action, rights of recovery and rights of set-off of whatever kind or description against any Person arising out of or relating to any Product or Acquired Asset.

"Closing" shall have the meaning set forth in Section 4.1.

"Closing Date" shall have the meaning set forth in Section 4.1.

"Closing Date Payment" shall have the meaning set forth in Section 3.3.

"Closing Legal Impediment" shall have the meaning set forth in Section 9.3.

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

"Contract" means any contract, agreement, lease, sublease, license, sublicense, sales order, purchase order, instrument or other commitment, whether written or oral, that is binding on any Person or any part of its property under applicable Law.

"Cure Costs" means amounts that must be paid and obligations that otherwise must be satisfied, including pursuant to Sections 365(b)(1)(A) and (B) of the Bankruptcy Code, in connection with the assumption and/or assignment of the Assigned Agreements.

"Deposit" shall have the meaning set forth in Section 3.2.

"DESI" means the Drug Efficacy Study Implementation program implemented and administered by the FDA, and all applicable regulations, notices and guidances issued by the FDA in connection therewith, including without limitation the FDA's "Guidance for FDA Staff and Industry, Marketed Unapproved Drugs—Compliance Policy Guide Section 440.100 (June 2006)."

"DIN" means the Drug Identification Number assigned to a party for a drug product authorized for sale in Canada, that uniquely identifies that drug product sold in a specific dosage form in Canada.

"Documents" means (a) all books, records, files, invoices, inventory records, product specifications, customer lists, cost and pricing information, physician lists, supplier lists, business plans, catalogs, customer literature, quality control records and manuals and credit records of customers, (b) research, design and development files, records and laboratory books (including raw data, technical data, pharmacology data, pharmacovigilance data, chemistry and pharmaceutical data relating to drug substance and drug product (including analytical and product characterization data) and toxicology data) and stability and clinical studies; (c) all data relevant to the manufacturing of a Product, (d) Regulatory Documentation and (e) Marketing Materials , in each case relating to any Product or Acquired Asset (including all data and other information stored on discs, tapes or other media).

"Effective Date" shall have the meaning set forth in the Preamble.

"Encumbrance" means any charge, lien, claim, mortgage, lease, sublease, hypothecation, deed of trust, pledge, security interest, option, right of use or possession, right of first offer or first refusal, easement, servitude, restrictive covenant, encroachment, encumbrance, or other similar restriction of any kind.

"Environmental, Health and Safety Laws" shall have the meaning set forth in Section 5.4(a).

"Equipment" means all furniture, trade fixtures, equipment, computers, servers, telephones, laptop computers, machinery, apparatus, appliances, implements, signage, office supplies and all other tangible personal property of every kind and description owned by Sellers and used or held for use primarily in the Business.

"Escrow Agent" shall have the meaning set forth in Section 3.2.

"Escrow Agreement" shall have the meaning set forth in Section 3.2.

"Excluded Assets" shall have the meaning set forth in Section 2.2.

"Excluded Intellectual Property" means the Seller Brand and the Intellectual Property set forth on Schedule 1.1(b).

"Excluded Liabilities" shall have the meaning set forth in Section 2.4.

"Expense Reimbursement Amount" shall have the meaning set forth in Section 7.6(b).

"FD&C Act" means the United States Federal Food, Drug, and Cosmetic Act.

"FDA" means the United States Food and Drug Administration, or any successor entity.

"Filing" shall have the meaning set forth in the Recitals.

"Final Order" means an action taken or order issued by the applicable Governmental Authority as to which no stay of the action or order is in effect.

"Financial Statements" shall have the meaning set forth in Section 5.18.

"Governmental Authority" means any United States or Canadian federal, provincial, state, municipal or local or any foreign government, governmental agency or authority, or regulatory or administrative authority, or any court, tribunal or judicial body having jurisdiction, including the Bankruptcy Court and the Canadian Court.

"Governmental Authorization" means any approval, consent, license, permit, waiver or other authorization issued, granted or otherwise made available by or under the authority of any Governmental Authority.

"Hazardous Substance" means any "toxic substance," "hazardous pollutant," "hazardous waste," "hazardous material" or "hazardous substance" under any Environmental, Health and Safety Laws.

"Health Canada" means the Canadian Federal department called Health Canada, or any successor entity.

"Health Care Laws" shall have the meaning set forth in Section 5.11(a).

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the relevant rules and regulations thereunder.

"IND" shall have the meaning given in the definition of "Regulatory Documentation."

"Intellectual Property" means all right, title and interest in, to or under intellectual property, including: (i) all patents, patent applications, patent disclosures and invention disclosure statements, together with all provisionals, reissuances, continuations, continuations-in-part, divisions, revisions, extensions and reexaminations thereof; (ii) all trademarks, service marks, trade names, service names, brand names, trade dress rights, logos, slogans, internet domain names and other source identifiers, together with all goodwill of the business connected with the use thereof and symbolized thereby, and all applications, registrations, and renewals in

connection therewith; (iii) all copyrights and all applications, registrations, renewals and extensions in connection therewith; (iv) all trade secrets and confidential and proprietary information, including confidential technology, know-how, inventions, processes, formulae, specifications, models and methodologies (collectively, the "Trade Secrets"); (v) computer software, including websites and computer programs, any and all software implementations of algorithms, models and methodologies whether in source code or object code form, and all documentation, including user manuals and training materials, related to the foregoing; and (vi) all copies and tangible embodiments of the foregoing (in whatever form or medium).

"Intercompany Loan" means the debtor-in-possession financing provided by the Canadian Seller to the US Sellers and all proceeds thereof.

"Inventory" means all raw materials, work-in-process, finished goods, supplies (including clinical drug supplies), samples (including samples held by sales representatives), components, packaging materials, and other inventories to which Sellers have title that are in the possession of Sellers or any Third Party and used or held for use in connection with any Product or Acquired Asset.

"IRS" means the Internal Revenue Service.

"Knowledge" means, with respect to any matter in question, in the case of Sellers, the knowledge, after reasonable inquiry, of Jefferson J. Gregory, Robert J. Moccia, Brian G. Shrader, John A. A. Bellamy, Tariq Zaidi, John Bowles, Michael T. Nordsiek, Chris Curtin, Gregory C. Jones, Sean T. Brennan and Erin Craven, with respect to such matter.

"Labeling" shall be as defined in Section 201(m) of the FD&C Act (21 U.S.C. § 321(m)) and other comparable foreign Law relating to the subject matter thereof, including the applicable Product's label, packaging and package inserts accompanying such Product, and any other written, printed, or graphic materials accompanying such Product, including patient instructions or patient indication guides.

"Law" means any foreign or domestic law, statute, code, ordinance, rule, regulation, order, judgment, writ, stipulation, award, injunction or decree by any Governmental Authority as in effect from time to time.

"Liability" means any debt, losses, claim, damage, demand, fine, judgment, penalty, liability or obligation (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due).

"Marketing Materials" means all marketing materials, marketing research data, customer and sales information, product literature, promotional materials and data, advertising and display materials (including all underlying designs, samples, charts, diagrams, photos and electronic files related to the foregoing) and all training materials, in each case in whatever form or medium (e.g., audio, visual, digital or print) held in any Seller's name and primarily related to any Product or Acquired Asset as of the Closing Date.

"Material Adverse Effect" means any effect, change, condition, circumstance, development or event that, individually or in the aggregate with all other effects, changes,

conditions, circumstances, developments and events has had, or would reasonably be expected to have, a material adverse effect on the Business (excluding the Excluded Assets and the Excluded Liabilities), taken as a whole, or would reasonably be expected to prevent or materially impair the ability of Sellers to consummate the transactions contemplated by this Agreement, excluding, in each case, (a) any effect, change, condition, circumstance, development or event that results from or arises out of: (i) the Bankruptcy Case and/or the Canadian Proceedings; (ii) the execution and delivery of this Agreement or the announcement thereof or the pendency or consummation of the transactions contemplated hereby; (iii) geopolitical conditions or any outbreak or escalation of hostilities or acts of terrorism or war; (iv) any hurricane, tornado, flood, earthquake or other natural disaster; (v) changes in (or proposals to change) Laws or accounting regulations or principles; (vi) any action expressly contemplated by this Agreement or taken at the written request of Buyer; (vii) failure of any Seller, or part thereof, to meet any internal or published projections, forecasts, estimates or predictions in respect of financial or operating metrics (it being understood that the facts or circumstances giving rise or contributing to such failure to meet any internal or published projections, forecasts, estimates or predictions in respect of financial or operating metrics may be deemed to constitute, or be taken into account in determining whether there has been, a Material Adverse Effect); (viii) the failure to pay or otherwise honor (A) Rebates, Chargebacks and return obligations relating to sales of Products sold by Sellers prior to the Filing or (B) any patient coupon program; or (ix) any reasonably anticipated motion, application, pleading or Order filed under or in connection with the Bankruptcy Case; and (b) any effect, change or event generally applicable to: (i) the industries and markets in which Sellers operate, or (ii) economic or political conditions or the debt, securities or financial markets in any country or region, *provided, however*, that in the case of clauses (a)(iii), (a)(v), (b)(i) and (b)(ii) of this paragraph, such effects, changes or events shall be taken into account in determining whether any material adverse effect has occurred to the extent that any such effects, changes or events have, or would reasonably be expected to have, a disproportionate effect on the Business (excluding the Excluded Assets and the Excluded Liabilities) as compared to other similarly situated businesses engaged in the business of selling dermatology pharmaceutical products.

"Material Business Intellectual Property" shall have the meaning set forth in Section 5.9(a).

"Material Unregistered Trademarks" shall have the meaning set forth in Section 5.9(a).

"NDA" means any new drug application filed pursuant to the requirements of the FDA, as more fully defined in 21 C.F.R. Part 314 *et seq.*, and any foreign equivalent application filed with any Governmental Authority.

"NDC Number" means the unique, identifying number assigned to a drug product, including the labeler code, product code and package code, in connection with the drug listing requirements of Section 510(j) of the FD&C Act and applicable FDA rules and regulations or other comparable foreign Law relating to the subject matter thereof.

"NDS" means any new drug submission filed pursuant to the requirements of Health Canada as more fully defined under the *Food and Drugs Act*, RSC 1985, c F-27 and includes all related documentation accompanying the submission.

"NOC" means the regulatory approval for a drug product by Health Canada, namely a Notice of Compliance.

"Non-Serious Adverse Event" shall have the meaning set forth in Section 8.6(b).

"Nycomed Award Amount" shall have the meaning set forth in Section 8.10.

"Nycomed Litigation" means Graceway Pharmaceuticals, LLC and 3M Innovative Properties Company v. Perrigo Company, Perrigo Israel Pharmaceuticals, Ltd. and Nycomed U.S. Inc., Civil Action No. 10-937 (WJM)(MF) in the United States District Court for the District of New Jersey.

"Order" means any award, writ, injunction, judgment, order or decree entered, issued, made, or rendered by any Governmental Authority.

"Ordinary Course of Business" means the operation of the Business in the ordinary and usual course consistent with past practice and custom of Sellers, including taking any action in accordance with any Contract to which Sellers is a party.

"Outside Date" shall have the meaning set forth in Section 11.1(a)(iii).

"Party" or "Parties" means, individually or collectively, Buyer and Sellers.

"Permits" means all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals, clearances, Product Registrations and Orders that are necessary for Sellers to own, lease and operate their properties and assets or to carry on the Business as it is now being conducted.

"Permitted Encumbrances" means (a) as to US Sellers only, Encumbrances for utilities and current Taxes not yet due and payable or being contested in good faith; (b) non-exclusive licenses to the Business Intellectual Property granted in the Ordinary Course of Business; and (c) as to US Sellers only, immaterial materialmans', mechanics', artisans', shippers', warehousemans' or other similar common law or statutory liens incurred in the Ordinary Course of Business.

"Person" means any individual, corporation (including any non-profit corporation), partnership, limited liability company, joint venture, estate, trust, association, organization or other entity or Governmental Authority.

"Pre-Paid Expenses" means all deposits and prepaid charges and expenses of Sellers as of the Closing Date to the extent related to an Assigned Agreement and after applying any such deposits, prepaid charges and expenses against any Cure Costs payable to the third party to whom such deposits, prepaid charges and expenses were paid.

"Proceeding" means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative or investigative) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority, other than an Avoidance Action.

"Product Registrations" means the approvals, licenses, registrations, listings, franchises, permits, certificates, consents, clearances, or other authorizations (including, but not limited to, NDAs and NDSs) and comparable regulatory filings required by any Governmental Authority for the Products held in Sellers' name as set forth in Schedule 1.1(c).

"Products" or "Product" means, collectively or individually, all products, formulations and compounds owned by Sellers or any of their Subsidiaries, or to which Sellers or any of their Subsidiaries have rights, including the products, formulations, compounds and other assets set forth on Schedule 1.1(c), together with all potential new strengths, indications, modes of administration and line extensions related to such products, formulations, compounds and other assets.

"Property Taxes" shall have the meaning set forth in Section 8.1(b).

"Purchase Price" shall have the meaning set forth in Section 3.1.

"Qualified Bid" shall have the meaning set forth in the Bidding Procedures.

"Real Property" means all real property owned by Sellers and all unexpired leases or other occupancy agreements for real property under which Sellers are a lessee (or the equivalent).

"Rebates" means rebates, price reductions, administrative fees and related adjustments charged by state Medicaid and other federal, state and local governmental programs (including any Canadian programs) and their participants, and by health plans, insurance companies, mail service pharmacies and health care providers based upon the utilization and sales of the Product, and service, administrative and inventory management fees due to wholesalers, distributors and group purchasing organizations based on sales of the Product.

"Receiver" means the Receiver appointed by the Canadian Court in the Canadian Proceedings.

"Regulatory Documentation" means (a) all regulatory filings and supporting documents, chemistry, manufacturing and controls data and documentation, preclinical and clinical studies and tests, (b) the NDA and all regulatory files and foreign equivalents related thereto, including the NDS, (c) all records maintained under record keeping or reporting Laws of the FDA or any other Governmental Authority including all investigational new drug ("IND") applications, IND annual and safety reports, drug master files, FDA warning letters, FDA Notices of Adverse Finding Letters, FDA audit reports (including any responses to such reports), any correspondence with the Department of Drug Marketing, Advertising and Communications, periodic safety update reports, complaint files, annual product quality reviews and clinical trial applications in Canada, (d) the complete complaint, adverse event and medical inquiry filings with respect to the Products, in each case held by Sellers as required by applicable Laws and as related to any Product or Acquired Asset, including the Product Registrations and (e) all regulatory approvals, including the NOC, the DIN and any other market authorization issued by Health Canada.

"Release" means any past or present spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of a Hazardous Substance into the environment.

"Representative" means, with respect to a particular Person, any director, officer, employee, agent, consultant, advisor or other representative of such Person, including legal counsel, accountants and financial advisors.

"Retained Subsidiaries" means all direct and indirect Subsidiaries of Sellers.

"Review Documents" shall have the meaning set forth in Section 5.19(a).

"Safety Notice" shall have the meaning set forth in Section 5.11(d).

"Sale Hearing" means the hearing conducted by the Bankruptcy Court to approve the transactions contemplated by this Agreement.

"Sale Order" means an Order of the Bankruptcy Court approving this Agreement and the transactions contemplated hereby, which Order shall be substantially in the form attached hereto as Exhibit D with such changes as Buyer and Sellers find reasonably acceptable.

"Seller Employee" means any employee of any Seller or any Affiliates of any Seller.

"Sellers" and "Seller" shall have the meaning set forth in the Preamble.

"Sellers Termination Notice" shall have the meaning set forth in Section 11.1(c)(i).

"Sellers' Brand" shall have the meaning set forth in Section 8.7.

"Sellers' Interim Access Manager" shall have the meaning set forth in Section 7.1.

"Serious Adverse Event" shall have the meaning set forth in Section 8.6(b).

"Stalking Horse Bidder" shall have the meaning set forth in the Bidding Procedures.

"Subsidiary" means any entity with respect to which a specified Person (or a Subsidiary thereof) has the power, through the ownership of securities or otherwise, to elect a majority of the directors or similar managing body.

"Successful Bidder" shall have the meaning set forth in the Bidding Procedures.

"Tax" or "Taxes" means any federal, state, provincial, local, municipal, foreign or other income, alternative, minimum, add-on minimum, accumulated earnings, personal holding company, franchise, capital stock, net worth, capital, profits, intangibles, windfall profits, gross receipts, value added, sales, use, goods and services, excise, customs duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, environmental (including taxes under Section 59A of the Code), natural resources, real property, personal property, ad valorem, intangibles, rent, occupancy, license, occupational, employment, unemployment insurance, social security, disability, workers' compensation, payroll, health care,

withholding, estimated or other similar tax, duty, levy or other governmental charge or assessment or deficiency thereof (including all interest and penalties thereon and additions thereto), in each case imposed by any Governmental Authority.

"Tax Return" means any return, declaration, report, claim for refund, information return or other document (including any related or supporting estimates, elections, schedules, statements, or information) filed with or required to be filed with any Governmental Authority in connection with the determination, assessment or collection of any Tax or the administration of any laws, regulations or administrative requirements relating to any Tax.

"Territory" means the countries and territories set forth directly above each Product indicated on Schedule 1.1(c).

"Third Party" means a Person who or which is neither a party hereto nor an Affiliate of a Party hereto.

"Trade Secrets" shall have the meaning set forth in subsection (iv) of the definition of Intellectual Property.

"Transaction Documents" means this Agreement and any other agreements, instruments or documents entered into pursuant to this Agreement.

"Transfer Taxes" shall have the meaning set forth in Section 8.1(a).

"Treasury Regulations" means the regulations promulgated by the U.S. Treasury Department pursuant to the Code.

"Unaudited Financial Statements" shall have the meaning set forth in Section 5.18.

"US Sellers" and "US Seller" shall have the meaning set forth in the Preamble.

"WARN Act" means the Worker Adjustment and Retraining Notification Act of 1988, as amended, any similar Law, and the rules and regulations thereunder.

Section 1.2 Other Definitions and Interpretive Matters.

(a) Unless otherwise indicated to the contrary in this Agreement by the context or use thereof:

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

(ii) Any reference in this Agreement to $ means U.S. dollars.

(iii) Unless the context otherwise requires, all capitalized terms used in the Exhibits and Schedules shall have the respective meanings assigned in this Agreement. No reference to or disclosure of any item or other matter in the Exhibits and Schedules shall be construed as an admission or indication that such item or other matter is material or that such item or other matter is required to be referred to or disclosed in the Exhibits and Schedules. No disclosure in the Exhibits and Schedules relating to any possible breach or violation of any agreement, law or regulation shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. Any information, item or other disclosure set forth in any Schedule shall be deemed to have been set forth in all other applicable Schedules if the relevance of such disclosure to such other Schedule is reasonably apparent from the facts specified in such disclosure. All Exhibits and Schedules attached or annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein.

(iv) Any reference in this Agreement to gender includes all genders, and words importing the singular number also include the plural and vice versa.

(v) The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in the construction or interpretation of this Agreement. All references in this Agreement to any "Section" or "Article" are to the corresponding Section or Article of this Agreement unless otherwise specified.

(vi) Words such as "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear, unless the context otherwise requires.

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

(b) No Strict Construction. Buyer, on the one hand, and Sellers, on the other hand, participated jointly in the negotiation and drafting of this Agreement, and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by Buyer, on the one hand, and Sellers, on the other hand, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. Without limitation as to the foregoing, no rule of strict construction construing ambiguities against the draftsperson shall be applied against any Person with respect to this Agreement.

ARTICLE II

PURCHASE AND SALE

Section 2.1 Purchase and Sale of the Acquired Assets. Upon the terms and subject to the conditions of this Agreement, on the Closing Date, US Sellers and Canadian Seller, or the Receiver on behalf of the Canadian Seller, shall sell, transfer, assign, convey and deliver, or cause to be sold, transferred, assigned, conveyed and delivered, to Buyer, and Buyer shall purchase, all right, title and interest of Sellers in, to or under all of the properties and assets (including Intellectual Property) of Sellers of every kind and description, wherever located, real, personal or mixed, tangible or intangible, to the extent owned, leased, licensed, used or held for use in or relating to the Business, as the same shall exist on the Closing Date (but, for the avoidance of doubt, excluding any Excluded Assets) (collectively, the "Acquired Assets"), including all right, title and interest of Sellers in, to or under:

(a) all Inventory;

(b) the Assigned Agreements;

(c) all Permits and pending applications therefor;

(d) all Business Intellectual Property;

(e) all Pre-Paid Expenses;

(f) all goodwill associated with the Acquired Assets;

(g) all Documents (other than those described in Section 2.2(c)) to the extent available and permitted by applicable Laws, *provided* that Sellers may retain copies of such Documents;

(h) all Claims and Proceedings (including, for the avoidance of doubt, the Nycomed Litigation and all claims for past infringement or misappropriation of Business Intellectual Property) of Sellers as of the Closing other than Claims and Proceedings (i) primarily related to or constituting any Excluded Asset or Excluded Liability or (ii) against Sellers (regardless of whether or not such claims and causes of action have been asserted by Sellers) and all rights of indemnity, warranty rights, rights of contribution, rights to refunds (other than Tax refunds), rights of reimbursement and other rights of recovery, including insurance proceeds, possessed by Sellers as of the Closing (regardless of whether such rights are currently exercisable) to the extent related to any Product or other Acquired Asset or any of the Assumed Liabilities; and

(i) all rights of Sellers under non-disclosure or confidentiality, non-compete, or non-solicitation agreements relating to any Product or Acquired Asset (or any portion thereof).

Section 2.2 Excluded Assets. Notwithstanding anything herein to the contrary, the Acquired Assets shall not include any of the following (collectively, the "Excluded Assets"):

(a) each Seller's rights under this Agreement (including the right to receive the Purchase Price delivered to Sellers pursuant to this Agreement);

(b) all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit and other bank deposits, securities, securities entitlements, instruments and other investments of Sellers and all bank accounts and securities accounts, including any cash collateral that is collateralizing any letters of credit;

(c) all Documents prepared in connection with this Agreement or the transactions contemplated hereby or relating to the Bankruptcy Case or the Canadian Proceedings, all minute books, corporate records (such as stock registers) and organizational documents of Sellers and the Retained Subsidiaries, Tax Returns, other Tax work papers, and all other Documents not related to the Products or the Acquired Assets;

(d) any Contract that is not an Assigned Agreement, including the Contracts listed or described on Schedule 2.2(d), which Schedule may be modified from the Effective Date through one (1) Business Day prior to the Sale Hearing in accordance with Section 7.9;

(e) any Tax refunds, rebates or credits of Sellers;

(f) all Claims and Proceedings of Sellers (other than those described in Section 2.1(h));

(g) all Seller Employees and all of the funding vehicles and assets of any Benefit Plan;

(h) the Avoidance Actions or similar Proceedings, including but not limited to Proceedings under Sections 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code;

(i) any security deposits or pre-paid expenses not associated with the Acquired Assets;

(j) all insurance policies and binders, all claims, refunds and credits from insurance policies or binders due or to become due with respect to such policies or binders and all rights to proceeds thereof (other than as described in Section 2.1(h));

(k) all shares of capital stock or other equity interests of any Seller or Retained Subsidiary or securities convertible into or exchangeable or exercisable for shares of capital stock or other equity interests of any Seller or Retained Subsidiary;

(l) the Equipment;

(m) all Accounts Receivable;

(n) all Real Property;

(o) any assets, properties and rights of any Sellers other than the Acquired Assets, including those set forth on Schedule 2.2(o);

(p) the Excluded Intellectual Property;

(q) any Inventory that is part of a split lot of and in the possession of Sellers as of the Filing; and

(r) the Intercompany Loan and all interest thereon.

Section 2.3 Assumed Liabilities. Upon the terms and subject to the conditions of this Agreement, on the Closing Date, Buyer shall assume and agree to perform and discharge, when due (in accordance with their respective terms and subject to the respective conditions thereof), the following Liabilities (collectively, the "Assumed Liabilities"):

(a) all Liabilities arising from the ownership of the Acquired Assets or the sale of Products by Buyer, in each case after the Closing Date, it being understood that Liabilities arising from the ownership of the Acquired Assets or the operation of the Business prior to the Closing Date (including the sale of Products by Sellers and their Affiliates prior to the Closing Date) shall not constitute Assumed Liabilities regardless of when the obligation to pay such Liabilities arises, other than as set forth in Section 2.3(e) and Section 8.1;

(b) all Liabilities under the Assigned Agreements arising after the Closing;

(c) the Cure Costs associated with any Contracts (i) added by Buyer to Schedule 1.1(a) after the Effective Date, *provided* that such Contract (A) is listed on Schedule 2.2(d) to this Agreement as of the Effective Date or (B) arose in the Ordinary Course of Business after the Effective Date and was approved by Buyer in writing as an "Assigned Agreement" or (ii) added by Buyer to Schedule 1.1(a) after the Auction;

(d) all Liabilities of Sellers for any claims entitled to administrative expense priority in the Bankruptcy Case in accordance with the applicable provisions of the Bankruptcy Code arising out of any Contract removed by Buyer from Schedule 1.1(a) in accordance with Section 7.9 that is listed on Schedule 2.3(d); and

(e) all Liabilities for Transfer Taxes, as provided in Section 8.1.

Section 2.4 Excluded Liabilities. Notwithstanding any provision in this Agreement to the contrary, Buyer shall not assume and shall not be obligated to assume or be obliged to pay, perform or otherwise discharge, and Sellers shall be solely and exclusively liable with respect to, any Liability of Sellers that is not an Assumed Liability, including, without limitation, Liability incurred by Sellers for returns, government Rebates, commercial Rebates and obligations arising under any patient coupon program, in each case, with respect to Product sold by Sellers prior to Closing and whether such Liabilities arise prior to, on or after the Closing Date (such Liabilities, collectively, the "Excluded Liabilities").

Section 2.5 Assignments; Cure Costs. Sellers shall transfer and assign all Assigned Agreements and Permits to Buyer, and Buyer shall assume all Assigned Agreements and Permits

from Sellers, as of the Closing Date pursuant to, *inter alia*, Section 365 of the Bankruptcy Code and the Sale Order. In connection with such assumption and assignment of the Assigned Agreements in accordance with Section 2.1(b), Sellers shall pay and discharge all Cure Costs, except for those assumed by Buyer pursuant to Section 2.3(c), which Buyer shall pay and discharge; *provided, however*, that, notwithstanding the foregoing, Canadian Seller shall not be liable for Cure Costs for Assigned Agreements and Permits to which Canadian Seller is not a party. To the maximum extent permitted by the Bankruptcy Code or other applicable Law, the Assigned Agreements and Permits shall be assumed by Sellers and assigned to Buyer as of the Closing Date. Notwithstanding anything to the contrary in this Agreement, to the extent that the assignment to Buyer of any Assigned Agreement or Permit is not permitted by Law or is not permitted without the consent of another Person and, in the case of the Assigned Agreements and Permits that are the subject of Section 365 of the Bankruptcy Code and the Sale Order, as applicable, such restriction cannot be effectively overridden or canceled by the Sale Order, or other related order of the Bankruptcy Court, then this Agreement will not be deemed to constitute an assignment or an undertaking or attempt to assign the same or any right or interest therein if such consent is not given and the Closing shall proceed with respect to the remaining Assigned Agreements and Permits without any reduction in the Purchase Price, *provided, however*, that Sellers will use their commercially reasonable efforts to obtain any such consents to assign such Assigned Agreements and Permits to Buyer, *provided, further*, that Sellers shall not be required to incur any Liabilities or provide any financial accommodation in order to obtain any such consents.

Section 2.6 Further Assurances. At the Closing, Sellers shall execute and deliver to Buyer such other instruments of transfer as shall be reasonably necessary or appropriate to vest in Buyer good and indefeasible title to the Acquired Assets free and clear of all Encumbrances (other than Permitted Encumbrances) and to comply with the purposes and intent of this Agreement and such other instruments as shall be reasonably necessary or appropriate to evidence the assignment by Sellers and assumption by Buyer of the Assigned Agreements, and each of Sellers, on the one hand, and Buyer, on the other hand, shall use its commercially reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable Law, and execute and deliver such documents and other papers, as may be required to consummate the transactions contemplated by this Agreement at or after the Closing, including, subject to Section 2.5, assistance by Sellers with the transfer of the Inventory, Permits, Documents, Business Intellectual Property (including with respect to making all appropriate filings and submissions with the United States Patent and Trademark Office and the Canadian Intellectual Property Office promptly after Closing, and in any event within thirty (30) days of Closing) and Product Registrations (which in the case of the shipping and delivery of the Inventory, Documents and Product Registrations shall be arranged by Buyer at its sole cost and expense); *provided* that (i) nothing in this Section 2.6 shall prohibit Sellers from ceasing operations or winding up their affairs following the Closing and (ii) Buyer shall reimburse Sellers for any reasonable and documented out-of-pocket expenditure or obligation incurred by Sellers after the Closing directly related to assistance provided to Buyer pursuant to this Section 2.6. In furtherance and not in limitation of the foregoing, in the event that any of the assets, properties, rights, titles and interests (tangible or intangible) used in connection with the Products and the Acquired Assets shall not have been conveyed at Closing, Sellers shall use commercially reasonable efforts to convey such assets, properties, rights, titles and interests to Buyer as promptly as practicable after the Closing, and pending such conveyance

shall provide the applicable benefits thereof to Buyer in a manner consistent in all material respects with past practice, *provided, however*, that Sellers shall not be required to incur any Liabilities or provide any financial accommodation in connection with any action required to be taken pursuant to this Section 2.6. Prior to the Closing, the parties shall cooperate in good faith to identify any assets, properties, rights, titles or interests that may not be able to be conveyed at Closing.

ARTICLE III
PURCHASE PRICE

Section 3.1 Purchase Price. The purchase price (the "Purchase Price") for the purchase, sale, assignment and conveyance of Sellers' right, title and interest in, to and under the Acquired Assets shall consist of:

(a) cash in the amount of the Cash Consideration; plus

(b) the assumption of the Assumed Liabilities.

Section 3.2 Deposit. Upon the execution of an escrow agreement substantially in the form attached hereto as Exhibit E (the "Escrow Agreement"), with such changes thereto as may be reasonably acceptable to Sellers and Buyer, with an escrow agent reasonably acceptable to Sellers and Buyer (the "Escrow Agent"), Buyer shall deposit into escrow with the Escrow Agent an amount equal to 10% of the Cash Consideration (such amount, together with all interest and other earnings accrued thereon, the "Deposit") by wire transfer of immediately available funds pursuant to the terms of the Escrow Agreement. The Deposit shall not be subject to any lien, attachment, trustee process or any other judicial process of any creditor of any Sellers or Buyer. The Deposit shall become payable to Sellers upon the Closing or in the event of the termination of this Agreement pursuant to Section 11.1(c)(i), in accordance with Section 11.2 (a "Buyer Default Termination"). At the Closing, the Parties shall instruct the Escrow Agent to deliver the Deposit to an account designated by Sellers by wire transfer of immediately available funds as payment of a portion of the Purchase Price.

Section 3.3 Closing Date Payment. At the Closing, Buyer shall pay to Sellers and the Receiver in accordance with the Allocation Schedule(s) in cash by wire transfer of immediately available funds an amount equal to the Cash Consideration, *less* the amount of the Deposit (such amount to be paid to Sellers at the Closing, the "Closing Date Payment").

Section 3.4 Discharge of Assumed Liabilities After Closing. Buyer shall pay, perform or satisfy the Assumed Liabilities from time to time and as such Assumed Liabilities become due and payable or are required to be performed or satisfied in accordance with their respective terms.

Section 3.5 Allocation of Purchase Price. No later than twenty (20) Business Days prior to the Closing, Buyer shall deliver to Sellers allocation schedule(s) allocating the Purchase Price (as may be adjusted pursuant to the terms of this Agreement), including the Assumed Liabilities to the extent such Liabilities are required to be treated as part of the purchase price for Tax purposes, (i) between the Acquired Assets of Canadian Seller (the "Canadian Assets"), on the one hand, and the Acquired Assets other than the Canadian Assets, on the other hand, (ii) for

the Canadian Assets, among the province(s) in which the Canadian Assets are located, and (iii) among the Acquired Assets (the "Allocation Schedule(s)") in accordance with Section 1060 of the Code and the regulations thereunder. In administering any Proceeding, the Bankruptcy Court shall not be required to apply the Allocation Schedule(s) in determining the manner in which the Purchase Price should be allocated as between any of the US Sellers and their respective estates or between the US Sellers and their estates and the Canadian Seller and its estate. In administering the Canadian Proceedings, the Canadian Court shall not be required to apply the Allocation Schedule(s) in determining the manner in which the Purchase Price should be allocated as between the US Sellers and their estates and the Canadian Seller and its estate. Buyer and Sellers will each file all Tax Returns (including, but not limited to, IRS Forms 8594) consistent with the Allocation Schedule(s) established pursuant to the terms of this Section 3.5. Sellers, on the one hand, and Buyer, on the other hand, each agree to provide the other promptly with any other information required to complete IRS Forms 8594. Neither Buyer nor any Seller shall take any Tax position inconsistent with such Allocation Schedule(s) and neither Buyer nor any Seller shall agree to any proposed adjustment based upon or arising out of Allocation Schedule(s) by any Governmental Authority without first giving the other Party prior written notice; *provided, however*, that nothing contained herein shall prevent Buyer or any Seller from settling any proposed deficiency or adjustment by any Governmental Authority based upon or arising out of the Allocation Schedule(s), and neither Buyer nor any Seller shall be required to litigate before any court any proposed deficiency or adjustment by any Governmental Authority based upon or arising out of such Allocation Schedule(s). The Allocation Schedule(s) shall be revised in accordance with Section 1060 of the Code and the regulations thereunder to appropriately take into account any payments made under this Agreement.

Section 3.6 Withholding. If Buyer is required by applicable Laws to withhold or deduct any amount of Tax from the payment of the Purchase Price hereunder, then Buyer shall withhold or deduct (and, to the extent required by applicable Laws, remit to the appropriate Governmental Authority) the amount of any such Tax and such withheld amount shall be treated for all purposes of this Agreement as having been paid to Sellers.

ARTICLE IV
CLOSING

Section 4.1 Closing Date. Upon the terms and subject to the conditions hereof, the closing of the sale of the Acquired Assets and the assumption of the Assumed Liabilities contemplated hereby (the "Closing") shall take place at the offices of Latham & Watkins LLP, 233 S. Wacker Drive, Suite 5800, Chicago, Illinois, no later than the third (3rd) Business Day following the date on which the conditions set forth in Article IX and Article X have been satisfied or (if permissible) waived (other than the conditions which by their nature are to be satisfied by actions taken at the Closing, but subject to the satisfaction or (if permissible) waiver of such conditions), or at such other place or time as Buyer, Sellers and the Receiver may mutually agree. The date and time at which the Closing actually occurs is referred to as the "Closing Date."

Section 4.2 Buyer's Deliveries. At the Closing, Buyer shall deliver to Sellers:

(a) the Closing Date Payment, in accordance with Section 3.3;

(b) the Bill of Sale, duly executed by Buyer;

(c) the Canadian Bill of Sale, duly executed by Buyer;

(d) an assignment and assumption agreement with respect to the Assigned Agreements, in the form attached hereto as Exhibit F (the "Assignment and Assumption Agreement"), assigning to Buyer all of Sellers' right, title and interest in and to such Assigned Agreements, duly executed by Buyer;

(e) each other Transaction Document to which Buyer is a party, duly executed by Buyer;

(f) the certificates of Buyer to be received by Sellers pursuant to Sections 10.1 and 10.4; and

(g) such other assignments and other good and sufficient instruments of assumption and transfer, in form reasonably satisfactory to Sellers, as Sellers may reasonably request to transfer and assign the Acquired Assets and Assumed Liabilities to Buyer.

Section 4.3 Sellers' Deliveries. At the Closing, Sellers and the Receiver, as applicable, shall deliver to Buyer:

(a) the Bill of Sale, one or more Assignment and Assumption Agreements, and each other Transaction Document to which any Seller is a party, duly executed by each applicable Seller or the Receiver;

(b) the Canadian Bill of Sale, duly executed by the Receiver;

(c) a copy of the Sale Order entered by the Bankruptcy Court;

(d) a copy of the Canadian Sale and Vesting Order as entered by the Canadian Court;

(e) a copy of the Receiver's Certificate referred to in the Canadian Sale and Vesting Order duly executed by the Receiver and as filed with the Canadian Court;

(f) the certificates of Sellers to be received by Buyer pursuant to Sections 9.1 and 9.2;

(g) a certificate of non-foreign status executed by each Seller (or, if applicable, a direct or indirect owner of a Seller) that is not a disregarded entity for U.S. federal income tax purposes, prepared in accordance with Treasury Regulation Section 1.1445-2(b); and

(h) such other bills of sale, special warranty deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Buyer, as Buyer may reasonably request to vest in Buyer all the right, title and interest of Sellers in, to or under any or all the Acquired Assets.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby represent and warrant to Buyer that the statements contained in this Article V are true and correct:

Section 5.1 Organization and Good Standing. Each Seller is an entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization. Sellers have the requisite corporate or limited liability company power and authority to own or lease and to operate and use its properties and to carry on the Business as now conducted. Except as set forth on Schedule 5.1, Sellers are duly qualified or licensed to do business and are in good standing in each jurisdiction where the character of its business or the nature of its properties makes such qualification or licensing necessary, except for such failures to be so qualified or licensed or in good standing as would not, individually or in the aggregate, have a Material Adverse Effect.

Section 5.2 Authority; Validity; Consents. Sellers have, subject to requisite Bankruptcy Court approval and Canadian Court approval, as applicable, the requisite corporate or limited liability company power and authority necessary to enter into and perform its obligations under this Agreement and the other Transaction Documents to which each such Seller is a party and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly and validly executed and delivered by Sellers and each other Transaction Document required to be executed and delivered by Sellers at the Closing will be duly and validly executed and delivered by Sellers at the Closing. Subject to requisite Bankruptcy Court approval and Canadian Court approval, as applicable, this Agreement and the other Transaction Documents constitute, with respect to Sellers, the legal, valid and binding obligations of Sellers, enforceable against Sellers in accordance with their respective terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Subject to requisite Bankruptcy Court approval and Canadian Court approval, as applicable, except (a) as required to comply with the HSR Act, (b) for entry of the Sale Order or the Canadian Sale and Vesting Order and (c) for notices, filings and consents required in connection with the Bankruptcy Case or the Canadian Proceedings, Sellers are not required to give any notice to, make any filing with or obtain any consent from any Person (including any Governmental Authority) in connection with the execution and delivery of this Agreement and the other Transaction Documents or the consummation or performance of any of the transactions contemplated hereby and thereby, except for such notices, filings and consents, the failure of which to provide, make or obtain, would not, individually or in the aggregate, have a Material Adverse Effect.

Section 5.3 No Conflict. When the consents and other actions described in Section 5.2 have been obtained and taken, the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions provided for herein and therein will not result in the material breach of any of the terms and provisions of, or constitute a material default under, or materially conflict with, or require consent or the giving of notice under, or cause any acceleration of any material obligation of Sellers under (a) any Order or (b) any Law.

Section 5.4 Environmental and Health and Safety Matters. Except as set forth on Schedule 5.4 or as would not, individually or in the aggregate, have a Material Adverse Effect:

(a) the current operations of the Business at the Real Property comply with all applicable Laws concerning environmental, health or safety matters ("Environmental, Health and Safety Laws"), and Sellers have not received written notice alleging that the activities of the Business are in violation of any Environmental Health and Safety Laws; and

(b) no Seller has caused any Release of any Hazardous Substances that requires reporting under applicable Environmental, Health and Safety Laws at, on or under any of the Real Property, and, to Sellers' Knowledge, none of such properties has been used by any Person as a landfill or storage, treatment or disposal site for any type of Hazardous Substance or non-hazardous solid wastes as defined under the Resource Conservation and Recovery Act of 1976, as amended.

Section 5.5 Title to Acquired Assets. Sellers have, and, immediately prior to Closing, will have, and, upon delivery to Buyer on the Closing Date of the instruments of transfer contemplated by Section 4.3, and subject to the terms of the Sale Order and the Canadian Sale and Vesting Order, Sellers will thereby transfer to Buyer, good title to, or, in the case of personal property leased by Sellers, a valid leasehold interest in, all of the Acquired Assets material to the Business, taken as a whole, and the assets set forth on Schedule 5.5, free and clear of all Encumbrances, except (a) as set forth on Schedule 5.5, (b) for the Assumed Liabilities, (c) for Permitted Encumbrances, and (d) subject to the limitation that certain transfers, assignments, licenses, sublicenses, leases and subleases, as the case may be, of Acquired Assets, Assigned Agreements and Permits, and any claim or right or benefit arising thereunder or resulting therefrom, may require consent of a Person or Governmental Authority, which has not been obtained.

Section 5.6 Taxes. Except as set forth on Schedule 5.6, all income and other material Tax Returns required to be filed by Sellers have been timely filed (taking into account any extension of time to file granted, or to be obtained with respect thereto), and all such Tax Returns are complete and accurate in all material respects. Except as set forth on Schedule 5.6, on the Effective Date (a) no examination by any Governmental Authority of any such Tax Return is currently in progress; and (b) no material Tax deficiencies of Sellers are being claimed, proposed or assessed by any Governmental Authority. All material amounts of Tax due and payable by Sellers have been duly and timely paid. There are no Liens for Taxes on any of the Acquired Assets other than Permitted Encumbrances.

Section 5.7 Legal Proceedings. As of the date hereof, except for the Bankruptcy Case, the Canadian Proceedings and as set forth on Schedule 5.7, there is no Proceeding or Order pending, outstanding or, to Sellers' Knowledge, threatened against any Seller that (a) seeks to restrain or prohibit or otherwise challenge the consummation, legality or validity of the transactions contemplated hereby or (b) would have, individually or in the aggregate, a Material Adverse Effect. Since December 31, 2006, there has not been made or, to Sellers' Knowledge, threatened, any material product liability or other material product-related claims by any third party arising from the sale, distribution or manufacturing with respect to the safety of the

Products of any Product and, to Seller's Knowledge, there are no material safety concerns with respect to any Product.

Section 5.8 Compliance with Laws; Permits. Except as set forth in Schedule 5.8, Sellers are not, and since January 1, 2009, have not been in violation in any material respect of any Law applicable to the operation of the Business and hold all Permits required for Sellers to conduct the Business as it is currently conducted. Except as set forth in Schedule 5.8, there are no Proceedings pending, or to Sellers' Knowledge threatened, regarding any of the Permits, except where the failure to hold the same or such Proceedings regarding the same would not reasonably be expected to materially impair the conduct of the Business as currently conducted. Sellers are in compliance with the terms of all Permits, except for such non-compliance as would not reasonably be expected to materially impair the conduct of the Business as currently conducted. Notwithstanding the foregoing, this Section 5.8 shall not apply to environmental and health and safety matters, Taxes or regulatory matters, which are the subject exclusively of the representations and warranties in Section 5.4, Section 5.6 and Section 5.11, respectively.

Section 5.9 Sellers' Intellectual Property.

(a) Schedule 5.9(a)(i) sets forth a true and complete list of all U.S. and foreign (A) issued patents and pending applications for patents; (B) registered trademarks, Internet domain names and pending applications for trademarks; and (C) registered copyrights and pending applications for copyrights, in each case consisting of Business Intellectual Property and which are material to the Business as currently conducted (collectively, the "Material Business Intellectual Property"). To Sellers' Knowledge, Schedule 5.9(a)(ii) sets forth a true and complete list of all unregistered trademarks consisting of Business Intellectual Property and which are material to the Business as currently conducted (the "Material Unregistered Trademarks"). Except as set forth on Schedule 5.9(a)(iii) and for Permitted Encumbrances, Sellers have all right, title and interest in and to the Material Business Intellectual Property designated as owned by Sellers on Schedule 5.9(a)(i), free and clear of all Encumbrances.

(b) Except as set forth on Schedule 5.9(b), to Sellers' Knowledge, each item of the Material Business Intellectual Property is in full force and effect, and has not been abandoned or passed into the public domain, and all necessary registration, maintenance and renewal documentation and fees in connection with the applicable Material Business Intellectual Property have been timely filed with the appropriate authorities and paid. Sellers have in place commercially reasonable policies and procedures, consistent with industry standards, to maintain the secrecy of all Trade Secrets included in the Business Intellectual Property. To Sellers' Knowledge, the Business is not using any Material Business Intellectual Property in a manner that would reasonably be expected to result in the cancellation or unenforceability of such Material Business Intellectual Property.

(c) Except as set forth on Schedule 5.9(c), there are no claims, actions, suits or proceedings before any court, tribunal or other Governmental Authority with respect to the Material Business Intellectual Property or Material Unregistered Trademarks (other than proceedings related to usual and customary patent or trademark prosecutions in the Ordinary Course of Business, including with the United States Patent and Trademark Office or equivalent foreign or multi-national authority).

(d) Except as disclosed on Schedule 5.9(d), to Sellers' Knowledge (i) the conduct of the Business by Sellers as conducted as of the date hereof does not infringe or otherwise violate any Person's Intellectual Property rights, and no claims with respect to such infringement or violation are pending or threatened in writing against Sellers, and (ii) no Person is infringing or otherwise violating any Business Intellectual Property, and no claims with respect to any such infringement or violation are pending or threatened against any Person by Sellers.

Section 5.10 Assigned Agreements. Each Assigned Agreement listed or described in Schedule 1.1(a) is in full force and effect and is a valid and binding obligation of Sellers and, to Sellers' Knowledge, the other parties thereto, in accordance with its terms and conditions, in each case except (a) as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity and (b) as set forth on Schedule 5.10. Sellers have made available to Buyer correct and complete copies of all Assigned Agreements. Upon entry of the Sale Order and payment of the Cure Costs and except as set forth on Schedule 5.10, (i) no Seller will be in material breach or default of its obligations under any such Assigned Agreement, (ii) no condition exists that with notice or lapse of time or both would constitute a material default by any Seller under any such Assigned Agreement and (iii) to Sellers' Knowledge, no other party to any such Assigned Agreement is in material breach or default thereunder. Other than as disclosed in Schedule 1.1(a) (as amended from time to time in accordance with the terms of this Agreement), Schedule 2.2(d) (as amended from time to time in accordance with the terms of this Agreement), Schedule 5.13, Schedule 5.14 and Schedule 5.15, as of the Effective Date, no Seller is party to a Contract that is material to the Business.

Section 5.11 Regulatory Matters.

(a) Except as disclosed on Schedule 5.11(a), Sellers are in compliance in all material respects with all health care laws, statutes, ordinances, codes, rules, regulations, decrees and orders of Governmental Authorities (collectively, "Health Care Laws") applicable to the conduct of the Business as currently conducted by Sellers. Health Care Laws include, but are not limited to, the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §§ 1320d et seq.) as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. §§ 17921 et seq.), the exclusion laws (42 U.S.C. § 1320a-7), the FD&C Act and related FDA regulations, the DESI program, the Public Health Service Act, the Controlled Substances Act, Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act), the Food and Drugs Act, RSC 1985, cF-27, the Food and Drugs Regulations CRC, C870, the Patent Act R.S.C., 1985, c. P-4, the Patented Medicines (Notice of Compliance) Regulations SOR/93-133 and the Controlled Drugs and Substances Act, SC 1996, c 19, as well as any comparable foreign, federal or state laws, and the regulations promulgated pursuant to such laws. Except as disclosed on Schedule 5.11(a), no Seller has received any notification of any pending or, to Sellers' Knowledge, threatened, claim, suit, proceeding, hearing, enforcement, audit, inquiry, investigation, arbitration or other action from any Governmental Authority, including, without limitation, the FDA, the Centers for Medicare & Medicaid Services, and the U.S. Department of Health and Human

Services Office of Inspector General, alleging potential or actual non-compliance by, or liability of, Sellers under any Health Care Laws, except as would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the Business as currently conducted.

(b) Sellers hold Product Registrations required for the conduct of the Business as currently conducted by Sellers, and such Product Registrations are in full force and effect, except where the failure to hold a Product Registration would not, individually or in the aggregate, reasonably be expected to materially impair the conduct of the Business as currently conducted. Sellers have fulfilled and performed, and are performing, all of their material obligations with respect to the Product Registrations, and no event has occurred which allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other impairment of the rights of the holder of any Product Registration, except where the failure to so perform, or the occurrence of such event would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the Business as currently conducted. Except as disclosed on Schedule 5.11(b), Sellers have not received any notice, letters or other correspondence from the FDA, Health Canada or any other Governmental Authority or person (i) contesting any of their Product Registrations or (ii) otherwise alleging any violation of Health Care Laws by Sellers.

(c) Except as disclosed on Schedule 5.11(c), all material reports, documents, claims and notices required to be filed, maintained, or furnished to the FDA or Health Canada by Sellers (including, but not limited to, drug registration and listing submissions to the FDA or Health Canada) have been so filed, maintained or furnished and, to Sellers' Knowledge, were complete and correct in all material respects on the date filed (or were corrected in or supplemented by a subsequent filing).

(d) Except as set forth on Schedule 5.11(d), during the one (1) year period prior to the Effective Date, no Seller has voluntarily or involuntarily initiated, conducted or issued, or caused to be initiated, conducted or issued, any recalls, market withdrawals, replacements, warnings, "dear doctor" letters, investigator notices, MedWatch safety alerts or other notice of material action relating to an alleged lack of safety, efficacy or regulatory compliance of the Products (each a "Safety Notice").

(e) Except as set forth on Schedule 5.11(e), during the one (1) year prior to the Effective Date, no Seller has received any FDA Form 483, notice of adverse finding, warning letter, untitled letter, or other notice, in each case, alleging a material lack of safety from the FDA, Health Canada or any other Governmental Authority.

(f) During the one (1) year prior to the Effective Date, no Seller has received any notification from the FDA regarding Products marketed under the DESI program (i) alleging or finding that a Product is illegally marketed; (ii) requesting that Sellers voluntarily submit an application for a Product Registration with the FDA in order to market or continue marketing a Product; (iii) providing notice of action in a *Federal Register* notice against a Product and/or (iv) initiating a seizure, injunction or other action against a Product.

(g) To Sellers' Knowledge, the clinical and pre-clinical studies conducted or sponsored by Sellers, or in which Sellers, the Products or Sellers' product candidates have

participated were, and if still pending, are being conducted in accordance with standard medical and scientific research procedures and all applicable Health Care Laws, including, but not limited to, the FD&C Act and its applicable implementing regulations at 21 C.F.R. Parts 50, 54, 56, 58 and 312, except as would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the Business as currently conducted.

(h) To Sellers' Knowledge, no officer, employee, or agent of Sellers has made an untrue statement of a material fact or fraudulent statement to the FDA, Health Canada or any other Governmental Authority, failed to disclose a material fact required to be disclosed to the FDA, Health Canada or any other Governmental Authority, or committed an act, made a statement, or failed to make a statement that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA, Health Canada or any other Governmental Authority to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," set forth in 56 Fed. Reg. 46191 (Sept. 10, 1991) or any similar policy. To Sellers' Knowledge, no officer, employee, or agent of Sellers has engaged in any conduct that has resulted, or would reasonably be expected to result, in debarments under 21 U.S.C. § 335a(a) or any similar laws, rules, or regulations.

Section 5.12 Brokers or Finders. Except as set forth on Schedule 5.12 hereof, Sellers have not incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement, the other Transaction Documents or the transactions contemplated hereby or thereby for which Buyer is or will become liable, and Sellers shall indemnify and hold harmless Buyer from any claims with respect to any such fees or commissions.

Section 5.13 Affiliate Transactions. Other than as set forth on Schedule 5.13 hereof or as otherwise expressly contemplated by this Agreement, there are no loans, leases or other continuing transactions between Sellers, on the one hand, and any present or former member, manager, stockholder, director or officer thereof, as applicable, on the other hand, that will not be terminated and of no further effect prior to or simultaneously with the Closing.

Section 5.14 Insurance. The physical properties, assets, business, operations, employees, officers, directors and managers of Sellers are insured to the extent disclosed in Schedule 5.14 and (i) to Sellers' Knowledge, there is no claim by Sellers pending under any such policies as to which coverage has been questioned, denied or disputed by the insurer, (ii) such insurance policies and arrangements are in full force and effect, all premiums with respect thereto are currently paid, and Sellers are in compliance in all material respects with the terms thereof, and (iii) no notice of cancellation or termination has been received by Sellers with respect to any insurance policy described in Schedule 5.14.

Section 5.15 3M. Schedule 5.15 lists all agreements between Sellers and/or the Business, on the one hand, and 3M Company or any of its Affiliates, on the other hand. As of the date hereof, to the Knowledge of Sellers, Sellers have not received any notice and have no reason to believe that 3M Company or any of its Affiliates has (i) terminated or intends to terminate its business dealings with the Business, (ii) materially reduced or will materially reduce its supply to the Business, or (iii) otherwise materially changed or intends to materially

change the pricing, terms or amount of business with the Business in a manner adverse to the Business, in each case, as a result of this Agreement, the Bankruptcy Case, or otherwise.

Section 5.16 Inventory; Products. Inventory that is finished goods or samples (i) with an expiration date fourteen (14) months or longer from the Closing Date and (ii) not in quarantine, is in good and marketable condition, and is saleable in the ordinary course of business, other than for normal discounts and liquidations in the Ordinary Course of Business.

Section 5.17 Canadian Competition Act. Neither (i) the aggregate value of the Acquired Assets in Canada of Sellers, nor (ii) the gross revenues from sales in or from Canada from such assets exceeds Cdn$73 million as determined in accordance with the Notifiable Transaction Regulations promulgated under the Competition Act (Canada).

Section 5.18 Financial Statements. Schedule 5.18 sets forth the (i) audited consolidated financial statements of Sellers as at and for the years ended December 31, 2009 and December 31, 2010 (the "Audited Financial Statements") and (ii) unaudited consolidated financial statements of the Business as at and for the period ended July 31, 2011 (the "Unaudited Financial Statements"), including in each of clauses (i) and (ii) a balance sheet, statement of income and statements of cash flows and operations and for clause (i) a statement of retained earnings (the Audited Financial Statements and the Unaudited Financial Statements collectively, the "Financial Statements"). The Financial Statements have been prepared in accordance with United States generally accepted accounting principles and practices in effect from time to time applied on a consistent basis throughout the periods indicated and present fairly, in all material respects, the financial condition of Sellers at their respective dates, *provided, however,* that in the case of clause (ii) the unaudited financial statements were prepared on a going concern basis and do not include footnotes.

Section 5.19 No Other Representations or Warranties.

(a) Buyer acknowledges that, except for the representations and warranties contained in Article V, neither Sellers nor any other Person on behalf of Sellers makes any express or implied representation or warranty with respect to Sellers (including representations and warranties as to the condition of the Acquired Assets) or with respect to any information provided by or on behalf of Sellers to Buyer. Neither Sellers nor any other Person will have or be subject to any liability or indemnification obligation to Buyer or any other Person resulting from the distribution to Buyer, or use by Buyer, of any such information, including any information, documents, projections, forecasts or other material made available to Buyer in any "data rooms," "data sites," responses to inquiries, confidential information memoranda or management presentations in expectation of or in connection with the transactions contemplated by this Agreement or any other Transaction Document. Any documents, title information, assessments, surveys, plans, specifications, reports and studies, or other information made available to Buyer by Sellers or their Representatives, including any other material made available to Buyer in any "data rooms," "data sites," responses to inquiries, confidential information memoranda or management presentations (collectively, "Review Documents") are provided as information only. Buyer shall not rely upon Sellers' provision of any Review Document(s) in lieu of conducting its own due diligence. Except for the specific representations and warranties contained in this Article V (in each case as modified by the Disclosure Schedules

hereto), Sellers have not made, do not make, and have not authorized anyone else to make any representation as to: (i) the accuracy, reliability or completeness of any of the Review Documents; (ii) the operating condition of the Acquired Assets; (iii) the Environmental Conditions of the Real Property INCLUDING, WITHOUT LIMITATION, THE PRESENCE OR ABSENCE OF ANY HAZARDOUS SUBSTANCES; (iv) the enforceability of, or Buyer's ability to obtain the benefits of, any agreement of record affecting the Acquired Assets, (v) the transferability or assignability of any Contract or Permit or (vi) any other matter or thing affecting or relating to the Acquired Assets.

(b) In connection with investigation by Buyer, Buyer has received or may receive from Sellers certain projections, forward-looking statements and other forecasts and certain business plan information. Buyer acknowledges that there are uncertainties inherent in attempting to make such estimates, projections and other forecasts and plans, that Buyer is familiar with such uncertainties, that Buyer is taking full responsibility for making its own evaluation of the adequacy and accuracy of all estimates, projections and other forecasts and plans so furnished to it (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans), and that Buyer shall have no claim against anyone with respect thereto. Accordingly, Buyer acknowledges that, without limiting any representation or warranty in this Article V or any other term of this agreement, Sellers make no representation or warranty with respect to such estimates, projections, forecasts or plans (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans).

ARTICLE VI
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Sellers that the statements contained in this Article VI are true and correct:

Section 6.1 Organization and Good Standing. Buyer is a corporation, duly organized, validly existing and in good standing under the laws of the Country of Switzerland. Buyer has the requisite power and authority to own or lease and to operate and use its properties and to carry on its business as now conducted.

Section 6.2 Authority; Validity; Consents. Buyer has the requisite power and authority necessary to enter into and perform its obligations under this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated herein have been duly and validly authorized by all requisite corporate actions in respect thereof. This Agreement has been duly and validly executed and delivered by Buyer and each other Transaction Document to which Buyer is a party will be duly and validly executed and delivered by Buyer at the Closing. This Agreement and the other Transaction Documents to which Buyer is a party constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Except as required to comply with the HSR Act and Investment Canada Act, Buyer is not and will not be required to give any notice to or obtain any

consent from any Person in connection with the execution and delivery of this Agreement and the other Transaction Documents to which it is a party or the consummation or performance of any of the transactions contemplated hereby or thereby.

Section 6.3 No Conflict. When the consents and other actions described in Section 6.2 have been obtained and taken, the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions provided for herein and therein will not result in the breach of any of the terms and provisions of, or constitute a default under, or conflict with, or cause any acceleration of any obligation of Buyer under (a) any agreement, indenture, or other instrument to which it is bound, (b) the certificate incorporation of Buyer, (c) any Order or (d) any Law.

Section 6.4 Availability of Funds; Solvency.

(a) Buyer will have at the Closing sufficient cash in immediately available funds (without giving effect to any unfunded financing, regardless of whether any such financing is committed) to pay the Cash Consideration, and all other costs, fees and expenses required to be paid by it under this Agreement and the other Transaction Documents.

(b) As of the Closing and immediately after consummating the transactions contemplated by this Agreement and the other transactions contemplated by the Transaction Documents, Buyer will not, assuming the accuracy of Sellers' representations and warranties under this Agreement, (i) be insolvent (either because its financial condition is such that the sum of its debts is greater than the fair value of its assets or because the present fair value of its assets will be less than the amount required to pay its probable Liability on its debts as they become absolute and matured), (ii) have unreasonably small capital with which to engage in its business or (iii) have incurred or plan to incur debts beyond its ability to repay such debts as they become absolute and matured.

Section 6.5 Litigation. There are no Proceedings pending or, to the knowledge of Buyer, threatened, that would affect in any material respect Buyer's ability to perform its obligations under this Agreement or any other Transaction Documents or to consummate the transactions contemplated hereby or thereby.

Section 6.6 Brokers or Finders. Neither Buyer nor any Person acting on behalf of Buyer has paid or become obligated to pay any fee or commission to any broker, finder, investment banker, agent or intermediary for or on account of the transactions contemplated by this Agreement for which Sellers are or will become liable, and Buyer shall hold harmless and indemnify Sellers from any claims with respect to any such fees or commissions.

ARTICLE VII
ACTION PRIOR TO THE CLOSING DATE

Section 7.1 Investigation of the Business by Buyer. After the Effective Date and prior to the Closing Date, Sellers shall, at Buyer's sole cost and expense and in accordance with reasonable procedures to be established in good faith by mutual agreement of Sellers' Interim Access Manager and Buyer's Interim Access Manager, (a) afford Buyer's authorized Representatives access during normal business hours to the offices, properties, key employees,

outside accountants, agreements and other documentation and financial records (including computer files, retrieval programs and similar documentation) with respect to the Business to the extent Buyer reasonably deems necessary, and permit Buyer and its authorized Representatives to make copies of such materials, (b) furnish to Buyer or its authorized Representatives such additional information concerning the Business as shall be reasonably requested by Buyer or its authorized Representatives and (c) use commercially reasonable efforts to cause their outside accountants and outside counsel to cooperate with Buyer in its investigation; *provided* that Buyer shall submit to Sellers requests for such access, information or cooperation, including reasonable detail regarding the requested access, information or cooperation, a reasonable period in advance of the time at which such access, information or cooperation is to be provided, and all such requests shall be submitted only to John A. A. Bellamy, as Sellers' designated representative, or to such other individuals as John A. A. Bellamy may designate from time to time to receive such requests ("Sellers' Interim Access Manager"). Such requests of Buyer shall be submitted only by Scott McCrea or another individual reasonably acceptable to Sellers' Interim Access Manager as Scott McCrea's successor, as Buyer's designated representative ("Buyer's Interim Access Manager"). Notwithstanding anything herein to the contrary, no such access, information or cooperation shall be permitted or required to the extent that it would require Sellers to disclose information subject to attorney-client privilege or would be prohibited by Law or would otherwise contravene any antitrust or competition Law.

Section 7.2 Operations Prior to the Closing Date. Sellers covenant and agree that, except (i) as expressly contemplated by this Agreement, (ii) as disclosed in Schedule 7.2 or any other Schedule as of the date hereof, (iii) for the failure to pay or otherwise honor (A) Rebates, Chargebacks and return obligations relating to Products sold by Sellers prior to the Filing or (B) any patient coupon program, (iv) with the prior written consent of Buyer (which consent shall not be unreasonably withheld or delayed), (v) as required by, arising out of, relating to or resulting from the Bankruptcy Case, the Canadian Proceedings or otherwise approved by the Bankruptcy Court or the Canadian Court and (vi) as otherwise required by Laws, after the Effective Date and prior to the Closing Date:

(a) Sellers shall use commercially reasonable efforts, taking into account US Sellers' status as a debtor-in-possession in the Bankruptcy Case and Canadian Seller's status as a debtor in the Canadian Proceedings, to carry on in the Ordinary Course of Business (including by paying all fees due to any regulatory authority in the Ordinary Course of Business, including all fees due to the FDA or Health Canada prior to Closing), to maintain in full force and effect the Permits, to maintain and preserve the Acquired Assets in their present condition, other than reasonable wear and tear, and to keep intact the business relationships relating to the Acquired Assets; and, without limiting the generality of the forgoing,

(b) Sellers shall not:

(i) other than the sale of Products in accordance with Section 7.2(b)(vii) or pursuant to any debtor-in-possession financing or cash collateral agreement or order, sell, lease (as lessor), transfer or otherwise dispose of, or mortgage or pledge, or voluntarily impose or suffer to be imposed, any Encumbrance (other than Assumed Liabilities and Permitted Encumbrances) on any Acquired Asset;

(ii) issue, deliver or sell or authorize the issuance, delivery or sale of, any membership or other equity interests of Sellers;

(iii) fail to pay any maintenance or similar fees in connection with the prosecution and maintenance of applicable Material Business Intellectual Property, or otherwise fail to protect and maintain Material Business Intellectual Property consistent with past practice in all material respects;

(iv) amend any of the Assigned Agreements or any Contract included in the Acquired Assets other than non-material amendments made in the Ordinary Course of Business;

(v) other than in the Ordinary Course of Business, enter into any new, or amend any existing, license or other similar agreement concerning any Business Intellectual Property material to the Business, taken as a whole;

(vi) except in the Ordinary Course of Business, cancel or compromise any material claim or waive or release any material right, in each case, that is a claim or right related to an Acquired Asset;

(vii) sell more than 3,300 units of Zyclara Products in the aggregate (including all strengths and methods of delivery) in any given week or materially increase the sale of other Products outside of the Ordinary Course of Business; or

(viii) enter into any agreement or commitment to take any action prohibited by this Section 7.2.

Without in any way limiting any Party's rights or obligations under this Agreement, the Parties understand and agree that (i) nothing contained in this Agreement shall give Buyer, directly or indirectly, the right to control or direct the operations of Sellers, or the Business prior to the Closing and (ii) prior to the Closing, Sellers shall exercise, consistent with, and subject to, the terms and conditions of this Agreement, complete control and supervision over the Business and their operations. Notwithstanding anything herein to the contrary, Sellers shall be permitted to take all actions that are necessary or desirable to comply with the Worker Adjustment and Retraining Notification Act and WARN Act, including without limitation, providing any notices required under the WARN Act, and no such actions shall constitute a violation of this Section 7.2.

Section 7.3 HSR Act; Reasonable Best Efforts.

(a) Subject to Section 7.3(c), within fifteen (15) Business Days following the Effective Date, Sellers, on the one hand, and Buyer, on the other hand, shall each prepare and file, or cause to be prepared and filed, any notifications required to be filed under the HSR Act with the United States Federal Trade Commission and the Department of Justice, and request early termination of the waiting period under the HSR Act. Buyer, on the one hand, and Sellers, on the other hand, shall as soon as reasonably practicable respond to any requests for additional information in connection with such filings and shall take all other actions necessary to cause the

waiting periods under the HSR Act to terminate or expire at the earliest practicable date after the date of filing. Buyer shall be responsible for payment of the applicable filing fee under the HSR Act.

(b) In addition to the actions to be taken under Section 7.3(a), Sellers, on the one hand, and Buyer, on the other hand, shall use all best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated hereby, including using best efforts to accomplish the following: (i) the taking of all reasonable acts necessary to cause the conditions precedent set forth in Article IX and Article X to be satisfied, (ii) the obtaining of all necessary Governmental Authorizations and the making of all necessary registrations, declarations and filings (including registrations, declarations and filings with Governmental Authorities, if any) and the taking of all steps as may be necessary to avoid any Proceeding by any Governmental Authority, (iii) the defending of any Proceedings challenging this Agreement or the consummation of the transaction contemplated hereby, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Authority vacated or reversed, and (iv) the execution or delivery of any additional instruments necessary to consummate the transactions contemplated hereby and to fully carry out the purposes of this Agreement.

(c) Buyer further agrees that it shall, to the extent necessary to obtain the waiver or consent from any Governmental Authority required to satisfy the conditions set forth in Article IX and Article X, as applicable, or to avoid the entry of or have lifted, vacated or terminated any Closing Legal Impediment, take the following actions: (i) propose, negotiate, offer to commit and effect (and if such offer is accepted, commit to and effect), by consent decree, hold separate order or otherwise, and in connection with the consummation of the transactions contemplated by this Agreement and the other Transaction Documents, the sale, divestiture or disposition (including by licensing any intellectual property rights) of any Acquired Assets and/or any other assets or businesses of Buyer or any of its Affiliates (or equity interests held by Buyer or any of its Affiliates in entities with assets or businesses); (ii) terminate any existing relationships and contractual rights and obligations; (iii) otherwise offer to take or offer to commit to take any action which it is capable of taking and, if the offer is accepted, take or commit to take such action, that limits its freedom of action with respect to, or its ability to retain, any of the Acquired Assets and/or any other assets or businesses of Buyer or any of its Affiliates (or equity interests held by Buyer or any of its Affiliates in entities with assets or businesses); and (iv) take promptly, in the event that any permanent or preliminary injunction or other order is entered or becomes reasonably foreseeable to be entered in any proceeding that would make consummation of the transactions contemplated by this Agreement and the other Transaction Documents unlawful or that would prevent or delay consummation of the transactions contemplated by this Agreement and the other Transaction Documents, any and all steps (including the appeal thereof, the posting of a bond or the taking of the steps contemplated by clauses (i), (ii) and (iii) of this Section 7.3(c)) necessary to vacate, modify or suspend such injunction or order. For the avoidance of doubt, Buyer's obligations under this Section 7.3 shall be absolute and not qualified by "commercially reasonable efforts." The Parties agree that Sellers' obligations under this Section 7.3 shall not include any obligation on the part of Sellers or their respective Affiliates to commit to or effect, by consent decree, hold separate orders, trust

or otherwise the sale or disposition of such of its assets or businesses (including the Acquired Assets) as may be required to be divested in order to avoid the entry of, or to effect the dissolution of, any decree, order, judgment, injunction, temporary restraining order or other order in any suit or preceding.

(d) Sellers, on the one hand, and Buyer, on the other hand, (i) shall promptly inform each other of any communication from any Governmental Authority concerning this Agreement, the transactions contemplated hereby, and any filing, notification or request for approval and (ii) shall permit the other to review in advance any proposed written or material oral communication or information submitted to any such Governmental Authority in response thereto and shall discuss and attempt to reasonably account for any comments or suggestions of the other Party. In addition, none of Parties shall agree to participate in any meeting with any Governmental Authority in respect of any filings, investigation or other inquiry with respect to this Agreement or the transactions contemplated hereby, unless such Party consults with the other Parties in advance and, to the extent not prohibited by any such Governmental Authority, gives the other Parties the opportunity to attend and participate thereat, in each case to the maximum extent practicable. Subject to any restrictions under applicable laws, rules or regulations, Buyer, on the one hand, and Sellers, on the other hand, shall furnish the other with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective Representatives on the one hand, and the Governmental Authority or members of its staff on the other hand, with respect to this Agreement, the transactions contemplated hereby (excluding documents and communications which are subject to preexisting confidentiality agreements or to the attorney-client privilege or work product doctrine) or any such filing, notification or request for approval. In carrying out their obligations under this Section 7.3, subject to applicable Law, each of the Parties shall not submit or otherwise provide any information to such Governmental Authority without first having provided a reasonable opportunity to the other Party and its counsel to comment upon such information. Each Party shall also furnish the other Party with such necessary information and assistance as such other Party and its Affiliates may reasonably request in connection with their preparation of necessary filings, registration or submissions of information to the Governmental Authority in connection with this Agreement, the transactions contemplated hereby and any such filing, notification or request for approval. Any Party may, as it deems advisable and necessary, reasonably designate any sensitive material provided to the other Party under this Section 7.3, or otherwise pursuant to this Agreement, as "outside counsel only." Such materials and the information contained therein shall be given only to the outside legal counsel of the recipient and will not be disclosed by such outside counsel to the directors, officers or employees of the recipient, unless express written permission is obtained in advance from the source of the materials.

(e) Neither Buyer nor Sellers shall, after the entry of the Sale Order, agree to accept any agreement that would have the effect of delaying the consummation of any action contemplated by this Agreement without the written consent of the other Party. For the avoidance of doubt, no Party shall commit to or agree with any Governmental Authority to stay, toll or extend any applicable waiting period under the HSR Act or other applicable Laws, without the prior written consent of the other Parties.

(f) Neither Buyer nor any of its controlled Affiliates shall take any action or acquire any assets or securities of any other Person or agree to acquire assets or securities of any other Person if such action, acquisition or agreement would reasonably be expected to impair Buyer's ability to consummate the transactions contemplated hereby.

Section 7.4 Bankruptcy Court Filings and Approval.

(a) US Sellers shall use their commercially reasonable efforts to obtain entry of the Bidding Procedures Order and the Sale Order and such other relief from the Bankruptcy Court as may be necessary or appropriate in connection with this Agreement and the consummation of the transactions contemplated by this Agreement. US Sellers shall file with the Bankruptcy Court, on or prior to the end of the third (3rd) Business Day following the later of the Filing or execution of this Agreement, the motion seeking entry of the Bidding Procedures Order and the Sale Order authorizing US Sellers to enter into this Agreement and to consummate the transactions contemplated hereunder. Buyer agrees that it will promptly take such actions as are reasonably requested by US Sellers to assist in obtaining entry of the Bidding Procedures Order and the Sale Order and, consistent with Section 8.3(a) below, a finding by the Bankruptcy Court of adequate assurance of future performance by Buyer.

(b) As promptly as possible, but in no event later than five (5) Business Days following the Filing, Canadian Seller shall bring application in the Canadian Court seeking an Order under the CJA (i) appointing a receiver to oversee the sale of the assets of Canadian Seller and (ii) granting certain other relief customarily granted in receivership orders made by the Canadian Court including, without limitation, a stay of proceedings against Canadian Seller (the "Canadian Receivership Order"), which Order shall be in form and substance acceptable to Buyer, acting reasonably. As promptly as possible, but in no event later than two (2) Business Days following entry of the Bidding Procedures Order and on notice to Persons designated by Buyer, the Canadian Seller shall bring a motion seeking an Order in the Canadian Proceedings approving this Agreement (including the Break-Up Fee and the Expense Reimbursement Amount) and the transactions contemplated herein as a stalking horse agreement, and approving the Bidding Procedures as they relate to Canadian Seller, and granting such other relief as Canadian Seller and Buyer may deem necessary or advisable (the "Canadian Bidding Procedures Order"), which Order shall be in form and substance acceptable to Buyer, acting reasonably.

(c) As promptly as possible, but in no event later than two (2) Business Days following entry of the Sale Order and on notice to Persons designated by Buyer, Canadian Seller shall bring a motion seeking an Order in the Canadian Proceeding, *inter alia*, (i) approving this Agreement and the transactions contemplated herein, (ii) exempting the transaction from the provisions of the Bulk Sales Act (Ontario), and (iii) vesting the Canadian Assets in Buyer free and clear of all claims, liens and encumbrances (other than Permitted Encumbrances) effective upon delivery to Buyer of the Receiver's Certificate confirming that the Purchase Price has been paid, the conditions to Closing have been satisfied or waived and the transactions contemplated in this Agreement have closed to the satisfaction of the Receiver (such order, the "Canadian Sale and Vesting Order"), which Order shall be substantially in the form attached hereto as Exhibit G, with such changes as Buyer may accept acting reasonably. Buyer agrees that it will take such actions as are reasonably requested by Sellers to assist in obtaining entry of the Canadian

Receivership Order, the Canadian Bidding Procedures Order and the Canadian Sale and Vesting Order.

(d) Prior to the filing by Sellers of the motion contemplated by the second sentence of Section 7.4(a) and the applications and motions for the Canadian Orders, Sellers will (i) provide a copy thereof (including, in each case, the related forms of order and notice and supporting materials) to Buyer and its counsel, (ii) provide Buyer and its counsel a reasonable opportunity to review and comment on such document, and any amendment or supplement thereto and (iii) incorporate any reasonable comments of Buyer and its counsel into such document and any amendment or supplement thereto.

(e) Sellers and Buyer acknowledge that this Agreement and the sale of the Acquired Assets and the assumption and assignment of the Assigned Agreements are subject to Bankruptcy Court approval and approval of the Canadian Court. Sellers and Buyer acknowledge that (i) to obtain such approval, Sellers must demonstrate that they have taken reasonable steps to obtain the highest and otherwise best offer possible for the Acquired Assets and (ii) Buyer must provide adequate assurance of future performance under the Assigned Agreements to be assigned by US Sellers.

(f) Sellers shall give appropriate notice, and provide appropriate opportunity for hearing, to all Persons entitled thereto, of all motions (including the motions seeking entry of the Bidding Procedures Order, the Sale Order and the Canadian Orders), orders, hearings and other proceedings relating to this Agreement and the transactions contemplated hereby and thereby and such additional notice as ordered by the Bankruptcy Court or the Canadian Court or as Buyer may reasonably request.

(g) In the event an appeal is taken or a stay pending appeal is requested, from the Bidding Procedures Order, Sale Order or any of the Canadian Orders, Sellers shall immediately notify Buyer of such appeal or stay request and shall provide to Buyer promptly a copy of the related notice of appeal or order of stay. Sellers shall also provide Buyer with written notice of any motion or application filed in connection with any appeal from or stay request in respect of either of such orders. Sellers and Buyer shall use their respective commercially reasonable efforts to defend such appeal or stay request and obtain an expedited resolution of such appeal.

(h) After entry of the Sale Order and the Canadian Sale and Vesting Order, to the extent Buyer is the Successful Bidder at the Auction, Sellers shall not take any action which is intended to, or fail to take any action the intent of which failure to act is to, result in the reversal, voiding, modification or staying of the Sale Order or the Canadian Sale and Vesting Order.

Section 7.5 Bidding Procedures. The bidding procedures to be employed with respect to this Agreement shall be those reflected in the Bidding Procedures Order. Buyer agrees and acknowledges that Sellers and their Representatives and Affiliates are and may continue soliciting inquiries, proposals or offers for the Acquired Assets in connection with any alternative transaction pursuant to the terms of the Bidding Procedures Order.

Section 7.6 Break-Up Fee; Expense Reimbursement Amount.

(a) Subject to entry of the Bidding Procedures Order and the Canadian Bidding Procedures Order, if this Agreement is terminated pursuant to Section 11.1(a)(iv), Section 11.1(b)(iii), Section 11.1(c)(ii) or Section 11.1(c)(iii) and, in each case, Sellers consummate an Alternative Transaction, then Sellers, jointly and severally, shall pay in cash to Buyer, on the date of the consummation of the Alternative Transaction and from the proceeds of the Alternative Transaction, a break-up fee in the amount of Eight Million Two Hundred Fifty Thousand United States Dollars (USD$8,250,000) (the "Break-Up Fee") by wire transfer of immediately available funds to the account specified by Buyer to Sellers in writing.

(b) Subject to entry of the Bidding Procedures Order and the Canadian Bidding Procedures Order, if this Agreement is terminated pursuant to Section 11.1(a)(i) (unless due to Buyer's breach of this Agreement), Section 11.1(a)(iv), Section 11.1(b)(i), Section 11.1(b)(iii), Section 11.1(c)(ii) or Section 11.1(c)(iii), then Sellers, jointly and severally, shall pay in cash to Buyer, within five (5) Business Days of such termination, an amount equal to the reasonable and documented costs, fees and expenses incurred by Buyer and its Affiliates (including fees and expenses of legal, accounting and financial advisors) in connection with this Agreement and the transactions contemplated hereby up to a maximum of One Million Five Hundred Thousand United States Dollars (USD$1,500,000) (the "Expense Reimbursement Amount") by wire transfer of immediately available funds to the account specified by Buyer to Sellers in writing. If the Break-Up Fee is later determined to be payable, it shall be reduced by the Expense Reimbursement Amount received by Buyer from Sellers pursuant to this Section 7.6.

(c) The obligations of Sellers to pay the Break-Up Fee and the Expense Reimbursement Amount as provided herein shall be entitled to administrative expense status with priority over any and all administrative expenses of the kind specified in Sections 503(b)(1) and 507(a) of the Bankruptcy Code in the Bankruptcy Case and senior to all other superpriority administrative expenses in the Bankruptcy Case.

(d) Sellers agree and acknowledge that Buyer's due diligence, efforts, negotiation and execution of this Agreement have involved substantial investment of management time and have required significant commitment of financial, legal and other resources by Buyer and its Affiliates and that such due diligence, efforts, negotiation and execution have provided value to Sellers.

Section 7.7 Communications with Customers and Suppliers. Prior to the Closing, Buyer shall not, and shall cause its Affiliates and Representatives not to, contact, or engage in any discussions or otherwise communicate with, any of Sellers' landlords, clients, suppliers and other Persons with which Sellers have material commercial dealings without obtaining the prior consent of Sellers, which consent shall not be unreasonably withheld, conditioned or delayed; provided that nothing herein shall in any way restrict or limit Buyer or its Affiliates from contacting, or engaging in discussions or otherwise communicating with, any Person in the ordinary course of the business of Buyer and its Affiliates as conducted as of the date hereof. In no event shall Buyer request any client, customer or any other Person to return any Products sold by Seller.

Section 7.8 Financing. Buyer covenants and agrees with Sellers that it will take all actions necessary to ensure that as of the Closing Date Buyer will have immediately available funds, in the aggregate, sufficient to pay the Cash Consideration, and all other costs, fees and expenses required to be paid by it under this Agreement and the other Transaction Documents.

Section 7.9 Notification of Certain Matters. From the Effective Date through one (1) Business Day prior to the Sale Hearing, Sellers shall use commercially reasonable efforts to promptly (and in no event later than five (5) Business Days prior to the Sale Hearing, except with respect to Contracts entered into after such date) supplement or update Schedule 2.2(d) by providing Buyer written notice of any Contract to which any Seller is a party as of the Effective Time which was not set forth on Schedule 1.1(a) or Schedule 2.2(d) as of the Effective Time and any Contracts that relate to the Business and arise in the Ordinary Course of Business after the Effective Date. From the Effective Date through one (1) Business Day prior to the Sale Hearing, Buyer may amend Schedule 2.2(d) or Schedule 1.1(a) to move any Contract from Schedule 2.2(d) to Schedule 1.1(a) or vice versa by providing Seller with written notice thereof, *provided, however*, that Buyer shall have no right to add any Contract rejected, in accordance with Section 365 of the Bankruptcy Code, by Sellers prior to Sellers receiving written notice from Buyer to include such Contract on Schedule 1.1(a)), *provided further*, that, following the Auction, Buyer may amend Schedule 2.2(d) or Schedule 1.1(a) to move any Contract from Schedule 2.2(d) to Schedule 1.1(a), but not vice versa, *provided further*, that Buyer may not amend Schedule 2.2(d) or Schedule 1.1(a) to move any Contract from Schedule 1.1(a) to Schedule 2.2(d) which is also listed on Schedule 5.15 without the prior written consent of Sellers.

ARTICLE VIII
ADDITIONAL AGREEMENTS

Section 8.1 Taxes.

(a) Any sales, use, property transfer or gains, documentary, stamp, registration, recording or similar Tax (including, for certainty, goods and services tax, harmonized sales tax and land transfer tax) payable in connection with the sale or transfer of the Acquired Assets ("Transfer Taxes") shall be borne by Buyer and, to the extent any Seller is required by applicable Law to pay Transfer Taxes, such Transfer Taxes shall be paid by the Buyer to the appropriate Seller at Closing. Sellers and Buyer shall use reasonable efforts and cooperate in good faith to exempt the sale and transfer of the Acquired Assets from any such Transfer Taxes. Buyer shall prepare and file all necessary Tax Returns or other documents with respect to all such Transfer Taxes; *provided, however*, that in the event any such Tax Return requires execution by Sellers, Buyer shall prepare and deliver to Sellers a copy of such Tax Return at least three (3) Business Days before the due date thereof, and Sellers shall promptly execute such Tax Return and deliver it to Buyer, which shall cause it to be filed. Buyer shall reimburse Sellers for any Tax described in this Section 8.1(a) that is paid by Sellers to a Governmental Authority.

(b) Buyer shall be responsible for all personal property Taxes and similar ad valorem obligations levied with respect to the Acquired Assets (the "Property Taxes"), without

regard to the taxable period such Property Taxes are attributable to, that are due and payable after the Closing Date.

(c) Buyer and Sellers agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Business and the Acquired Assets (including access to Documents) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any taxing authority and the prosecution or defense of any claims, suit or proceeding relating to any Tax; *provided, however*, that (other than as required pursuant to this Section 8.1(c)) neither Buyer nor any Seller shall be required to disclose the contents of its income tax returns to any Person. Any expenses incurred in furnishing such information or assistance pursuant to this Section 8.1(c) shall be borne by the Party requesting it.

(d) Notwithstanding any other provisions in this Agreement, Buyer and Sellers hereby waive compliance with all "bulk sales," "bulk transfer" and similar laws that may be applicable with respect to the sale and transfer of any or all of the Acquired Assets to Buyer.

(e) If requested by Sellers prior to Closing, Buyer and Canadian Seller shall jointly execute and file an election pursuant to subsection 20(24) of the *Income Tax Act* (Canada) and the corresponding provisions of any applicable provincial Tax legislation in prescribed manner and within the prescribed time limits with respect to Buyer's assumption of Canadian Seller's obligations in respect of undertakings to which paragraph 12(1)(a) of *Income Tax Act* (Canada) apply. Buyer and Canadian Seller acknowledge that Canadian Seller is transferring assets of equal value to Buyer as consideration for the assumption of such obligations. Buyer and Canadian Seller shall file all of their respective Canadian Tax Returns in a manner consistent with any elections completed under this Section 8.1(e).

Section 8.2 Payments Received. Sellers, on the one hand, and Buyer, on the other hand, each agree that, after the Closing, each will hold and will promptly transfer and deliver to the other, from time to time as and when received by them, any cash, checks with appropriate endorsements (using their best efforts not to convert such checks into cash) or other property that they may receive on or after the Closing which properly belongs to the other and will account to the other for all such receipts.

Section 8.3 Assigned Agreements; Adequate Assurance of Future Performance.

(a) With respect to each Assigned Agreement, Buyer shall provide adequate assurance as required under the Bankruptcy Code of the future performance by Buyer of each such Assigned Agreement. Buyer and Sellers agree that they will promptly take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been an adequate demonstration of adequate assurance of future performance under the Assigned Agreements, such as furnishing affidavits, non-confidential financial information and other documents or information for filing with the Bankruptcy Court and making Buyer's and Sellers' Representatives available to testify before the Bankruptcy Court.

(b) Subject to the other terms and conditions of this Agreement, Buyer shall, from and after the Closing Date, (i) assume all Liabilities of Sellers under the Assigned

Agreements and (ii) satisfy and perform all of the Liabilities related to each of the Assigned Agreements when the same are due thereunder.

Section 8.4 Rebates, Chargebacks and Returns.

(a) On or following the Closing, Buyer shall take all actions necessary to obtain its own NDC Numbers, DINs and any other license number, code or other similar reference required for the distribution, marketing, and sale of each Product by Buyer in each jurisdiction in the relevant Territory (collectively, "Buyer Required Code"). Such actions shall include labeling all Product inventory acquired by Buyer pursuant to this Agreement with Buyer's Buyer Required Code, as applicable, such that all sales of Product by Buyer are tracked with Buyer Required Code in each applicable jurisdiction in the relevant Territory. Buyer will not sell or otherwise transfer any Products that have a label or packaging that includes any Seller NDC Number, DIN or foreign equivalent or counterpart.

(b) As promptly as practicable following the Closing, Sellers and Buyer will issue a joint letter to customers of the Products, advising such customers of Sellers' and Buyer's responsibilities in connection with returns and credits. Sellers shall be responsible only for returned Product that bears Sellers' NDC Number, DIN or foreign counterpart and evidenced as being sold by Sellers prior to the Closing by lot number or otherwise, *provided* that, any processing of returns of Product shall be in compliance with Sellers' return policy. Buyer shall be responsible only for returned Product that bears the Buyer's NDC Number, DIN or foreign counterpart or evidenced as being sold by Buyer on or after the Closing Date by lot number or otherwise, *provided* that, any such returns of Product shall be in compliance with Buyer's then current return policy. Neither Sellers nor Buyer shall take any action to encourage or delay return of any Product. If Sellers or Buyer receive a Product for which the other was responsible as set forth in Section 8.4(b), that party shall ship the returned Product to the responsible party at the expense of the responsible party, together with such information as is necessary to support the return. All payments due to Sellers from Buyer or due to Buyer from Sellers under this Section 8.4(b), shall be made within 30 days of submission to the responsible party of invoices that describe the requested payment in reasonable detail.

(c) Subject to the terms and conditions of this Agreement, after the Closing Date, Buyer shall have the responsibility to process, and shall have all Liability for, all Rebates and Chargebacks for Products sold by Buyer. Sellers shall retain all Liability for Rebates and Chargebacks relating to Products sold by Sellers.

(d) Without limiting the generality of the foregoing or Section 8.5, or being limited thereby, after the Closing, Buyer shall make all appropriate filings and submissions with the Centers for Medicare & Medicaid Services, any Canadian programs and other Government Authorities in regard to all Chargebacks and Rebates owing to such Government Authorities for Products sold by Buyer, including without limitation updates to Buyer's Medicaid Drug Rebate Agreement and any required filings. Sellers shall bear no responsibility for Buyer's failure to make such filings and submissions or any delays resulting therefrom.

(e) Nothing in this Section 8.4 shall prohibit Sellers from ceasing operations or winding up their affairs following the Closing.

Section 8.5 Transfer of Regulatory Matters.

(a) Promptly after the Closing and in any event within one (1) day after the Closing, Sellers and Buyer shall file with the FDA, Health Canada or other Governmental Authority the notices and information required pursuant to any applicable regulation or requirement, such as 21 C.F.R. § 314.72, or any successor regulation thereto, to transfer the Product Registrations from Sellers to Buyer. The Parties also agree to use all commercially reasonable efforts, and in any event within thirty (30) days, to take any and all other actions required by the FDA, Health Canada, or other Governmental Authority, if any, to effect the transfer of the Product Registrations from Sellers to Buyer.

(b) Promptly after the Closing and in any event within thirty (30) days after the Closing, Sellers and Buyer shall make all appropriate filings and submissions with Governmental Authorities, including but not limited to, the Centers for Medicare & Medicaid Services, the FDA and Health Canada, to register NDC Numbers and DINs and transfer all regulatory responsibilities, excluding all Excluded Liabilities, attaching thereto of each Product, from Sellers to Buyer.

(c) Except as provided in Section 8.5(a) and Section 8.5(b), from and after the Closing, Buyer, at its cost, shall be solely responsible and liable for (i) taking all actions, paying all fees and conducting all communication with the appropriate Governmental Authority required by any Law in respect of the Product Registrations, including preparing and filing all reports (including adverse drug experience reports) with the appropriate Governmental Authority, (ii) paying all future Chargebacks and Rebates due to any Governmental Authority for Products sold by Buyer, (iii) taking all actions and conducting all communication with Third Parties in respect of Products sold by Buyer, including responding to (A) complaints in respect thereof, including complaints related to tampering or contamination, and (B) all medical information requests, (iv) investigating all complaints and adverse drug experiences in respect of such Products, *provided further* that nothing in this Section 8.5(c) shall prohibit Sellers from ceasing operations or winding up their affairs following the Closing.

(d) Subject to Section 12.15, Sellers shall be solely responsible and liable for all Chargebacks and Rebates due to any Governmental Authority for Products bearing Seller's NDC Number.

Section 8.6 Adverse Event Reporting. Each of Buyer and Sellers shall promptly notify the other of any significant adverse events that relate to the Products or are required in accordance with any Law, including adverse drug experiences and governmental inquiries, and each of Buyer and Sellers shall cooperate with the other in connection therewith as reasonably requested by the other Party and as follows:

(a) Serious Adverse Events related to any Product of which Sellers become aware shall be submitted to Buyer within three (3) Business Days but no more than four (4) calendar days from the date Sellers first become aware of such Serious Adverse Event. Non-Serious Adverse Events for any Product that are reported to Sellers shall be submitted to Buyer no more than one (1) month from the date received by Sellers; *provided, however*, that medical and scientific judgment should be exercised in deciding whether expedited reporting is

appropriate in other situations, such as important medical events that may not be immediately life-threatening or result in death or hospitalization but may jeopardize the patient or may require intervention to prevent a Serious Adverse Event outcome. In no event shall Sellers submit to Buyer any adverse event report or similar information that does not relate to the Products.

(b) Until the reporting procedures referenced in Section 8.6(d) herein have been instituted by Buyer and Sellers, a "Serious Adverse Event" for any Product shall have the meaning set forth in 21 C.F.R. § 314.80(a), as amended from time to time, and a "Non-Serious Adverse Event" for any Product is defined any adverse event that is not a Serious Adverse Event.

(c) As provided in Section 8.5(c) above, from and after the Closing, Buyer shall be solely responsible for reporting adverse events related to the Products to Governmental Authorities to the extent required by applicable Laws.

(d) As soon as reasonably practicable after the Closing Date, Buyer and Sellers shall discuss and develop mutually acceptable guidelines and procedures for the receipt, recordation, reporting, communication (as between the Parties) and exchange of Serious Adverse Event and Non-Serious Adverse Event information, as applicable, to the other Party; *provided* that Buyer shall have exclusive responsibility for communications with Governmental Authorities concerning the Products and related Serious Adverse Event and Non-Serious Adverse Event information. The Parties shall bear their respective costs incurred in connection with receiving, recording, reviewing, reporting, communicating and exchanging with each other regarding and, as applicable, reporting and responding to Serious Adverse Events and Non-Serious Adverse Events.

Section 8.7 Use of Sellers' Brand. Other than as expressly provided in this Agreement and the Transaction Documents, Buyer will have no right, title, interest, license or any other right whatsoever in or to, and shall not use or permit any of its Affiliates to use, the name "Graceway" or any names, words, service marks, trademarks, trade names, identifying symbols, logos, emblems, signs, insignia or other business identifiers containing or comprising the foregoing, including any derivations, translations, modifications or alterations thereof, or any word, name or mark confusingly similar thereto (the "Sellers' Brand"); *provided* that Sellers hereby grant to Buyer a non-exclusive, non-transferable, non-sublicensable limited right and license to use, Sellers' Brand as it appears on existing (as of the Closing Date) Labeling and packaging for existing Inventory purchased hereunder for a period of time ending on the one hundred eightieth (180th) day after the Closing Date. Buyer and its Affiliates shall indemnify and hold harmless Sellers and any of their Affiliates for any claims (other than claims resulting from the gross negligence of Sellers or any of their Affiliates or representatives) arising from or relating to the use by Buyer or any of its Affiliates of the Sellers' Brand pursuant to this Section 8.7. The Parties agree that damages would be an inadequate remedy in the event of a breach of this Section 8.7, and that a Person seeking to enforce this Section 8.7 shall be entitled to seek specific performance and injunctive relief as remedies for any breach hereof in addition to any other remedies available at law or in equity.

Section 8.8 Post-Closing Books and Records and Personnel. For seven (7) years after the Closing Date (or such longer period as may be required by any Governmental Authority or ongoing claim), (a) neither Buyer nor any Seller shall dispose of or destroy any of the business

records and files of the Business and (b) Buyer and Sellers (including, for clarity, any trust established under a Chapter 11 plan of Sellers or any other successors of Sellers) shall allow each other and their respective Representatives reasonable access during normal business hours, and upon reasonable advance notice, to all employees, files and any books and records and other materials included in the Acquired Assets for purposes relating to the Bankruptcy Case, the Canadian Proceedings, the wind-down of the operations of Sellers, the functions of any such trusts or successors, or other reasonable business purposes, including Tax matters, governmental contracts, litigation, or potential litigation, each as it relates to any Product, the Business, the Acquired Assets or the Assumed Liabilities prior to the Closing Date (with respect to Sellers) or from and after the Closing Date (with respect to the Buyer), and Buyer and Sellers (including any such trust or successors) and such Representatives shall have the right to make copies of any such files, books, records and other materials. In addition, from and after the Closing for a period of 60 days, Sellers will permit Buyer and its Representatives access to such personnel of Sellers during normal business hours as Buyer may reasonably request to assist with the transfer of the Inventory, Permits, Documents, Business Intellectual Property and Product Registrations, *provided* that (i) nothing in this Section 8.8 shall prohibit Sellers from ceasing operations or winding up their affairs following the Closing and (ii) Buyer shall reimburse Sellers for any reasonable and documented out-of-pocket expenditure or obligation incurred by Sellers after the Closing directly related to assistance provided pursuant to this Section 8.8 with the transfer and integration of the Inventory, Permits, Documents, Business Intellectual Property and Product Registrations.

Section 8.9 Confidentiality.

(a) Sellers agree not to, and shall use commercially reasonable efforts to cause its employees not to, divulge to any Person (other than Buyer or its Affiliates or any persons employed or designated by such entities), publish or make use of any information of any type whatsoever of a confidential nature relating to the Products or the Acquire Assets, including, without limitation, all types of trade secrets, client lists or information, information regarding product development, marketing plans, management organization information, operating policies or manuals, performance results, packaging design or other financial, commercial, business or technical information, except (i) such knowledge or information that is in the public domain through no wrongful act by any Seller without the prior written consent of Buyer or its Affiliates (as the case may be), (ii) for disclosure made pursuant to and in accordance with any Contract to which any Seller or any Affiliate of Seller is a party, (iii) for disclosures made to facilitate the Auction in accordance with the Bidding Procedures, and (iv) as required by applicable law, by an order of a court having competent jurisdiction or under subpoena from an appropriate government agency. This confidentiality provision has no temporal or geographical limitation.

(b) Sellers and Buyer hereby agree that the Confidentiality Agreement, dated April 20, 2011, between Graceway Pharmaceuticals, LLC and Galderma Pharma S.A. shall terminate, and no party shall have any further obligations thereunder, effective concurrently with the Closing.

Section 8.10 Nycomed Litigation. After the Closing Date, if Buyer receives any proceeds, judgments, payments, expense reimbursements, property or rights (without regard to how any such items are characterized by a court, arbitrator, agreement or the parties to the

Nycomed Litigation and specifically including, but not limited, to rights to future royalties or revenue streams, license or cross-licensing rights, marketing rights, services, or any other rights the value of which can be reasonably ascertained or estimated) relating to or arising from the final resolution of all or any portion of the Nycomed Litigation, the value of such proceeds, judgments, payments, expense reimbursements, property or rights (the "Nycomed Award Amount"), such Nycomed Award Amount shall be distributed as follows:

(a) first, any such proceeds up to an aggregate amount of $3 million shall be transferred to Sellers in cash by wire transfer of immediately available funds;

(b) second, Buyer shall retain any additional proceeds up to the amount of reasonable, documented out-of-pocket costs, fees and expenses incurred by Buyer and its Affiliates in connection with the Nycomed Litigation;

(c) third, Buyer shall transfer any additional proceeds to Sellers, in cash by wire transfer of immediately available funds, up to an amount, when taken together with the $3 million of proceeds transferred to Sellers pursuant to Section 8.10(a), that equals the amount of reasonable, documented out-of-pocket costs, fees and expenses incurred by Sellers prior to the Closing in connection with the Nycomed Litigation (which shall in no event exceed $9,000,000); and

(d) fourth, Buyer shall (i) retain 50% of any additional proceeds and (ii) transfer the remaining 50% of such proceeds to Sellers in cash by wire transfer of immediately available funds.

Within ten (10) Business Days after indefeasible receipt by Buyer of any funds constituting Sellers' portion of the Nycomed Award Amount, Buyers shall pay to US Sellers in cash by wire transfer of immediately available funds an amount equal to the amount apportioned to Sellers above (or the applicable portion thereof). To the extent all or any portion of the Nycomed Award Amount may be payable to Buyers in future increments. Buyers and Sellers shall negotiate in good faith appropriate arrangements for the payment to Sellers of Sellers' portion of such delayed payments either (x) over time as such amounts are received by Buyers or (y) as a single lump sum of the agreed net present value of such payment streams. For the avoidance of doubt, Buyer shall have full control over the defense of the Nycomed Litigation and any decisions related thereto, including any potential settlements, and Sellers shall cooperate with Buyer in connection with such defense. On and after the Closing Date, Buyers shall keep Sellers informed of any material developments in the Nycomed Litigation including any settlement offers and acceptances. Buyer shall provide Sellers reasonably detailed information, including copies of any related settlement agreement or license agreement as well as supporting documents and materials, related to any resolution (whether or not appealable) of the matters related to the Nycomed Litigation, and Buyer shall allow Sellers reasonable access to employees and outside counsel of Buyer to resolve any questions or ambiguities related to such information.

Section 8.11 Acquired Assets "AS IS"; Buyer's Acknowledgment Regarding Same. Buyer agrees, warrants and represents that (a) Buyer is purchasing the Acquired Assets on an "AS IS" and "WITH ALL FAULTS" basis based solely on Buyer's own investigation of the Acquired Assets and (b) except as set forth in this Agreement, neither Sellers nor any

Representative of Sellers have made any warranties, representations or guarantees, express, implied or statutory, written or oral, respecting the Acquired Assets, any part of the Acquired Assets, the financial performance of the Acquired Assets or the Business, or the physical condition of the Acquired Assets. Buyer further acknowledges that the consideration for the Acquired Assets specified in this Agreement has been agreed upon by Sellers and Buyer after good-faith arms-length negotiation in light of Buyer's agreement to purchase the Acquired Assets "AS IS" and "WITH ALL FAULTS." Buyer agrees, warrants and represents that, except as set forth in this Agreement, Buyer has relied, and shall rely, solely upon its own investigation of all such matters, and that Buyer assumes all risks with respect thereto. EXCEPT AS SET FORTH IN THIS AGREEMENT, SELLERS HEREBY DISCLAIM ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, PROJECTION, FORECAST, STATEMENT, OR INFORMATION MADE, COMMUNICATED, OR FURNISHED (ORALLY OR IN WRITING) TO BUYER OR ITS AFFILIATES OR REPRESENTATIVES (INCLUDING ANY OPINION, INFORMATION, PROJECTION, OR ADVICE THAT MAY HAVE BEEN OR MAY BE PROVIDED TO BUYER BY ANY DIRECTOR, OFFICER, MANAGER, EMPLOYEE, AGENT, CONSULTANT, OR REPRESENTATIVE OF SELLERS OR ANY OF THEIR AFFILIATES). EXCEPT AS SET FORTH IN THIS AGREEMENT, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES TO BUYER REGARDING THE PROBABLE SUCCESS, PROFITABILITY OR VALUE OF ANY OF THE PURCHASED ASSETS.

ARTICLE IX
CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER TO CLOSE

The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

Section 9.1 Accuracy of Representations. The representations and warranties of Sellers contained in Article V shall be true and correct as of the Closing Date as though made on and as of the Closing Date (except that those representations and warranties which address matters only as of a particular date need only be true and correct as of such date); *provided, however*, that the condition in this Section 9.1 shall be deemed to be satisfied so long as any failure of such representations and warranties to be true and correct (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein), individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect. Buyer shall have received a certificate of Sellers, signed by a duly authorized officer of Sellers, to that effect.

Section 9.2 Sellers' Performance. Sellers shall have performed and complied with in all material respects the covenants and agreements that Sellers are required to perform or comply with pursuant to this Agreement at or prior to the Closing, and Buyer shall have received a certificate of Sellers to such effect signed by a duly authorized officer thereof.

Section 9.3 No Order. No Governmental Authority shall have enacted, issued, promulgated or entered any Order which is in effect and has the effect of making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement (a

"Closing Legal Impediment"); *provided, however*, that prior to asserting this condition Buyer shall have taken all actions required by Section 7.3, subject to the last sentence of Section 7.3(c), to prevent the occurrence or entry of any such Closing Legal Impediment and to remove or appeal as promptly as possible any such Closing Legal Impediment.

Section 9.4 Governmental Authorizations. Any applicable waiting period under the HSR Act and any other material waiting period under any applicable antitrust or competition Law shall have expired or been terminated and any other material approval under any applicable antitrust or competition Law shall have been received.

Section 9.5 Sellers' Deliveries. Each of the deliveries required to be made to Buyer pursuant to Section 4.3 shall have been so delivered.

Section 9.6 Sale Order. The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall be a Final Order.

Section 9.7 Canadian Sale and Vesting Order. The Canadian Court shall have entered the Canadian Sale and Vesting Order and the Canadian Sale and Vesting Order shall be a Final Order.

ARTICLE X
CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLERS TO CLOSE

Sellers' obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

Section 10.1 Accuracy of Representations. The representations and warranties of Buyer contained in this Agreement shall be true and correct as of the Closing Date as though made on and as of the Closing Date (except that those representations and warranties which address matters only as of a particular date need only be true and correct as of such date); *provided, however*, that the condition in this Section 10.1 shall be deemed to be satisfied so long as any failure of such representations and warranties to be true and correct (without giving effect to any limitation as to "materiality" or "material adverse effect" set forth therein), individually or in the aggregate, has not had and would not reasonably be expected to prevent or materially impair the ability of Buyer to consummate the transactions contemplated by this Agreement. Sellers shall have received a certificate of Buyer, signed by a duly authorized officer of Buyer, to that effect.

Section 10.2 Sale Order in Effect. The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall be a Final Order.

Section 10.3 Canadian Sale and Vesting Order. The Canadian Court shall have entered the Canadian Sale and Vesting Order and the Canadian Sale and Vesting Order shall be a Final Order.

Section 10.4 Buyer's Performance. Buyer shall have performed and complied with in all material respects the material covenants and agreements that Buyer is required to perform or

comply with pursuant to this Agreement at or prior to the Closing, and Sellers shall have received a certificate of Buyer to such effect signed by a duly authorized officer thereof.

Section 10.5 No Order. No Closing Legal Impediment shall be in effect.

Section 10.6 Governmental Authorizations. Any applicable waiting period under the HSR Act and any other material waiting period under any applicable antitrust or competition Law shall have expired or been terminated and any other material approval under any applicable antitrust or competition Law shall have been received.

Section 10.7 Buyer's Deliveries. Each of the deliveries required to be made to Sellers pursuant to Section 4.2 shall have been so delivered.

ARTICLE XI
TERMINATION

Section 11.1 Termination Events. Anything contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated at any time prior to the Closing Date:

(a) by either Sellers or Buyer:

(i) if the Bankruptcy Court declines to approve this Agreement for any reason, if the Canadian Court fails to enter the Canadian Sale and Vesting Order or if a Governmental Authority issues a final, non-appealable ruling or Order permanently prohibiting the transactions contemplated hereby, *provided, however*, that the right to terminate this Agreement pursuant to this Section 11.1(a)(i) shall not be available to any party whose breach of any of its representations, warranties, covenants or agreements contained herein results in such ruling or Order;

(ii) by mutual written consent of Sellers and Buyer;

(iii) if the Closing shall not have occurred by the close of business on January 27, 2012 (the "Outside Date"); *provided, however*, that (A) Buyer shall be permitted to terminate this Agreement pursuant to this Section 11.1(a)(iii) only if (x) Buyer is not in breach of any of its representations, warranties, covenants or agreements contained herein in such a way that would result in the failure of a condition set forth in Section 10.1 or Section 10.4 to be satisfied and (y) Buyer has provided written notice to Sellers of its intention to exercise its rights under this Section 11.1(a)(iii) and Sellers have not taken all actions necessary to close the transactions contemplated by this Agreement on or before the date that is five (5) Business Days after the date of such notice from Buyer, and (B) Sellers shall be permitted to terminate this Agreement pursuant to this Section 11.1(a)(iii) only if (x) Sellers are not themselves in breach of any of their representations, warranties, covenants or agreements contained herein in such a way that would result in the failure of a condition set forth in Section 9.1 or Section 9.2 to be satisfied and (y) Sellers have provided written notice to Buyer of their intention to

exercise their rights under this Section 11.1(a)(iii) and Buyer has not taken all actions necessary to close the transactions contemplated by this Agreement on or before the date that is five (5) Business Days after the date of such notice from Sellers; or

(iv) if Sellers file any stand-alone plan of reorganization or liquidation (or announce support of any such plan filed by any other party) or consummate an Alternative Transaction;

(b) by Buyer:

(i) in the event of any breach by any Seller of any of its agreements, covenants, representations or warranties contained herein (*provided* such breach would result in the failure of a condition set forth in Section 9.1 or Section 9.2 to be satisfied), and the failure of Sellers to cure such breach by the earlier of (A) the Outside Date and (B) the date that is thirty (30) days after receipt of the Buyer Termination Notice; *provided, however*, that (1) Buyer is not in material breach of any of its representations, warranties, covenants or agreements contained herein or in the Bidding Procedures Order or the Sale Order, (2) Buyer notifies Sellers in writing (the "Buyer Termination Notice") of its intention to exercise its rights under this Section 11.1(b)(i) as a result of the breach, and (3) Buyer specifies in the Buyer Termination Notice the representation, warranty, covenant or agreement contained herein of which Sellers are allegedly in breach; or

(ii) if the Bankruptcy Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code and neither such dismissal nor conversion expressly contemplates the transactions provided for in this Agreement;

(iii) if Buyer is not the Successful Bidder at the Auction, except that if Buyer is designated as the second highest bidder, then upon the earlier of the consummation of the transaction with the Successful Bidder and 30 days after the conclusion of the Sale Hearing;

(iv) if the Bidding Procedures Order has not been entered on or before forty-five (45) days after the date hereof (or is vacated or stayed as of such date); or

(v) if the Sale Order has not been entered on or before January 2, 2012 (or is vacated or stayed as of such date).

(c) by Sellers:

(i) in the event of any breach by Buyer of any of its agreements, covenants, representations or warranties contained herein (*provided* such breach would result in the failure of a condition set forth in Section 10.1 or Section 10.4 to be satisfied), and the failure of Buyer to cure such breach by the earlier of (A) the Outside Date and (B) the date that is thirty (30) days after receipt of the Sellers Termination Notice; *provided, however*, that Sellers (1) are not themselves

in material breach of any of their representations, warranties, covenants or agreements contained herein or in the Bidding Procedures Order or the Sale Order, (2) with concurrence of the Receiver, notify Buyer in writing (the "Sellers Termination Notice") of their intention to exercise their rights under this Section 11.1(c) as a result of the breach, and (3) specify in the Sellers Termination Notice the representation, warranty, covenant or agreement contained herein of which Buyer is allegedly in breach;

(ii) if Buyer is not the Successful Bidder at the Auction; or

(iii) if Sellers enter into (or provide written notice to Buyer of their intent to enter into) one or more agreements to sell, transfer or otherwise dispose of any portion of the Acquired Assets in a transaction or series of transactions with one or more Persons other than Buyer in accordance with the Bidding Procedures.

For the avoidance of doubt, the Parties acknowledge and agree, that in the event that Sellers determine, in their reasonable discretion, that the last Overbid (as defined in the Bidding Procedures) submitted by Buyer is better than all other Qualified Bids (as defined in the Bidding Procedures) as such Qualified Bids may be amended by an Overbid submitted at the Auction, then within two (2) Business Days following the conclusion of the Auction, Sellers and Buyer shall enter into an amendment to this Agreement to reflect Buyer's last Overbid; it being acknowledged and agreed that this Agreement shall not be deemed to have terminated by virtue of Buyer's having submitted the winning bid at the Auction.

Section 11.2 Effect of Termination.

(a) In the event of a termination of this Agreement pursuant to Section 11.1(c)(i), the Escrow Agent shall, within two (2) Business Days after receiving joint notice of the Buyer Default Termination from Sellers and Buyer, disburse the Deposit to an account designated by Sellers by wire transfer of immediately available funds to be retained by Sellers for their own account; *provided* that disbursement of the Deposit shall not constitute liquidated damages or otherwise limit Sellers' remedies against Buyer in any respect of any claim against Buyer arising under this Agreement or otherwise (except that any damages that may be awarded against Buyer by any court shall be reduced by the amount of the Deposit). Sellers acknowledge and agree that, in such event, the Deposit shall be allocated among US Sellers and Canadian Seller on the same basis as contemplated by clause (i) of Section 3.5.

(b) In the event of a termination of this Agreement pursuant to this Article XI (other than a termination of this Agreement pursuant to Section 11.1(c)(i)), Sellers and Buyer shall instruct the Escrow Agent to, and the Escrow Agent shall, promptly (but in any event within two (2) Business Days of such instruction) return to Buyer the Deposit by wire transfer of immediately available funds and the return thereof shall, except as specified in Section 11.2(c), below, constitute the sole and exclusive remedy of Buyer in the event of a termination hereunder.

(c) If the Bidding Procedures Order has been entered and this Agreement is terminated in the circumstances set forth in Section 7.6(a) or Section 7.6(b), then Sellers, jointly

and severally, shall pay to Buyer the Break-Up Fee or the Expense Reimbursement Amount in accordance with Section 7.6, as applicable. The Break-Up Fee and the Expense Reimbursement Amount are in the nature of liquidated damages and shall, except as specified in Section 11.2(b), constitute the sole and exclusive remedy of Buyer in the event of a termination hereunder.

ARTICLE XII
GENERAL PROVISIONS

Section 12.1 Public Announcements. The initial press release relating to this Agreement shall be a joint press release, the text of which shall be agreed to by Buyer, on the one hand, and Sellers, on the other hand. Buyer, on the one hand, and Sellers, on the other hand, shall consult with each other before issuing any other press release or otherwise making any public statement with respect to this Agreement, the transactions contemplated hereby or the activities and operations of the other and shall not issue any such release or make any such statement without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

Section 12.2 Notices. All notices, consents, waivers and other communications under this Agreement must be in writing and shall be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by facsimile (with written confirmation of receipt), (c) received by the addressee, if sent by a delivery service (prepaid, receipt requested) or (d) received by the addressee, if sent by registered or certified mail (postage prepaid, return receipt requested), in each case to the appropriate addresses, representatives (if applicable) and facsimile numbers set forth below (or to such other addresses, representatives and facsimile numbers as a Party may designate by notice to the other Parties):

(a) If to Sellers, then to:

Graceway Pharmaceuticals, LLC
340 Martin Luther King Jr. Blvd., Suite 500
Bristol, Tennessee 37620
Attn: John A. A. Bellamy
Facsimile: 423-274-5520

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

Latham & Watkins LLP
233 South Wacker Drive, Suite 5800
Chicago, Illinois 60606
Attn: Josef Athanas and Zachary Judd
Facsimile: 312-993-9767

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

Goodmans LLP
333 Bay St., Suite 3400
Toronto, Ontario
Attn: Joseph Latham and Cristina Alaimo

Facsimile: 416-979-1234

(b) If to Buyer:

Galderma S.A.
c/o Galderma Laboratories, L.P.
14501 North Freeway
Fort Worth, TX 76177
Attn: General Counsel
Facsimile: (817) 961-0034

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

Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022
Attn: Kevin Rinker and My Chi To
Facsimile: (212) 909-6836

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

Bennett Jones LLP
1 First Canadian Place, Suite 3400
P.O. Box 130
Toronto, Ontario M5X 1A4
Attn: Kevin Zych and Mark Laugesen
Facsimile: (416) 863-1716

(c) After the appointment of the Receiver, all notices to Canadian Seller shall also be copied to:

RSM Richter Inc.
200 King Street West, Suite 1100
Toronto, Ontario M5H 3T4
Attn: Robert Kofman
Facsimile: (416) 932-6200

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

Davies, Ward, Phillips & Vineberg LLP
1 First Canadian Place, 44th Floor
Toronto, Ontario M5X 1B1
Attn: Jay Swartz
Facsimile: (416) 863-0871

Section 12.3 Waiver. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement shall operate as a waiver of such right, power or privilege, and no single or partial exercise of

any such right, power, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given, and (b) no notice to or demand on one Party shall be deemed to be a waiver of any right of the Party giving such notice or demand to take further action without notice or demand.

Section 12.4 Entire Agreement; Amendment. This Agreement (including the Schedules and the Exhibits) and the other Transaction Documents supersede all prior agreements between Buyer, on the one hand, and Sellers, on the other hand, with respect to its subject matter and constitute a complete and exclusive statement of the terms of the agreements between Buyer, on the one hand, and Sellers, on the other hand, with respect to their subject matter. This Agreement may not be amended except by a written agreement executed by all of the Parties.

Section 12.5 Assignment. This Agreement, and the rights, interests and obligations hereunder, shall not be assigned by any Party by operation of law or otherwise without the express written consent of the other Parties (which consent may be granted or withheld in the sole discretion of such other Party); *provided, however*, that Buyer shall be permitted, upon prior notice to Sellers, to assign all or part of its rights or obligations hereunder to an Affiliate, but no such assignment shall relieve Buyer of its obligations under this Agreement, and Sellers shall be permitted to assign all or part of their rights or obligations hereunder pursuant to a plan of reorganization or liquidation approved by the Bankruptcy Court.

Section 12.6 Severability. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability.

Section 12.7 Expenses. Whether or not the transactions contemplated by this Agreement are consummated, the Parties shall bear their own respective expenses (including all compensation and expenses of counsel, financial advisors, consultants, actuaries and independent accountants) incurred in connection with this Agreement and the transactions contemplated hereby (except as otherwise specified herein).

Section 12.8 Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code or the provisions of the CJA or other Laws applicable in the Canadian Proceedings apply, this Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to Contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of Delaware applicable hereto.

(b) Without limitation of any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby (except for such matters as must be dealt with by the Canadian Court in the Canadian Proceedings) and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding; *provided, however*, that, if the Bankruptcy Case is closed, all Proceedings arising out of or relating to this Agreement shall be heard and determined in a Delaware state court or a federal court sitting in the State of Delaware, and the Parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding. The Parties consent to service of process by mail (in accordance with Section 12.2) or any other manner permitted by law.

(c) THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF SELLERS OR BUYER OR THEIR RESPECTIVE REPRESENTATIVES IN THE NEGOTIATION OR PERFORMANCE HEREOF.

Section 12.9 Counterparts. This Agreement and any amendment hereto may be executed in one or more counterparts, each of which shall be deemed to be an original of this Agreement or such amendment and all of which, when taken together, shall be deemed to constitute one and the same instrument. Notwithstanding anything to the contrary in Section 12.2, delivery of an executed counterpart of a signature page to this Agreement or any amendment hereto by telecopier, facsimile or email attachment shall be effective as delivery of a manually executed counterpart of this Agreement or such amendment, as applicable.

Section 12.10 Parties in Interest; No Third Party Beneficiaries. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

Section 12.11 Non-Recourse. No past, present or future director, manager, officer, employee, incorporator, member, unitholder, partner or equityholder of any Seller shall have any liability for any obligations or liabilities of Sellers under this Agreement or any other Transaction Document, for any claim based on, in respect of, or by reason of the transactions contemplated hereby and thereby, and Buyer hereby covenants, on behalf of itself and its Affiliates, not to sue any past, present or future director, manager, officer, employee, incorporator, member, unitholder, partner or equityholder of any Seller for any such claim.

Section 12.12 Schedules; Materiality. The inclusion of any matter in any Schedule shall be deemed to be an inclusion for all purposes of this Agreement, to the extent that such

disclosure is sufficient to identify the Section to which such disclosure is responsive, but inclusion therein shall not be deemed to constitute an admission, or otherwise imply, that any such matter is material or creates a measure for materiality for purposes of this Agreement. The disclosure of any particular fact or item in any Schedule shall not be deemed an admission as to whether the fact or item is "material" or would constitute a "Material Adverse Effect."

Section 12.13 Specific Performance. The Parties acknowledge and agree that (a) irreparable injury, for which monetary damages, even if available, would not be an adequate remedy, will occur in the event that any of the provisions of this Agreement are not performed in accordance with the specific terms hereof or are otherwise breached, and (b) the non-breaching Party or Parties shall therefore be entitled, in addition to any other remedies that may be available, to obtain (without the posting of any bond) specific performance of the terms of this Agreement. If any Proceeding is brought by the non-breaching Party or Parties to enforce this Agreement, the Party in breach shall waive the defense that there is an adequate remedy at law.

Section 12.14 Survival. All covenants and agreements contained herein which by their terms are to be performed in whole or in part, or which prohibit actions, subsequent to the Closing shall survive the Closing in accordance with their terms. All other covenants and agreements contained herein, and all representations and warranties contained herein or in any certificated deliveries hereunder, shall not survive the Closing and shall thereupon terminate.

Section 12.15 Prepetition Claims and Liabilities. Notwithstanding anything contained herein to the contrary, and taking into account US Sellers' status as debtors-in-possession in the Bankruptcy Cases and the limitations set forth in the Bankruptcy Code (including, without limitation, with respect the payment of prepetition claims (including, without limitation, prepetition claims on account of Rebates, returns, Chargebacks or coupons)), US Seller shall not be required to pay or otherwise satisfy any prepetition claims or liabilities (other than (i) Sellers' obligations to pay Cure Costs to the extent required by this Agreement, (ii) Sellers' obligations to pay any fees due to any regulatory authority in the Ordinary Course of Business in accordance with Section 7.2(a), except, for the avoidance of doubt, those related to any Rebates, returns, Chargebacks or coupons, (iii) Sellers' obligations under Section 7.2(b)(iii) to pay any Governmental Authority with respect to the prosecution and maintenance of applicable Material Business Intellectual Property, and (iv) Sellers' obligations to Buyer under Sections 3.2, 11.2(b) and 11.2(c) of this Agreement) and none of Sellers' covenants or obligations hereunder shall be construed, directly or indirectly, to require such payment or satisfaction.

Section 12.16 Receiver. For greater certainty, nothing herein or in any bill of sale or similar document shall constitute an express or implied representation or warranty by the Receiver or shall create any liability or obligation for the Receiver.

[*Signature pages follow.*]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives, all as of the Effective Date.

GRACEWAY PHARMACEUTICALS, LLC

By: _____
Jefferson J. Gregory
Chief Executive Officer

GRACEWAY CANADA HOLDINGS, INC.

By: _____
Jefferson J. Gregory
Chief Executive Officer

GRACEWAY CANADA COMPANY

By: _____
Jefferson J. Gregory
Chief Executive Officer

GRACEWAY INTERNATIONAL, INC.

By: _____
Jefferson J. Gregory
Chief Executive Officer

CHESTER VALLEY HOLDINGS, LLC

By: _____
Jefferson J. Gregory
Chief Executive Officer

CHESTER VALLEY PHARMACEUTICALS, LLC

By: _____
Jefferson J. Gregory
Chief Executive Officer

GALDERMA S.A.

By: _____

Name: Humberto C. Antunes

Title: President & Chief Executive Officer

[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]

Annex A

Subsidiary Sellers

Graceway Canada Holdings, Inc.
Graceway International, Inc.
Chester Valley Holdings, LLC
Chester Valley Pharmaceuticals, LLC

Disclosure Schedules

[Intentionally omitted; available upon request]

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: GRACEWAY PHARMACEUTICALS, LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 11-_____ (____) Jointly Administered **Related Docket No. [____]**

ORDER APPROVING AND AUTHORIZING (A) BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF CERTAIN ASSETS OF THE DEBTORS, (B) STALKING HORSE BID PROTECTIONS, (C) FORM AND MANNER OF NOTICE OF THE SALE HEARING AND (D) RELATED RELIEF

Upon the portion of the motion (the "**Motion**")[2] of Graceway Pharamaceuticals, LLC and its affiliates, as debtors and debtors-in-possession (collectively, the "**Debtors**"), for entry of an order approving and authorizing (a) bidding procedures, including stalking horse bidder protections, in connection with the receipt and analysis of competing bids for certain assets of the Debtors, (b) procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale, (c) the form and manner of notice of the Sale and scheduling the sale hearing and setting related dates and deadlines, and (d) other related relief, pursuant to sections 105(a), 363, 365, 503(b), 507 and, if applicable, 1146(a) of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 6004, 6006 and 9014 of the Federal Rules of

1 The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).

2 All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Motion.

Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rules 2002-1, 6004-1 and 9006-1(b) of the Local Bankruptcy Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"); and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and a hearing having been held on ____ __, 2011 (the "**Bidding Procedures Hearing**"); and this Court having reviewed the Motion and the exhibits thereto and the arguments of counsel made and the evidence proffered or adduced, as applicable, at the Bidding Procedures Hearing; and this Court having determined that the legal and factual bases set forth in the Motion and at the Bidding Procedures Hearing establish just cause for the relief granted herein; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and this Court having found the form and manner of notice of the Bidding Procedures Hearing is good, sufficient and appropriate under the circumstances and that no other or further notice need be provided or is necessary; and after due deliberation and sufficient cause appearing therefor, this Court FINDS AND DETERMINES THAT:[3]

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3 The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

A. Bidding Procedures. The Debtors have articulated good and sufficient reasons for authorizing and approving the Bidding Procedures attached as **Exhibit 1** hereto (the "**Bidding Procedures**"), which are fair, reasonable and appropriate under the circumstances and represent the best method for maximizing the recovery on, and realizable value of, the Acquired Assets.

B. Stalking Horse Bid Protections. The Debtors have demonstrated a compelling and sound business justification for authorizing the payment of the Break-Up Fee and the Expense Reimbursement Amount and establishing the Initial Minimum Overbid Increment (collectively, the "**Bid Protections**") to the Stalking Horse Bidder under the circumstances, including, without limitation, that:

i. the Bid Protections are the product of negotiations among the Debtors and the Stalking Horse Bidder conducted in good faith and at arm's-length, and the APA (including the Bid Protections) is the culmination of a process undertaken by the Debtors and their professionals to negotiate a transaction with a bidder who was prepared to pay the highest or otherwise best purchase price to date for the Acquired Assets in order to maximize the value of the Debtors' estates;

ii. the Break-Up Fee and the Expense Reimbursement Amount are an actual and necessary cost and expense of preserving the respective Debtors' estates, within the meaning of Sections 503(b) and 507(a)(2) of the Bankruptcy Code;

iii. the Bid Protections are fair, reasonable and appropriate in light of, among other things, the size and nature of the proposed Sale under the APA and comparable transactions, the substantial efforts that have been and will be expended by the Stalking Horse Bidder, notwithstanding that the proposed Sale is subject to higher or better offers, and the substantial benefits the Stalking Horse Bidder has provided to the Debtors, their estates and creditors and all parties in interest herein, including, among other things, by increasing the likelihood that the best possible price for the Acquired Assets will be received;

iv. the protections afforded to the Stalking Horse Bidder by way of the Bid Protections were material inducements for, and express conditions of, the Stalking Horse Bidder's willingness to enter into, and to continue to be bound by, the APA, and were necessary to ensure that the Stalking Horse

Bidder would continue to pursue the proposed acquisition on terms acceptable to the Debtors in their sound business judgment, subject to competitive bidding; and

v. the assurance of the payment of the Break-Up Fee and/or the Expense Reimbursement Amount, as applicable, (I) has promoted more competitive bidding by inducing the Stalking Horse Bidder's bid, which otherwise would not have been made, without which competitive bidding would be limited, and which may be the highest and best available offer for the Acquired Assets, and has induced the Stalking Horse Bidder to conduct due diligence with respect to the Debtors' business, assets, operations and liabilities, and propose the Sale contemplated by the APA, including, among other things, submission of a bid that will serve as a minimum or floor bid on which all other bidders can rely and (II) increases the likelihood that the final purchase price reflects the true value of the Acquired Assets.

C. Assumption Procedures. The Motion, this Order, and the Contract Notice are reasonably calculated to provide counterparties to the Assumed Contracts with proper notice of the intended assumption and assignment of their executory contracts or unexpired leases, any Cure Amounts relating thereto and the Assumption and Assignment Procedures.

D. Sale Notice. The Sale Notice is reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale, including, without limitation: (i) the date, time and place of the Auction (if one is held); (ii) the Bidding Procedures and the dates and deadlines related thereto; (iii) the objection deadline for the sale motion and the date, time and place of the Sale Hearing; (iv) reasonably specific identification of the Acquired Assets; (v) instructions for promptly obtaining a copy of the APA; (vi) representations describing the Sale as being free and clear of liens, claims, interests and other encumbrances, with all such liens, claims, interests and other encumbrances attaching with the same validity and priority to the sale proceeds; (vi) the commitment by the Stalking Horse Bidder to assume certain liabilities of the Debtors; and (vii) notice of the proposed assumption and assignment of contracts and leases to the Stalking Horse Bidder pursuant to the APA (or to another Successful Bidder arising

from the Auction, if any), the proposed cure amounts relating thereto and the right, procedures and deadlines for objecting thereto, and no other or further notice of the Sale shall be required.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is granted to the extent set forth herein.

2. All objections to the relief requested in the Motion that have not been withdrawn, waived or settled as announced to the Court at the hearing on the Motion or by stipulation filed with the Court, are overruled.

I. Important Dates and Deadlines

3. **Sale Hearing**. _____ __, 2011, at _:00 _.m. prevailing Eastern Time, is the date and time the sale hearing (the "**Sale Hearing**") will be held before the Honorable Judge [_____], United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at: 824 North Market Street, [__] Floor, Wilmington, Delaware 19801. At the Sale Hearing, the Debtors will seek the entry of an order of this Court approving and authorizing the Sale to the Stalking Horse Bidder or the Successful Bidder (if other than the Stalking Horse Bidder), as applicable. Any obligations of the Debtors set forth in the APA that are intended to be performed prior to the Sale Hearing and/or entry of the Sale Order pursuant to the APA are authorized as set forth herein and are fully enforceable as of the date of entry of this Order. **Please take notice that:** the Sale Hearing (or any portion thereof) may be adjourned by this Court or the Debtors from time to time without further notice other than by announcement in open court, on this Court's calendar or through the filing of a notice or other document on this Court's docket.

4. **Sale Objection Deadline**. _____ __, 2011 at 4:00 p.m. prevailing Eastern Time, is the deadline to object to the relief requested in the Motion, including entry of the proposed Sale Order (the "**Sale Objection Deadline**"). Objections, if any, **must**: (i) be in writing;

(ii) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (iv) be filed with this Court and served so *actually received* no later than the Sale Objection Deadline by (A) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002 and (B) the following parties (the "**Notice Parties**"):

Debtors	**Counsel to Debtors**
Graceway Pharmaceuticals, LLC 340 Martin Luther King Jr. Blvd. Suite 500 Bristol, Tennessee 37620 Attn: John Bellamy	Latham & Watkins LLP 233 South Wacker Drive Chicago, IL 60606 Attn: Josef S. Athanas, Esq. and Matthew L. Warren, Esq. Young Conaway Stargatt & Taylor, LLP 1000 West Street, 17th Floor Wilmington, Delaware 19801 Attn: Michael R. Nestor, Esq. and Kara Hammond Coyle, Esq.
Special Bankruptcy and Restructuring Counsel to the Agent for the First Lien Lenders	**United States Trustee**
Wachtell, Lipton, Rosen & Katz 51 West 52nd Street New York, NY 10019 Attn: Scott K. Charles, Esq. and Michael S. Benn, Esq. DLA Piper LLP 919 North Market Street, 15th Floor Suite 1500 Wilmington, DE 19801 Attn: Stuart M. Brown, Esq.	Office of the United States Trustee for the District of Delaware 844 King Street J. Caleb Boggs Federal Building Room 2207, Lockbox 35 Wilmington, DE 19801 Attn: [_____]
Financing Counsel to the Agent for the First Lien Lenders	**Counsel to the Creditors' Committee**
Morgan Lewis 225 Franklin Street, 16th Floor Boston, Massachusetts 02110 Attn: Sula Fiszman, Esq.	
Counsel to the Agent for the Second Lien Lenders	**Counsel to the Stalking Horse Bidder**
Sidley Austin LLP One South Dearborn, Chicago, IL 60603 Attn: Larry Nyhan, Esq.	Debevoise & Plimpton LLP 919 Third Avenue New York, NY 10022 Attn: My Chi To, Esq. and Kevin A. Rinker, Esq. Morris, Nichols, Arsht & Tunnell LLP 1201 North Market Street, 18th Floor Wilmington, DE 19801 Attn: Gregory W. Werkheiser, Esq.

Notwithstanding anything to the contrary in this paragraph 4, the Sale Objection Deadline may be extended by the Debtors in consultation with the Stalking Horse Bidder.

5. **The failure to timely file an objection in accordance with this Order shall forever bar the assertion of any objection to the Motion, entry of the Sale Order and/or consummation of the Sale, including the assumption and assignment of contracts and leases to the Successful Bidder pursuant to the APA, and shall be deemed to constitute any such party's consent to entry of the Sale Order and consummation of the Sale and all transactions related thereto.**

6. **Reply Deadline.** _____ __, 2011 at 4:00 p.m. prevailing Eastern Time, is the deadline for the Debtors, the Stalking Horse Bidder and other parties in interest to file replies to any timely-filed objection to entry of the Sale Order with this Court; *provided*, that such deadline may be extended by agreement of the Debtors and the affected objecting party.

7. **Competitive Bidding**. The following dates and deadlines regarding competitive bidding are hereby established (subject to modification as needed):

a. **Bid Deadline**: _____ __, 2011 at _:00 _.m. prevailing Eastern Time, is the deadline by which all "Qualified Bids" (as defined in the Bidding Procedures) must be *actually received* by the parties specified in the Bidding Procedures (the "**Bid Deadline**"); and

b. **Auction**: _____ __, 2011 at _:00 _.m. prevailing Eastern Time, is the date and time of the Auction, if one is needed, will be held at the offices of counsel to the Debtors: Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022-4834.

II. Bidding Procedures and Related Relief

A. Bidding Procedures

8. The Bidding Procedures, substantially in the form annexed hereto as **Exhibit 1** and incorporated by reference as though fully set forth herein, are hereby approved in their

entirety. The Bidding Procedures shall govern the submission, receipt and analysis of all bids relating to the proposed Sale, and any party desiring to submit a higher or better offer for the Acquired Assets shall do so strictly in accordance with the terms of the Bidding Procedures and this Order. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.

9. The Bid Protections described in the Motion are hereby approved. The Debtors are authorized to pay any and all amounts owing to the Stalking Horse Bidder in accordance with the terms of the APA, including the Break-Up Fee and the Expense Reimbursement Amount, without further order of this Court, except as otherwise provided herein. The Debtors' obligation to pay the Bid Protections to the Stalking Horse Bidder shall constitute an administrative expense claim in accordance with Sections 105(a), 503 and 507 of the Bankruptcy Code, senior to all other superpriority administrative expense claims in the Debtors' Bankruptcy Cases.

10. No person or entity other than the Stalking Horse Bidder shall, pursuant to the Bidding Procedures or otherwise, be entitled to any expense reimbursement, break-up fees, "topping," termination or other similar fee or payment in connection with the sale of the Acquired Assets pursuant to the terms of this Order.

11. As described in the Bidding Procedures, if the Debtors do not receive any Qualified Bids other than from the Stalking Horse Bidder or if no Qualified Bidder other than the Stalking Horse Bidder indicates its intent to participate in the Auction, the Debtors will not hold the Auction, the Stalking Horse Bidder will be named the Successful Bidder and the Debtors will seek approval of the APA at the Sale Hearing. If one or more Qualified Bids is timely received from a Qualified Bidder (other than the Stalking Horse Bidder) in accordance with the Bidding Procedures, the Debtors shall conduct the Auction as set forth herein.

12. If the Auction is conducted, each Qualified Bidder participating in the Auction shall be required to confirm that it has not engaged in any collusion with respect to the bidding process or the Sale, the Auction will be conducted openly and the Auction shall be transcribed or videotaped.

III. Assumption Procedures

13. The following procedures regarding the assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale are hereby approved to the extent set forth herein, and shall govern the assumption and assignment of all executory contracts and unexpired leases proposed to be assumed by the Debtors pursuant to Section 365(b) of the Bankruptcy Code and assigned to the Stalking Horse Bidder (or other Successful Bidder following the Auction, if any) pursuant to Section 365(f) of the Bankruptcy Code under the APA:

c. **Designation Deadline.** On or before one day prior to the Sale Hearing, the Stalking Horse Bidder or other Successful Bidder shall have the right to (a) designate any Contract to be an Assigned Agreement by amending Schedule 1.1(a) to the APA (Assigned Agreements) to add such Contract and (b) designate any Contract to not be an Assigned Agreement by amending Schedule 1.1(a) to the APA (Assigned Agreements) to remove such Contract; provided that, following the conclusion of the Auction, the Stalking Horse Bidder or such other Successful Bidder (i) may designate any Contract to be an Assigned Agreement by amending Schedule 1.1(a) to add such Contract to Schedule 1.1(a) and (ii) may not remove any Contract that was on Schedule 1.1(a) as of the conclusion of the Auction from Schedule 1.1(a).

d. **Notices for Assigned Agreements.** As soon as practicable, the Debtors shall serve on all non-Debtor counterparties to any Contract (the "**Contract Notice Parties**") that may be assumed by the Debtors and assigned to the Successful Bidder, a "**Contract Notice**" in the form attached hereto as **Exhibit 3** that identifies, to the extent applicable (a) the Contract that may be an Assigned Agreement, (b) the name of the counterparty to such Contract, (c) any applicable cure amount for such Contract if it becomes an Assigned Agreement, and (d) the deadline by which any such Contract counterparty must file a "**Contract Objection**" to the proposed assumption and assignment; provided, however, that the

presence of a Contract on a Contract Notice does not constitute an admission that such Contract is an executory contract. As soon as practicable after the conclusion of the Auction, the Debtors shall file with the Court and serve on the Contract Notice Parties party to an Assigned Agreement identified by the Successful Bidder a further notice in the form attached hereto as **Exhibit 4** (the "**Assumption Notice**") identifying the Successful Bidder and stating which Contracts will be Assigned Agreements, and no other or further notice will be required with respect to the Assigned Agreements. If the Successful Bidder designates any additional Contracts during the period between the Auction and the day prior to the Sale Hearing pursuant to subsection (a) above, the Debtors shall file with the Court and serve on such additionally affected Contract Notice Parties a revised Assumption Notice. The Contract Notice, substantially in the form attached hereto as Exhibit 3, is hereby approved. The Assumption Notice, substantially in the form attached hereto as Exhibit 4, is hereby approved.

e. **Objections to Assumption of Contracts.** For all non-Debtor counterparties to an Assigned Agreement served a Contract Notice in accordance with this Order more than 14 days prior to the Sale Hearing, to which no Contract Objection was timely filed within 14 days after mailing of the Contract Notice, the counterparty to such Assigned Agreement shall be deemed to have waived and released any right to assert an objection to the assignment and assumption of such Assigned Agreement and to have otherwise consented to such assumption and assignment and cure amount, and the assignment will be deemed effective in accordance with the Sale Order. For all non-Debtor counterparties to an Assigned Agreement served with a Contract Notice 14 days or less prior to the Sale Hearing, if a timely filed Contract Objection is not received at or prior to the Sale Hearing, the counterparty to such Assigned Agreement shall be deemed to have waived and released any right to assert an objection to the assignment and assumption of such Assigned Agreement and to have otherwise consented to such assumption and assignment and cure amount, and the assignment will be deemed effective in accordance with the Sale Order. If any counterparty timely files a Contract Objection that cannot be resolved by the Debtors and the counterparty, the Court shall resolve such Contract Objection prior to assumption and assignment of such designated Contract, and upon entry of an order by the Court resolving such Contract Objection, the assignment shall be deemed effective in accordance with the Sale Order.

14. Any party failing to timely file a Contract Objection shall be forever barred and estopped from objecting thereto, including asserting against the Debtors or any of the Debtors' estates, the Stalking Horse Bidder or other Successful Bidder that any additional cure or default

amounts are due or conditions to assumption and assignment must be satisfied under such executory contract(s) or unexpired lease(s) and shall be deemed to consent to the Sale and the assumption and assignment of such executory contract(s) or unexpired lease(s) effectuated in connection therewith.

15. A properly filed and served Contract Objection will reserve such objecting party's rights against the Debtors with respect to the relevant cure objection, but will not constitute an objection to the remaining relief requested in the Motion.

A. Sale Hearing Notice and Related Relief

16. The Sale Notice, substantially in the form annexed hereto as **Exhibit 2**, is hereby approved. Within three (3) business days of the entry of this Order or as soon thereafter as practicable, the Debtors shall cause the Sale Notice to be served upon, without limitation, (i) the U.S. Trustee; (ii) counsel to the Committee; (iii) financing counsel to the agent for the First Lien Lenders; (iv) special bankruptcy and restructuring counsel to the agent for the First Lien Lenders; (v) local counsel to the agent for the First Lien Lenders, (vi) counsel to the agent for the Second Lien Lenders, (vii) the attorneys general for each of the States in which the Debtors conduct operations; (viii) all taxing authorities having jurisdiction over any of the Acquired Assets, including the Internal Revenue Service; (ix) the Environmental Protection Agency; (x) the Tennessee Environmental Protection Agency, (xi) the Pension Benefit Guaranty Corporation; (xii) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002; (xiii) all parties that are known or reasonably believed to have expressed an interest in acquiring all or a substantial portion of the Acquired Assets; (xiv) all parties that are known or reasonably believed to have asserted any lien, encumbrance, claim or other interest in the Acquired Assets; (xv) all governmental agencies that are an interested party with respect to

the Sale and transactions proposed thereunder; (xvi) all non-Debtor parties to the Assigned Agreements and (xvii) all other known creditors of the Debtors.

17. Within five (5) business days of the entry of this Order or as soon as practicable thereafter, the Debtors shall publish the Sale Notice once in *The Wall Street Journal*, and such publication notice shall be deemed proper notice to any other interested parties whose identities are unknown to the Debtors.

18. Compliance with the foregoing notice provisions shall constitute sufficient notice to all parties in interest, including those whose identities are unknown to the Debtors, of the Sale of the Acquired Assets, the contemplated assumption and assignment of the Assigned Agreements and the cure amounts, and no additional notice of such contemplated transactions need be given.

19. The Debtors are authorized to execute and deliver all instruments and documents, and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated by this Order.

20. The Court finds that the requirements set forth in Local Rules 6004-1 and 9013-1 are hereby satisfied or waived.

21. Notwithstanding any applicability of Bankruptcy Rule 6004(h), 6006(d), 7062 or 9014, the terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

22. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from, based upon or related to this Order.

Date: _____ ___, 2011
Wilmington, Delaware

_____
United States Bankruptcy Judge

EXHIBIT 1

Bidding Procedures

BIDDING PROCEDURES

Set forth below are the bidding procedures (the "Bidding Procedures") to be employed with respect to the potential sale (the "Sale") of certain assets (the "Assets") of Graceway Pharmaceuticals, LLC, and certain of its subsidiaries, as debtors and debtors-in-possession (collectively, the "Debtors"), in jointly administered case no. [_____] under chapter 11 of the Bankruptcy Code pending in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). Pursuant to the Bidding Procedures Order (defined below), the Bankruptcy Court has approved Galderma S.A. or its assignee(s) or designee(s) as the stalking horse bidder (the "Stalking Horse Bidder") for the Assets as set forth more fully in that certain Asset Purchase Agreement among Galderma S.A., the Debtors and Graceway Canada Company, dated as of September [__], 2011 (the "APA").

On September [__], 2011, the Debtors filed a motion pursuant to 11 U.S.C. §§ 105(A), 363, 365, 503, and 507 and Federal Bankruptcy Rules 2002, 6004, 6006, and 9014: (a) approving and authorizing (i) bidding procedures in connection with the sale of certain assets of the Debtors; (ii) stalking horse bid protections; (iii) form and manner of notice of the sale hearing and (iv) related relief; and (b) authorizing (i) the sale of such assets free and clear of all claims, liens, liabilities, rights, interests and encumbrances; (ii) the Debtors to enter into and perform their obligations under the APA; (iii) the Debtors to assume and assign certain executory contracts; and (iv) related relief. On [_____] [__], 2011 the Bankruptcy Court entered an order approving the Bidding Procedures set forth herein (the "Bidding Procedures Order"). The Bidding Procedures Order also set [_____], 2011 as the date the Bankruptcy Court will conduct the Sale Hearing (as defined below). At the Sale Hearing, the Debtors may seek entry of an order from the Bankruptcy Court authorizing and approving the Sale of the Assets to the Stalking Horse Bidder or another Qualified Bidder (as defined below) that the Debtors determine to have made the highest or best offer for the Assets.

Assets to be Sold

The Debtors are offering to sell in one or more transactions the Assets and Qualified Bidders may submit bids for all or substantially all of the Assets. The Debtors shall retain all rights to the Assets that are not subject to a bid accepted by the Debtors and approved by the Bankruptcy Court at the Sale Hearing.

Bid Deadline

All offers, solicitations, or proposals (each, a "Bid") must be submitted in writing so that they are actually **received** no later than 4:00 p.m. (Eastern Time) on **[____], 2011** (the "Bid Deadline"). Prior to the Bid Deadline, a Qualified Bidder that wants to make a Bid shall deliver written copies of its Bid to investment bankers for the Debtors, Lazard Freres & Co., LLC ("Lazard"), 190 South LaSalle Street, 31st Floor, Chicago, Illinois 60603, Attn: Daniel Aronson, Daniel.aronson@lazard.com and Sachin Lulla, sachin.lulla@lazard.com, and Lazard will promptly (and in no event later than twenty-four (24) hours of receipt) deliver such Bid to: (a) the Debtors, c/o Graceway Holdings, LLC, 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, Tennessee 37620, Attn: John Bellamy, john.bellamy@gracewaypharma.com; (b) co-counsel to the Debtors, (i) Latham & Watkins LLP, 233 South Wacker Drive, Suite 5800,

Chicago, Illinois 60606, Attn: David Heller, Josef Athanas, and Zak Judd, david.heller@lw.com, josef.athanas@lw.com, zachary.judd@lw.com; and (ii) Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17th Floor, Wilmington, Delaware 19801, Attn: Michael R. Nestor and Kara Hammond Coyle, mnestor@ycst.com and kcoyle@ycst.com; (c) co-counsel to the Stalking Horse Bidder, (i) Debevoise & Plimpton LLP, 919 Third Avenue, New York, New York 10022, Attn: Kevin Rinker and My Chi To, karinker@debevoise.com and mcto@debevoise.com and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 18th Floor, Wilmington, DE 19801, Attn: Gregory W. Werkheiser, gwerkheiser@mnat.com; (d) financing counsel to the agent (the "First Lien Agent") to the lenders party to the Debtors' prepetition first lien credit agreement (the "First Lien Lenders"), Morgan Lewis, 225 Franklin Street, 16th Floor, Boston, Massachusetts 02110, Attn: Sula Fiszman, sfiszman@morganlewis.com; (e) special bankruptcy and restructuring counsel to the First Lien Agent, Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019, Attn: Scott K. Charles and Michael S. Benn, SKCharles@wlrk.com and MSBenn@wlrk.com; (f) counsel to the agent (the "Second Lien Agent") to the lenders party to the Debtors' prepetition second lien credit agreement (the "Second Lien Lenders"), Sidley Austin LLP, One South Dearborn, Chicago, IL 60603, Attn: Larry Nyhan, lnyhan@sidley.com; (g) local counsel to the First Lien Agent, DLA Piper LLP, 919 North Market Street, 15th Floor, Suite 1500, Wilmington, Delaware 19801, Attn: Stuart M. Brown, stuart.brown@dlapiper.com; and (h) counsel to the Official Committee of Unsecured Creditors, [_____], Attn: [_____] (collectively, the "Notice Parties"), by the Bid Deadline. A Bid received after the Bid Deadline shall not constitute a Qualified Bid (as defined below). A Bid shall be delivered to all Notice Parties at the same time. Interested bidders requesting information about the qualification process, including a form asset purchase agreement, and information in connection with their due diligence, should contact Sachin Lulla, Lazard Freres & Co., LLC, 190 South LaSalle Street, 31st Floor, Chicago, Illinois 60603, (312) 407-6626, Sachin.Lulla@lazard.com.

Participant Requirements

To participate in the process detailed by the Bidding Procedures and to otherwise be considered for any purpose hereunder, each Bid and each bidder submitting a Bid (a "Potential Bidder") must be determined by the Debtors to have satisfactorily provided the Debtors with each of the following (unless such requirement other than the "Confidentiality Agreement requirement set forth in clause (c) below is waived by the Debtors) on or before the Bid Deadline (the "Participant Requirements"):

(a) Identification of Potential Bidder. Identification of the Potential Bidder and any Principals (defined below), and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;

(b) Corporate Authority. Written evidence of the Potential Bidder's chief executive officer or other appropriate senior executive's approval of the contemplated transaction and acceptance of the terms set forth in the Bidding Procedures; *provided, however*, that, if the Potential Bidder is an entity specially formed for the purpose of effectuating the contemplated transaction (an "Acquisition Entity"), then the Potential Bidder must

furnish written evidence reasonably acceptable to the Debtors of the approval of the contemplated transaction by the equity holder(s) of such Potential Bidder (the "Principals");

(c) Confidentiality Agreement. An executed confidentiality agreement (the "Confidentiality Agreement") in form and substance acceptable to the Debtors and their counsel;

(d) Proof of Financial Ability to Perform. Written evidence upon which the Debtors may reasonably conclude that the Potential Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. Such information should include, among other things, the following:

(i) the Potential Bidder's or, in the case of an Acquisition Entity, the Principals', current financial statements (audited if they exist);

(ii) contact names and numbers for verification of financing sources;

(iii) evidence of the Potential Bidder's or Principals' internal resources and written evidence of a commitment for debt or equity funding that is needed to close the contemplated transaction; and

(iv) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors demonstrating that such Potential Bidder has the ability to close the contemplated transaction; provided, however, that the Debtors shall determine, in their reasonable discretion, in consultation with their advisors, whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Potential Bidder's financial qualifications.

Designation as Qualified Bidder

A "Qualified Bidder" is a Potential Bidder (or combination of Potential Bidders whose Bids for the Assets do not overlap and who agreed to have their Bids combined for purposes of the determination of whether such Potential Bidders together constitute a Qualified Bidder, and who shall also be referred to herein as a single Qualified Bidder) that delivers the documents described in paragraphs (a) through (d) above, and that the Debtors in their reasonable determination and with assistance from their advisors (after consultation with special bankruptcy and restructuring counsel to the First Lien Agent and counsel to the Official Committee of Unsecured Creditors) determine is reasonably likely to submit a bona fide offer that would result in greater cash value being received for the benefit of the Debtors' creditors than under the APA and to be able to consummate a sale if selected as a Successful Bidder (defined below) within the approximate overall time frame contemplated by the APA.

Upon the receipt from a Potential Bidder of the information required under paragraphs (a) through (d) above, as soon as is practicable, the Debtors shall, in consultation with special bankruptcy and restructuring counsel to the First Lien Agent and counsel to the Official Committee of Unsecured Creditors, determine and notify the Potential Bidder with respect to whether such Potential Bidder is a Qualified Bidder.

The Stalking Horse Bidder is a Qualified Bidder.

Access to Due Diligence Materials

Only Potential Bidders that execute the Confidentiality Agreement are eligible to receive due-diligence access or additional non-public information; provided, however, if the Debtors determine in their reasonable discretion that a Potential Bidder who has satisfied the Participant Requirements does not constitute a Qualified Bidder, then such Potential Bidder's right to receive due-diligence access or additional non-public information shall terminate. The Debtors will designate an employee or other representative to coordinate all reasonable requests for additional information and due-diligence access from such Qualified Bidders. The Debtors shall not be obligated to furnish any due diligence information after the Bid Deadline. The Debtors are not responsible for, and will bear no liability with respect to, any information obtained by Qualified Bidders in connection with the sale of the Assets. If the Debtors furnish any material information related to the Debtors not theretofore given to the Stalking Horse Bidder, then the Debtors shall place such information in one of the data rooms.

Due Diligence From Bidders

Each Potential Bidder and Qualified Bidder (collectively, a "Bidder") shall comply with all reasonable requests for additional information and due-diligence access by the Debtors or their advisors regarding such Bidder and its contemplated transaction. Failure by a Potential Bidder to comply with requests for additional information and due-diligence access will be a basis for the Debtors to determine that the Potential Bidder is not a Qualified Bidder. Failure by a Qualified Bidder to comply with requests for additional information and due-diligence access will be a basis for the Debtors to determine that a Bid made by a Qualified Bidder is not a Qualified Bid.

Bidding Process

The Debtors and their advisors shall: (a) determine whether a Potential Bidder is a Qualified Bidder; (b) coordinate the efforts of Bidders in conducting their due-diligence investigations, as permitted by the provisions herein; (c) receive offers from Qualified Bidders; and (d) negotiate any offers made to purchase the Assets. Subject to the Bidding Procedures Order, the Debtors shall have the right to adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein), that, in the Debtors' reasonable discretion, will better promote the goals of the Bidding Process.

Bid Requirements

To participate in the Auction (as defined below), each Bid (including any credit bid by the First Lien Agent (other than with respect to clause (h) below) or the Second Lien

Agent) and Qualified Bidder submitting such a Bid must be determined by the Debtors to satisfy each of the following conditions:

(a) Written Submission of APA and Commitment to Close. Qualified Bidders must submit by the Bid Deadline a blackline of the APA reflecting their proposed changes, and a written commitment that they intend to close on the terms and conditions set forth therein;

(b) Identification of Executory Contracts and Leases to be Assumed. Qualified Bidders must submit by the Bid Deadline a comprehensive list of all executory contracts and leases that they will assume and the corresponding cure amounts associated with the assumption and assignment of such leases and contracts;

(c) Irrevocable. A Bid must be irrevocable until five (5) business days after the Assets have been sold pursuant to the closing of the sale or sales approved by the Bankruptcy Court in a final, non-appealable order (the "Termination Date") unless such Bid is designated as the Back-Up Bid (defined below);

(d) Contingencies. A Bid may not be conditioned on obtaining financing, regulatory contingencies (other than on the condition that any applicable waiting period under The Hart–Scott–Rodino Antitrust Improvements Act of 1976 (Public Law 94-435) be satisfied, which may occur subsequent to the date of the Bid Deadline), any internal approval or on the outcome or review of due diligence. Any other contingencies or conditions associated with a Bid may not be more burdensome taken as a whole than those set forth in the APA taken as a whole;

(e) Financing Sources. A Bid must contain written evidence of a firm commitment for financing or other evidence of the financial wherewithal and ability to consummate the sale and which the Debtors reasonably believe to be sufficient to satisfy the standards to provide adequate assurance of future performance under Bankruptcy Code Section 365, with appropriate contact information for such financing sources;

(f) No Fees Payable to Qualified Bidder. A Bid may not request or entitle the Qualified Bidder to any break-up fee, expense reimbursement fee or similar type of payment. Further, by submitting a Bid, a Bidder shall be deemed to waive its right to pursue a substantial contribution claim under Section 503 of the Bankruptcy Code or in any way related to the submission of its Bid or the Bidding Procedures;

(g) Good-Faith Deposit. Each Bid must be accompanied by a deposit (the "Good Faith Deposit") in the form of a certified check or cash payable to the order of Graceway Pharmaceuticals, LLC in the amount of not less

than $27,500,000 to be held in escrow by the Debtors until the Termination Date;

(h) Minimum Overbid. The consideration proposed by the Bid may include only cash and assumed liabilities. The aggregate consideration must equal or exceed the sum of the cash "Purchase Price" and assumed liabilities provided for under the APA, in the aggregate, plus the cash amount of the Break-Up Fee ($8,250,000) (defined below), *plus* the cash amount of $2,500,000 (the "Initial Minimum Overbid Increment");

(i) Terms. A Bid must be on terms that, taken as a whole, are determined by the Debtors not to be materially more burdensome or conditional than the terms of the APA taken as a whole; and

(j) Purchase of Assets and Assumption of Liabilities. A Bid must provide for the purchase of all or a substantial portion of the Assets and payment or assumption of all or a substantial portion of the liabilities to be paid or assumed under the APA.

A Bid received from a Qualified Bidder before the Bid Deadline that meets the above requirements, and that satisfies the Bid Deadline requirement above, shall constitute a "Qualified Bid," if the Debtors believe, in their reasonable discretion (after consultation with special bankruptcy and restructuring counsel to the First Lien Agent and counsel to the Official Committee of Unsecured Creditors), that such Bid would be consummated if selected as the Successful Bid (as defined below). For purposes herein, the APA shall constitute a Qualified Bid. A Qualified Bid shall be considered such Qualified Bidder's "Baseline Bid."

If any Bid is determined by the Debtors not to be a Qualified Bid, the Bidder shall be refunded its Good Faith Deposit and all accumulated interest thereon within three (3) business days after that determination.

Any Bid that is not deemed a Qualified Bid shall not be considered by the Debtors.

Auction

Only if a Qualified Bid (other than that of the Stalking Horse Bidder) is received by the Bid Deadline shall the Debtors conduct an auction (the "Auction") to determine the highest and/or best bid with respect to the Assets. The Auction shall commence on [_____], 2011, at 10:00 a.m. (Eastern Time), at the offices of Latham & Watkins, LLP, 885 Third Avenue, Suite 1000, New York, New York 10022-4834.

If no such Qualified Bid is received by the Bid Deadline, then (i) the Auction will not be held, (ii) the Stalking Horse Bidder will be deemed the Successful Bidder, (iii) the APA will be the Successful Bid, and (iv) at the Sale Hearing on **[_____, 2011** at _:00 _.m.] (Eastern Time), the Debtors will seek approval of and authority to consummate the proposed sale to the Stalking Horse Bidder as contemplated by the APA.

The Auction shall be conducted according to the following procedures:

(a) Participation At The Auction

Only a Qualified Bidder that has submitted a Qualified Bid is eligible to participate at the Auction. Only the authorized representatives of each of the Qualified Bidders, the Debtors, the official committee of unsecured creditors and the First Lien Agent shall be permitted to attend. During the Auction, bidding shall begin initially with the highest Qualified Bid (the "Opening Bid") and subsequently continue in minimum increments of at least $2,500,000 (or such other amount the Debtors determine to facilitate the Auction). At least two (2) business days prior to the Auction, each Qualified Bidder that has submitted a Qualified Bid must inform the Debtors whether it intends to participate at the Auction. The Debtors shall provide copies of the Opening Bid to the Stalking Horse Bidder and all Qualified Bidders that have indicated their intent to participate at the Auction at least one (1) business day prior to the Auction.

(b) The Debtors Shall Conduct The Auction

The Debtors and their professionals shall direct and preside over the Auction. The determination of which Qualified Bid constitutes the Opening Bid shall take into account any factors the Debtors reasonably deem relevant to the value of the Qualified Bid to the estate, including, among other things, the following: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities; (iii) the ability of the Qualified Bidder to close the proposed transaction; (iv) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (v) any purchase-price adjustments; (vi) the impact of the contemplated transaction on any actual or potential litigation; (vii) the net economic effect of any changes from the APA, if any, contemplated by the contemplated transaction documents (the "Contemplated Transaction Documents"); (viii) the net after-tax consideration to be received by the Debtors' estates; and (ix) such other considerations the Debtors deem relevant in their reasonable discretion (collectively, the "Bid Assessment Criteria"). All Bids made thereafter shall be Overbids (as defined below) and shall be made and received on an open basis, and all material terms of each Bid shall be fully disclosed to all other Qualified Bidders. The Debtors shall arrange for the actual bidding at the Auction to be transcribed or videotaped. Each Qualified Bidder participating in the Auction will be required to confirm that it has not engaged in any collusion regarding the Bidding Procedures, the Auction or the proposed transaction.

(c) Terms of Overbids

An "Overbid" is any Bid made at the Auction subsequent to the Debtors' announcement of the Opening Bid. To submit an Overbid for purposes of this Auction, a Qualified Bidder must comply with the following conditions:

(i) Minimum Overbid Increment

Any Overbid after the Opening Bid shall be made in increments of at least $2,500,000 (or such other amount the Debtors determine to facilitate the Auction).

(ii) Remaining Terms are the same as for Qualified Bids

Except as modified herein, an Overbid must comply with the conditions for a Qualified Bid set forth above, *provided, however*, that the Bid Deadline and the Initial Minimum Overbid Increment shall not apply. Any Overbid made by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (A) the Debtors accept a higher Qualified Bid as an Overbid and (B) such Overbid is not selected as the Back-up Bid (as defined below).

To the extent not previously provided (which shall be determined by the Debtors), a Qualified Bidder submitting an Overbid must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtor) demonstrating such Qualified Bidder's ability to close the transaction proposed by such Overbid.

(iii) Consideration of Overbids

The Debtors reserve the right, in their reasonable business judgment, to make one or more adjournments in the Auction to, among other things: (A) facilitate discussions between the Debtors and individual Qualified Bidders; (B) allow individual Qualified Bidders to consider how they wish to proceed; (C) consider and determine the current highest and best Overbid at any given time during the Auction; and (D) give Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment, may require that the Qualified Bidder (other than Stalking Horse Bidder) has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. The Break-Up Fee will be taken into account in each round of bidding. For the avoidance of doubt, during the Auction, any bid by the Stalking Horse Bidder shall be deemed to be increased by the amount of the Break-Up Fee, *provided* that in the event that the Stalking Horse Bidder is the Successful Bidder and its Successful Bid includes the Break-Up Fee, the Stalking Horse Bidder shall be entitled to credit the amount of the Break-Up Fee against the purchase price.

(d) Additional Procedures

The Debtors, in their reasonable discretion, may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the Bidding Procedures, the Bidding Procedures Order or the Bankruptcy Code.

(e) Closing the Auction

Upon conclusion of the bidding, the Auction shall be closed, and the Debtors shall (i) immediately review the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale, and (ii) identify the highest, best, and/or otherwise financially superior offer for the Assets (the "Successful Bid" and the entity submitting such Successful Bid, the "Successful Bidder"), which highest, best and/or otherwise financially superior offer will provide the greatest amount of net cash value to the Debtor, and the next highest or otherwise best offer after the Successful Bid (the "Back-up Bid"), and advise the Qualified Bidders and Notice Parties of such determination. No additional bids may be

considered following the closing of the Auction. If the Stalking Horse Bidder's final Bid is deemed to be highest and best at the conclusion of the Auction, the Stalking Horse Bidder will be the Successful Bidder, and such Bid, the Successful Bid.

Within one (1) day after the closing of the Auction, the Debtors shall file with the Bankruptcy Court and serve upon all Qualified Bidders and entities that have requested notice in the Bankruptcy Cases a notice identifying the Successful Bidder.

(f) Consent to Jurisdiction as Condition to Bid.

All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Auction, and the construction and enforcement of the Bidder's Contemplated Transaction Documents, as applicable.

(g) Terms of Break-Up Fee

If the APA terminates because the Debtors have accepted or selected, and the Bankruptcy Court has approved, the Bid or Bids (including a credit bid) of any Qualified Bidder(s) other than Stalking Horse Bidder to purchase all or a substantial portion of the Debtors' Assets, and such transaction or transactions contemplated by any such Bid or Bids has been consummated, the Debtors shall pay the Stalking Horse Bidder out of the proceeds of such transaction or transactions at the closing the "Break-Up Fee".

Acceptance of Successful Bid

The Debtors shall sell the Assets to the Successful Bidder upon the approval of the Successful Bid by the Bankruptcy Court. The Debtors' presentation of a particular Qualified Bid to the Bankruptcy Court for approval does not constitute the Debtors' acceptance of the Bid. The Debtors will be deemed to have accepted a Bid only when the Bid has been approved by the Bankruptcy Court.

Credit Bidding by First Lien Lenders

In the event the Bankruptcy Court permits the First Lien Lenders to credit bid, in addition to the requirements set forth in the section titled "Bid Requirements" above (other than with respect to clause (h) of such section), in order to be a Qualified Bid, a credit bid must provide for (a) the payment in cash at the closing of the Break-Up Fee, (b) the payment in cash at closing and/or the assumption of the unpaid administrative expense claims of the Debtors owning such collateral (other than the Break-Up Fee and the Lazard Success Fee (as defined in the Interim Cash Collateral Order)) incurred from the Petition Date through and including the date on which the closing of the sale occurs, (c) the payment in cash at closing of all claims that are senior to the claims of the First Lien Lenders pursuant to the DIP Financing Order or otherwise, (d) a description of all assets to be purchased that are not subject to a valid and perfected security interest held by the agent for the First Lien Lenders, (e) payment in cash in an amount equal to the fair value of such unencumbered assets and (f) payment in cash of the Lazard Success Fee. In the event the agent for the First Lien Lenders submits a credit bid for all of its collateral pursuant to these Bidding Procedures at the Auction, the Debtors reserve their

rights to not consult with the agent for the First Lien Lenders as to whether a Potential Bidder is a Qualified Bidder with respect to such Assets.

Credit Bidding by Second Lien Lenders

In the event that the Bankruptcy Court permits the Second Lien Lenders to credit bid, in addition to the requirements set forth in the section titled "Bid Requirements" above, in order to be a Qualified Bid, a credit bid by the Second Lien Lenders must provide for (a) the payment in cash at closing of the Break-Up Fee, (b) the payment in full in cash of all obligations owed to the First Lien Lenders and to other the holders of claims with claims senior to those of the Second Lien Lenders pursuant to the Interim Cash Collateral Order or otherwise, (c) the payment in cash at closing and/or the assumption of the unpaid administrative expense claims of the Debtors owning such collateral incurred from the Petition Date through and including the date on which the closing of the sale occurs, (d) a description of all assets to be purchased that are not subject to a valid and perfected first priority security interest held by the agent for the Second Lien Lenders, (d) payment in cash in an amount equal to the fair value of such unencumbered assets and (e) payment in cash of the Lazard Success Fee. In the event the agent for the Second Lien Lenders submits a credit bid for all of its collateral pursuant to these Bidding Procedures at the Auction, the Debtors reserve their rights to not consult with the agent for the Second Lien Lenders as to whether a Potential Bidder is a Qualified Bidder with respect to such Assets. Notwithstanding the right to credit bid afforded them in the Bidding Procedures, the Second Lien Agent and the Second Lien Lenders shall be deemed to have consented and waived any and all applicable rights under Bankruptcy Code Section 363(f).

"As Is, Where Is"

The sale of the Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtors, their agents or estates except to the extent set forth in the APA or the purchase agreement of another Successful Bidder. The Stalking Horse Bidder and each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures and (a) as to the Stalking Horse Bidder, the terms of the sale of the Assets set forth in the APA, or (b) as to another Successful Bidder, the terms of the sale of the Assets set forth in the applicable purchase agreement.

Free Of Any And All Encumbrances

Except as otherwise provided in the APA or another Successful Bidder's purchase agreement, all of the Debtors' right, title, and interest in and to the Assets subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the "Encumbrances") in accordance with 11 U.S.C. § 363, with such Encumbrances to attach to the net proceeds of the sale of the Assets.

Sale Hearing

A hearing to approve the sale of the Assets to the Successful Bidder shall be conducted by the Bankruptcy Court on [_____,**2011**, at _:00 _.m.] (Eastern Time), located at 824 North Market Street, [_]th Floor, Courtroom No. [_] Wilmington, Delaware (the "Sale Hearing"). Following the approval of the sale of the Assets to the Successful Bidder at the Sale Hearing, if such Successful Bidder fails to consummate an approved sale within fourteen (14) days after entry of order by the Bankruptcy Court approving the sale of the Assets (except where the sole cause of any delay in closing is as a result of default by the Debtors), the Debtors shall be authorized, but not required, to deem the Back-up Bid, as disclosed at the Sale Hearing, the Successful Bid and the Debtors shall be authorized, but not required, to consummate the sale with the Qualified Bidder submitting such Back-up Bid without further notice or orders of the Bankruptcy Court. The Sale Hearing may be adjourned or rescheduled without notice other than by announcement of the adjourned date at the Sale Hearing. If the Stalking Horse Bidder is not the Successful Bidder at the Auction but is designated as the bidder that has submitted the Back-Up Bid, then such Back-Up Bid must remain open until the earlier of the consummation of the transaction with the Successful Bidder and 30 days after the conclusion of the Sale Hearing. If any other bidder submits the Back-Up Bid, such Back-Up Bid must remain open until the consummation of the Sale to the Successful Bidder.

Return of Good Faith Deposit

The Good Faith Deposit of the Successful Bidder shall be applied to the purchase price of such transaction at closing. Good Faith Deposits of all other Qualified Bidders shall be held by the Debtors until five (5) business days after closing of the transactions contemplated by the Successful Bid, and thereafter returned to the respective Qualified Bidders. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtors shall be entitled to retain the Good Faith Deposit as part of their damages resulting from the breach or failure to perform by the Successful Bidder. Notwithstanding anything herein to the contrary, the terms under which the Stalking Horse Bidder provided a Good Faith Deposit and the terms of its use, release and return to the Stalking Horse Bidder shall be governed by the APA.

Modifications and Reservations

The Debtors may (a) determine which Qualified Bid, if any, is the highest, best, and/or otherwise financially superior offer; and (b) reject at any time before entry of orders of the Bankruptcy Court approving a Qualified Bid, any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of sale, or (iii) contrary to the best interests of the Debtors, their estates and creditors.

At or before the Sale Hearing, the Debtors may impose such other terms and conditions as the Debtors may determine to be in the best interests of their estate and creditors and other parties in interest thereof that are not inconsistent with the Bidding Procedures Order, the Bidding Procedures or the Bankruptcy Code.

The Bidding Procedures may be materially modified only upon the express written consent of the Debtors and the Stalking Horse Bidder (such consent not to be unreasonably withheld), or by order of the Bankruptcy Court.

Reservation of Rights

Subject to the Bidding Procedures Order, the Debtors reserve the right as they may determine to be in the best interests of their estates to: (a) determine which Potential Bidders are Qualified Bidders; (b) determine which Bids are Qualified Bids; (c) determine which Qualified Bid is the highest and best proposal and which is the next highest and best proposal; (d) reject any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures Order or the requirements of the Bankruptcy Code or any other orders entered by the Bankruptcy Court, or (iii) contrary to the best interests of the Debtors and their estates or stakeholders, as applicable; (e) impose additional terms and conditions with respect to any or all Potential Bidders other than the Stalking Horse Bidder; (f) adjourn the Auction and/or Sale Hearing in open court without further notice; and (h) with the consent of the Stalking Horse Bidder, remove a portion of the Assets from the Auction. Without limiting the foregoing, the Debtors may determine to distribute or not distribute copies of other Qualified Bids to other Qualified Bidders prior to or during the Auction other than with respect to the distribution of the Opening Bid as set forth above.

EXHIBIT 2

Sale Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
GRACEWAY PHARMACEUTICALS, LLC, *et al.*,[1]	Case No. 11-_____ (____)
	Jointly Administered
Debtors.	

NOTICE OF PUBLIC AUCTION AND SALE HEARING

("**Sale Notice**")

PLEASE TAKE NOTICE that the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**"), have entered into an asset purchase agreement, dated [_____], 2011 (the "**APA**")[2], with [_____], a [_____], formed by [_____] (the "**Stalking Horse Bidder**") to sell certain assets of the Debtors free and clear of all liens, claims, encumbrances and other interests to the Stalking Horse Bidder, subject to the submission of higher or better offers in an auction process (the "**Auction**").

PLEASE TAKE FURTHER NOTICE that in connection with the proposed sale (the "**Sale**") to the Stalking Horse Bidder, on [_____], 2011, the Debtors filed a motion [Docket No. [___]] (the "**Motion**") seeking a court order for approval and authorization of, among other things, (a) bidding procedures governing the Sale, (b) payment of a break-up fee and reimbursable expenses to the Stalking Horse Bidder in certain instances under the terms and conditions set forth in the APA, including if the Stalking Horse Bidder is not the successful bidder at the Auction, (c) the form and manner of notices related to the Sale, and (d) procedures related to the assumption and assignment of executory contracts and unexpired leases in connection with the Sale.

PLEASE TAKE FURTHER NOTICE that, on [_____], 2011, the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**") entered an order [Docket No. [___]] (the "**Bidding Procedures Order**") approving the bidding procedures (the "**Bidding Procedures**"), which set the key dates and times related to the Sale. All interested bidders should carefully read the Bidding Procedures. The summary of the Bidding Procedures contained in this Sale Notice is provided for convenience only. To the extent that there are any

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[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).

[2] All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the APA.

inconsistencies between the Bidding Procedures and the summary description in this Sale Notice, the terms of the Bidding Procedures shall control.

PLEASE TAKE FURTHER NOTICE that copies of the Motion, Bidding Procedures and Bidding Procedures Order, as well as all related exhibits including the APA, are available on the website of the Court-appointed claims, noticing soliciting and balloting agent for the Debtors' chapter 11 cases, BMC Group, Inc., at www.bmcgroup.com/graceway, or can be requested by calling (888) 909-0100 from within the United States or +1 310 321 5555 from outside the United States.

PLEASE TAKE FURTHER NOTICE that, if the Debtors receive one or more qualified competing bids that satisfy the requirements and time frame specified by the Bidding Procedures, the Debtors will conduct the Auction to determine the highest or otherwise best bid for the purchased assets on [_____], 2011 at 10:00 a.m. prevailing Eastern Time at the offices of Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022, or at any such other location as the Debtors may hereafter designate (with notice of such alternate location given to all qualified bidders under the Bidding Procedures).

PLEASE TAKE FURTHER NOTICE that the Debtors will seek approval of the Sale before the Honorable [_____], United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at: 824 North Market Street, [__]th Floor, Wilmington, Delaware 19801, on [_____], 2011 at [_____] [_].m. prevailing Eastern Time.

PLEASE TAKE FURTHER NOTICE that objections to the Motion if any, **must**: (i) be in writing; (ii) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules for the United States Bankruptcy Court for the District of Delaware; (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (iv) be filed with the Court and served so *actually received* no later than [____], 2011 at 4:00 p.m. prevailing Eastern Time by all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002 and the following parties:

Debtors	Counsel to Debtors
Graceway Pharmaceuticals, LLC 340 Martin Luther King Jr. Blvd. Suite 500 Bristol, Tennessee 37620 Attn: John Bellamy	Latham & Watkins LLP 233 South Wacker Drive Chicago, IL 60606 Attn: Josef S. Athanas, Esq. and Matthew L. Warren, Esq. Young Conaway Stargatt & Taylor, LLP 1000 West Street, 17th Floor Wilmington, Delaware 19801 Attn: Michael R. Nestor, Esq. and Kara Hammond Coyle, Esq.

Special Bankruptcy and Restructuring Counsel to the Agent for the First Lien Lenders	United States Trustee
Wachtell, Lipton, Rosen & Katz 51 West 52nd Street New York, NY 10019 Attn: Scott K. Charles, Esq. and Michael S. Benn, Esq. DLA Piper LLP 919 North Market Street, 15th Floor Suite 1500 Wilmington, DE 19801 Attn: Stuart M. Brown, Esq.	Office of the United States Trustee for the District of Delaware 844 King Street J. Caleb Boggs Federal Building Room 2207, Lockbox 35 Wilmington, DE 19801 Attn: [_____], Esq.
Financing Counsel to the Agent for the First Lien Lenders	**Counsel to the Creditors' Committee**
Morgan Lewis 225 Franklin Street, 16th Floor Boston, Massachusetts 02110 Attn: Sula Fiszman, Esq.	[to come]
Counsel to the Agent for the Second Lien Lenders	**Counsel to the Stalking Horse Bidder**
Sidley Austin LLP One South Dearborn, Chicago, IL 60603 Attn: Larry Nyhan, Esq.	Debevoise & Plimpton LLP 919 Third Avenue New York, NY 10022 Attn: My Chi To, Esq. and Kevin A. Rinker, Esq. Morris, Nichols, Arsht & Tunnell LLP 1201 North Market Street, 18th Floor Wilmington, DE 19801 Attn: Gregory W. Werkheiser, Esq.

CONSEQUENCES OF FAILING TO TIMELY FILE AND SERVE AN OBJECTION

ANY PARTY OR ENTITY WHO FAILS TO TIMELY FILE AND SERVE AN OBJECTION TO THE SALE ON OR BEFORE THE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE PROPERTY FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS AFFECTED THEREUNDER.

NO SUCCESSOR OR TRANSFEREE LIABILITY

The proposed Sale Order provides that the purchaser in the Sale (the "**Purchaser**") will have no responsibility for, and the assets will be sold free and clear of, any successor liability, including the following:

The Purchaser shall not be deemed, as a result of any action taken in connection with the APA, the consummation of the Transactions (as defined in the Sale Order) contemplated by the APA, or the transfer or operation of the Acquired Assets, to (a) be a legal successor, or otherwise be deemed a successor to the Debtors (other than, for the Purchaser, with respect to any obligations as an assignee under the Assigned Agreements arising after the Closing); (b) have, *de facto* or otherwise, merged with or into the Debtors; or (c) be an alter ego or mere continuation or substantial continuation of the Debtors including, without limitation, within the meaning of any foreign, federal, state or local revenue law, pension law, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the WARN Act (29 U.S.C. §§ 2101 et seq., the Comprehensive Environmental Response Compensation and Liability Act ("**CERCLA**"), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended), the National Labor Relations Act, 29 U.S.C. § 151, et seq., environmental liabilities, debts, claims or obligations arising from conditions first existing on or prior to Closing (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including, without limitation, under CERCLA, any liabilities, debts or obligations of or required to be paid by the Debtors for any taxes of any kind for any period, labor, employment, or other law, rule or regulation (including without limitation filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine. Other than as expressly set forth in the APA with respect to Assumed Liabilities, the Purchaser shall not have any responsibility for (a) any liability or other obligation of the Debtors or related to the Acquired Assets or (b) any remaining Claims (as defined in the Sale Order) against the Debtors or any of their predecessors or affiliates. The Purchaser shall have no liability whatsoever with respect to the Debtors' (or their predecessors' or affiliates') respective businesses or operations or any of the Debtors' (or their predecessors' or affiliates') obligations based, in whole or part, directly or indirectly, on any theory of successor or vicarious liability of any kind or character, or based upon any theory of antitrust, environmental, successor or transferee liability, *de facto* merger or substantial continuity, labor and employment or products liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Acquired Assets prior to the Closing.

IF YOU HAVE ANY QUESTIONS REGARDING THIS SALE NOTICE, PLEASE CONTACT THE RESTRUCTURING HOTLINE ESTABLISHED IN CONNECTION WITH THE DEBTORS' CHAPTER 11 CASES AT (888) 909-0100 FROM WITHIN THE UNITED STATES OR +1 310 321 5555 FROM OUTSIDE THE UNITED STATES

EXHIBIT 3

Contract Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
GRACEWAY PHARMACEUTICALS, LLC, *et al.*,[1]	Case No. 11-_____ (____)
	Jointly Administered
Debtors.	**Sale Hearing: [____] 2011 at [___] [].m. (ET)** **Objection Deadline: [____] 2011 at [___] [].m. (ET**

NOTICE OF (I) CURE AMOUNT WITH RESPECT TO EXECUTORY CONTRACTS TO BE ASSUMED AND ASSIGNED AND (II) POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. Pursuant to the *Order Approving and Authorizing (A) Bidding Procedures in Connection with the Sale of Certain Assets of the Debtors, (B) Stalking Horse Bid Protections, (C) Form and Manner of Notice of the Sale Hearing and (D) Related Relief* [Docket No. ___] (the "**Bidding Procedures Order**") entered by the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**") on [_____], 2011, the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**") hereby provide notice that they are a party to various executory contracts and unexpired leases as set forth on Exhibit 1 attached hereto (individually, a "**Contract**", collectively the "**Contracts**") and they intend to seek to assume and assign some or all of the Contracts (individually, a "**Potentially Assumed**

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).

Contract", collectively, the "**Potentially Assumed Contracts**") to the Successful Bidder[2] in connection with the proposed sale of certain of the Debtors' assets.

2. You have been identified as a party to a Potentially Assumed Contract. If your Contract is **actually** to be assumed or assigned, a separate notice of such assumption and assignment will be provided.

3. The Potentially Assumed Contract with respect to which you have been identified as a non-Debtor counterparty, and the corresponding proposed amount the Debtors' records reflect is owing to cure any and all defaults under such Potentially Assumed Contract so as to permit the assumption and assignment of such Potentially Assumed Contract (if designated for assumption and assignment by the Successful Bidder) pursuant to 11 U.S.C. § 365 (the "**Cure Amount**"), have been set forth on Exhibit 1, as attached hereto. The Debtors' records reflect, as of the date hereof, that all postpetition amounts owing under your Potentially Assumed Contract have been paid and will continue to be paid and that there are no other defaults under the Potentially Assumed Contract. Amounts due and owing under the Contracts with respect to the period after the petition date and after the closing date of the Sale are not included in the calculation of the Cure Amounts.

4. Objections, if any, to the proposed Cure Amount, or to the possible assumption and assignment of any Potentially Assumed Contract, must be made in writing, filed with the United States Bankruptcy Court for the District of Delaware, at: 824 North Market Street, [__]th

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[2] Capitalized terms not otherwise defined in this notice shall have the meanings set forth in the Bidding Procedures approved as part of the Bidding Procedures Order. All documents filed with the Bankruptcy Court in connection with these Chapter 11 Cases, including orders of the Bankruptcy Court, are available for free on the website of the Court-appointed claims, noticing, soliciting and balloting agent in these Chapter 11 Cases, BMC Group, Inc., at www.bmcgroup.com/graceway, or can be requested by calling (888) 909-0100 from within the United States or +1 310 321 5555 if calling from outside the United States.

Floor, Wilmington, Delaware 19801, and served so as to be received on or before [_____] [_].m. on [_____], 2011 (the "**Objection Deadline**"). Service should be made by mail to:

Debtors	Counsel to Debtors
Graceway Pharmaceuticals, LLC 340 Martin Luther King Jr. Blvd. Suite 500 Bristol, Tennessee 37620 Attn: John Bellamy	Latham & Watkins LLP 233 South Wacker Drive Chicago, IL 60606 Attn: Josef S. Athanas, Esq. and Matthew L. Warren, Esq. Young Conaway Stargatt & Taylor, LLP 1000 West Street, 17th Floor Wilmington, Delaware 19801 Attn: Michael R. Nestor, Esq. and Kara Hammond Coyle, Esq.
Special Bankruptcy and Restructuring Counsel to the Agent for the First Lien Lenders	**United States Trustee**
Wachtell, Lipton, Rosen & Katz 51 West 52nd Street New York, NY 10019 Attn: Scott K. Charles, Esq. and Michael S. Benn, Esq. DLA Piper LLP 919 North Market Street, 15th Floor Suite 1500 Wilmington, DE 19801 Attn: Stuart M. Brown, Esq.	Office of the United States Trustee for the District of Delaware 844 King Street J. Caleb Boggs Federal Building Room 2207, Lockbox 35 Wilmington, DE 19801 Attn: [_____], Esq.
Financing Counsel to the Agent for the First Lien Lenders	**Counsel to the Creditors' Committee**
Morgan Lewis 225 Franklin Street, 16th Floor Boston, Massachusetts 02110 Attn: Sula Fiszman, Esq.	[to come]
Counsel to the Agent for the Second Lien Lenders	**Counsel to the Stalking Horse Bidder**
Sidley Austin LLP One South Dearborn, Chicago, IL 60603 Attn: Larry Nyhan, Esq.	Debevoise & Plimpton LLP 919 Third Avenue New York, NY 10022 Attn: My Chi To, Esq. and Kevin A. Rinker, Esq. Morris, Nichols, Arsht & Tunnell LLP 1201 North Market Street, 18th Floor Wilmington, DE 19801 Attn: Gregory W. Werkheiser, Esq.

5. An objection to any Cure Amount must (i) be in writing; (ii) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules for the United States Bankruptcy Court for the District of Delaware; and (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor.

6. If an objection to the Cure Amount, or the possible assumption and assignment, is timely filed and cannot be resolved by the Debtors and the counterparty to the Potentially Assumed Contract, a hearing with respect to the objection will be held before the Honorable [_____], United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at: 824 North Market Street, [__]th Floor, Wilmington, Delaware 19801, on [_____], 2011 at [_____] [].m. prevailing Eastern Time or at a later hearing, as determined by the Debtors. A hearing regarding objections to a Cure Amount, if any, may be continued at the sole discretion of the Debtors.

7. Regardless of whether a Potentially Assumed Contract will be assumed and assigned at the closing of the Sale as provided for in the APA, unless a non-debtor party to any Potentially Assumed Contract files an objection to the Cure Amount by the Objection Deadline, then such counterparty shall be (i) forever barred from objecting to the Cure Amount or the assumption and assignment of such Potentially Assumed Contract; and (ii) forever barred and estopped from asserting or claiming any amounts under the Contracts outstanding as of the effective date of assumption and assignment to the Successful Bidder, other than the Cure Amount on Exhibit 1, against the Debtors, any Successful Bidder or any other assignee of the relevant contract.

8. The Debtors will file and serve a further notice that identifies any Successful Bidder and provides notice of the particular Potentially Assumed Contracts that the Debtors will seek to assume and assign at the Sale Hearing (the "**Assumption Notice**").

9. At the Sale Hearing, the Debtors shall present evidence necessary to demonstrate adequate assurance of future performance by the Successful Bidder. At the Sale Hearing, you

will have the opportunity to evaluate and, if necessary, challenge, the ability of the Successful Bidder to provide adequate assurance of future performance under the Assumed Contracts.

10. The presence of a contract, lease or other agreement on Exhibit 1, as attached hereto, does not constitute an admission that such contract, lease or other agreement is an executory contract or unexpired lease or that such contract or lease will be assumed by the Debtors and assigned to any Successful Bidder. The Debtors reserve all of their rights, claims and causes of action with respect to the contracts, leases and other agreements listed on Exhibit 1, as attached hereto.

Dated: _____, 2011
Wilmington, Delaware

Respectfully Submitted,

_____

Michael R. Nestor (No. 3526)
Kara Hammond Coyle (No. 4410)
YOUNG CONAWAY STARGATT & TAYLOR, LLP
1000 West Street, 17th Floor
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

-and-

David S. Heller
Josef S. Athanas
Matthew L. Warren
LATHAM & WATKINS LLP
Suite 5800
233 South Wacker Drive
Chicago, IL 60606
Telephone: (312) 876-7700
Facsimile: (312) 993-9767

PROPOSED ATTORNEYS FOR DEBTORS AND DEBTORS-IN-POSSESSION

EXHIBIT 4

Assumption Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: GRACEWAY PHARMACEUTICALS, LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 11-_____ (____) Jointly Administered **Hearing Date: [_____], 2011 at [___] [].m. (ET)**

NOTICE OF ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On [_____], 2011, the United States Bankruptcy Court for the District of Delaware (this "**Court**") entered the *Order Approving and Authorizing (A) Bidding Procedures in Connection with the Sale of Certain Assets of the Debtors, (B) Stalking Horse Bid Protections, (C) Form and Manner of Notice of the Sale Hearing and (D) Related Relief* [Docket No. _____] (the "**Bidding Procedures Order**").

2. Pursuant to the Bidding Procedures Order, the Debtors have accepted the bid of [_____] (the "**Successful Bidder**") for the purchase of certain of the assets (the "**Assets**") related to the Debtors' business (the "**Sale**"). The terms of the bid are set forth in that certain asset purchase agreement (the "**APA**"), dated as of [_____], 2011 among the Debtors and the Successful Bidder, as filed with the Court [Docket No. _____].

3. The Bidding Procedures Order, among other things, authorized procedures for the Debtors to assume and assign certain executory contracts and unexpired leases (the "**Assumed**

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1 The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).

Contracts") to the Successful Bidder. Attached hereto as Exhibit 1 is a list of the Assumed Contracts that the Debtors will assign to the Successful Bidder in connection with the closing of the Sale and the cure amount, if any, with respect to each Assumed Contract.

4. As set forth in the Bidding Procedures Order, the hearing to approve the Sale will be held on [_____], 2011, at [_____] [].m. prevailing Eastern Time before the Honorable [_____], United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at: 824 North Market Street, [__]th Floor, Wilmington, Delaware 19801.

5. All documents filed with this Court in connection with these Chapter 11 Cases, including orders of this Court, are available for free on the website of the Court-appointed claims, noticing, soliciting and balloting agent in these Chapter 11 Cases, BMC Group, Inc., at www.bmcgroup.com/graceway, or can be requested by calling (888) 909-0100 from within the United States or +1 310 321 5555 from outside the United States.

Dated: _____, 2011
Wilmington, Delaware

Respectfully Submitted,

_____

Michael R. Nestor (No. 3526)
Kara Hammond Coyle (No. 4410)
YOUNG CONAWAY STARGATT & TAYLOR, LLP
1000 West Street, 17th Floor
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

-and-

David S. Heller
Josef S. Athanas
Matthew L. Warren
LATHAM & WATKINS LLP
Suite 5800
233 South Wacker Drive
Chicago, IL 60606
Telephone: (312) 876-7700
Facsimile: (312) 993-9767

PROPOSED ATTORNEYS FOR DEBTORS AND DEBTORS-IN-POSSESSION

EXHIBIT 1

ASSUMED CONTRACTS

EXHIBIT B

BILL OF SALE

This BILL OF SALE (this "Bill of Sale") is made as of **[•]**, 2011, by and among **GALDERMA S.A.**, a Switzerland corporation ("Buyer"), and **GRACEWAY PHARMACEUTICALS, LLC**, a Delaware limited liability company, and its Subsidiaries set forth on Annex A to the Asset Purchase Agreement (as defined below) (collectively, "Sellers" and each individually a "Seller").

WHEREAS, Buyer and Sellers entered into that certain Asset Purchase Agreement, dated as of September **[•]**, 2011 (the "Asset Purchase Agreement"); and

WHEREAS, pursuant to the Asset Purchase Agreement, Sellers have agreed to sell, convey, transfer, assign and deliver to Buyer all of the Acquired Assets, and Buyer has agreed to purchase the Acquired Assets from Sellers.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, it is hereby agreed that:

1. Definitions. Unless otherwise defined herein, all capitalized terms used in this Bill of Sale shall have the meanings set forth in the Asset Purchase Agreement.

2. Transfer of Assets. Effective as of the Closing Date, Sellers hereby sell, convey, transfer, assign and deliver to Buyer all of Sellers' right, title and interest in, to and under the tangible Acquired Assets, and Buyer hereby purchases such tangible Acquired Assets and accepts such conveyance, transfer, assignment and delivery; *provided, however*, that any Acquired Assets that are specifically assigned or transferred pursuant to any other Transaction Document shall not be assigned or transferred pursuant to this Section 2.

3. Subject to the Asset Purchase Agreement. This Bill of Sale is subject in all respects to the terms and conditions of the Asset Purchase Agreement, and all of the representations, warranties, covenants and agreements of Sellers and Buyer contained therein, all of which shall survive the execution and delivery of this Bill of Sale in accordance with the terms of the Asset Purchase Agreement. The Acquired Assets are being delivered for good and valuable consideration, pursuant to the terms and conditions contained in the Asset Purchase Agreement. Nothing contained herein shall supersede, amend, alter or modify (nor shall it be deemed or construed to supersede, amend, alter or modify) any of the terms or conditions of the Asset Purchase Agreement in any manner whatsoever. In the event of any conflict between the provisions of this Bill of Sale and the provisions of the Asset Purchase Agreement, the provisions of the Asset Purchase Agreement shall control and prevail.

4. Representations and Warranties. Except as set forth in the Asset Purchase Agreement, Sellers make no representations or warranties, express or implied, with respect to the Acquired Assets, and Sellers expressly disclaim any implied warranties.

5. Assignment. This Bill of Sale, and the rights, interests and obligations hereunder, shall not be assigned by any Party by operation of law or otherwise without the express written consent of the other Parties (which consent may be granted or withheld in the sole discretion of

such other Party); provided, however, that Buyer shall be permitted, upon prior notice to Sellers, to assign all or part of its rights or obligations hereunder to an Affiliate, but no such assignment shall relieve Buyer of its obligations under this Bill of Sale, and Sellers shall be permitted to assign all or part of their rights or obligations hereunder pursuant to a plan of reorganization or liquidation approved by the Bankruptcy Court.

6. Parties in Interest; No Third Party Beneficiaries. This Bill of Sale shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. This Bill of Sale is for the sole benefit of the Parties and their permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

7. Counterparts. This Bill of Sale and any amendment hereto may be executed in one or more counterparts, each of which shall be deemed to be an original of this Bill of Sale or such amendment and all of which, when taken together, shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Bill of Sale or any amendment hereto by telecopier, facsimile or email attachment shall be effective as delivery of a manually executed counterpart of this Bill of Sale or such amendment, as applicable.

8. Waiver. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Bill of Sale or the documents referred to in this Bill of Sale shall operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given, and (b) no notice to or demand on one Party shall be deemed to be a waiver of any right of the Party giving such notice or demand to take further action without notice or demand.

9. Entire Agreement; Amendment. This Bill of Sale and the other Transaction Documents supersede all prior agreements between Buyer, on the one hand, and Sellers, on the other hand, with respect to its subject matter and constitute a complete and exclusive statement of the terms of the agreements between Buyer, on the one hand, and Sellers, on the other hand, with respect to their subject matter. This Bill of Sale may not be amended except by a written agreement executed by all of the Parties.

10. Severability. The provisions of this Bill of Sale shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Bill of Sale, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Bill of Sale and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability.

11. Governing Law; Jurisdiction.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Bill of Sale shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to Contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of Delaware applicable hereto.

(b) Without limitation of any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Bill of Sale and to decide any claims or disputes which may arise or result from, or be connected with, this Bill of Sale, any breach or default hereunder, or the transactions contemplated hereby and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding; *provided, however*, that, if the Bankruptcy Case is closed, all Proceedings arising out of or relating to this Bill of Sale shall be heard and determined in a Delaware state court or a federal court sitting in the State of Delaware, and the Parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding. The Parties consent to service of process by mail (in accordance with Section 12.2 of the Asset Purchase Agreement) or any other manner permitted by law.

(c) THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS BILL OF SALE OR THE ACTIONS OF SELLERS OR BUYER OR THEIR RESPECTIVE REPRESENTATIVES IN THE NEGOTIATION OR PERFORMANCE HEREOF.

SIGNATURE PAGES FOLLOW

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

GRACEWAY PHARMACEUTICALS, LLC

By: _____
Name:
Title:

GRACEWAY CANADA HOLDINGS, INC.

By: _____
Name:
Title:

GRACEWAY INTERNATIONAL, INC.

By: _____
Name:
Title:

CHESTER VALLEY HOLDINGS, LLC

By: _____
Name:
Title:

CHESTER VALLEY PHARMACEUTICALS, LLC

By: _____
Name:
Title:

GALDERMA S.A.

By: _____
Name:
Title:

[Signature Page to Bill of Sale]

EXHIBIT C

BILL OF SALE

This BILL OF SALE (this "Bill of Sale") is made as of **[•]**, 2011, by and among **GALDERMA S.A.**, a Switzerland corporation ("Buyer"), **GRACEWAY CANADA COMPANY**, a Nova Scotia unlimited liability company ("Canadian Seller"), and **RSM RICHTER INC.**, in its capacity as the Receiver of the Canadian Seller (the "Receiver") appointed in the Canadian Proceedings pursuant to the Receivership Order in order to carry out the terms of the Canadian Sale and Vesting Order and all other Orders received by the Canadian Seller in the Canadian Proceedings relating to the Asset Purchase Agreement (as defined below) and the transactions contemplated therein.

WHEREAS, Graceway Pharmaceuticals, LLC, its Subsidiaries set forth on Annex A to the Asset Purchase Agreement, Graceway Canada and Buyer entered into that certain Asset Purchase Agreement dated as of September **[•]**, 2011 (the "Asset Purchase Agreement");

WHEREAS, pursuant to the Asset Purchase Agreement, Canadian Seller has agreed to sell, convey, transfer, assign and deliver to Buyer all of the Canadian Assets, and Buyer has agreed to purchase the Canadian Assets from Canadian Seller; and

WHEREAS, pursuant to the Canadian Sale and Vesting Order, the Receiver is authorized to conclude the transactions contemplated by the Asset Purchase Agreement on behalf of the Debtor, and the Receiver and the Debtor are thereby authorized to take such additional steps and to execute such additional documents as may be necessary or desirable for the conveyance of the Canadian Assets to the Buyer;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, it is hereby agreed that:

1. Definitions. Unless otherwise defined herein, all capitalized terms used in this Bill of Sale shall have the meanings set forth in the Asset Purchase Agreement.

2. Transfer of Assets. Effective as of the Closing Date, pursuant to the authority and powers granted in the Canadian Sale and Vesting Order, the Receiver hereby sells, conveys, transfers, assigns and delivers to Buyer all right, title and interest of Canadian Seller and Receiver in, to and under the Canadian Assets, including, without limitation, all Intellectual Property (as defined in the Asset Purchase Agreement) of the Canadian Seller, and Buyer hereby purchases such Canadian Assets and accepts such sale, conveyance, transfer, assignment and delivery; *provided, however*, that any Canadian Assets that are specifically assigned or transferred pursuant to any other Transaction Document shall not be assigned or transferred pursuant to this Section 2.

3. Subject to the Asset Purchase Agreement. This Bill of Sale is subject in all respects to the terms and conditions of the Asset Purchase Agreement, and all of the representations, warranties, covenants and agreements of Canadian Seller and Buyer contained therein, all of which shall survive the execution and delivery of this Bill of Sale in accordance with the terms of the Asset Purchase Agreement. The Canadian Assets are being delivered for

good and valuable consideration, pursuant to the terms and conditions contained in the Asset Purchase Agreement and pursuant to the powers granted to the Receiver pursuant to the Canadian Orders. Nothing contained herein shall supersede, amend, alter or modify (nor shall it be deemed or construed to supersede, amend, alter or modify) any of the terms or conditions of the Asset Purchase Agreement in any manner whatsoever. In the event of any conflict between the provisions of this Bill of Sale and the provisions of the Asset Purchase Agreement, the provisions of the Asset Purchase Agreement shall control and prevail.

4. Representations and Warranties. Except as set forth in the Asset Purchase Agreement and this Bill of Sale, in respect of Canadian Seller, neither of Canadian Seller nor the Receiver makes any representations or warranties, express or implied, with respect to the Acquired Assets, and each of Canadian Seller and the Receiver expressly disclaims any implied warranties. For greater certainty, nothing in this Bill of Sale or in the Asset Purchase Agreement or similar document shall create any liability for the Receiver. The Receiver represents and warrants to the Buyer that (a) the Receiver is a court-appointed receiver of the Canadian Seller and, pursuant to the Canadian Sale and Vesting Order, has the power, authority and capacity to enter into this Bill of Sale and to complete the Transaction related to the Canadian Assets as contemplated by the Asset Purchase Agreement; (b) the Receiver has not created any encumbrance on the Canadian Assets, other than the Receiver's Charge as contemplated in the Receivership Order; and (c) the Receiver is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada).

5. Parties in Interest; No Third Party Beneficiaries. This Bill of Sale shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. This Bill of Sale is for the sole benefit of the Parties and their permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

6. Counterparts. This Bill of Sale and any amendment hereto may be executed in one or more counterparts, each of which shall be deemed to be an original of this Bill of Sale or such amendment and all of which, when taken together, shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Bill of Sale or any amendment hereto by telecopier, facsimile or email attachment shall be effective as delivery of a manually executed counterpart of this Bill of Sale or such amendment, as applicable.

7. Waiver. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Bill of Sale or the documents referred to in this Bill of Sale shall operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given, and (b) no notice to or demand on one Party shall be deemed to be a waiver of any right of the Party giving such notice or demand to take further action without notice or demand.

8. Entire Agreement; Amendment. Subject to Section 3 of this Bill of Sale, this Bill of Sale and the other Transaction Documents supersede all prior agreements between Buyer, on the one hand, and Canadian Seller, on the other hand, with respect to its subject matter and constitute a complete and exclusive statement of the terms of the agreements between Buyer, on the one hand, and Canadian Seller, on the other hand, with respect to their subject matter. This Bill of Sale may not be amended except by a written agreement executed by all of the Parties.

9. Severability. The provisions of this Bill of Sale shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Bill of Sale, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Bill of Sale and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability.

10. Governing Law; Jurisdiction.

(a) This Bill of Sale is to be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

(b) Without limitation of any Party's right to appeal any Canadian Order of the Canadian Court, (i) the Canadian Court shall retain exclusive jurisdiction to enforce the terms of this Bill of Sale and to decide any claims or disputes which may arise or result from, or be connected with, this Bill of Sale, any breach or default hereunder, or the transactions contemplated hereby and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Canadian Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Canadian Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding. The Parties consent to service of process (in accordance with Section 12.2 of the Asset Purchase Agreement) or any other manner permitted by law.

SIGNATURE PAGE FOLLOWS

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

GRACEWAY CANADA COMPANY

By: _____
Name:
Title:

RSM RICHTER INC., in its capacity as the Receiver of Graceway Canada Company, and not in its personal capacity

By: _____
Name:
Title:

GALDERMA S.A.

By: _____
Name:
Title:

EXHIBIT D

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: GRACEWAY PHARMACEUTICALS, LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 11-_____ (____) Joint Administration Requested Related Docket No. [__]

ORDER AUTHORIZING (A) THE SALE OF CERTAIN ASSETS OF THE DEBTORS FREE AND CLEAR OF ALL CLAIMS, LIENS, LIABILITIES, RIGHTS, INTERESTS AND ENCUMBRANCES; (B) THE DEBTORS TO ENTER INTO AND PERFORM THEIR OBLIGATIONS UNDER THE ASSET PURCHASE AGREEMENT; (C) THE DEBTORS TO ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (D) GRANTING RELATED RELIEF

Upon the portion of the motion (the "**Motion**")[2] of Graceway Holdings, LLC and the other above-captioned debtors, as debtors and debtors-in-possession (collectively, the "**Debtors**") for entry of orders, pursuant to sections 105(a), 363, 365, 503 and 507 of the United States Bankruptcy Code (the "**Bankruptcy Code**"), and Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") authorizing and approving the following:

(i) the sale of certain assets of the Debtors;

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1 The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).

2 Unless indicated otherwise, capitalized terms used but not defined herein have the meanings ascribed to them in the APA (as defined below).

(ii) the entry into, performance under and terms and conditions of the Asset Purchase Agreement dated as of September [__], 2011 (collectively with all related agreements, amendments, documents or instruments and all exhibits, schedules and addenda to any of the foregoing, the "**APA**"), substantially in the form attached hereto as **Exhibit A**, whereby the Debtors have agreed to sell, and Galderma S.A. ("**Buyer**") has agreed to buy, certain of the Debtors' assets (specifically as set forth and defined in the APA, the "**Acquired Assets**"), free and clear of all Claims (as defined below), Liens (defined below), liabilities, rights, interests, setoff rights and encumbrances except where the Debtors have agreed to transfer and Buyer has expressly agreed to assume certain of the Debtors' liabilities (specifically as set forth and defined in the APA, the "**Assumed Liabilities**") (collectively, and including all actions taken or required to be taken in connection with the implementation and consummation of the APA, the "**Transactions**");

(iii) the assumption and assignment to Buyer or an Affiliate (as defined in the APA) of Buyer of certain executory contracts and unexpired leases of the Debtors designated for assumption and assignment as Assigned Agreements in accordance with this Order, the Bidding Procedures Order (defined below) and the APA (collectively the "**Assigned Agreements**"); and

(iv) other related relief;

and the Court having entered an order approving the bidding procedures and granting certain related relief on [_____], 2011 [Docket No. _____] (the "**Bidding Procedures Order**"); an auction having been conducted in accordance with the Bidding Procedures Order (the "**Auction**") and Buyer having submitted the highest and best offer; and the Court having conducted a hearing on the Motion commencing on [_____], 2011 (the "**Sale Hearing**") at which time all interested parties were offered an opportunity to be heard with respect to the Motion; and the Court having reviewed and considered the Motion, the APA, the Bidding Procedures Order, the record of the hearing before the Court on [_____] (the "**Bidding Procedures Hearing**") at which the Bidding Procedures Order was approved, and all objections to the Transactions and the APA filed in accordance with the Bidding Procedures Order; and the appearance of all interested parties and all responses and objections to the Sale Motion having been duly noted in the record of the Sale Hearing; and upon the record of the Sale Hearing, and

having heard statements of counsel and the evidence presented in support of the relief requested in the Motion at the Sale Hearing; and upon all of the proceedings had before the Court, and all objections and responses to the relief requested in the Motion having been heard and overruled, continued or resolved on the terms set forth in this Order, and it appearing that due notice of the Motion, the APA, the Bidding Procedures Order and the Auction having been provided; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their stakeholders and all other parties-in-interest; and it appearing that the Court has jurisdiction over this matter; and it further appearing that the legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein; and after due deliberation thereon,

THE COURT EXPRESSLY FINDS AS FOLLOWS:[3]

Jurisdiction, Venue and Final Order

A. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h), 6006(d) and 7062, and to the extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of this Order as set forth herein.

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3 All findings of fact and conclusions of law announced by the Bankruptcy Court at the Sale Hearing in relation to the Sale Motion are hereby incorporated to the extent not inconsistent herewith.

Notice of the Transactions, APA, Sale Hearing, Auction and the Cure Costs

C. As evidenced by the affidavits of service and publication previously filed with this Court, proper, timely, adequate and sufficient notice of the Motion, the Auction, the Sale Hearing, the APA and the Transactions has been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9014. The Debtors have complied with all obligations to provide notice of the Motion, the Auction, the Sale Hearing, the APA and the Transactions as required by the Bidding Procedures Order. The aforementioned notices are good, sufficient and appropriate under the circumstances, and no other or further notice of the Motion, the Auction, the Sale Hearing, the APA or the Transactions is required for the entry of this Order.

D. A reasonable opportunity to object or to be heard regarding the relief requested in the Motion was afforded to all interested persons and entities.

E. In accordance with the Bidding Procedures Order, the Debtors have served a notice (as amended, modified or otherwise supplemented from time to time, the "**Contract Notice**") of the potential assumption and assignment of the Assigned Agreements and of the Cure Costs upon each non-Debtor counterparty to an Assigned Agreement. The service and provision of the Contract Notice was good, sufficient and appropriate under the circumstances and no further notice need be given in respect of assumption and assignment of the Assigned Agreements or establishing a Cure Cost for the respective Assigned Agreements. Non-Debtor counterparties to the Assigned Agreements have had an adequate opportunity to object to assumption and assignment of the applicable Assigned Agreements and the Cure Cost set forth in the Contract Notice (including objections related to the adequate assurance of future performance and objections based on whether applicable law excuses the non-Debtor counterparty from accepting performance by, or rendering performance to, Buyer for purposes of section 365(c)(1)

of the Bankruptcy Code). The deadline to file an objection to the assumption and assignment to Buyer of any Assigned Agreement (a "**Contract Objection**") has expired and to the extent any such party timely filed a Contract Objection, all such Contract Objections have been resolved, withdrawn, overruled, or continued to a later hearing by agreement of the parties. To the extent that any such party did not timely file a Contract Objection by the Contract Objection deadline, such party shall be deemed to have consented to (i) the assumption and assignment of the Assigned Agreement, and (ii) the proposed Cure Cost set forth on the Contract Notice.

Highest or Otherwise Best Offer

F. As demonstrated by the evidence proffered or adduced at the Sale Hearing and the representations of counsel made on the record at the Sale Hearing, the Debtors have otherwise complied in all respects with, the Bidding Procedures Order. The Auction was duly noticed and conducted in a noncollusive, fair and good faith manner and the Auction process set forth in the Bidding Procedures Order afforded a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase all of the Acquired Assets and assume all of the Assumed Liabilities.

G. The Acquired Assets were adequately marketed by the Debtors, and the consideration provided by Buyer under the APA constitutes the highest and best offer and provides fair and reasonable consideration to the Debtors for the sale of all Acquired Assets and the assumption of all Assumed Liabilities. The consideration provided by Buyer under the APA will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the consideration provided by Buyer under the APA constitutes the highest and best offer for the Acquired Assets constitutes a valid and sound exercise of the Debtors' business judgment.

H. Approval of the Motion and the APA and the consummation of the Transactions contemplated thereby are in the best interests of the Debtors, their respective creditors, estates and other parties in interest. The Debtors have demonstrated good, sufficient and sound business reasons and justifications for entering into the Transactions and the performance of their obligations under the APA.

I. Entry of an order approving the APA and all the provisions thereof is a necessary condition precedent to Buyer's consummation of the Transactions.

J. The APA was not entered into, and none of the Debtors or Buyer has entered into the APA or propose to consummate the Transactions, for the purpose of hindering, delaying or defrauding the Debtors' present or future creditors. None of the Debtors or Buyer is entering into the APA, or proposing to consummate the Transactions, fraudulently, for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

K. The offer of Buyer, upon the terms and conditions set forth in the APA, including the form and total consideration to be realized by the Debtors pursuant to the APA: (i) is the highest and best offer received by the Debtors; (ii) is fair and reasonable; (iii) is in the best interests of the Debtors' creditors and estates and (iv) constitutes fair value, fair, full and adequate consideration, reasonably equivalent value and reasonable market value for the Acquired Assets.

L. Buyer is the Successful Bidder for the Acquired Assets in accordance with the Bidding Procedures Order. Buyer has complied in all respects with the Bidding Procedures

Order and any other applicable order of this Court in negotiating and entering into the APA, and the sale and the APA likewise comply with the Bidding Procedures Order and any other applicable order of this Court.

Good Faith of Debtors and Buyer

M. The sales process conducted by the Debtors, including without limitation, the Bidding Procedures set forth in the Bidding Procedures Order, was at arms' length, non-collusive, in good faith, and substantively and procedurally fair to all parties.

N. The Debtors, Buyer and their respective professionals have complied, in good faith, in all respects with the Bidding Procedures Order. As demonstrated by (i) any testimony and other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, substantial marketing efforts and a competitive sale process were conducted in accordance with the Bidding Procedures Order, the Debtors (a) afforded all creditors and other parties in interest and all potential purchasers a full, fair and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase the Acquired Assets, (b) provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Acquired Assets, and (c) considered any bids submitted on or before the Bid Deadline (as defined in the Bidding Procedures).

O. The APA and the Transactions contemplated thereunder were proposed, negotiated and entered into by and among the Debtors and Buyer without collusion, in good faith and at arms' length. None of the Debtors or Buyer has engaged in any conduct that would cause or permit the APA or the Transactions to be avoided under section 363(n) of the Bankruptcy Code.

P. Neither Buyer nor any of its affiliates, present or contemplated members, officers, directors, shareholders or any of their respective successors and assigns is an "insider" of any of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code. Buyer is entering into the Transactions in good faith and is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to the full protection of that provision, and otherwise has proceeded in good faith in all respects in connection with this proceeding. Neither the Debtors nor Buyer have engaged in any action or inaction that would cause or permit the APA to be avoided or impose any costs or damages under section 363(n) of the Bankruptcy Code.

Section 363 Is Satisfied

Q. The Debtors have demonstrated a sufficient basis and compelling circumstances requiring them to (i) enter into the APA, and (ii) sell the Acquired Assets and assume and assign the Assigned Agreements and such actions are appropriate exercises of the Debtors' business judgment and in the best interests of the Debtors, their estates and their creditors. Such business reasons include, but are not limited to, the fact that (i) the APA constitutes the highest and best offer for the Acquired Assets; (ii) the APA presents the best opportunity to realize the value of the Debtors; and (iii) unless the sale is concluded expeditiously as provided for in the Motion and pursuant to the APA, recoveries of creditors may be diminished.

R. The Debtors have, to the extent necessary, satisfied the requirements of Bankruptcy Code section 363(b)(1). Accordingly, appointment of a consumer privacy ombudsman pursuant to Bankruptcy Code sections 363(b)(1) or 332 is not required with respect to the relief requested in the Motion.

S. The Acquired Assets constitute property of the Debtors' estates and title thereto is presently vested in the Debtors' estates within the meaning of Bankruptcy Code section 541(a).

T. The sale of all Acquired Assets to Buyer under the terms of the APA meets the applicable provisions of section 363(f) of the Bankruptcy Code such that the sale of the Acquired Assets will be free and clear of any and all Claims, and except as expressly provided in the APA with respect to the Assumed Liabilities, the (i) transfer of the Acquired Assets to Buyer and (ii) assumption and/or assignment to Buyer or an Affiliate of Buyer of the Assigned Agreements and Assumed Liabilities will be free and clear of all Claims and will not subject Buyer or any of Buyer's assets to any liability for any Claims whatsoever (including, without limitation, under any theory of equitable law, antitrust, setoff, or successor or transferee liability). All holders of Claims who did not object, or withdrew their objections to the Transactions, are deemed to have consented to the Transactions pursuant to section 363(f)(2) of the Bankruptcy Code, and all holders of Claims are adequately protected — thus satisfying section 363(e) of the Bankruptcy Code — by having their Claims, if any, attach to the proceeds of the Transactions ultimately attributable to the property against or in which they assert a Claim or other specifically dedicated funds, in the same order of priority and with the same validity, force and effect that such Claim holder had prior to the Transactions, subject to any rights, claims and defenses of the Debtors or their estates, as applicable, or as otherwise provided herein; provided, however, that setoff rights will be extinguished to the extent there is no longer mutuality after the consummation of the Transactions.

U. Buyer would not have entered into the APA and would not consummate the sale of all Acquired Assets, thus adversely affecting the Debtors, their estates, creditors, employees and other parties in interest, if the sale of the Acquired Assets was not free and clear of all Claims or if Buyer would, or in the future could, be liable for any Claims, including, without limitation and as applicable, certain liabilities that expressly are not assumed by Buyer as set

forth in the APA or in this Order. Buyer asserts that it will not consummate the Transactions unless the APA specifically provides, and this Court specifically orders, that none of Buyer, its assets or the Acquired Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any (i) Claim or (ii) any successor or transferee liability for any of the Debtors other than the Assumed Liabilities.

V. The transfer of the Acquired Assets to Buyer under the APA will be a legal, valid and effective transfer of all of the legal, equitable and beneficial right, title and interest in and to the Acquired Assets free and clear of all Claims. The Debtors may sell their interests in the Acquired Assets free and clear of all Claims because, in each case, one or more of the standards set forth in section 363(f) of the Bankruptcy Code has been satisfied. The transfer of the Acquired Assets to Buyer will vest Buyer with good and marketable title to the Acquired Assets.

W. Buyer is not a successor to the Debtors or their respective estates by reason of any theory of law or equity and Buyer shall not assume or in any way be responsible for any liability or obligation of any of the Debtors or their respective estates, except as otherwise expressly provided in the APA or this Sale Order. Buyer is not a continuation of the Debtors or their respective estates and there is no continuity between Buyer and the Debtors. Buyer is not holding itself out to the public as a continuation of the Debtors or their respective estates and the Transactions do not amount to a consolidation, merger or *de facto* merger of Buyer and the Debtors.

X. There is no legal or equitable reason to delay the Transactions. The Transactions must be approved and consummated promptly in order to preserve the value of the Debtors' assets.

Y. The Debtors have demonstrated both (i) good, sufficient and sound business purposes and justifications and (ii) compelling circumstances for the Transactions pursuant to section 363(b) of the Bankruptcy Code prior to, and outside of, a plan of reorganization in that, among other things, absent the immediate consummation of the Transactions, the value of the Debtors' assets will be harmed. To maximize the value of the Purchased Assets, it is essential that the Transactions occur within the timeframe set forth in the APA. Time is of the essence in consummating the Transactions.

Z. The sale and assignment of the Acquired Assets outside of a plan of reorganization pursuant to the APA neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan for the Debtors. Neither the APA nor the transactions contemplated thereby constitute a sub rosa chapter 11 plan.

Assumption and Assignment of the Assigned Agreements

AA. The assumption and assignment of the Assigned Agreements (as such Assigned Agreements may be amended, supplemented or otherwise modified prior to assumption and assignment without further order of the Court with the consent of the Debtors, the contract counterparty and Buyer) that are designated for assumption and assignment pursuant to the terms of this Order and the APA are integral to the APA, are in the best interests of the Debtors and their respective estates, creditors and other parties in interest, and represent the reasonable exercise of sound and prudent business judgment by the Debtors.

BB. No section of any Assigned Agreement which purports to prohibit, restrict, or condition the use, consideration or assignment of any such Assigned Agreement in connection with the Transactions shall have any force or effect.

CC. The Debtors have met all requirements of section 365(b) of the Bankruptcy Code for each of the Assigned Agreements. The Debtors (and, in certain cases, Buyer, as applicable under the APA) have (a) cured and/or provided adequate assurance of cure of any default existing prior to the Closing under all of the Assigned Agreements, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code; and (b) provided compensation or adequate assurance of compensation to any counterparty for actual pecuniary loss to such party resulting from a default prior to the Closing under any of the Assigned Agreements, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. Each of the Assigned Agreements is free and clear of all Claims against Buyer.

DD. Buyer has demonstrated adequate assurance of its future performance under the relevant Assigned Agreements within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code. Pursuant to section 365(f) of the Bankruptcy Code, the Assigned Agreements to be assumed and assigned under the APA shall be assigned and transferred to, and remain in full force and effect for the benefit of, Buyer notwithstanding any provision in the contracts or other restrictions prohibiting their assignment or transfer.

EE. No defaults exist in the Debtors' performance under the Assigned Agreements as of the date of this Sale Order other than the failure to pay amounts equal to the Cure Costs or defaults that are not required to be cured as contemplated in section 365(b)(1)(A) of the Bankruptcy Code.

THEREFORE, IT IS HEREBY ORDERED THAT:

General Provisions

2. The Motion is granted in its entirety and approved in all respects.

3. All objections to the Motion or the relief requested therein that have not been withdrawn, waived or settled as announced to the Court at the Sale Hearing or by stipulation

filed with the Court or as resolved in this Order, and all reservations of rights included therein, are hereby overruled on the merits with prejudice. All persons and entities given notice of the Motion that failed to timely object thereto are deemed to consent to the relief sought therein including without limitation all non-Debtor parties to the Assigned Agreements.

4. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Approval of the APA

5. The APA, all of the terms and conditions thereof, and all of the Transactions contemplated therein are approved in all respects. The failure specifically to include any particular provision of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the APA be authorized and approved in its entirety. The transfer of the Acquired Assets by the Debtors to Buyer shall be a legal, valid and effective transfer of the Acquired Assets. The consummation of the Transactions is hereby approved and authorized under section 363(b) of the Bankruptcy Code.

6. The Debtors are authorized to (a) take any and all actions necessary or appropriate to perform, consummate, implement and close the Transactions, including the sale to Buyer of all Acquired Assets, in accordance with the terms and conditions set forth in the APA and this Order, including without limitation executing, acknowledging and delivering such deeds, assignments, conveyances and other assurance, documents and instruments of transfer and taking any action for purposes of assigning, transferring, granting, conveying, and confirming to Buyer, or reducing to possession, any or all of the Acquired Assets and (b) to assume and assign any and

all Assigned Agreements. The Debtors are further authorized to pay, without further order of this Court, whether before, at or after the Closing, any expenses or costs that are required to be paid in order to consummate the Transactions or perform their obligations under the APA. [Except for the Break Up Fee (as defined in the APA), which is only payable out of the proceeds of an Alternative Transaction (as defined in the APA), any amounts, including the Expense Reimbursement Amount, that become payable by the Debtors to Buyer pursuant to the APA, (and related agreements executed in connection therewith) shall constitute administrative expenses of the Debtors' estates under sections 503(b) and 507(a)(l) of the Bankruptcy Code (to the extent set forth in the Bidding Procedures Order, the APA and such related agreements) and shall be treated with such priority if the above-captioned bankruptcy cases convert to cases under chapter 7 of the Bankruptcy Code.][4]

7. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with, or which would be inconsistent with, the ability of the Debtors to transfer the Acquired Assets to Buyer in accordance with the APA and this Order.

Sale and Transfer Free and Clear of Claims

8. Except as otherwise expressly provided in the APA and the terms of this Order with respect to Assumed Liabilities, the Acquired Assets shall be sold free and clear of all claims, Liens, liabilities, interests, rights and encumbrances, including, without limitation, the following: all mortgages, restrictions (including, without limitation, any restriction on the use, voting rights, transfer rights, claims for receipt of income or other exercise of any attributes of ownership), hypothecations, charges, indentures, loan agreements, instruments, leases, licenses,

[4] Note to draft: to be revised after determination of Successful Bidder.

options, deeds of trust, security interests, equity interests, conditional sale rights or other title retention agreements, pledges, judgments, demands, rights of first refusal, consent rights, offsets, contract rights, rights of setoff, recoupment rights, rights of recovery, reimbursement rights, contribution claims, indemnity rights, exoneration rights, product liability claims, alter-ego claims, environmental rights and claims (including, without limitation, toxic tort claims), labor rights and claims, employment rights and claims, pension rights and claims, tax claims, regulatory violations by any governmental entity, decrees of any court or foreign or domestic governmental entity, charges of any kind or nature, debts arising in any way in connection with any agreements, acts, or failures to act, reclamation claims, obligation claims, demands, guaranties, option rights or claims, rights, contractual or other commitment rights and claims, rights of licensees or sublicensees under section 365(n) of the Bankruptcy Code or any similar statute, and all other matters of any kind and nature, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of this Bankruptcy Case (but, for the avoidance of doubt, in each case arising from the ownership of the Acquired Assets or the operation of the Business prior to the Closing Date), and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under any theory, law or doctrine of successor liability or related theories (all of the foregoing collectively being referred to in this Order as "**Claims**", and, as used in this Order, the term Claims includes, without limitation, any and all "claims" as that term is defined and used in the Bankruptcy Code, including section 101(5) thereof), with all such Claims to attach to the proceeds of the

Transactions to be received by the Debtors with the same validity, force, priority and effect which they now have as against the Acquired Assets and subject to any claims and defenses the Debtors or other parties may possess with respect thereto; provided, however, that setoff rights will be extinguished to the extent there is no longer mutuality after the consummation of the Transactions. As used in this Order, the term "**Liens**" includes, without limitation, any statutory lien on real and personal property and any and all "liens" as that term is defined and used in the Bankruptcy Code, including section 101(37) thereof.

9. At Closing, all of the Debtors' right, title and interest in and to, and possession of, the Acquired Assets shall be immediately vested in Buyer pursuant to sections 105(a), 363(b), 363(f) and 365 of the Bankruptcy Code free and clear of any and all Claims except for Assumed Liabilities. Such transfer shall constitute a legal, valid, binding and effective transfer of such Acquired Assets. All person or entities, presently or on or after the Closing, in possession of some or all of the Acquired Assets are directed to surrender possession of the Acquired Assets to Buyer or its designees on the Closing or at such time thereafter as Buyer may request.

10. This Order (a) shall be effective as a determination that, as of the Closing, (i) no Claims (other than Assumed Liabilities) will be capable of being asserted against Buyer or any of its assets (including the Acquired Assets), (ii) the Acquired Assets shall have been transferred to Buyer free and clear of all Claims and (iii) the conveyances described herein have been effected; and (b) is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of

law, the duties of their office or contract, to accept, file, register or otherwise record or release any documents or instruments; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA. The Acquired Assets are sold free and clear of any reclamation rights.

11. Except as otherwise expressly provided in the APA with respect to the Assumed Liabilities, all persons and entities (and their respective successors and assigns), including, but not limited to, all debt security holders, equity security holders, affiliates, governmental, tax and regulatory authorities, lenders, customers, vendors, employees, trade creditors, litigation claimants and other creditors holding Claims arising under or out of, in connection with, or in any way relating to, the Debtors, the Acquired Assets, the ownership, sale or operation of the Acquired Assets and the Business prior to Closing or the transfer of the Acquired Assets to Buyer, are hereby forever barred, estopped and permanently enjoined from asserting such Claims against Buyer, its successors or assigns, their property or the Acquired Assets. Following the Closing, no holder of any Claim shall interfere with Buyer's title to or use and enjoyment of the Acquired Assets based on or related to any such Claim, or based on any action the Debtors may take in their Chapter 11 cases.

12. If any person or entity that has filed financing statements, mortgages, mechanic's Claims, *lis pendens* or other documents or agreements evidencing Claims against or in the Acquired Assets shall not have delivered to the Debtors prior to the Closing of the Transactions, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Claims that the person or entity has with respect to the Acquired Assets or otherwise, then only with regard to the Acquired Assets that are purchased by

Buyer pursuant to the APA and this Order (a) the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Acquired Assets and (b) Buyer is hereby authorized to file, register or otherwise record a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Claims against Buyer and the applicable Acquired Assets; and (c) Buyer may seek in this Court or any other court to compel appropriate parties to execute termination statements, instruments of satisfaction, and releases of all Claims with respect to the Acquired Assets other than Assumed Liabilities. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department or office. Notwithstanding the foregoing, the provisions of this Order authorizing the sale and assignment of the Acquired Assets free and clear of Claims shall be self-executing, and none of the Debtors nor Buyer shall be required to execute or file releases, termination statements, assignments, consents or other instruments in order to effectuate, consummate and implement the provisions of this Order.

13. To the maximum extent permitted under applicable law, Buyer shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtors with respect to the Acquired Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to Buyer as of the Closing Date.

14. To the extent permitted by Bankruptcy Code section 525, no governmental unit may revoke or suspend any permit or license relating to the operation of the Acquired Assets

sold, transferred, assigned or conveyed to Buyer on account of the filing or pendency of these chapter 11 cases or the consummation of the Transactions.

No Successor or Transferee Liability

15. Buyer shall not be deemed, as a result of any action taken in connection with the APA, the consummation of the Transactions contemplated by the APA, or the transfer or operation of the Acquired Assets to (a) be a legal successor, or otherwise be deemed a successor to the Debtors (other than, for Buyer, with respect to any obligations as an assignee under the Assigned Agreements arising after the Closing); (b) have, *de facto* or otherwise, merged with or into the Debtors; or (c) be an alter ego or a mere continuation or substantial continuation of the Debtors including, without limitation, within the meaning of any foreign, federal, state or local revenue law, pension law, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act ("**COBRA**"), WARN (defined below), CERCLA (defined below), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended), the National Labor Relations Act, 29 U.S.C. § 151, *et seq.* (the "**NLRA**"), environmental liabilities, debts, claims or obligations arising from conditions first existing on or prior to Closing (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including, without limitation, under CERCLA, any liabilities, debts or obligations of or required to be paid by the Debtors for any taxes of any kind for any period, labor, employment, or other law, rule or regulation (including without limitation filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine.

16. Other than as expressly set forth in the APA with respect to Assumed Liabilities, Buyer shall not have any responsibility for (a) any liability or other obligation of the Debtors or related to the Acquired Assets or (b) any remaining Claims against the Debtors or any of their predecessors or affiliates. Buyer shall have no liability whatsoever with respect to the Debtors' (or their predecessors' or affiliates') respective businesses or operations or any of the Debtors' (or their predecessors' or affiliates') obligations (as described herein, "**Successor or Transferee Liability**") based, in whole or part, directly or indirectly, on any theory of successor or vicarious liability of any kind or character, or based upon any theory of antitrust, environmental, successor or transferee liability, *de facto* merger or substantial continuity, labor and employment or products liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Acquired Assets prior to the Closing. Buyer shall have no liability or obligation under the WARN Act (29 U.S.C. §§ 2101 et seq.) ("**WARN**") or the Comprehensive Environmental Response Compensation and Liability Act ("**CERCLA**"), or any foreign, federal, state or local labor, employment, or environmental law whether of similar import or otherwise by virtue of Buyer's purchase of the Acquired Assets or assumption of the Assumed Liabilities by Buyer or an Affiliate of Buyer.

17. Nothing in this Order or the APA shall require Buyer to (a) continue or maintain in effect, or assume any liability in respect of any employee, collective bargaining agreement, pension, welfare, fringe benefit or any other benefit plan, trust arrangement or other agreements to which the Debtors are a party or have any responsibility therefor including, without limitation, medical, welfare and pension benefits payable after retirement or other termination of

employment; or (b) assume any responsibility as a fiduciary, plan sponsor or otherwise, for making any contribution to, or in respect of the funding, investment or administration of any employee benefit plan, arrangement or agreement (including but not limited to pension plans) or the termination of any such plan, arrangement or agreement.

18. Effective upon the Closing, all persons and entities are forever prohibited and enjoined from commencing or continuing in any matter any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against Buyer, or its assets (including the Acquired Assets), with respect to any (a) Claim or (b) Successor or Transferee Liability including, without limitation, the following actions with respect to clauses (a) and (b): (i) commencing or continuing any action or other proceeding pending or threatened; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (iii) creating, perfecting or enforcing any lien, claim, interest or encumbrance; (iv) asserting any setoff, right of subrogation or recoupment of any kind; (v) commencing or continuing any action, in any manner or place, that does not comply with, or is inconsistent with, the provisions of this Sale Order or other orders of this Court, or the agreements or actions contemplated or taken in respect hereof; or (vi) revoking, terminating or failing or refusing to renew any license, permit or authorization to operate any of the Acquired Assets or conduct any of the businesses operated with such assets.

Good Faith of Buyer

19. The Transactions contemplated by the APA are undertaken by Buyer without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the sale shall not affect the validity of the Transactions (including the assumption and assignment of the Assigned Agreements), unless such authorization and consummation of

the sale are duly and properly stayed pending such appeal. Buyer is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

20. Neither the Debtors nor Buyer have engaged in any action or inaction that would cause or permit the Transactions to be avoided or costs or damages to be imposed under section 363(n) of the Bankruptcy Code. The consideration provided by Buyer for the Acquired Assets under the APA is fair and reasonable and the Transactions may not be avoided under section 363(n) of the Bankruptcy Code.

21. Buyer is not an "insider" as that term is defined in section 101(31) of the Bankruptcy Code.

Assumption and Assignment of Assigned Agreements

22. The Debtors are authorized and directed at to assume and assign each of the Assigned Agreements upon the Closing of the Transactions, free and clear of all Claims. The payment of the applicable Cure Costs by the Debtors (or, in certain cases, Buyer, as applicable under the APA) shall (a) effect a cure of all defaults existing thereunder as of the Closing Date, (b) compensate for any actual pecuniary loss to such non-Debtor counterparty resulting from such default, and (c) together with the assumption of the Assigned Agreements by the Debtors and the assignment of the Assigned Agreements to Buyer or an Affiliate of Buyer, constitute adequate assurance of future performance thereof.

23. Any provisions in any Assigned Agreement that prohibit or condition the assignment of such Assigned Agreement or allow the counterparty to such Assigned Agreement to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Assigned Agreement, constitute unenforceable anti-assignment provisions that are void and of no force and effect. All other requirements and

conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to Buyer or an Affiliate of Buyer of the Assigned Agreements have been satisfied. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, Buyer shall be fully and irrevocably vested with all right, title and interest of the Debtors under the Assigned Agreements, and such Assigned Agreements shall remain in full force and effect for the benefit of Buyer. Each non-Debtor counterparty to the Assigned Agreements shall be forever barred, estopped, and permanently enjoined from (a) asserting against the Debtors or Buyer or their respective property any assignment fee, acceleration, default, breach or claim or pecuniary loss, or condition to assignment existing, arising or accruing as of the Closing Date or arising by reason of the Closing, including any breach related to or arising out of change-in-control in such Assigned Agreements, or any purported written or oral modification to the Assigned Agreements and (b) asserting against Buyer (or its property, including the Acquired Assets) any claim, counterclaim, defense, breach, condition, setoff asserted or capable of being asserted against the Debtors existing as of the Closing Date or arising by reason of the Closing except for the Assumed Liabilities.

24. Upon the Closing and the payment of the relevant Cure Costs, Buyer shall be deemed to be substituted for the Debtors as a party to the applicable Assigned Agreements and the Debtors shall be released, pursuant to section 365(k) of the Bankruptcy Code, from any liability under the Assigned Agreements. There shall be no assignment fees, increases or any other fees charged to Buyer or the Debtors as a result of the assumption and assignment of the Assigned Agreements.

25. Each non-Debtor party to an Assigned Agreement is forever barred, estopped and permanently enjoined from asserting against Buyer, or its property (including without limitation

the Acquired Assets), any default existing as of the date of the Sale Hearing, or any counterclaim, defense, setoff or other claim asserted or capable of being asserted against the Debtors. Other than the Assigned Agreements, Buyer assumed none of the Debtors' other contracts or leases and shall have no liability whatsoever thereunder.

26. The assignments of each of the Assigned Agreements are made in good faith under sections 363(b) and (m) of the Bankruptcy Code.

Other Provisions

27. In connection with the Closing of the Transactions, the Cash Consideration from the Sale[, less the Break Up Fee paid to Buyer pursuant to the terms of the APA (the "**Net Cash Consideration**")][5], shall be paid directly by the Successful Bidder to the First Lien Agent (as defined in the *Interim Order (I) Authorizing Debtors to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to the Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364; (III) Authorizing Debtors to Obtain Postpetition Financing Pursuant to 11 U.S.C. § 364 and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(B)* [Docket No. ___], entered on _____, 2011, and the *Final Order (I) Authorizing Debtors to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to the Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364 and (III) Authorizing Debtors to Obtain Postpetition Financing Pursuant to 11 U.S.C. § 364* [Docket No. ____], entered on ____, 2011, and any amendments to each of the foregoing (collectively, the "**DIP Order**")) on the Closing Date for distribution to the First Lien Claimholders (as defined in the DIP Order), except that:

[5] NTD: This provision will be included/excluded after the Successful Bidder is determined.

(i) $[•] shall be funded into a segregated escrow account to pay the applicable Debtors' Cure Costs in accordance with the APA (the "**Cure Account**");

(ii) $[•] (the "**Canadian Cash Consideration**"), constituting the portion of the [Net][6] Cash Consideration allocated by the Bankruptcy Court to the Acquired Assets of Graceway Canada Company ("**Graceway Canada**") less any Cure Costs required to be paid by Graceway Canada in accordance with the APA, shall be paid directly to the Receiver from Graceway Canada's payment of its creditors and equity holders in accordance with applicable law;

(iii) the sum of the outstanding principal amount and all capitalized or accrued interest thereon under the $6,000,000 postpetition intercompany term loans authorized pursuant to the DIP Order from Graceway Canada to Graceway Pharmaceuticals, LLC (the "**Intercompany Loan Balance**") shall be paid to Graceway Canada;

(iv) solely to pay the Sale Transaction Fee due and owing to Lazard Freres & Co. LLC ("**Lazard**") as defined in and pursuant to the terms of that certain engagement letter, dated March 12, 2010, between Lazard and Graceway Pharmaceuticals, LLC (the "**Success Fee**"), an amount equal to the Success Fee shall be paid directly by the Successful Bidder to Lazard on the Closing Date if permitted by the Bankruptcy Court or, if not so permitted on the Closing Date deposited into a segregated interest bearing account (the "**Lazard Account**") to be maintained at, and at all times under the control of, the First Lien Agent pending approval by the Bankruptcy Court of the Success Fee for distribution to Lazard;

(v) only after the Intercompany Loan Balance shall be paid to Graceway Canada in accordance with sub-clause (iii) above, an amount equal to(A) $[•] *plus* (B) any unpaid amounts incurred and earned prior to the Closing Date under each of the Debtors' Professionals Carve-Out Cap and the Committee Professionals Carve-Out Cap (each as defined in the DIP Order) (including, without limitation, any unbilled amounts) *minus* (C) the sum of (1) any Cash Collateral (as defined in the DIP Order), (2) the amount of all retainers, if any, held by professionals retained by the Debtors and/or Graceway Canada and not applied prior to the closing of the sale and (3) $2,616,007 (or $0 if the amount of Cash Collateral on hand immediately prior to the closing of the sale, *plus* the amount of all such retainers, *plus* $2,616,007 is greater than or equal to $[•] *plus* any unpaid amounts incurred and earned prior to the Closing Date under each of the Debtors' Professionals Carve-Out Cap and the Committee Professionals Carve-Out Cap (including, without limitation, any unbilled amounts)) shall be deposited into a separate interest bearing account (the "**Designated Account**") to be maintained at, and all times under the control of, the First Lien Agent for purposes of funding any shortfall with respect to (X) the Carve-Out (as defined in the DIP Order) (less the

[6] NTD: This word will be included/excluded after the Successful Bidder is determined.

amount of the Success Fee) and (Y) solely to the extent a Carve-Out Trigger Notice (as defined in the DIP Order) has not been delivered or a plan of reorganization or liquidation in the Bankruptcy Case is confirmed, distributions on account of (I) allowed priority claims and allowed administrative claims (including, without limitation, claims arising under Section 503(b)(9) of the Bankruptcy Code) not to exceed in the aggregate $[•] (excluding any amounts approved under Section 330 of the Bankruptcy Code to the extent of the Carve-Out) and (II) allowed prepetition claims authorized to be paid by the Bankruptcy Court pursuant to the orders approving those certain documents, motions and pleadings, filed by the Debtors with the Bankruptcy Court on the Petition Date (as defined in the DIP Order), pursuant to which the Debtors sought authorization to pay the prepetition obligations specifically described therein or any motions filed by the Debtors after the Petition Date consented to by the Approving Majority First Lien Lenders (as defined in the DIP Order) that seek authorization to pay the prepetition obligations specifically described therein (the "**Prepetition Claims Motions**") and not paid as of the Closing Date, not to exceed in the aggregate $[•]; provided, however, that nothing contained herein shall be construed as prohibiting the Debtors from paying any allowed prepetition claims authorized to be paid by the Bankruptcy Court pursuant to the orders approving the Prepetition Claims Motions, allowed priority claims and allowed administrative claims, in each case, incurred in the ordinary course of business prior to delivery of a Carve-Out Trigger Notice;

(vi) an amount equal to one percent (1.0%) of the portion of the [Net] Cash Consideration allocated to the Acquired Assets of the Debtors in accordance with the procedures set forth in the Sale Motion net of the sum of (A) the amount equal to the Intercompany Loan Balance, (B) any Cure Costs required to be paid in accordance with the APA and (C) the Canadian Cash Consideration, shall be deposited into a separate interest bearing account (the "**1.0% Holdback Account**") to be maintained at, and at all times under the control of, the First Lien Agent; and

(vii) an amount equal to $2,616,007 less (A) the amount of all severance and liabilities under the provisions of the Consolidated Omnibus Budget Reconciliation Act, as set forth in Section 4980B of the Code, or any other similar state law ("**COBRA**") paid by the Debtors during the period from and including the Petition Date to and including the Closing Date and (B) any amounts paid during the period from and including the Petition Date to and including the Closing Date to the Debtors' employees on account of vacation, personal and sick days, holidays and permitted time off for service on a jury, service in the military or bereavement, in each case, under the Debtors' paid time off plans existing during the period from and including the Petition Date to and including the Closing Date (it being understood that the amounts described in subclauses (A) and (B) of this clause shall not in the aggregate exceed $2,616,007) shall be deposited into a separate interest bearing account (the "**Employee Account**" and, together with the Cure Account, Lazard Account, Designated Account and 1.0% Holdback Account, the "**Reserve Accounts**") to be maintained at, and all times under the control of, the First Lien

Agent for purposes of funding the Debtors' severance and COBRA liabilities budgeted for under the DIP Order.

Any contingent payments under the APA not yet due and payable on the Closing Date shall be paid by the Successful Bidder as and when they become due and payable following the Closing Date directly to the First Lien Agent for distribution to the First Lien Claimholders

28. Without limiting any provision hereunder, it is hereby acknowledged and agreed that (i) the liens of the First Lien Agent, for the benefit of the First Lien Claimholders and other secured creditors, if any, shall attach in the same priority and to the same extent as existed on the Acquired Assets prior to the consummation of the transactions contemplated by the APA to each of the Reserve Accounts (provided, that distributions, if any, of the funds in such Reserve Accounts in accordance with paragraph 26 shall be distributed free and clear of any liens, claims, interests or encumbrances of the First Lien Agent or any liens, claims, interests or encumbrances junior in priority thereto), and (ii) to the extent any such funds (and any interest accruing thereon) remain in such segregated interest bearing Reserve Accounts (other than the 1% Holdback Account) after the final payment of all amounts for which such funds are designed (as specified herein), any such excess funds shall be paid to the First Lien Agent for prompt distribution to the First Lien Claimholders. Notwithstanding anything to the contrary in this Order, the funds in the 1.0% Holdback Account shall be distributed to the First Lien Administrative Agent for prompt distribution to the First Lien Lenders upon the earlier of the effective date of a plan of reorganization or liquidation in the Chapter 11 Cases and [July 31, 2012].

29. The requirements set forth in Bankruptcy Rules 6003(b), 6004 and 6006 and Local Bankruptcy Rules 6004-1 and 9013-1 have been satisfied or otherwise deemed waived.

30. Buyer shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the APA or any other sale-related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence, provided however that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

31. Notwithstanding anything to the contrary contained in the APA, the Acquired Assets shall not include any causes of action concerning directors' and officers' liability. In addition to the foregoing, neither the APA, nor this Order shall transfer to Buyer any avoidance claims or causes of action under the Bankruptcy Code or applicable law, including all such rights and avoidance actions of the Debtors' estates arising under chapter 5 of the Bankruptcy Code.

32. This Order is binding upon and inures to the benefit of any successors and assigns of the Debtors or Buyer, including any trustee appointed in any subsequent case of the Debtors under chapter 7 of the Bankruptcy Code.

33. The provisions of this Order and the APA are non-severable and mutually dependent.

34. The APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates.

35. The Court shall retain exclusive jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the APA, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtors are a party or which has been assigned by the Debtors

to Buyer, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Transactions. This Court retains jurisdiction to compel delivery of the Acquired Assets, to protect Buyer and its assets, including the Acquired Assets, against any Claims and Successor and Transferee Liability and to enter orders, as appropriate, pursuant to sections 105, 363 or 365 (or other applicable provisions) of the Bankruptcy Code necessary to transfer the Acquired Assets and the Assigned Agreements to Buyer.

36. As provided by Bankruptcy Rules 7062 and 9014, the terms and conditions of this Order shall be effective immediately upon entry and shall not be subject to the stay provisions contained in Bankruptcy Rules 6004(h) and 6006(d). Time is of the essence in closing the sale and the Debtors and Buyer intend to close the sale as soon as possible. Therefore, any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay or risk their appeal being foreclosed as moot.

37. This Order and the APA shall be binding in all respects upon all creditors of (whether known or unknown), and holders of equity interests in, any Debtor, any holders of Claims in, against or on all or any portion of the Acquired Assets, all non-Debtor counterparties to the Assigned Agreements, all successors and assigns of Buyer, the Debtors and their affiliates and subsidiaries and any subsequent trustees appointed in these chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code, and shall not be subject to rejection. Nothing contained in any chapter 11 plan confirmed in these chapter 11 cases, any order confirming any such chapter 11 plan or any order approving wind-down or dismissal of these chapter 11 cases or any subsequent chapter 7 cases shall conflict with or derogate from the provisions of the APA or this Order, and to the extent of any conflict or derogation between this

Order or the APA and such future plan or order, the terms of this Order and the APA shall control.

38. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

39. To the extent any provisions of this Order conflict with, or are otherwise inconsistent with, the terms and conditions of the APA or the Bidding Procedures Order, this Order shall govern and control.

Dated: [_____] [•], 2011
Wilmington, Delaware

_____

UNITED STATES BANKRUPTCY JUDGE

Exhibit A

APA

Exhibit E: Form of Escrow Agreement

[Intentionally omitted; available upon request]

EXHIBIT F

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment Agreement") is made as of **[•]**, 2011, by and among **GALDERMA S.A.**, a Switzerland corporation ("Buyer"), and **GRACEWAY PHARMACEUTICALS, LLC**, a Delaware limited liability company, and its Subsidiaries set forth on Annex A to the Asset Purchase Agreement (as defined below) (collectively, "US Sellers" and each individually a "US Seller"), and **GRACEWAY CANADA COMPANY**, a Nova Scotia unlimited liability company ("Canadian Seller" and collectively with US Sellers, "Sellers" and each individually a "Seller").

WHEREAS, Buyer and Sellers entered into that certain Asset Purchase Agreement, dated as of September **[•]**, 2011 (the "Asset Purchase Agreement"); and

WHEREAS, pursuant to the Asset Purchase Agreement, Sellers have agreed to sell, convey, transfer, assign and deliver to Buyer all of Sellers' right, title and interest in, to and under the Acquired Assets, and Buyer has agreed to assume, timely perform and discharge in accordance with their respective terms, the Assumed Liabilities.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, it is hereby agreed that:

1. Definitions. Unless otherwise defined herein, all capitalized terms used in this Assignment Agreement shall have the meanings set forth in the Asset Purchase Agreement.

2. Assignment of Acquired Assets. Effective as of the Closing Date, Sellers hereby sell, convey, transfer, assign and deliver to Buyer all of Sellers' right, title and interest in, to and under the Acquired Assets, and Buyer hereby accepts such sale, conveyance, transfer, assignment and delivery from Sellers; *provided, however*, that the tangible Acquired Assets are being specifically assigned and transferred pursuant to the Bill of Sale and any other Acquired Assets that are specifically assigned or transferred pursuant to any other Transaction Document are being specifically assigned and transferred pursuant to such other Transaction Documents and, in each case, shall not be assigned or transferred pursuant to this Section 2.

3. Assumption of Assumed Liabilities. Effective as of the Closing Date, Buyer hereby assumes, accepts and agrees to timely perform and discharge in accordance with their respective terms any and all of the Assumed Liabilities; *provided, however*, that any Assumed Liabilities that are specifically assumed by Buyer pursuant to any other Transaction Document shall not be assumed pursuant to this Section 3.

4. Subject to the Asset Purchase Agreement. This Assignment Agreement is subject in all respects to the terms and conditions of the Asset Purchase Agreement, and all of the representations, warranties, covenants and agreements of Sellers and Buyer contained therein, all of which shall survive the execution and delivery of this Assignment Agreement in accordance with the terms of the Asset Purchase Agreement. Nothing in this Assignment Agreement shall supersede, amend, alter or modify (nor shall it be deemed or construed to supersede, amend, alter

or modify) any of the terms or conditions of the Asset Purchase Agreement in any manner whatsoever. In the event of any conflict between the provisions of this Assignment Agreement and the provisions of the Asset Purchase Agreement, the provisions of the Asset Purchase Agreement shall control and prevail.

5. Representations and Warranties. Except as set forth in the Asset Purchase Agreement, Sellers make no representations or warranties, express or implied, with respect to the Acquired Assets or the Assumed Liabilities, and Sellers expressly disclaim any implied warranties.

6. Assignment. This Assignment Agreement, and the rights, interests and obligations hereunder, shall not be assigned by any Party by operation of law or otherwise without the express written consent of the other Parties (which consent may be granted or withheld in the sole discretion of such other Party); provided, however, that Buyer shall be permitted, upon prior notice to Sellers, to assign all or part of its rights or obligations hereunder to an Affiliate, but no such assignment shall relieve Buyer of its obligations under this Assignment Agreement, and Sellers shall be permitted to assign all or part of their rights or obligations hereunder pursuant to a plan of reorganization or liquidation approved by the Bankruptcy Court.

7. Parties in Interest; No Third Party Beneficiaries. This Assignment Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. This Assignment Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

8. Counterparts. This Assignment Agreement and any amendment hereto may be executed in one or more counterparts, each of which shall be deemed to be an original of this Assignment Agreement or such amendment and all of which, when taken together, shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Assignment Agreement or any amendment hereto by telecopier, facsimile or email attachment shall be effective as delivery of a manually executed counterpart of this Assignment Agreement or such amendment, as applicable.

9. Waiver. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Assignment Agreement or the documents referred to in this Assignment Agreement shall operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given, and (b) no notice to or demand on one Party shall be deemed to be a waiver of any right of the Party giving such notice or demand to take further action without notice or demand.

10. Entire Agreement; Amendment. This Assignment Agreement and the other Transaction Documents supersede all prior agreements between Buyer, on the one hand, and Sellers, on the other hand, with respect to its subject matter and constitute a complete and

exclusive statement of the terms of the agreements between Buyer, on the one hand, and Sellers, on the other hand, with respect to their subject matter. This Assignment Agreement may not be amended except by a written agreement executed by all of the Parties.

11. Severability. The provisions of this Assignment Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Assignment Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Assignment Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability.

12. Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code or the provisions of the CJA or other Laws applicable in the Canadian Proceedings apply, this Assignment Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to Contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of Delaware applicable hereto.

(b) Without limitation of any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Assignment Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Assignment Agreement, any breach or default hereunder, or the transactions contemplated hereby (except for such matters as must be dealt with by the Canadian Court in the Canadian Proceedings) and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding; *provided, however*, that, if the Bankruptcy Case is closed, all Proceedings arising out of or relating to this Assignment Agreement shall be heard and determined in a Delaware state court or a federal court sitting in the State of Delaware, and the Parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding. The Parties consent to service of process by mail (in accordance with Section 12.2 of the Asset Purchase Agreement) or any other manner permitted by law.

(c) THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS ASSIGNMENT AGREEMENT OR THE ACTIONS OF SELLERS OR BUYER OR THEIR RESPECTIVE REPRESENTATIVES IN THE NEGOTIATION OR PERFORMANCE HEREOF.

SIGNATURE PAGES FOLLOW

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

GRACEWAY PHARMACEUTICALS, LLC

By: _____
Name:
Title:

GRACEWAY CANADA HOLDINGS, INC.

By: _____
Name:
Title:

GRACEWAY CANADA COMPANY

By: _____
Name:
Title:

GRACEWAY INTERNATIONAL, INC.

By: _____
Name:
Title:

CHESTER VALLEY HOLDINGS, LLC

By: _____
Name:
Title:

CHESTER VALLEY PHARMACEUTICALS, LLC

By: _____
Name:
Title:

GALDERMA S.A.

By: _____
Name:
Title:

[Signature Page to Assignment and Assumption Agreement]

EXHIBIT G

Court File No. ●

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE ●	)	●, THE ●
	)	
JUSTICE ●	)	DAY OF ●, 2011

IN THE MATTER OF THE RECEIVERSHIP OF GRACEWAY CANADA COMPANY

Applicant

AND IN THE MATTER OF THE *COURTS OF JUSTICE ACT*, AS AMENDED

SALE AND VESTING ORDER

THIS MOTION, made by RSM Richter Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of Graceway Canada Company (the "**Debtor**") appointed by Order of the Court dated ●, 2011 (the "**Receivership Order**"), for an order approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement (the "**Asset Purchase Agreement**") among Galderma S.A., as the purchaser, the Debtor, Graceway Pharmaceuticals, LLC and its U.S. affiliates signatory thereto (collectively with Graceway Pharmaceuticals, LLC, the "**U.S. Sellers**") dated September ●, 2011, and vesting in the Purchaser the Debtor's right, title and interest in and to the Canadian Assets (as defined in the Asset Purchase Agreement), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the ● Report of the Receiver dated ●, 2011 (the "**Report**"), **[and the affidavit of ● sworn on ●,]** and on hearing the submissions of counsel for the Receiver, the Debtor, the Purchaser and ●, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ● sworn ●, 2011 filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction (including the allocation of the Purchase Price (as defined in the Asset Purchase Agreement) as between the Debtor's estate and the estates of the U.S. Sellers) is hereby approved, the Receiver is hereby authorized and directed to conclude the Transaction on behalf of the Debtor, and the Receiver and the Debtor are hereby authorized and directed to take such additional steps and to execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Canadian Assets to ● (the "**Purchaser**").

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Canadian Assets described in the Asset Purchase Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order **[or the Bidding Procedures Order of this Court dated ●, 2011]**; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system, but excluding the Permitted Encumbrances (as defined in the Asset Purchase Agreement) (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Canadian Assets are hereby expunged and discharged as against the Canadian Assets.

3. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Canadian Assets shall stand in the place and stead of the Canadian Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Canadian Assets with the same priority as they had with respect to the Canadian Assets immediately prior to the sale, as if the Canadian Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

5. 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 Debtor and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Canadian Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, 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.

6. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

EXHIBIT G

Schedule A – Form of Receiver's Certificate

Court File No. ●

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE RECEIVERSHIP OF GRACEWAY CANADA COMPANY

Applicant

AND IN THE MATTER OF THE *COURTS OF JUSTICE ACT*, AS AMENDED

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable ● of the Ontario Superior Court of Justice (the "**Court**") dated ●, 2011, RSM Richter Inc. was appointed as the receiver (the "**Receiver**") of Graceway Canada Company (the "**Debtor**").

B. Pursuant to an Order of the Court dated ●, 2011, the Court approved the asset purchase agreement made as of ●, 2011 (the "**Asset Purchase Agreement**") among Galderma S.A., as the purchaser, the Debtor, Graceway Pharmaceuticals, LLC and its U.S. affiliates signatory thereto and provided for the vesting in ● (the "**Purchaser**") of the Debtor's right, title and interest in and to the Canadian Assets, which vesting is to be effective with respect to the Canadian Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Canadian Assets; (ii) that the conditions to Closing as set out in section ● of the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Asset Purchase Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Canadian Assets payable on the Closing Date pursuant to the Asset Purchase Agreement;

2. The conditions to Closing as set out in section ● of the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and

3. The Transaction has been completed to the satisfaction of the Receiver.

4. This Certificate was delivered by the Receiver at ● on ●, 2011.

RSM Richter Inc., in its capacity as Receiver of Graceway Canada Company, and not in its personal capacity

Per: _____

Name:

Title:

EXHIBIT H

U.S. TRADEMARK ASSIGNMENT

This U.S. TRADEMARK ASSIGNMENT, dated as of _____, 2011 (the "Assignment"), is made by and between Graceway Pharmaceuticals, LLC, a Delaware limited liability company ("Assignor"), and Galderma S.A., a Switzerland corporation ("Assignee").

WHEREAS, Assignee, Assignor, Graceway Canada Company and certain Subsidiaries of Assignor are parties to the Asset Purchase Agreement, dated as of September __, 2011 ("Purchase Agreement"), providing for the execution and delivery of this Assignment (capitalized terms used herein without definition shall have the meanings set forth in the Purchase Agreement);

WHEREAS, Assignor is the sole and exclusive owner of the marks set forth on Exhibit A and incorporated by reference herein, which are registered, or for which application for registration has been filed, in the United States Patent and Trademark Office (collectively, the "Assigned Marks"); and

WHEREAS, Assignee desires to purchase and acquire all of Assignor's right, title and interest in and to the Assigned Marks together with the goodwill of the Business symbolized by the Assigned Marks, which is ongoing.

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

1. Assignment. Assignor does hereby sell, transfer, assign, convey and deliver to Assignee all of Assignor's right, title and interest in and to the Assigned Marks together with the goodwill of the Business symbolized by the Assigned Marks, including without limitation all of the rights in damages for past, present and future infringements of the Assigned Marks.

2. Recordation. Assignor authorizes and requests the Commissioner of Patents and Trademarks of the United States to record ownership of the Assigned Marks as the property of Assignee.

3. Governing Law. Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Assignment shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to Contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of Delaware applicable hereto.

4. Further Action. From time to time after the date hereof, and for no further consideration, Assignor and Assignee shall execute, acknowledge and deliver such

assignments, transfers, consents, assumptions and other documents and instruments and take such other actions as may reasonably be necessary to consummate the transactions contemplated hereby.

5. Counterparts. This Assignment may be executed simultaneously in one or more counterparts (including by facsimile or electronic .pdf submission), and by the different parties in separate counterparts, each of which when executed shall be deemed to be an original, but all of which shall constitute one and the same agreement.

[Signature Page Follows.]

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

ASSIGNOR:

GRACEWAY PHARMACEUTICALS, LLC

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF NEW YORK)
:SS:
COUNTY OF)

On , 2011 before me, the undersigned, personally appeared

_____

personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
(signature and office of individual taking acknowledgment)

ASSIGNEE:

GALDERMA S.A.

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF NEW YORK)
:SS:
COUNTY OF)

On , 2011 before me, the undersigned, personally appeared

_____

personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
(signature and office of individual taking acknowledgment)

EXHIBIT A

Assigned Marks

[TO COME]

EXHIBIT I

U.S. PATENT ASSIGNMENT

This U.S. PATENT ASSIGNMENT, dated as of _____, 2011 (the "Assignment"), is made by and between Graceway Pharmaceuticals, LLC, a Delaware limited liability company ("Assignor"), and Galderma S.A., a Switzerland corporation ("Assignee").

WHEREAS, Assignee, Assignor, Graceway Canada Company and certain Subsidiaries of Assignor are parties to the Asset Purchase Agreement, dated as of September __, 2011 ("Purchase Agreement"), providing for the execution and delivery of this Assignment (capitalized terms used herein without definition shall have the meanings set forth in the Purchase Agreement);

WHEREAS, Assignor is the sole and exclusive owner of the patents and patent applications set forth on Exhibit A and incorporated by reference herein, which have been issued, or for which application has been filed, in the United States Patent and Trademark Office (collectively, the "Assigned Patents"); and

WHEREAS, Assignee desires to purchase and acquire all of Assignor's right, title and interest in and to the Assigned Patents.

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

1. Assignment. Assignor does hereby sell, transfer, assign, convey and deliver to Assignee all of Assignor's right, title and interest in and to the Assigned Patents, including without limitation all of the rights in damages for past, present and future infringements of the Assigned Patents.

2. Recordation. Assignor authorizes and requests the Commissioner of Patents and Trademarks of the United States to record ownership of the Assigned Patents as the property of Assignee.

3. Governing Law. Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Assignment shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to Contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of Delaware applicable hereto.

4. Further Action. From time to time after the date hereof, and for no further consideration, Assignor and Assignee shall execute, acknowledge and deliver such assignments, transfers, consents, assumptions and other documents and instruments and

take such other actions as may reasonably be necessary to consummate the transactions contemplated hereby.

5. Counterparts. This Assignment may be executed simultaneously in one or more counterparts (including by facsimile or electronic .pdf submission), and by the different parties in separate counterparts, each of which when executed shall be deemed to be an original, but all of which shall constitute one and the same agreement.

[Signature Page Follows.]

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

ASSIGNOR:

GRACEWAY PHARMACEUTICALS, LLC

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF NEW YORK)
:SS:
COUNTY OF)

On , 2011 before me, the undersigned, personally appeared

_____

personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
(signature and office of individual taking acknowledgment)

ASSIGNEE:

GALDERMA S.A.

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF NEW YORK)
:SS:
COUNTY OF)

On , 2011 before me, the undersigned, personally appeared

_____

personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
(signature and office of individual taking acknowledgment)

EXHIBIT A

Assigned Patents

[TO COME]

Exhibit E

Sale Support Agreement

SALE SUPPORT AGREEMENT

This SALE SUPPORT AGREEMENT (as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof, this "***Agreement***"), dated as of September 28, 2011, is entered into by and among Graceway Pharmaceuticals, LLC ("***Graceway***"), Graceway Pharma Holding Corp., Graceway Holdings, LLC ("***Holdings***"), Chester Valley Holdings, LLC, Chester Valley Pharmaceuticals, LLC, Graceway Canada Holdings, Inc. and Graceway International, Inc. (such entities collectively, the "***Graceway Entities***" or the "***Company***"), Graceway Canada Company, a Nova Scotia unlimited liability corporation ("***Graceway Canada***") and each of the first lien lenders party hereto in its capacity as such (each, a "***Consenting First Lien Lender***", and collectively, the "***Consenting First Lien Lenders***"). Each of the Graceway Entities, Graceway Canada and each of the Consenting First Lien Lenders are referred to herein individually as a "***Party***", and collectively as the "***Parties***".

RECITALS

WHEREAS, certain Graceway Entities are party to that certain $680,000,000 First Lien Credit Agreement, dated as of May 3, 2007 (as amended, modified, supplemented or waived from time to time, the "***First Lien Credit Agreement***"), by and among Graceway, as borrower, Holdings, the Lenders (as defined in the First Lien Credit Agreement and hereinafter referred to as the "***First Lien Lenders***") and Bank of America, N.A. ("***BofA***"), as first lien collateral agent (together with any successor collateral agent appointed, the "***First Lien Collateral Agent***") and administrative agent (together with any successor administrative agent appointed, the "***First Lien Administrative Agent***") for the First Lien Claimholders (as defined in the Intercreditor Agreement, dated as of May 3, 2007 (the "***Intercreditor Agreement***"), among Graceway, Holdings, the First Lien Collateral Agent and Deutsche Bank Trust Company Americas, as second lien collateral agent, without giving effect to any cap provided for therein), providing for a credit facility of $680,000,000 (the "***First Lien Credit Facility***");

WHEREAS, certain Graceway Entities are party to that certain Guaranty, dated as of May 3, 2007 (the "***Guaranty***"), among Holdings, the Subsidiary Guarantors (as defined in the First Lien Credit Agreement) and the First Lien Administrative Agent;

WHEREAS, as of September 29, 2011, Graceway, Holdings and the Subsidiary Guarantors are obligated pursuant to the First Lien Credit Agreement and Guaranty for an aggregate outstanding principal amount of First Lien Loan Claims (as defined below) equal to $430,698,397.57;

WHEREAS, each Party desires that the Graceway Entities sell substantially all of their assets (the "***U.S. Assets***") pursuant to Section 363 of the Bankruptcy Code and that Graceway Canada sell substantially all of its assets (the "***Canadian Assets***" and together with the U.S. Assets, the "***Assets***"), in each case subject to the terms and conditions of this Agreement;

WHEREAS, subject to the terms and conditions of this Agreement, the Parties have agreed to support the Sale (as defined below); and

WHEREAS, the Graceway Entities intend to commence voluntary reorganization cases (the "***Chapter 11 Cases***") under chapter 11 of title 11 of the United States Code (as amended from time to time, the "***Bankruptcy Code***"), in the United States Bankruptcy Court for the District of Delaware (the "***Bankruptcy Court***") to effect the Sale; and

WHEREAS, Graceway Canada intends to make an application to Ontario Superior Court of Justice (Commercial List) in Toronto, Ontario, Canada (the "***Canadian Court***") and, if so reasonably requested by the Prevailing Purchaser (as defined herein), to any other courts of any other provinces in which Canadian Seller has Canadian Assets material to the Business as conducted by Canadian Seller (together with the Canadian Court, the "***Requested Canadian Courts***"), for the appointment of a receiver (the "***Receiver***"), and, if so reasonably requested by the Prevailing Purchaser, for recognition in any other provinces in which Graceway Canada has Canadian Assets material to the Business as conducted by Graceway Canada and such recognition is necessary for the transfer of such Canadian Assets, to oversee the Sale of the Canadian Assets under the Asset Purchase Agreement (as defined below) in concert with the process before the Bankruptcy Court.

NOW, THEREFORE, in consideration of the premises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Incorporation of Defined Terms. Capitalized terms used and not defined in this Agreement shall have the meaning ascribed to them in the Asset Purchase Agreement or First Lien Credit Agreement, as applicable.

2. Definitions. The following terms shall have the following definitions:

"***1.0% Holdback Account***" has the meaning set forth in section 4(b)(iii).

"***Agreement***" has the meaning set forth in the preamble hereof.

"***Affiliate***" means, with respect to any Person, any other Person which directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean, with respect to any Person, the possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise) of such Person.

"***Agreement Effective Date***" has the meaning set forth in section 6 hereto.

"***Alternative Transaction***" has the meaning set forth in section 5(b) hereto.

"***Assets***" has the meaning set forth in the recitals hereto.

"***Asset Purchase Agreement***" means the asset purchase agreement, dated as of September 27, 2011, attached hereto as Exhibit A.

"***Bankruptcy Code***" has the meaning set forth in the recitals hereto.

"***Bankruptcy Court***" has the meaning set forth in the recitals hereto.

"***Bankruptcy Rules***" means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, 28 U.S.C. § 2075, as applicable to the Chapter 11 Cases, and the general, local and chambers rules of the Bankruptcy Court, each as amended from time to time.

"***Bidding Procedures***" means the bidding procedures approved by the Bankruptcy Court pursuant to the Bidding Procedures Order.

"***Bidding Procedures Order***" means an order of the Bankruptcy Court, approving, among other things, the Bidding Procedures and the Break-Up Fee.

"***Board of Directors***" has the meaning set forth in section 5(b) hereto.

"***BofA***" has the meaning set forth in the recitals hereto.

"***Business***" has the meaning set forth in the Asset Purchase Agreement.

"***Business Day***" means any day other than Saturday, Sunday and any day that is a legal holiday or a day on which banking institutions in New York, New York are authorized by law or other governmental action to close.

"***Canadian Assets***" has the meaning set forth in the recitals hereto.

"***Canadian Cash Consideration***" means that portion of the Cash Consideration allocated to the Canadian Assets as approved by the Bankruptcy Court and the Canadian Court prior to, or at the same time as, entry of the Sale Order, after notice and opportunity to appear and be heard by the Required Supporting Lenders, less any Cure Costs required to be paid by Graceway Canada in accordance with the Asset Purchase Agreement.

"***Canadian Court***" has the meaning set forth in the recitals hereto.

"***Carve-Out***" has the meaning set forth in Interim Cash Collateral Order.

"***Carve-Out Trigger Notice***" means a written notice delivered by the First Lien Administrative Agent to the Graceway Entities' lead counsel, the U.S. Trustee, counsel to the Second Lien Administrative Agent and counsel to any Creditors' Committee appointed in these Chapter 11 Cases, which notice may be delivered at any time following the occurrence and during the continuation of any event of default under the Cash Collateral Order, expressly stating that the Carve-Out is invoked.

"***Cash Collateral***" means "cash collateral," as defined in Section 363 of the Bankruptcy Code, in which the First Lien Administrative Agent, the First Lien Collateral Agent and/or the First Lien Claimholders, as applicable, have a lien, security interest or other interest (including, without limitation, any adequate protection liens or security interests), in each case whether existing on the Petition Date, arising pursuant to the Cash Collateral Order or otherwise.

"***Cash Collateral Order***" means the Interim Cash Collateral Order or Final Cash Collateral Order, as applicable.

"***Cash Consideration***" means cash in U.S. dollars equal to the Purchase Price net of any Break-Up Fee required to be paid by the Company and Graceway Canada to the Stalking Horse Bidder pursuant to the terms of the Asset Purchase Agreement.

"***CCR Account***" has the meaning set forth in Section 4(b)(v) hereto.

"***Chapter 11 Cases***" has the meaning set forth in the recitals hereto.

"***CJA***" means the Court of Justice Act (Ontario).

"***claims***" has the meaning assigned to such term in the Bankruptcy Code.

"***Closing Date***" has the meaning assigned to such term in the Asset Purchase Agreement.

"***COBRA***" means the provisions of the Consolidated Omnibus Budget Reconciliation Act, as set forth in Section 4980B of the Code, or any similar state law.

"***Committee Professionals Carve-Out Cap***" has the meaning set forth in Interim Cash Collateral Order.

"***Company***" has the meaning set forth in the preamble hereof.

"***Consenting First Lien Lender(s)***" has the meaning set forth in the preamble hereof.

"***Consenting First Lien Lender Claims***" has the meaning set forth in section 9(a) hereto.

"***Creditors' Committee***" means the official committee of unsecured creditors appointed by the Office of the United States Trustee in the Chapter 11 Cases, if any.

"***Debtors' Professionals Carve-Out Cap***" has the meaning set forth in Interim Cash Collateral Order.

"***Definitive Documents***" has the meaning set forth in section 3(a) hereto.

"***Designated Account***" has the meaning set forth in section 4(b)(ii) hereto.

"***Employee Account***" has the meaning set forth in section 4(b)(iv) hereto.

"***Final Cash Collateral Order***" has the meaning set forth in section 4(a) hereto.

"***First Lien Administrative Agent***" has the meaning set forth in the recitals hereto.

"***First Lien Collateral Agent***" has the meaning set forth in the recitals hereto.

"***First Lien Credit Agreement***" has the meaning set forth in the recitals hereto.

"***First Lien Credit Facility***" has the meaning set forth in the recitals hereto.

"***First Lien Lenders***" has the meaning set forth in the recitals hereto.

"***First Lien Loan Claims***" means all claims of any kind whatsoever arising under the First Lien Credit Agreement and the other Loan Documents.

"***First Lien Obligations***" shall have the meaning assigned to such term in the Intercreditor Agreement without giving effect to any cap provided for therein.

"***Final Order***" means (a) an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending, (b) an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction as to which any appeal, petition for certiorari, reargument, or rehearing shall have been waived in writing in form and substance reasonably satisfactory to the Graceway Entities and the Required Supporting Lenders, (c) in the event that an appeal or writ of certiorari, reargument or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court or other court of competent jurisdiction shall have been upheld by the highest court to which such order was appealed, or certiorari, reargument or rehearing shall have been denied or resulted in no modification of such

order or judgment or (d) an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction as to which an appeal, petition for certiorari, reargument or rehearing is pending but as to which no stay request is pending or has been granted; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or applicable state court rules of civil procedure may be, but has not been, filed with respect to such order shall not cause such order not to be a Final Order.

"***Graceway***" has the meaning set forth in the preamble hereof.

"***Graceway Canada***" has the meaning set forth in the preamble hereof.

"***Graceway Entities***" has the meaning set forth in the preamble hereof.

"***GTCR***" means GTCR Partners VIII, L.P., GTCR Golder Rauner II, L.L.C., GTCR Fund VIII, L.P., Fund VIII/B Graceway Splitter, L.P., GTCR Co-Invest II, L.P., GTCR Fund IX/A, L.P., Fund IX/B Graceway Splitter, L.P., GTCR Co-Invest III, L.P., and any affiliates of the foregoing.

"***Guaranty***" has the meaning set forth in the recitals hereto.

"***Holdings***" has the meaning set forth in the preamble hereof.

"***HSR Act***" has the meaning set forth in section 8(d) hereto.

"***Intercompany Loan***" means the $6,000,000 postpetition intercompany term loans from Graceway Canada to Graceway.

"***Intercompany Loan Balance***" means the sum of the outstanding principal amount under the Intercompany Loan and all capitalized or accrued interest thereon, in each case, due on the Closing Date.

"***Intercreditor Agreement***" has the meaning set forth in the recitals hereto.

"***Interim Cash Collateral Order***" has the meaning set forth in section 4(a) hereto.

"***Latham***" has the meaning set forth in section 11 hereto.

"***Lazard***" has the meaning set forth in section 4(b)(i) hereto.

"***Lazard Account***" has the meaning set forth in section 4(b)(i) hereto.

"***Marketing Process***" means the marketing process that the Company and its retained professionals have commenced to solicit third party bids for the purchase of any or all of the Assets, which shall be consummated in a court-approved auction process and Sale.

"***Party***" or "***Parties***" has the meaning set forth in the preamble hereof.

"***Person***" means an individual, a partnership, a joint venture, a limited liability company, a corporation, a trust, an unincorporated organization, a group or any other legal entity or association.

"***Petition Date***" means the date the Chapter 11 Cases are commenced, which date shall be no later than September 30, 2011, unless such date is extended by written agreement of the Required Supporting Lenders.

"***Prepetition Claims Motions***" means those certain documents, motions and pleadings, filed by the Debtors with the Bankruptcy Court on the Petition Date, pursuant to which the Debtors sought authorization to pay the prepetition obligations specifically described therein, and any motions filed by the Debtors after the Petition Date consented to by the Required Supporting Lenders that seek authorization to pay the prepetition obligations specifically described therein.

"***Prevailing Purchaser***" means the Person or entity that submits the highest or otherwise best bid for the Assets at the conclusion of the Marketing Process.

"***Purchase Price***" means the aggregate amount of cash actually paid by the Prevailing Bidder to the Company, Graceway Canada or the First Lien Administrative Agent, in each case, on the Closing Date.

"***Receiver***" has the meaning set forth in the recitals hereto.

"***Required Supporting Lenders***" means at least two Consenting First Lien Lenders holding in aggregate a majority of the then outstanding First Lien Loan Claims held by the Consenting First Lien Lenders.

"***Sale***" means the sale of substantially all of the Assets free and clear of all liens, claims, encumbrances and other interests pursuant to, *inter alia,* Sections 105, 363 and 365 of the Bankruptcy Code to the Prevailing Purchaser in accordance with terms and conditions that are no worse when considered in the aggregate with respect to the First Lien Administrative Agent, the First Lien Collateral Agent and the First Lien Claimholders and treatment of all Consenting First Lien Lender Claims than those set forth in the Asset Purchase Agreement.

"***Sale Motion***" means the motion of the Graceway Entities before the Bankruptcy Court seeking entry of the Bidding Procedures Order and Sale Order.

"***Sale Order***" means an order of the Bankruptcy Court which, among other things, (i) approves the Sale of the Assets to the Prevailing Purchaser free and clear of all liens, claims and encumbrances in accordance with terms and conditions that are no worse when considered in the aggregate with respect to the First Lien Administrative Agent, the First Lien Collateral Agent and the First Lien Claimholders and treatment of all Consenting First Lien Lender Claims than those set forth in the Asset Purchase Agreement, (ii) approves the assumption by the Graceway Entities (and, if applicable, assignment to the Prevailing Purchaser) of any contracts pursuant to Section 365 of the Bankruptcy Code, (iii) contains findings of fact and conclusions of law that the Prevailing

Purchaser is a good faith purchaser entitled to the protections of Section 363(m) of the Bankruptcy Code and (iv) provides that (A) U.S. Cash Consideration, net of the portion of the amounts specified in section 4(b) hereof that may be paid from the U.S. Cash Consideration, and (B) any contingent payments under the Asset Purchase Agreement not yet due and payable on the Closing Date shall be paid by the Prevailing Purchaser as and when they become due and payable following the Closing Date directly to the First Lien Administrative Agent for distribution to the First Lien Lenders.

"***Second Lien Credit Agreement***" means the $330,000,000 Second Lien Credit Agreement, dated as of May 3, 2007, by and among Graceway, as borrower, Holdings, the lenders party thereto and Deutsche Bank Trust Company Americas, as second lien administrative agent and collateral agent.

"***Success Fee***" has the meaning set forth in section 4(b)(i) hereto.

"***Termination Date***" has the meaning set forth in section 7(d) hereto.

"***Termination Event***" has the meaning set forth in section 7(a) hereto.

"***Total Amount***" has the meaning set forth in section 4(b)(ii) hereto.

"***Transfer***" has the meaning set forth in section 11 hereto.

"***U.S. Assets***" has the meaning set forth in the recitals hereto.

"***U.S. Cash Consideration***" means that portion of the Cash Consideration allocated to the U.S. Assets as approved by the Bankruptcy Court and the Canadian Court prior to, or at the same time as, entry of the Sale Order, after notice and opportunity to appear and be heard by the Required Supporting Lenders, less an amount equal to the Intercompany Loan Balance (which amount shall be used by Graceway to repay the Intercompany Loan Balance on the Closing Date), less any Cure Costs required to be paid by the Graceway Entities in accordance with the Asset Purchase Agreement.

"***Wachtell Lipton***" means Wachtell, Lipton, Rosen & Katz, in its capacity as special restructuring and bankruptcy counsel to the First Lien Administrative Agent and First Lien Collateral Agent.

3. Obligations of the Parties. Subject to the terms and conditions of this Agreement, each of the Parties agree as follows:

a. to promptly negotiate, in good faith, the definitive documents relating to the implementation and effectuation of the Sale, including, but not limited to, (i) the Interim Cash Collateral Order, (ii) the Final Cash Collateral Order and (iii) all other agreements, documents, exhibits, annexes, schedules and orders of the Bankruptcy Court that are necessary or appropriate for the prompt consummation of the Sale (all of the foregoing, collectively with this Agreement and the Asset Purchase Agreement, and in each case as amended, modified or supplemented from time to time in accordance with the terms hereof or thereof, the "***Definitive Documents***"); provided that, in each case,

such Definitive Documents shall contain terms and conditions that are no worse when considered in the aggregate with respect to the First Lien Administrative Agent, the First Lien Collateral Agent and the First Lien Claimholders and treatment of all Consenting First Lien Lender Claims than those set forth in the Asset Purchase Agreement and shall otherwise be in form and substance reasonably acceptable to the Graceway Entities, the Receiver and the Required Supporting Lenders; and

b. to promptly execute and deliver (to the extent a party thereto), and otherwise support the prompt consummation of the transactions contemplated by, the Definitive Documents.

4. Obligations of the Consenting First Lien Lenders.

a. Consenting First Lien Lenders' Consent to Use of Cash Collateral to Fund the Chapter 11 Cases. The Consenting First Lien Lenders hereby consent to (i) the Graceway Entities' use of Collateral (including, without limitation, Cash Collateral) and (ii) the Intercompany Loan, in each case, solely pursuant to the terms and conditions of the interim order attached hereto as Exhibit B (the "***Interim Cash Collateral Order***"), as such order may be superseded by a final and/or supplemental order(s) in form and substance substantially similar to the Interim Cash Collateral Order and reasonably acceptable to the Required Supporting Lenders (the "***Final Cash Collateral Order***").

b. Consenting First Lien Lenders Consent to Use of Cash Collateral to Fund Liquidating Plan. In furtherance of the confirmation of a plan of reorganization or liquidation, on the Closing Date, the Consenting First Lien Lenders hereby consent to the distribution and the use of a portion of the U.S. Cash Consideration to fund and, if applicable, pay the amounts specified below:

(i) Solely to pay the Sale Transaction Fee due and owing to Lazard Frères & Co. LLC ("***Lazard***") as defined in and pursuant to the terms of that certain engagement letter, dated March 12, 2010, between Lazard and Graceway (the "***Success Fee***"), an amount equal to the Success Fee shall be paid directly by the Prevailing Bidder to Lazard on the Closing Date if permitted by the Bankruptcy Court or, if not so permitted on the Closing Date deposited into a segregated interest bearing account (the "***Lazard Account***") to be maintained at, and at all times under the control of, the First Lien Collateral Agent pending approval by the Bankruptcy Court of the Success Fee for distribution to Lazard; provided, that (1) the liens of the First Lien Collateral Agent, for the benefit of the First Lien Lenders and other secured creditors, if any, shall attach in the same priority and to the same extent as existed on the Assets prior to the consummation of the Sale to the Lazard Account and the funds contained therein (provided, that distributions, if any, of the funds in such account in accordance with this section 4(b)(i) shall be distributed free and clear of any liens, claims, interests or encumbrances of the First Lien Collateral Agent or any liens, claims, interests or encumbrances junior in priority thereto) and (2) to the extent any such funds (and any interest accruing thereon) remain in such segregated interest bearing account after

payment in full of the Success Fee, any such excess funds shall be paid to the First Lien Administrative Agent for prompt distribution to the First Lien Lenders;

(ii) Only after the Intercompany Loan Balance has been paid to Graceway Canada, an amount equal to (A) $11,234,000 *plus* (B) any unpaid amounts incurred and earned prior to the Closing Date under each of the Debtors' Professionals Carve-Out Cap and the Committee Professionals Carve-Out Cap (including, without limitation, any unbilled amounts) *plus* (C) the lesser of $10,500,000 and any unpaid amounts incurred and accrued prior to the Closing Date on account of allowed priority claims, administrative claims and allowed prepetition claims authorized to be paid by the Bankruptcy Court pursuant to the orders approving the Prepetition Claims Motions, excluding amounts described in clause (B) above, liabilities on account of chargebacks, channel management agreements, product returns and consumer rebates and liabilities for which funds have been deposited pursuant to paragraphs (i) and (iv) of this section 4(b), *plus* (D) any unpaid amounts incurred and accrued prior to the Closing Date on account of claims arising under Section 503(b)(9) of the Bankruptcy Code (the aggregate of such amounts in subclauses (A), (B), (C) and (D), the "***Total Amount***") *minus* (E) the sum of (1) any Cash Collateral, (2) the amount of all retainers, if any, held by professionals retained by the Graceway Entities and/or Graceway Canada and not applied prior to the Closing Date and (3) $2,616,007 (or $0 if the amount of Cash Collateral on hand immediately prior to the Closing Date, *plus* the amount of all such retainers, plus $2,616,007 is greater than or equal to the Total Amount) shall be deposited into a separate interest bearing account (the "***Designated Account***") to be maintained at, and all times under the control of, the First Lien Collateral Agent for purposes of funding any shortfall with respect to (X) the Carve-Out (less the amount of the Success Fee) and (Y) solely to the extent a Carve-Out Trigger Notice has not been delivered or a plan of reorganization or liquidation in the Chapter 11 Cases is confirmed, distributions on account of (I) allowed priority claims and allowed administrative claims (including, without limitation, claims arising under Section 503(b)(9) of the Bankruptcy Code, but excluding liabilities on account of chargebacks, channel management agreements, product returns and consumer rebates) not to exceed in the aggregate $15,852,000 (excluding any amounts approved under Section 330 of the Bankruptcy Code to the extent of the Carve-Out) and (II) allowed prepetition claims (excluding liabilities on account of chargebacks, channel management agreements, product returns and consumer rebates) authorized to be paid by the Bankruptcy Court pursuant to the orders approving the Prepetition Claims Motions and not paid as of the Closing Date, not to exceed in the aggregate $250,000; provided, however, that nothing contained herein shall be construed as prohibiting the Graceway Entities from paying any allowed prepetition claims authorized to be paid by the Bankruptcy Court pursuant to the orders approving the Prepetition Claims Motions, allowed priority claims and allowed administrative claims, in each case, incurred in the ordinary course of business prior to delivery of a Carve-Out Trigger Notice; provided, further, that (1) the liens of the First Lien Collateral Agent, for the benefit of the First Lien Lenders and other secured creditors, if any, shall attach in the same priority and to the same extent as existed on the Assets prior to the consummation of the Sale to the Designated Account and the funds contained therein (provided, that distributions, if any, of the funds in such account in accordance with this section 4(b)(ii) shall be distributed free and clear of any liens,

claims, interests or encumbrances of the First Lien Collateral Agent or any liens, claims, interests or encumbrances junior in priority thereto) and (2) to the extent any such funds (and any interest accruing thereon) remain in such segregated interest bearing account after payment in full of the professionals covered by the Carve-Out and such allowed prepetition claims, allowed priority claims and allowed administrative claims, any such excess funds shall be paid to the First Lien Administrative Agent for prompt distribution to the First Lien Lenders.

(iii) An amount equal to one percent (1.0%) of the U.S. Cash Consideration shall be deposited into a separate interest bearing account (the "***1.0% Holdback Account***") to be maintained at, and at all times under the control of, the First Lien Collateral Agent; provided, that (1) the liens of the First Lien Collateral Agent, for the benefit of the First Lien Lenders and other secured creditors, if any, shall attach in the same priority and to the same extent as existed on the Assets prior to the consummation of the Sale to the 1.0% Holdback Account and the funds contained therein and (2) such funds shall be paid to the First Lien Administrative Agent for prompt distribution to the First Lien Lenders upon the earlier of the effective date of a plan of reorganization or liquidation in the Chapter 11 Cases and July 31, 2012;

(iv) An amount equal to $2,616,007 less (A) the amount of all severance and COBRA liabilities paid by the Company during the period from and including the Petition Date to and including the Closing Date and (B) any amounts paid during the period from and including the Petition Date to and including the Closing Date to the Graceway Entities' employees on account of vacation, personal and sick days, holidays and permitted time off for service on a jury, service in the military or bereavement, in each case, under the Graceway Entities' paid time off plans existing during the period from and including the Petition Date to and including the Closing Date (it being understood that the amounts described in subclauses (A) and (B) of this clause (iv) shall not in the aggregate exceed $2,616,007) shall be deposited into a separate interest bearing account (the "***Employee Account***") to be maintained at, and all times under the control of, the First Lien Collateral Agent for purposes of funding the Graceway Entities' severance and COBRA liabilities budgeted for under the Cash Collateral Order; provided, that (1) the liens of the First Lien Collateral Agent, for the benefit of the First Lien Lenders and other secured creditors, if any, shall attach in the same priority and to the same extent as existed on the Assets prior to the consummation of the Sale to the Employee Account and the funds contained therein (provided, that distributions, if any, of the funds in such account in accordance with this section 4(b)(iv) shall be distributed free and clear of any liens, claims, interests or encumbrances of the First Lien Collateral Agent or any liens, claims, interests or encumbrances junior in priority thereto) and (2) to the extent any such funds (and any interest accruing thereon) remain in such segregated interest bearing account after payment in full of such budgeted severance and COBRA liabilities, any such excess funds shall be paid to the First Lien Administrative Agent for prompt distribution to the First Lien Lenders; and

(v) An amount equal to $17,684,000 shall be deposited into a separate interest bearing account (the "***CCR Account***") to be maintained at, and all times under the control of, the First Lien Collateral Agent for purposes of paying liabilities on

account of chargebacks, channel management agreements, product returns and consumer rebates constituting allowed (A) prepetition claims authorized to be paid by the Bankruptcy Court pursuant to the orders approving the Prepetition Claims Motions or (B) administrative claims, in each case, unpaid as of the Closing Date or arising thereafter; provided, that (1) the liens of the First Lien Collateral Agent, for the benefit of the First Lien Lenders and other secured creditors, if any, shall attach in the same priority and to the same extent as existed on the Assets prior to the consummation of the Sale to the CCR Account and the funds contained therein (provided, that distributions, if any, of the funds in such account in accordance with this section 4(b)(v) shall be distributed free and clear of any liens, claims, interests or encumbrances of the First Lien Collateral Agent or any liens, claims, interests or encumbrances junior in priority thereto) and (2) to the extent any such funds (and any interest accruing thereon) remain in such segregated interest bearing account after payment in full of such allowed claims, any such excess funds shall be paid to the First Lien Administrative Agent for prompt distribution to the First Lien Lenders

c. Support of Sale. Subject to the terms and conditions of this Agreement and the Asset Purchase Agreement, each of the Consenting First Lien Lenders, to the extent applicable, agrees that, until this Agreement has been terminated in accordance with section 7 hereof, it shall (severally and not jointly):

(1) not object to, or support any action or proceeding or take any other action (including, without limitation, credit bidding) that would, or would reasonably be expected to, impede or delay, the consummation of the Sale;

(2) not commence or support any action or proceeding to appoint a trustee, conservator, receiver or examiner for any of the Graceway Entities (or any of their respective Affiliates or subsidiaries), to dismiss any of the Chapter 11 Cases or to convert any of the Chapter 11 Cases to cases under Chapter 7 of the Bankruptcy Code; and

(3) not direct or instruct the First Lien Administrative Agent to take any action that is inconsistent with the terms and conditions of this Agreement, and, if the First Lien Administrative Agent or the counsel or advisors to the First Lien Administrative Agent takes or threatens to take any such action, to promptly take all commercially reasonable efforts to direct the First Lien Administrative Agent, or to cause the First Lien Administrative Agent or the counsel or advisors to the First Lien Administrative Agent to be directed, not to take such action; it being understood that no Party shall be required to give any such direction if doing so would require such Party to provide an indemnity to the First Lien Administrative Agent in connection therewith.

d. Limited Release. Each of the Consenting First Lien Lenders, to the extent applicable, agrees that, unless this Agreement has been terminated in accordance with section 7 hereof, it shall (severally and not jointly) support, as part of the Graceway Entities' plan of reorganization or liquidation, limited releases of each of the Graceway Entities' equity holders, officers, directors and employees, in each case, other than GTCR, in connection with any salary or bonus payments, equity distributions or tax distributions received by such equity holder, officer, director or employee from the Graceway Entities prior to December 31, 2010; provided, however, that no Consenting First Lien Lender shall be obligated pursuant to this section 4(d) to support any such release if (i) the Graceway Entities' plan of reorganization or liquidation becomes effective after July 31, 2012 or (ii) the Graceway Entities' plan of reorganization or liquidation is not in form and substance acceptable to such Consenting First Lien Lender in its sole and absolute discretion.

e. Canada. On the Closing Date (I) the Canadian Cash Consideration shall be paid directly to the Receiver for Graceway Canada's payment of its creditors and equity holders in accordance with applicable law and (II) the Intercompany Loan Balance shall be paid from that portion of the Cash Consideration allocated to the U.S. Assets as approved by the Bankruptcy Court and the Canadian Court prior to, or at the same time as, entry of the Sale Order, after notice and opportunity to appear and be heard by the Required Supporting Lenders.

provided, however, that the foregoing provisions will not (a) prohibit any Consenting First Lien Lender from taking, or directing the First Lien Collateral Agent to take, any action relating to the maintenance, protection and preservation of the Collateral; (b) prohibit any Consenting First Lien Lender from objecting, or directing the First Lien Collateral Agent or First Lien Administrative Agent to object, to any motion or pleading filed with the Bankruptcy Court seeking approval to use Cash Collateral (other than any motion or pleading filed in respect of the consensual Cash Collateral use arrangement described in the Cash Collateral Order) or to obtain debtor-in-possession financing (other than any motion or pleading filed in respect of the Intercompany Loan); or (c) limit any Consenting First Lien Lender's rights under the First Lien Credit Agreement, any other Loan Document and/or applicable law to appear and participate as a party in interest in any matter to be adjudicated in any case or proceeding under the Bankruptcy Code, the CJA or other applicable law, in each case, concerning the Company and/or Graceway Canada, so long as such appearance and the positions advocated in connection therewith are not materially inconsistent with this Agreement and do not hinder, delay or prevent consummation of the Sale.

5. Company and Graceway Canada Obligations to Support the Sale.

a. Generally.

(1) Graceway Entities. Subject to the provisions of section 5(b) of this Agreement, each Graceway Entity shall (i) use its commercially reasonable efforts to support and promptly consummate the Sale on or before January 27, 2012; (ii) do all things commercially reasonable, necessary and appropriate in furtherance of the Sale and all transactions set forth in this Agreement, including, without limitation, (1) using its commercially

reasonable efforts to obtain entry by the Bankruptcy Court of the Sale Order on or before January 2, 2012, (2) on or within three (3) Business Days after the Petition Date, filing the Sale Motion in the Bankruptcy Court, and (3) using its commercially reasonable efforts to have the Bankruptcy Court enter the Bidding Procedures Order within forty-five (45) days after the Petition Date; (iii) use its commercially reasonable efforts to obtain any and all required regulatory and/or third-party approvals for the Sale; and (iv) not take any action that is materially inconsistent with, or is intended or is reasonably likely to interfere with or impede or delay consummation of, the Sale.

(2) Graceway Canada. Subject to the provisions of section 5(b) of this Agreement, Graceway Canada shall (i) use its commercially reasonable efforts to support and promptly consummate the Sale on or before January 27, 2012; (ii) do all things commercially reasonable, necessary and appropriate in furtherance of the Sale and all transactions set forth in this Agreement; (iii) use its commercially reasonable efforts to obtain any and all required regulatory and/or third-party approvals for the Sale; and (iv) not take any action that is materially inconsistent with, or is intended or is reasonably likely to interfere with or impede or delay consummation of, the Sale.

b. Right to Consider Alternative Transactions. Notwithstanding anything in this Agreement to the contrary but subject to any limitations contained in the Asset Purchase Agreement, the Graceway Entities and/or Graceway Canada (in the case of Graceway Canada, in consultation with the Receiver) shall be entitled to consider any offer or proposal received as a result of the Marketing Process or otherwise from a Person concerning any proposed transaction involving any or all of (i) a plan of reorganization or other financial and/or corporate restructuring of any or all of the Graceway Entities and/or Graceway Canada, (ii) the sale or disposition by the Graceway Entities and/or Graceway Canada of greater than fifty percent (50%) of the outstanding equity interests of any Graceway Entity and/or Graceway Canada, as applicable, or the sale or disposition of assets constituting greater than fifty percent (50%) of the fair market value of all of the assets held by all of the Graceway Entities and/or Graceway Canada, (iii) a merger, consolidation, business combination, liquidation or recapitalization of any or all of the Graceway Entities and/or Graceway Canada or (iv) any similar transaction involving any or all of the Graceway Entities and/or Graceway Canada (each or any combination thereof, an "***Alternative Transaction***"). If the Graceway Entities and/or Graceway Canada receives an Alternative Transaction proposal, the Graceway Entities, Graceway Canada and/or the Receiver may engage in discussions or negotiations with, or provide information (upon entry into an acceptable confidentiality agreement) to, such Person proposing the Alternative Transaction, but only to the extent the board of directors of the applicable Graceway Entity and/or Graceway Canada (the "***Board of Directors***"), in consultation with the Receiver in the case of an Alternative Transaction with respect to Graceway Canada, determines in good faith that such Alternative Transaction may better maximize value for such Graceway Entity and/or Graceway Canada and its applicable stakeholders. The Graceway Entities and/or Graceway Canada shall promptly deliver to Wachtell Lipton all written communications delivered to or received by the Graceway Entities and/or Graceway Canada or its advisors proposing any Alternative Transaction, including, without limitation, copies of all expressions of interest, term sheets, letters of interest, offers, and proposed agreements and shall notify Wachtell Lipton of all discussions and/or negotiations being had with other Persons concerning such Alternative Transactions (it being understood that, notwithstanding anything contained herein or otherwise, the Graceway Entities' and/or Graceway Canada's obligations

pursuant to this last sentence of section 5(b) shall survive any termination of this Agreement pursuant to section 7 (other than a termination pursuant to section 7(b)(2) hereof)).

c. From and after the Closing Date to an including the effective date of its plan of reorganization or liquidation, each Graceway Entity shall deposit with the First Lien Collateral Agent on a bi-weekly basis all collections in respect of accounts receivable received by such Graceway Entity during each such two-week period. Each Graceway Entity shall make such deposits on every second Friday, commencing with Friday, February 10, 2012 and on the effective date of its plan of reorganization or liquidation. All amounts so deposited shall be applied by the First Lien Collateral Agent to reduce the amount of First Lien Loan Claims outstanding under, and in accordance with the terms of, the First Lien Credit Agreement.

6. Agreement Effective Date. This Agreement, and the rights and obligations of the Parties hereunder, shall be effective on the date on which the following conditions have been satisfied (the "***Agreement Effective Date***"):

a. The Graceway Entities and Graceway Canada shall have executed and delivered to Wachtell Lipton counterpart signature pages to this Agreement;

b. First Lien Lenders that hold, in the aggregate, at least forty percent (40%) of the then outstanding principal amount of the First Lien Loan Claims under the First Lien Credit Agreement shall have executed and delivered to the Graceway Entities and Graceway Canada counterpart signature pages to this Agreement;

c. all representations and warranties of the Parties contained herein shall be true and correct in all material respects as of the Agreement Effective Date;

d. a copy of the Register (as defined in the First Lien Credit Agreement) dated as of the Agreement Effective Date shall have been furnished to the Graceway Entities (the "***Register Notice***"); and

e. the Graceway Entities shall have paid any and all reasonable accrued and unpaid fees and expenses incurred by the First Lien Administrative Agent and First Lien Collateral Agent as of the Agreement Effective Date (including, without limitation, all reasonable fees and expenses of the First Lien Administrative Agent's and First Lien Collateral Agent's legal and financial advisors).

7. Termination of Obligations.

a. This Agreement shall terminate, and all of the rights and obligations of the Parties hereunder shall be of no further force or effect, in the event that (i) the Parties mutually agree to such termination in writing or (ii) this Agreement is terminated pursuant to the remaining paragraphs of this section 7 (the occurrence of any such event shall be deemed a "***Termination Event***").

b. The Graceway Entities or Graceway Canada may terminate this Agreement as to all Parties upon three (3) Business Days written notice to the other Parties upon the occurrence of any of the following events:

(1) the Board of Directors reasonably determines that proceeding with the Sale, or the consummation of the Sale, would be inconsistent with the exercise of their respective fiduciary duties;

(2) a material breach by any Consenting First Lien Lender of its respective obligations hereunder that would have a material adverse effect on the Graceway Entities or Graceway Canada or the prompt consummation of the Sale, which material breach is not cured on or within five (5) Business Days after the giving of written notice of such breach to the applicable breaching Consenting First Lien Lender; or

(3) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any ruling or order enjoining the consummation of a material portion of the Sale.

c. This Agreement shall terminate automatically without any further required action or notice upon the occurrence of any of the following events unless the occurrence of such Termination Event is waived in writing at any time by the Required Supporting Lenders:

(1) the failure of the Graceway Entities to commence their Chapter 11 Cases with the Bankruptcy Court on or before September 30, 2011;

(2) the Graceway Entities fails to obtain entry by the Bankruptcy Court of the (i) Interim Cash Collateral order on or within five (5) Business Days following the Petition Date or (ii) Final Cash Collateral Order on or within thirty-five (35) days after the Petition Date;

(3) the Graceway Entities fail to file the Sale Motion on or within three (3) Business Days following the Petition Date seeking approval of the Bidding Procedures and Sale in the Bankruptcy Court;

(4) the Graceway Entities fail to obtain entry by the Bankruptcy Court of (i) the Bidding Procedures Order within forty-five (45) days after the Petition Date or (ii) the Sale Order by January 2, 2012;

(5) (i) the termination of the Asset Purchase Agreement other than in connection with acceptance of an Alternative Transaction that is acceptable to the Postpetition Lender (as defined in the Interim Cash Collateral Order) and the Required Supporting Lenders in their respective sole discretion, (ii) the amendment or modification of, or filing of a pleading by the Graceway Entities seeking to amend or modify, the Asset Purchase Agreement, or any documents related thereto (including, without limitation, the Bidding Procedures, Bidding Procedures Order or Sale Order), in a manner not acceptable to the Postpetition Lender and Required Supporting Lenders in their respective sole discretion or (iii) execution of definitive documents in respect of an Alternative Transaction that are not acceptable to the Postpetition Lender and the Required Supporting Lenders in their respective sole discretion;

(6) the failure to consummate the Sale on or before January 27, 2012;

(7) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any ruling or order enjoining the consummation of a material portion of the Sale;

(8) (A) the entry by the Bankruptcy Court of an order, or the filing by any Graceway Entity of a motion with the Bankruptcy Court which seeks the entry of an order, accomplishing (i) the conversion of one or more of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code or (ii) the dismissal, termination, stay or modification of one or more of the Chapter 11 Cases or (B) with respect to any of the foregoing, any Graceway Entity's application for, consent to, or acquiescence in, any such relief;

(9) the entry by the Bankruptcy Court of an order, or the filing by any Graceway Entity of a motion with the Bankruptcy Court which seeks the entry of an order, accomplishing the appointment of an interim or permanent trustee, receiver or examiner with expanded powers to operate or manage the financial affairs, business or reorganization of any Graceway Entity in one or more of the Chapter 11 Cases;

(10) (A) the entry of an order by any court invalidating, disallowing or limiting in any respect, as applicable, either (i) the enforceability, priority, or validity of any liens (including any adequate protection replacement liens) securing the First Lien Obligations or (ii) any of the First Lien Obligations or Adequate Protection Super-Priority Claims (as defined in the Interim Cash Collateral Order) granted to the First Lien Claimholders or (B) with respect to any of the foregoing, any Graceway Entity's application for, consent to, or acquiescence in, any such relief;

(11) on or prior to January 27, 2012, with respect to each of the following line items in the Pre-Sale Approved Budget, the payment by the Graceway Entities of any disbursements in excess of the cumulative amount budgeted for each such line item in the Pre-Sale Approved Budget plus fifteen percent (15%) of the cumulative amount of disbursements with respect to such line item: (i) "Payroll & Benefits", (ii) "R&D, Licensing & Regulatory", (iii) "Advertising & Promotions and Sales Expenses", (iv) "Corporate, Occupancy, Utilities & Other Expenses", (v) "Ropes & Gray", (vi) "Edwards Angell Palmer & Dodge", (vii) "Hogan Lovells US LLP", (viii) "Other Non-Restructuring Professionals" and (ix) "CapEx";

(12) after January 27, 2012, with respect to the "Total Corporate, Employee and Other Wind Down Expenses" line item in the Wind-Down Approved Budget (as defined in the Interim Cash Collateral Order), the payment by the Graceway Entities of any disbursements in excess of the cumulative amount budgeted for such line item in the Wind-Down Approved

Budget plus ten percent (10%) of the cumulative amount of disbursements with respect to such line item;

(13) any violation of the Budget Covenants (as defined in the Interim Cash Collateral Order);

(14) the incurrence by the Graceway Entities after the Petition Date of indebtedness that is (A) secured by a security interest, mortgage or other lien on all or any portion of the Collateral which is equal or senior to any security interest, mortgage or other lien of the First Lien Collateral Agent and the First Lien Claimholders, as applicable, or (B) entitled to priority administrative status which is equal or senior to that granted to the First Lien Administrative Agent and First Lien Claimholders, as applicable, herein, except, in each case, (x) any such indebtedness used to refinance the First Lien Obligations in full and (y) the Intercompany Loan;

(15) the entry of a final order by the Bankruptcy Court (other than the Cash Collateral Order) granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code (A) to allow any creditor to execute upon or enforce a lien on or security interest in any Collateral with a value in excess of $250,000 or (B) with respect to any lien on or the granting of any lien on any Prepetition Collateral to any state or local environmental or regulatory agency (in each case with a value in excess of $250,000);

(16) reversal, vacatur, stay or modification (without the express prior written consent of the Postpetition Lender, First Lien Administrative Agent and the Required Supporting Lenders, in their respective sole discretion) of the Cash Collateral Order;

(17) the failure to make adequate protection payments or pay professional fees, costs and expenses of the First Lien Administrative Agent and First Lien Collateral Agent, in each case, when and as provided for under the Cash Collateral Order;

(18) any material breach by the Graceway Entities of any of their obligations, representations, warranties or covenants set forth in (i) this Agreement, (ii) the Cash Collateral Order or (iii) the Asset Purchase Agreement, as applicable, which material breach is not cured on or within five (5) Business Days after the giving of written notice of such breach to the Graceway Entities;

(19) any material breach by Graceway Canada of any of its obligations, representations, warranties or covenants set forth in (i) this Agreement or (ii) the Asset Purchase Agreement, as applicable, which material breach is not cured on or within five (5) Business Days after the giving of written notice of such breach to the Graceway Entities;

(20) the filing by any Graceway Entity of any stand-alone plan of reorganization or liquidation (or the announcement by any Graceway Entity of

its support of any such plan filed by any other party) prior to consummation of the Sale; and

(21) the entry by the Bankruptcy Court of an order, or the filing by the Graceway Entities of a motion with the Bankruptcy Court which seeks the entry of an order, authorizing the use of Cash Collateral for any purpose other than to pay the First Lien Loan Claims in full or as permitted in the Cash Collateral Order.

d. The date on which this Agreement is terminated in accordance with the foregoing provisions shall be referred to as the "***Termination Date***".

e. Subject to the last sentence of section 5(b), if this Agreement is terminated pursuant to this section 7, then all further obligations of the Parties hereunder shall be terminated without further liability. Notwithstanding any provision in this Agreement to the contrary, the right to terminate this Agreement under this section 7 shall not be available to any Party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the occurrence of the applicable Termination Event.

8. Representations of the Company and Graceway Canada. (A) Each Graceway Entity hereby jointly and severally represents and warrants and (B) Graceway Canada hereby represents and warrants, in each case, to each Consenting First Lien Lender as follows as of the date hereof:

a. Corporate Power and Authority. It has all requisite corporate, partnership or limited liability company power and authority to enter into this Agreement and to carry out the transactions contemplated by, and perform its obligations under, this Agreement.

b. Authorization. The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary corporate, partnership or limited liability company action on its part.

c. No Conflicts. The execution, delivery and performance by it of this Agreement do not and shall not (i) violate any provision of law, rule or regulation applicable to it or any of its subsidiaries or its certificate of incorporation or bylaws or other organizational documents or those of any of its subsidiaries or (ii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any material contractual obligation to which it or any of its subsidiaries is a party, other than as a result of the commencement of the Chapter 11 Cases.

d. Governmental Consents. The execution, delivery and performance by it of this Agreement do not and shall not require any registration or filing with, consent or approval of, or notice to, or other action to, with or by, any federal, state or other governmental authority or regulatory body, other than any required filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "***HSR Act***") and the expiration or

termination of the applicable waiting period (and any extension thereof) under the HSR Act.

e. Binding Obligation. This Agreement is its legally valid and binding obligation, enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance and other laws affecting creditors' rights, and by general limitations in the availability of equitable remedies.

9. Representations of Each Consenting First Lien Lender. Each of the Consenting First Lien Lenders party hereto severally (but not jointly) represents and warrants to the other Parties as follows with respect to itself only and as of the date hereof:

a. Holdings by Consenting First Lien Lenders. Each Consenting First Lien Lender (i) either (A) is the sole legal and beneficial owner of the amount of First Lien Loan Claims appearing on the date hereof opposite its name on the Register Notice and all related claims, rights and causes of action arising out of or in connection with or otherwise relating thereto (for each such Consenting First Lien Lender, the "***Consenting First Lien Lender Claims***"), in each case free and clear (other than pursuant to this Agreement), of any pledge, lien, security interest, charge, claim, equity, option, proxy, voting restriction, right of first refusal or other limitation on disposition or encumbrances of any kind, that would, or would reasonably be expected to, in each case, adversely affect in any material way such Party's performance of its obligations contained in this Agreement at the time such obligations are required to be performed, or (B) has investment or voting discretion with respect to such Consenting First Lien Lender Claims and has the power and authority to bind the beneficial owner(s) of such Consenting First Lien Lender Claims to the terms of this Agreement, and (ii) has full power and authority to consent to matters concerning such Consenting First Lien Lender Claims with respect to the Sale.

b. Sufficiency of Information Received. Each Consenting First Lien Lender has reviewed, or has had the opportunity to review, with the assistance of professional and legal advisors of its choosing, all information it deems necessary and appropriate for such Consenting First Lien Lender to evaluate the financial risks inherent in the Sale.

c. Corporate Power and Authority. It has all requisite corporate, partnership or limited liability company power and authority to enter into this Agreement and to carry out the transactions contemplated by, and perform its obligations under, this Agreement.

d. Authorization. The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary corporate, partnership or limited liability company action on its part.

e. No Conflicts. The execution, delivery and performance by it of this Agreement do not and shall not (i) violate any provision of law, rule or regulation

applicable to it or any of its subsidiaries or its certificate of incorporation or bylaws or other organizational documents or those of any of its subsidiaries or (ii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any material contractual obligation to which it or any of its subsidiaries is a party.

f. Governmental Consents. The execution, delivery and performance by it of this Agreement do not and shall not require any registration or filing with, consent or approval of, or notice to, or other action to, with or by, any federal, state or other governmental authority or regulatory body.

g. Binding Obligation. This Agreement is its legally valid and binding obligation, enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance and other laws affecting creditors' rights, and by general limitations in the availability of equitable remedies.

10. Claims and Interests. This Agreement shall in no way be construed to preclude any Consenting First Lien Lender from acquiring or holding claims against, or interests in, any of the Graceway Entities or Graceway Canada (or any of its respective Affiliates or subsidiaries). However, in the event any Consenting First Lien Lender shall acquire or hold any such claims and interests, then such claims and interests shall, without further action of or notice to any Person, automatically be deemed to be subject to the terms and conditions of this Agreement.

11. Transfer of Loans. Prior to the consummation of the Sale, and with the exception of the permitted Transfers enumerated in subsections (a) through (c) below, no Consenting First Lien Lender will, directly or indirectly, sell, contract to sell, give, assign, hypothecate, pledge, encumber, grant a security interest in, sell a participation in, offer, sell any option or contract to purchase, purchase any option or contract to sell, grant any proxy, option, right or warrant to purchase, or otherwise transfer or dispose of, any economic, voting or other rights in or to, by operation of law or otherwise (collectively, "***Transfer***"), all or any portion of its First Lien Loan Claims, and no such Transfer will be effective, unless: (i) the transferee furnishes to the Graceway Entities, Latham & Watkins LLP, legal counsel to the Company ("***Latham***"), the other Consenting First Lien Lenders and the First Lien Administrative Agent a joinder, substantially consistent with the joinder attached hereto as Exhibit C, pursuant to which such transferee agrees to be bound by all of the terms and conditions of this Agreement, and (ii) the Consenting First Lien Lender effecting such Transfer provides written notice of such Transfer to Wachtell Lipton, in each case, no later than one (1) Business Day after the execution of an agreement (or trade confirmation) in respect of such Transfer. Any proposed Transfer that does not comply with the foregoing provisions of this paragraph shall be deemed void *ab initio* and be of no force or effect. Upon consummation of any such Transfer, the Consenting First Lien Lender effecting such Transfer shall, with respect to any partial transfer, be released of its obligations hereunder in connection with that portion of its First Lien Loan Claims so transferred and, with respect to the transfer of all of its First Lien Loan Claims, be released of all of its obligations hereunder; provided, however, that any such Consenting First Lien Lender shall continue to comply with section 4(c) above until after the earlier of closing of the Sale or

termination of this Agreement pursuant to section 7 above. In addition to the foregoing Transfer, the following Transfers shall be permitted:

a) any Transfer by one Consenting First Lien Lender to an Affiliate of such Consenting First Lien Lender or to one or more affiliated funds or affiliated entity or entities with a common investment advisor (in each case, other than portfolio companies) so long as such Affiliate, affiliated funds or affiliated entity, as applicable, agrees in writing to be bound by the terms hereof in the same manner as the transferor and furnishes to the other Parties to this Agreement, Latham, Wachtell Lipton and the First Lien Administrative Agent a joinder, substantially consistent with the joinder attached hereto as Exhibit C;

b) any Transfer by one Consenting First Lien Lender to another Consenting First Lien Lender, provided, that the transferor provides written notice of such Transfer to Wachtell Lipton no later than one (1) Business Day after the execution of an agreement (or trade confirmation) in respect of such Transfer; and

c) any other Transfer that is approved in writing in advance of such Transfer by the Consenting First Lien Lenders and the Graceway Entities, in their respective sole discretion.

12. Entire Agreement; Prior Negotiations. This Agreement and the Asset Purchase Agreement, including any exhibits, set forth in full the terms of agreement between and among the Parties with respect to the transactions contemplated herein and are intended as the full, complete and exclusive contract governing the relationship between and among the Parties with respect to the transactions contemplated herein, superseding all other discussions, promises, representations, warranties, agreements and understandings, whether written or oral, between or among the Parties with respect to the subject matter hereof; provided, that any confidentiality agreement between or among any of the Parties shall remain in full force and effect in accordance with its terms. No representations, oral or written, other than those set forth herein, may be relied on by any Party in connection with the subject matter hereof.

13. Amendment or Waiver. No waiver, modification or amendment of any term or provision of this Agreement or the Asset Purchase Agreement shall be valid unless such waiver, modification or amendment is in writing and has been signed by the Graceway Entities, Graceway Canada and each Consenting First Lien Lender; provided, however, that any modification or amendment of the definition of "Petition Date" set forth in section 2 hereof or waiver, modification or amendment of section 7(c) hereof shall be valid if such waiver, modification or amendment is in writing and has been signed by the Graceway Entities, Graceway Canada and the Required Supporting Lenders. No waiver of any of the provisions of this Agreement or the Asset Purchase Agreement shall be deemed or constitute a waiver of any other provision of this Agreement or the Asset Purchase Agreement, whether or not similar, nor shall any waiver be deemed a continuing waiver. Any modification of this section 13 shall require the written consent of all Parties.

14. Miscellaneous.

a. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to such state's choice of law provisions which would require the application of the law of any other jurisdiction. By its execution and delivery of this Agreement, each of the Parties hereby irrevocably and unconditionally agrees for itself that any legal action, suit or proceeding against it with respect to any matter arising under or arising out of or in connection with this Agreement or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding, may be brought in the United States District Court for the Southern District of New York, and by execution and delivery of this Agreement, each of the Parties hereby irrevocably accepts and submits itself to the exclusive jurisdiction of such court, generally and unconditionally, with respect to any such action, suit or proceeding. Notwithstanding the foregoing, but subject to the limitations of *Stern v. Marshall*, 131 S. Ct. 2594 (U.S. 2011), upon any commencement of the Chapter 11 Cases and until the effective date of a plan of reorganization or liquidation, each of the Parties agrees that the Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of or in connection with this Agreement.

b. Specific Performance. It is understood and agreed by the Parties that money damages would not be a sufficient remedy for any breach of this Agreement by any Party and each non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief (excluding monetary remedies) as its sole and exclusive remedy of any such breach, including, without limitation, an order of the Bankruptcy Court or other court of competent jurisdiction requiring any Party to comply promptly with any of its obligations hereunder.

c. Reservation of Rights. Except as expressly provided in this Agreement, nothing herein is intended to, or does, in any manner, waive, limit, impair or restrict the ability of each Consenting First Lien Lender to protect and preserve its rights, remedies and interests, including its claims, against the Graceway Entities and/or Graceway Canada. If the Sale contemplated herein and in the Asset Purchase Agreement is not consummated, or if this Agreement is terminated for any reason, the Parties hereto fully reserve any and all of their respective rights and remedies. Pursuant to Federal Rule of Evidence 408, any applicable state rules of evidence and any other applicable law, foreign or domestic, this Agreement and all negotiations relating thereto shall not be admissible into evidence in any proceeding other than a proceeding to enforce the terms and provisions of this Agreement.

d. Headings. The section headings of this Agreement are for convenience of reference only and shall not, for any purpose, be deemed a part of this Agreement.

e. Notice. All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally, by facsimile or electronic transmission or mailed (first class postage prepaid) to the Parties at the following addresses, email addresses, or facsimile numbers, as applicable:

If to the First Lien Administrative Agent:

Bank of America, N.A.

111 Westminster Street
Providence, RI 02903
Fax: (401) 278-6002
Email: daniel.d.butler@bankofamerica.com
Attn: Daniel D. Butler

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

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Fax: (212) 403-2158
Email: MSBenn@wlrk.com
Attn: Scott K. Charles and Michael S. Benn

If to any other Consenting First Lien Lender:

To the address, facsimile number or electronic mail address specified on its respective signature page to this Agreement.

If to the Graceway Entities:

Graceway Pharmaceuticals, LLC
340 Martin Luther King Jr. Blvd., Suite 500
Bristol, TN 37620
Fax: (519) 432-8097
Email: john.bellamy@gracewaypharma.com
Attn: John A. Bellamy

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

Latham & Watkins LLP
233 South Wacker Drive, Suite 5800
Chicago, IL 60606
Fax: (312) 993-9767
Email: josef.athanas@lw.com
Attn: Josef S. Athanas, Caroline A. Reckler and Matthew Warren

If to Graceway Canada:

Graceway Canada Company
252 Pall Mall Street, Suite 302
London, ON, N6A 5P6
Fax: (519) 432-8097
Email: erin.craven@gracewaypharma.ca
Attn: Erin Craven

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

Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto ON, M5H 2S7
Canada
Fax: (416) 979-1234
Email: jlatham@goodmans.ca
Attn: Joe Latham

f. Successors and Assigns, No Third-Party Beneficiaries. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors, permitted assigns, heirs, executors, administrators and representatives. Unless expressly stated herein, this Agreement shall be solely for the benefit of the Parties hereto and no other Person or entity shall, or shall be deemed to, be a third party beneficiary hereof.

g. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

h. Several Obligations. The agreements, representations and obligations of each Consenting First Lien Lender under this Agreement are several, and not joint, in all respects. Any breach of this Agreement by a Party shall not result in liability for any other non-breaching Party (it being acknowledged and agreed by all parties that their sole and exclusive remedy for any breach of this Agreement shall be specific performance and injunctive or other equitable relief (excluding monetary remedies) as provided in section 14(b) above). It is understood and agreed that any Consenting First Lien Lender may trade in the First Lien Loan Claims or other debt or equity securities of the Graceway Entities or Graceway Canada without the consent of the Graceway Entities, Graceway Canada or any other Consenting First Lien Lender, subject to applicable laws, if any, sections 10 and 11 herein and the First Lien Credit Agreement (as applicable). No Consenting First Lien Lender shall have any responsibility for any such trading by any other entity by virtue of this Agreement.

i. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same agreement. Execution copies of this Agreement may be

delivered by facsimile or electronic mail which shall be deemed to be an original for the purposes of this Agreement.

j. Consideration. It is hereby acknowledged and agreed by the Parties that no consideration shall be due or paid to any Consenting First Lien Lender in exchange for their support of the Sale in accordance with the terms and conditions of this Agreement, other than the obligations imposed upon the Parties pursuant to the terms of this Agreement.

k. Public Disclosure. At least two (2) Business Days prior to release or filing thereof, the Company will submit to Wachtell Lipton any press release and/or public filing relating to this Agreement, the Asset Purchase Agreement, or the transactions contemplated hereby and thereby and any amendments thereof.

l. No Strict Construction. This Agreement and all other agreements and documents executed and/or delivered in connection herewith have been prepared through the joint efforts of all of the Parties hereto or thereto. Neither the provisions of this Agreement or any such other agreements and documents nor any alleged ambiguity therein shall be interpreted or resolved against any Party on the ground that such Party or such Party's counsel drafted this Agreement or such other agreements and documents, or based on any other rule of strict construction.

m. Survival of Agreement. Each of the Parties acknowledges and agrees that this Agreement is being executed in connection with negotiations concerning a possible sale of substantially all of the Assets of the Graceway Entities and Graceway Canada and in contemplation of possible Chapter 11 filings by the Graceway Entities, and (a) subject to section 8(e) and 9(g) of this Agreement, the rights granted in this Agreement are enforceable by each signatory hereto without approval of the Bankruptcy Court and (b) the Graceway Entities and Graceway Canada waive any right to assert that the exercise of the termination rights herein violates the automatic stay provisions of the Bankruptcy Code or any comparable provisions under the CJA or other applicable law; provided, however, that the Parties reserve their respective rights to argue before the Bankruptcy Court regarding the applicability of the automatic stay to all other rights provided herein.

n. WAIVER OF JURY TRIAL. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

o. Time Periods. If any time period or other deadline provided in this Agreement expires on a day that is not a Business Day, then such time period or other deadline, as applicable, shall be deemed extended to the next succeeding Business Day.

p. No Solicitation. This Agreement is not intended to be, and each signatory to this Agreement acknowledges that this Agreement is not, whether for the purposes of Sections 1125 and 1126 of the Bankruptcy Code or otherwise, a solicitation for the acceptance

or rejection of a plan of liquidation or plan of reorganization for any of the Graceway Entities. The Graceway Entities will not solicit acceptances of a plan of liquidation or a plan of reorganization from any Consenting First Lien Lender until the Consenting First Lien Lenders have been sent copies of a disclosure statement approved by the Bankruptcy Court.

[Remainder of page intentionally left blank; signature pages follow]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized officers, all as of the date and year first above written.

GRACEWAY PHARMACEUTICALS, LLC

By: _____

Name: Gregory C. Jones
Title: EVP, Strategic Development

GRACEWAY PHARMA HOLDING CORP.

By: _____

Name: Gregory C. Jones
Title: EVP, Strategic Development

GRACEWAY HOLDINGS, LLC

By: _____

Name: Gregory C. Jones
Title: EVP, Strategic Development

CHESTER VALLEY HOLDINGS, LLC

By: _____

Name: Gregory C. Jones
Title: EVP, Strategic Development

CHESTER VALLEY PHARMACEUTICALS, LLC

By: _____

Name: Gregory C. Jones
Title: EVP, Strategic Development

[Signature Page to Sale Support Agreement]

GRACEWAY CANADA HOLDINGS, INC.

By: _____

Name: Gregory C. Jones
Title: EVP, Strategic Development

GRACEWAY CANADA COMPANY

By: _____

Name: John Belly
Title: EVP and General Counsel

GRACEWAY INTERNATIONAL, INC.

By: _____

Name: Gregory C. Jones
Title: EVP, Strategic Development

[Signature Page to Sale Support Agreement]

First Lien Lenders

Aberdeen Loan Funding, Ltd.
Armstrong Loan Funding, Ltd.
Brentwood CLO, Ltd.
Loan Funding IV LLC
Eastland CLO, Ltd.
Gleneagles CLO, Ltd.
Grayson CLO, Ltd.
Greenbriar CLO, Ltd.
Highland Loan Funding V Ltd.
Jasper CLO, Ltd.
Liberty CLO, Ltd.
Red River CLO, Ltd.
Rockwall CDO, Ltd.
Rockwall CDO II, Ltd.
Southfork CLO, Ltd.
Stratford CLO, Ltd.
Loan Funding VII LLC
Westchester CLO, Ltd.

Signed on behalf of the First Lien Lenders listed above by:

HIGHLAND CAPITAL MANAGEMENT, L.P., as Collateral Manager

By: Strand Advisors, Inc., its general partner

By: _____
Name: MARK OKADA
Title: EXECUTIVE VICE PRESIDENT

[Signature Page to Sale Support Agreement]

QUANTUM PARTNERS LP

By: QP GP LLC, its General Partner

By: _____

Name: THOMAS L. O'GRADY
Title: Attorney-in-Fact

Attn: Thomas L. O'Grady

Tel: 212-320-5626

Fax: 646-731-5626

Email: thomas.ogrady@soros.com

Address:

c/o Soros Fund Management LLC
888 Seventh Avenue
New York, NY 10106

[Signature Page to Sale Support Agreement]

QP SFM CAPITAL HOLDINGS LIMITED

By: _____

Name: THOMAS L. O'GRADY
Title: Attorney-in-Fact

Attn: Thomas L. O'Grady

Tel: 212-320-5626

Fax: 646-731-5626

Email: thomas.ogrady@soros.com

Address:

c/o Soros Fund Management LLC
888 Seventh Avenue
New York, NY 10106

[Signature Page to Sale Support Agreement]

Exhibit A

Asset Purchase Agreement

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

DATED AS OF SEPTEMBER 27, 2011

BY AND BETWEEN

GALDERMA S.A.

AND

GRACEWAY PHARMACEUTICALS, LLC

AND

THE OTHER PARTIES SIGNATORY HERETO

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Exhibit I	Form of US Patent Assignment

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made as of September 27, 2011 (the "Effective Date"), by and between **GALDERMA S.A.**, a Switzerland corporation ("Buyer"), and **GRACEWAY PHARMACEUTICALS, LLC**, a Delaware limited liability company, and its Subsidiaries set forth on Annex A hereto (collectively, "US Sellers" and each individually a "US Seller"), and **GRACEWAY CANADA COMPANY**, a Nova Scotia unlimited liability company ("Canadian Seller" and collectively with US Sellers, "Sellers" and each individually a "Seller"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in Article I.

RECITALS

WHEREAS, Sellers are engaged in the business of developing, licensing and selling the Products in the Territory (such business, as conducted by Sellers as of the date hereof, the "Business");

WHEREAS, (i) US Sellers intend to file a voluntary petition for relief (the "Filing") commencing a case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") and (ii) Canadian Seller intends to make an application to the Ontario Superior Court of Justice (Commercial List) in Toronto, Ontario, Canada and, if so reasonably requested by Buyer, to any other courts of any other provinces in which Canadian Seller has Acquired Assets material to the Business as conducted by Canadian Seller (collectively, the "Canadian Court"), for the appointment of a receiver, and, if so reasonably requested by Buyer, for recognition in any other provinces in which Canadian Seller has Acquired Assets material to the Business as conducted by Canadian Seller and such recognition is necessary for the transfer of such Acquired Assets (the "Canadian Proceedings") to oversee the sale of the assets of Canadian Seller;

WHEREAS, Sellers desire to sell to Buyer all of the Acquired Assets and transfer to Buyer the Assumed Liabilities and Buyer desires to purchase from Sellers all of the Acquired Assets and assume all of the Assumed Liabilities, upon the terms and conditions hereinafter set forth;

WHEREAS, the execution and delivery of this Agreement and Sellers' ability to consummate the transactions set forth in this Agreement are subject to, among other things, the entry of the Sale Order under, *inter alia*, Sections 363 and 365 of the Bankruptcy Code, and the issuance of the Canadian Sale and Vesting Order in the Canadian Proceedings; and

WHEREAS, the Parties desire to consummate the proposed transaction as promptly as practicable after the Bankruptcy Court enters the Sale Order and the Canadian Court issues the Canadian Sale and Vesting Order.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Definitions. For purposes of this Agreement, the following terms have the meanings specified or referenced below.

"Accounts Receivable" means, with respect to Sellers, all trade accounts receivable and other rights to payment from customers of Sellers to the extent arising out of the Business.

"Acquired Assets" shall have the meaning set forth in Section 2.1.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such other Person. For purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have correlative meanings. For purposes of this Agreement, Affiliates of Buyer shall not include Nestlé S.A. or L'Oréal S.A., and their Affiliates (other than Galderma Pharma, S.A. and its Subsidiaries).

"Agreement" shall have the meaning set forth in the Preamble.

"Allocation Schedule(s)" shall have the meaning set forth in Section 3.5.

"Alternative Transaction" means a transaction or series of related transactions pursuant to which Sellers accept a bid for all or a substantial portion of the Acquired Assets or any group of assets that includes all or a substantial portion of the Acquired Assets, from a Person other than Buyer, as the highest or best offer, in accordance with the Bidding Procedures Order or otherwise, but does not mean the sale of Products by Sellers conducted in the Ordinary Course of Business.

"Assigned Agreements" means the Contracts listed or described in Schedule 1.1(a) (as may be amended pursuant to Section 7.9).

"Assignment and Assumption Agreement" shall have the meaning set forth in Section 4.2(d).

"Assumed Liabilities" shall have the meaning set forth in Section 2.3.

"Auction" shall have the meaning set forth in the Bidding Procedures.

"Audited Financial Statements" shall have the meaning set forth in Section 5.18.

"Avoidance Actions" means any and all claims for relief of Sellers under chapter 5 of the Bankruptcy Code, or state fraudulent conveyances, fraudulent transfer or other similar state laws, or under Sections 95 to 101.1 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

"Bankruptcy Case" means the bankruptcy case to be commenced by Sellers under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

"Bankruptcy Code" means Title 11 of the United States Code, Sections 101 *et seq*.

"Bankruptcy Court" shall have the meaning set forth in the Recitals.

"Benefit Plan" means any plan, program, policy or arrangement of Seller or any of its Affiliates by which compensation or employee benefits are provided to any Seller Employee.

"Bidding Procedures" means the bidding procedures substantially in the form attached as Exhibit 1 to the Bidding Procedures Order, to be approved by the Bankruptcy Court pursuant to the Bidding Procedures Order.

"Bidding Procedures Order" means the Order of the Bankruptcy Court, pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code: (a) authorizing and scheduling the Auction; (b) approving procedures for the submission of Qualified Bids; (c) in the case of any subsequent Qualified Bids, approving the initial overbid of at least $10,750,000 and further incremental overbids of at least $2,500,000; (d) approving the Break-Up Fee and the Expense Reimbursement Amount; (e) scheduling a hearing to consider approval of such sale; and (f) approving the form and manner of notice of the Auction procedures and Sale Hearing, which Order shall be substantially in the form attached hereto as Exhibit A with such changes as Buyer and Sellers find reasonably acceptable.

"Bill of Sale" means the bill of sale substantially in the form attached hereto as Exhibit B.

"Break-Up Fee" shall have the meaning set forth in Section 7.6(a).

"Business" shall have the meaning set forth in the Recitals.

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

"Business Intellectual Property" means all Intellectual Property owned by Sellers or any of their Subsidiaries, other than the Excluded Intellectual Property.

"Buyer" shall have the meaning set forth in the Preamble.

"Buyer Default Termination" shall have the meaning set forth in Section 3.2.

"Buyer Required Code" shall have the meaning set forth in Section 8.4(a).

"Buyer Termination Notice" shall have the meaning set forth in Section 11.1(b)(i).

"Buyer's Interim Access Manager" shall have the meaning set forth in Section 7.1.

"Canadian Assets" shall have the meaning set forth in Section 3.5.

"Canadian Bidding Procedures Order" shall have the meaning set forth in Section 7.4(b).

"Canadian Bill of Sale" means the bill of sale substantially in the form attached hereto as Exhibit C.

"Canadian Court" shall have the meaning set forth in the Recitals.

"Canadian Orders" means the Canadian Receivership Order, the Canadian Bidding Procedures Order, the Canadian Sale and Vesting Order and all other Orders sought by Canadian Seller in the Canadian Proceedings relating to this Agreement and the transactions contemplated therein.

"Canadian Proceedings" shall have the meaning set out in the Recitals.

"Canadian Receivership Order" shall have the meaning set forth in Section 7.4(b).

"Canadian Sale and Vesting Order" shall have the meaning set forth in Section 7.4(c).

"Canadian Seller" shall have the meaning set forth in the Preamble.

"Cash Consideration" means cash in U.S. dollars in the amount of Two Hundred Seventy-Five Million United States Dollars (USD $275,000,000.00).

"Chargebacks" means all chargebacks, credits, reimbursements and related adjustments, in each case other than Rebates, that are charged by wholesalers, group purchasing organizations, managed care entities and distributors.

"CJA" means *Courts of Justice Act*, R.S.O. 1990, c. C.43.

"Claims" means all claims, causes of action, choses in action, rights of recovery and rights of set-off of whatever kind or description against any Person arising out of or relating to any Product or Acquired Asset.

"Closing" shall have the meaning set forth in Section 4.1.

"Closing Date" shall have the meaning set forth in Section 4.1.

"Closing Date Payment" shall have the meaning set forth in Section 3.3.

"Closing Legal Impediment" shall have the meaning set forth in Section 9.3.

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

"Contract" means any contract, agreement, lease, sublease, license, sublicense, sales order, purchase order, instrument or other commitment, whether written or oral, that is binding on any Person or any part of its property under applicable Law.

"Cure Costs" means amounts that must be paid and obligations that otherwise must be satisfied, including pursuant to Sections 365(b)(1)(A) and (B) of the Bankruptcy Code, in connection with the assumption and/or assignment of the Assigned Agreements.

"Deposit" shall have the meaning set forth in Section 3.2.

"DESI" means the Drug Efficacy Study Implementation program implemented and administered by the FDA, and all applicable regulations, notices and guidances issued by the FDA in connection therewith, including without limitation the FDA's "Guidance for FDA Staff and Industry, Marketed Unapproved Drugs—Compliance Policy Guide Section 440.100 (June 2006)."

"DIN" means the Drug Identification Number assigned to a party for a drug product authorized for sale in Canada, that uniquely identifies that drug product sold in a specific dosage form in Canada.

"Documents" means (a) all books, records, files, invoices, inventory records, product specifications, customer lists, cost and pricing information, physician lists, supplier lists, business plans, catalogs, customer literature, quality control records and manuals and credit records of customers, (b) research, design and development files, records and laboratory books (including raw data, technical data, pharmacology data, pharmacovigilance data, chemistry and pharmaceutical data relating to drug substance and drug product (including analytical and product characterization data) and toxicology data) and stability and clinical studies; (c) all data relevant to the manufacturing of a Product, (d) Regulatory Documentation and (e) Marketing Materials , in each case relating to any Product or Acquired Asset (including all data and other information stored on discs, tapes or other media).

"Effective Date" shall have the meaning set forth in the Preamble.

"Encumbrance" means any charge, lien, claim, mortgage, lease, sublease, hypothecation, deed of trust, pledge, security interest, option, right of use or possession, right of first offer or first refusal, easement, servitude, restrictive covenant, encroachment, encumbrance, or other similar restriction of any kind.

"Environmental, Health and Safety Laws" shall have the meaning set forth in Section 5.4(a).

"Equipment" means all furniture, trade fixtures, equipment, computers, servers, telephones, laptop computers, machinery, apparatus, appliances, implements, signage, office supplies and all other tangible personal property of every kind and description owned by Sellers and used or held for use primarily in the Business.

"Escrow Agent" shall have the meaning set forth in Section 3.2.

"Escrow Agreement" shall have the meaning set forth in Section 3.2.

"Excluded Assets" shall have the meaning set forth in Section 2.2.

"Excluded Intellectual Property" means the Seller Brand and the Intellectual Property set forth on Schedule 1.1(b).

"Excluded Liabilities" shall have the meaning set forth in Section 2.4.

"Expense Reimbursement Amount" shall have the meaning set forth in Section 7.6(b).

"FD&C Act" means the United States Federal Food, Drug, and Cosmetic Act.

"FDA" means the United States Food and Drug Administration, or any successor entity.

"Filing" shall have the meaning set forth in the Recitals.

"Final Order" means an action taken or order issued by the applicable Governmental Authority as to which no stay of the action or order is in effect.

"Financial Statements" shall have the meaning set forth in Section 5.18.

"Governmental Authority" means any United States or Canadian federal, provincial, state, municipal or local or any foreign government, governmental agency or authority, or regulatory or administrative authority, or any court, tribunal or judicial body having jurisdiction, including the Bankruptcy Court and the Canadian Court.

"Governmental Authorization" means any approval, consent, license, permit, waiver or other authorization issued, granted or otherwise made available by or under the authority of any Governmental Authority.

"Hazardous Substance" means any "toxic substance," "hazardous pollutant," "hazardous waste," "hazardous material" or "hazardous substance" under any Environmental, Health and Safety Laws.

"Health Canada" means the Canadian Federal department called Health Canada, or any successor entity.

"Health Care Laws" shall have the meaning set forth in Section 5.11(a).

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the relevant rules and regulations thereunder.

"IND" shall have the meaning given in the definition of "Regulatory Documentation."

"Intellectual Property" means all right, title and interest in, to or under intellectual property, including: (i) all patents, patent applications, patent disclosures and invention disclosure statements, together with all provisionals, reissuances, continuations, continuations-in-part, divisions, revisions, extensions and reexaminations thereof; (ii) all trademarks, service marks, trade names, service names, brand names, trade dress rights, logos, slogans, internet domain names and other source identifiers, together with all goodwill of the business connected with the use thereof and symbolized thereby, and all applications, registrations, and renewals in

connection therewith; (iii) all copyrights and all applications, registrations, renewals and extensions in connection therewith; (iv) all trade secrets and confidential and proprietary information, including confidential technology, know-how, inventions, processes, formulae, specifications, models and methodologies (collectively, the "Trade Secrets"); (v) computer software, including websites and computer programs, any and all software implementations of algorithms, models and methodologies whether in source code or object code form, and all documentation, including user manuals and training materials, related to the foregoing; and (vi) all copies and tangible embodiments of the foregoing (in whatever form or medium).

"Intercompany Loan" means the debtor-in-possession financing provided by the Canadian Seller to the US Sellers and all proceeds thereof.

"Inventory" means all raw materials, work-in-process, finished goods, supplies (including clinical drug supplies), samples (including samples held by sales representatives), components, packaging materials, and other inventories to which Sellers have title that are in the possession of Sellers or any Third Party and used or held for use in connection with any Product or Acquired Asset.

"IRS" means the Internal Revenue Service.

"Knowledge" means, with respect to any matter in question, in the case of Sellers, the knowledge, after reasonable inquiry, of Jefferson J. Gregory, Robert J. Moccia, Brian G. Shrader, John A. A. Bellamy, Tariq Zaidi, John Bowles, Michael T. Nordsiek, Chris Curtin, Gregory C. Jones, Sean T. Brennan and Erin Craven, with respect to such matter.

"Labeling" shall be as defined in Section 201(m) of the FD&C Act (21 U.S.C. § 321(m)) and other comparable foreign Law relating to the subject matter thereof, including the applicable Product's label, packaging and package inserts accompanying such Product, and any other written, printed, or graphic materials accompanying such Product, including patient instructions or patient indication guides.

"Law" means any foreign or domestic law, statute, code, ordinance, rule, regulation, order, judgment, writ, stipulation, award, injunction or decree by any Governmental Authority as in effect from time to time.

"Liability" means any debt, losses, claim, damage, demand, fine, judgment, penalty, liability or obligation (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due).

"Marketing Materials" means all marketing materials, marketing research data, customer and sales information, product literature, promotional materials and data, advertising and display materials (including all underlying designs, samples, charts, diagrams, photos and electronic files related to the foregoing) and all training materials, in each case in whatever form or medium (e.g., audio, visual, digital or print) held in any Seller's name and primarily related to any Product or Acquired Asset as of the Closing Date.

"Material Adverse Effect" means any effect, change, condition, circumstance, development or event that, individually or in the aggregate with all other effects, changes,

conditions, circumstances, developments and events has had, or would reasonably be expected to have, a material adverse effect on the Business (excluding the Excluded Assets and the Excluded Liabilities), taken as a whole, or would reasonably be expected to prevent or materially impair the ability of Sellers to consummate the transactions contemplated by this Agreement, excluding, in each case, (a) any effect, change, condition, circumstance, development or event that results from or arises out of: (i) the Bankruptcy Case and/or the Canadian Proceedings; (ii) the execution and delivery of this Agreement or the announcement thereof or the pendency or consummation of the transactions contemplated hereby; (iii) geopolitical conditions or any outbreak or escalation of hostilities or acts of terrorism or war; (iv) any hurricane, tornado, flood, earthquake or other natural disaster; (v) changes in (or proposals to change) Laws or accounting regulations or principles; (vi) any action expressly contemplated by this Agreement or taken at the written request of Buyer; (vii) failure of any Seller, or part thereof, to meet any internal or published projections, forecasts, estimates or predictions in respect of financial or operating metrics (it being understood that the facts or circumstances giving rise or contributing to such failure to meet any internal or published projections, forecasts, estimates or predictions in respect of financial or operating metrics may be deemed to constitute, or be taken into account in determining whether there has been, a Material Adverse Effect); (viii) the failure to pay or otherwise honor (A) Rebates, Chargebacks and return obligations relating to sales of Products sold by Sellers prior to the Filing or (B) any patient coupon program; or (ix) any reasonably anticipated motion, application, pleading or Order filed under or in connection with the Bankruptcy Case; and (b) any effect, change or event generally applicable to: (i) the industries and markets in which Sellers operate, or (ii) economic or political conditions or the debt, securities or financial markets in any country or region, *provided*, *however*, that in the case of clauses (a)(iii), (a)(v), (b)(i) and (b)(ii) of this paragraph, such effects, changes or events shall be taken into account in determining whether any material adverse effect has occurred to the extent that any such effects, changes or events have, or would reasonably be expected to have, a disproportionate effect on the Business (excluding the Excluded Assets and the Excluded Liabilities) as compared to other similarly situated businesses engaged in the business of selling dermatology pharmaceutical products.

"Material Business Intellectual Property" shall have the meaning set forth in Section 5.9(a).

"Material Unregistered Trademarks" shall have the meaning set forth in Section 5.9(a).

"NDA" means any new drug application filed pursuant to the requirements of the FDA, as more fully defined in 21 C.F.R. Part 314 *et seq.*, and any foreign equivalent application filed with any Governmental Authority.

"NDC Number" means the unique, identifying number assigned to a drug product, including the labeler code, product code and package code, in connection with the drug listing requirements of Section 510(j) of the FD&C Act and applicable FDA rules and regulations or other comparable foreign Law relating to the subject matter thereof.

"NDS" means any new drug submission filed pursuant to the requirements of Health Canada as more fully defined under the *Food and Drugs Act*, RSC 1985, c F-27 and includes all related documentation accompanying the submission.

"NOC" means the regulatory approval for a drug product by Health Canada, namely a Notice of Compliance.

"Non-Serious Adverse Event" shall have the meaning set forth in Section 8.6(b).

"Nycomed Award Amount" shall have the meaning set forth in Section 8.10.

"Nycomed Litigation" means Graceway Pharmaceuticals, LLC and 3M Innovative Properties Company v. Perrigo Company, Perrigo Israel Pharmaceuticals, Ltd. and Nycomed U.S. Inc., Civil Action No. 10-937 (WJM)(MF) in the United States District Court for the District of New Jersey.

"Order" means any award, writ, injunction, judgment, order or decree entered, issued, made, or rendered by any Governmental Authority.

"Ordinary Course of Business" means the operation of the Business in the ordinary and usual course consistent with past practice and custom of Sellers, including taking any action in accordance with any Contract to which Sellers is a party.

"Outside Date" shall have the meaning set forth in Section 11.1(a)(iii).

"Party" or "Parties" means, individually or collectively, Buyer and Sellers.

"Permits" means all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals, clearances, Product Registrations and Orders that are necessary for Sellers to own, lease and operate their properties and assets or to carry on the Business as it is now being conducted.

"Permitted Encumbrances" means (a) as to US Sellers only, Encumbrances for utilities and current Taxes not yet due and payable or being contested in good faith; (b) non-exclusive licenses to the Business Intellectual Property granted in the Ordinary Course of Business; and (c) as to US Sellers only, immaterial materialmans', mechanics', artisans', shippers', warehousemans' or other similar common law or statutory liens incurred in the Ordinary Course of Business.

"Person" means any individual, corporation (including any non-profit corporation), partnership, limited liability company, joint venture, estate, trust, association, organization or other entity or Governmental Authority.

"Pre-Paid Expenses" means all deposits and prepaid charges and expenses of Sellers as of the Closing Date to the extent related to an Assigned Agreement and after applying any such deposits, prepaid charges and expenses against any Cure Costs payable to the third party to whom such deposits, prepaid charges and expenses were paid.

"Proceeding" means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative or investigative) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority, other than an Avoidance Action.

"Product Registrations" means the approvals, licenses, registrations, listings, franchises, permits, certificates, consents, clearances, or other authorizations (including, but not limited to, NDAs and NDSs) and comparable regulatory filings required by any Governmental Authority for the Products held in Sellers' name as set forth in Schedule 1.1(c).

"Products" or "Product" means, collectively or individually, all products, formulations and compounds owned by Sellers or any of their Subsidiaries, or to which Sellers or any of their Subsidiaries have rights, including the products, formulations, compounds and other assets set forth on Schedule 1.1(c), together with all potential new strengths, indications, modes of administration and line extensions related to such products, formulations, compounds and other assets.

"Property Taxes" shall have the meaning set forth in Section 8.1(b).

"Purchase Price" shall have the meaning set forth in Section 3.1.

"Qualified Bid" shall have the meaning set forth in the Bidding Procedures.

"Real Property" means all real property owned by Sellers and all unexpired leases or other occupancy agreements for real property under which Sellers are a lessee (or the equivalent).

"Rebates" means rebates, price reductions, administrative fees and related adjustments charged by state Medicaid and other federal, state and local governmental programs (including any Canadian programs) and their participants, and by health plans, insurance companies, mail service pharmacies and health care providers based upon the utilization and sales of the Product, and service, administrative and inventory management fees due to wholesalers, distributors and group purchasing organizations based on sales of the Product.

"Receiver" means the Receiver appointed by the Canadian Court in the Canadian Proceedings.

"Regulatory Documentation" means (a) all regulatory filings and supporting documents, chemistry, manufacturing and controls data and documentation, preclinical and clinical studies and tests, (b) the NDA and all regulatory files and foreign equivalents related thereto, including the NDS, (c) all records maintained under record keeping or reporting Laws of the FDA or any other Governmental Authority including all investigational new drug ("IND") applications, IND annual and safety reports, drug master files, FDA warning letters, FDA Notices of Adverse Finding Letters, FDA audit reports (including any responses to such reports), any correspondence with the Department of Drug Marketing, Advertising and Communications, periodic safety update reports, complaint files, annual product quality reviews and clinical trial applications in Canada, (d) the complete complaint, adverse event and medical inquiry filings with respect to the Products, in each case held by Sellers as required by applicable Laws and as related to any Product or Acquired Asset, including the Product Registrations and (e) all regulatory approvals, including the NOC, the DIN and any other market authorization issued by Health Canada.

"Release" means any past or present spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of a Hazardous Substance into the environment.

"Representative" means, with respect to a particular Person, any director, officer, employee, agent, consultant, advisor or other representative of such Person, including legal counsel, accountants and financial advisors.

"Retained Subsidiaries" means all direct and indirect Subsidiaries of Sellers.

"Review Documents" shall have the meaning set forth in Section 5.19(a).

"Safety Notice" shall have the meaning set forth in Section 5.11(d).

"Sale Hearing" means the hearing conducted by the Bankruptcy Court to approve the transactions contemplated by this Agreement.

"Sale Order" means an Order of the Bankruptcy Court approving this Agreement and the transactions contemplated hereby, which Order shall be substantially in the form attached hereto as Exhibit D with such changes as Buyer and Sellers find reasonably acceptable.

"Seller Employee" means any employee of any Seller or any Affiliates of any Seller.

"Sellers" and "Seller" shall have the meaning set forth in the Preamble.

"Sellers Termination Notice" shall have the meaning set forth in Section 11.1(c)(i).

"Sellers' Brand" shall have the meaning set forth in Section 8.7.

"Sellers' Interim Access Manager" shall have the meaning set forth in Section 7.1.

"Serious Adverse Event" shall have the meaning set forth in Section 8.6(b).

"Stalking Horse Bidder" shall have the meaning set forth in the Bidding Procedures.

"Subsidiary" means any entity with respect to which a specified Person (or a Subsidiary thereof) has the power, through the ownership of securities or otherwise, to elect a majority of the directors or similar managing body.

"Successful Bidder" shall have the meaning set forth in the Bidding Procedures.

"Tax" or "Taxes" means any federal, state, provincial, local, municipal, foreign or other income, alternative, minimum, add-on minimum, accumulated earnings, personal holding company, franchise, capital stock, net worth, capital, profits, intangibles, windfall profits, gross receipts, value added, sales, use, goods and services, excise, customs duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, environmental (including taxes under Section 59A of the Code), natural resources, real property, personal property, ad valorem, intangibles, rent, occupancy, license, occupational, employment, unemployment insurance, social security, disability, workers' compensation, payroll, health care,

withholding, estimated or other similar tax, duty, levy or other governmental charge or assessment or deficiency thereof (including all interest and penalties thereon and additions thereto), in each case imposed by any Governmental Authority.

"Tax Return" means any return, declaration, report, claim for refund, information return or other document (including any related or supporting estimates, elections, schedules, statements, or information) filed with or required to be filed with any Governmental Authority in connection with the determination, assessment or collection of any Tax or the administration of any laws, regulations or administrative requirements relating to any Tax.

"Territory" means the countries and territories set forth directly above each Product indicated on Schedule 1.1(c).

"Third Party" means a Person who or which is neither a party hereto nor an Affiliate of a Party hereto.

"Trade Secrets" shall have the meaning set forth in subsection (iv) of the definition of Intellectual Property.

"Transaction Documents" means this Agreement and any other agreements, instruments or documents entered into pursuant to this Agreement.

"Transfer Taxes" shall have the meaning set forth in Section 8.1(a).

"Treasury Regulations" means the regulations promulgated by the U.S. Treasury Department pursuant to the Code.

"Unaudited Financial Statements" shall have the meaning set forth in Section 5.18.

"US Sellers" and "US Seller" shall have the meaning set forth in the Preamble.

"WARN Act" means the Worker Adjustment and Retraining Notification Act of 1988, as amended, any similar Law, and the rules and regulations thereunder.

Section 1.2 Other Definitions and Interpretive Matters.

(a) Unless otherwise indicated to the contrary in this Agreement by the context or use thereof:

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

(ii) Any reference in this Agreement to $ means U.S. dollars.

(iii) Unless the context otherwise requires, all capitalized terms used in the Exhibits and Schedules shall have the respective meanings assigned in this Agreement. No reference to or disclosure of any item or other matter in the Exhibits and Schedules shall be construed as an admission or indication that such item or other matter is material or that such item or other matter is required to be referred to or disclosed in the Exhibits and Schedules. No disclosure in the Exhibits and Schedules relating to any possible breach or violation of any agreement, law or regulation shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. Any information, item or other disclosure set forth in any Schedule shall be deemed to have been set forth in all other applicable Schedules if the relevance of such disclosure to such other Schedule is reasonably apparent from the facts specified in such disclosure. All Exhibits and Schedules attached or annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein.

(iv) Any reference in this Agreement to gender includes all genders, and words importing the singular number also include the plural and vice versa.

(v) The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in the construction or interpretation of this Agreement. All references in this Agreement to any "Section" or "Article" are to the corresponding Section or Article of this Agreement unless otherwise specified.

(vi) Words such as "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear, unless the context otherwise requires.

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

(b) No Strict Construction. Buyer, on the one hand, and Sellers, on the other hand, participated jointly in the negotiation and drafting of this Agreement, and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by Buyer, on the one hand, and Sellers, on the other hand, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. Without limitation as to the foregoing, no rule of strict construction construing ambiguities against the draftsperson shall be applied against any Person with respect to this Agreement.

ARTICLE II

PURCHASE AND SALE

Section 2.1 Purchase and Sale of the Acquired Assets. Upon the terms and subject to the conditions of this Agreement, on the Closing Date, US Sellers and Canadian Seller, or the Receiver on behalf of the Canadian Seller, shall sell, transfer, assign, convey and deliver, or cause to be sold, transferred, assigned, conveyed and delivered, to Buyer, and Buyer shall purchase, all right, title and interest of Sellers in, to or under all of the properties and assets (including Intellectual Property) of Sellers of every kind and description, wherever located, real, personal or mixed, tangible or intangible, to the extent owned, leased, licensed, used or held for use in or relating to the Business, as the same shall exist on the Closing Date (but, for the avoidance of doubt, excluding any Excluded Assets) (collectively, the "Acquired Assets"), including all right, title and interest of Sellers in, to or under:

(a) all Inventory;

(b) the Assigned Agreements;

(c) all Permits and pending applications therefor;

(d) all Business Intellectual Property;

(e) all Pre-Paid Expenses;

(f) all goodwill associated with the Acquired Assets;

(g) all Documents (other than those described in Section 2.2(c)) to the extent available and permitted by applicable Laws, *provided* that Sellers may retain copies of such Documents;

(h) all Claims and Proceedings (including, for the avoidance of doubt, the Nycomed Litigation and all claims for past infringement or misappropriation of Business Intellectual Property) of Sellers as of the Closing other than Claims and Proceedings (i) primarily related to or constituting any Excluded Asset or Excluded Liability or (ii) against Sellers (regardless of whether or not such claims and causes of action have been asserted by Sellers) and all rights of indemnity, warranty rights, rights of contribution, rights to refunds (other than Tax refunds), rights of reimbursement and other rights of recovery, including insurance proceeds, possessed by Sellers as of the Closing (regardless of whether such rights are currently exercisable) to the extent related to any Product or other Acquired Asset or any of the Assumed Liabilities; and

(i) all rights of Sellers under non-disclosure or confidentiality, non-compete, or non-solicitation agreements relating to any Product or Acquired Asset (or any portion thereof).

Section 2.2 Excluded Assets. Notwithstanding anything herein to the contrary, the Acquired Assets shall not include any of the following (collectively, the "Excluded Assets"):

(a) each Seller's rights under this Agreement (including the right to receive the Purchase Price delivered to Sellers pursuant to this Agreement);

(b) all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit and other bank deposits, securities, securities entitlements, instruments and other investments of Sellers and all bank accounts and securities accounts, including any cash collateral that is collateralizing any letters of credit;

(c) all Documents prepared in connection with this Agreement or the transactions contemplated hereby or relating to the Bankruptcy Case or the Canadian Proceedings, all minute books, corporate records (such as stock registers) and organizational documents of Sellers and the Retained Subsidiaries, Tax Returns, other Tax work papers, and all other Documents not related to the Products or the Acquired Assets;

(d) any Contract that is not an Assigned Agreement, including the Contracts listed or described on Schedule 2.2(d), which Schedule may be modified from the Effective Date through one (1) Business Day prior to the Sale Hearing in accordance with Section 7.9;

(e) any Tax refunds, rebates or credits of Sellers;

(f) all Claims and Proceedings of Sellers (other than those described in Section 2.1(h));

(g) all Seller Employees and all of the funding vehicles and assets of any Benefit Plan;

(h) the Avoidance Actions or similar Proceedings, including but not limited to Proceedings under Sections 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code;

(i) any security deposits or pre-paid expenses not associated with the Acquired Assets;

(j) all insurance policies and binders, all claims, refunds and credits from insurance policies or binders due or to become due with respect to such policies or binders and all rights to proceeds thereof (other than as described in Section 2.1(h));

(k) all shares of capital stock or other equity interests of any Seller or Retained Subsidiary or securities convertible into or exchangeable or exercisable for shares of capital stock or other equity interests of any Seller or Retained Subsidiary;

(l) the Equipment;

(m) all Accounts Receivable;

(n) all Real Property;

(o) any assets, properties and rights of any Sellers other than the Acquired Assets, including those set forth on Schedule 2.2(o);

(p) the Excluded Intellectual Property;

(q) any Inventory that is part of a split lot of and in the possession of Sellers as of the Filing; and

(r) the Intercompany Loan and all interest thereon.

Section 2.3 Assumed Liabilities. Upon the terms and subject to the conditions of this Agreement, on the Closing Date, Buyer shall assume and agree to perform and discharge, when due (in accordance with their respective terms and subject to the respective conditions thereof), the following Liabilities (collectively, the "Assumed Liabilities"):

(a) all Liabilities arising from the ownership of the Acquired Assets or the sale of Products by Buyer, in each case after the Closing Date, it being understood that Liabilities arising from the ownership of the Acquired Assets or the operation of the Business prior to the Closing Date (including the sale of Products by Sellers and their Affiliates prior to the Closing Date) shall not constitute Assumed Liabilities regardless of when the obligation to pay such Liabilities arises, other than as set forth in Section 2.3(e) and Section 8.1;

(b) all Liabilities under the Assigned Agreements arising after the Closing;

(c) the Cure Costs associated with any Contracts (i) added by Buyer to Schedule 1.1(a) after the Effective Date, *provided* that such Contract (A) is listed on Schedule 2.2(d) to this Agreement as of the Effective Date or (B) arose in the Ordinary Course of Business after the Effective Date and was approved by Buyer in writing as an "Assigned Agreement" or (ii) added by Buyer to Schedule 1.1(a) after the Auction;

(d) all Liabilities of Sellers for any claims entitled to administrative expense priority in the Bankruptcy Case in accordance with the applicable provisions of the Bankruptcy Code arising out of any Contract removed by Buyer from Schedule 1.1(a) in accordance with Section 7.9 that is listed on Schedule 2.3(d); and

(e) all Liabilities for Transfer Taxes, as provided in Section 8.1.

Section 2.4 Excluded Liabilities. Notwithstanding any provision in this Agreement to the contrary, Buyer shall not assume and shall not be obligated to assume or be obliged to pay, perform or otherwise discharge, and Sellers shall be solely and exclusively liable with respect to, any Liability of Sellers that is not an Assumed Liability, including, without limitation, Liability incurred by Sellers for returns, government Rebates, commercial Rebates and obligations arising under any patient coupon program, in each case, with respect to Product sold by Sellers prior to Closing and whether such Liabilities arise prior to, on or after the Closing Date (such Liabilities, collectively, the "Excluded Liabilities").

Section 2.5 Assignments; Cure Costs. Sellers shall transfer and assign all Assigned Agreements and Permits to Buyer, and Buyer shall assume all Assigned Agreements and Permits

from Sellers, as of the Closing Date pursuant to, *inter alia*, Section 365 of the Bankruptcy Code and the Sale Order. In connection with such assumption and assignment of the Assigned Agreements in accordance with Section 2.1(b), Sellers shall pay and discharge all Cure Costs, except for those assumed by Buyer pursuant to Section 2.3(c), which Buyer shall pay and discharge; *provided, however*, that, notwithstanding the foregoing, Canadian Seller shall not be liable for Cure Costs for Assigned Agreements and Permits to which Canadian Seller is not a party. To the maximum extent permitted by the Bankruptcy Code or other applicable Law, the Assigned Agreements and Permits shall be assumed by Sellers and assigned to Buyer as of the Closing Date. Notwithstanding anything to the contrary in this Agreement, to the extent that the assignment to Buyer of any Assigned Agreement or Permit is not permitted by Law or is not permitted without the consent of another Person and, in the case of the Assigned Agreements and Permits that are the subject of Section 365 of the Bankruptcy Code and the Sale Order, as applicable, such restriction cannot be effectively overridden or canceled by the Sale Order, or other related order of the Bankruptcy Court, then this Agreement will not be deemed to constitute an assignment or an undertaking or attempt to assign the same or any right or interest therein if such consent is not given and the Closing shall proceed with respect to the remaining Assigned Agreements and Permits without any reduction in the Purchase Price, *provided, however*, that Sellers will use their commercially reasonable efforts to obtain any such consents to assign such Assigned Agreements and Permits to Buyer, *provided, further*, that Sellers shall not be required to incur any Liabilities or provide any financial accommodation in order to obtain any such consents.

Section 2.6 Further Assurances. At the Closing, Sellers shall execute and deliver to Buyer such other instruments of transfer as shall be reasonably necessary or appropriate to vest in Buyer good and indefeasible title to the Acquired Assets free and clear of all Encumbrances (other than Permitted Encumbrances) and to comply with the purposes and intent of this Agreement and such other instruments as shall be reasonably necessary or appropriate to evidence the assignment by Sellers and assumption by Buyer of the Assigned Agreements, and each of Sellers, on the one hand, and Buyer, on the other hand, shall use its commercially reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable Law, and execute and deliver such documents and other papers, as may be required to consummate the transactions contemplated by this Agreement at or after the Closing, including, subject to Section 2.5, assistance by Sellers with the transfer of the Inventory, Permits, Documents, Business Intellectual Property (including with respect to making all appropriate filings and submissions with the United States Patent and Trademark Office and the Canadian Intellectual Property Office promptly after Closing, and in any event within thirty (30) days of Closing) and Product Registrations (which in the case of the shipping and delivery of the Inventory, Documents and Product Registrations shall be arranged by Buyer at its sole cost and expense); *provided* that (i) nothing in this Section 2.6 shall prohibit Sellers from ceasing operations or winding up their affairs following the Closing and (ii) Buyer shall reimburse Sellers for any reasonable and documented out-of-pocket expenditure or obligation incurred by Sellers after the Closing directly related to assistance provided to Buyer pursuant to this Section 2.6. In furtherance and not in limitation of the foregoing, in the event that any of the assets, properties, rights, titles and interests (tangible or intangible) used in connection with the Products and the Acquired Assets shall not have been conveyed at Closing, Sellers shall use commercially reasonable efforts to convey such assets, properties, rights, titles and interests to Buyer as promptly as practicable after the Closing, and pending such conveyance

shall provide the applicable benefits thereof to Buyer in a manner consistent in all material respects with past practice, *provided, however*, that Sellers shall not be required to incur any Liabilities or provide any financial accommodation in connection with any action required to be taken pursuant to this Section 2.6. Prior to the Closing, the parties shall cooperate in good faith to identify any assets, properties, rights, titles or interests that may not be able to be conveyed at Closing.

ARTICLE III
PURCHASE PRICE

Section 3.1 Purchase Price. The purchase price (the "Purchase Price") for the purchase, sale, assignment and conveyance of Sellers' right, title and interest in, to and under the Acquired Assets shall consist of:

(a) cash in the amount of the Cash Consideration; plus

(b) the assumption of the Assumed Liabilities.

Section 3.2 Deposit. Upon the execution of an escrow agreement substantially in the form attached hereto as Exhibit E (the "Escrow Agreement"), with such changes thereto as may be reasonably acceptable to Sellers and Buyer, with an escrow agent reasonably acceptable to Sellers and Buyer (the "Escrow Agent"), Buyer shall deposit into escrow with the Escrow Agent an amount equal to 10% of the Cash Consideration (such amount, together with all interest and other earnings accrued thereon, the "Deposit") by wire transfer of immediately available funds pursuant to the terms of the Escrow Agreement. The Deposit shall not be subject to any lien, attachment, trustee process or any other judicial process of any creditor of any Sellers or Buyer. The Deposit shall become payable to Sellers upon the Closing or in the event of the termination of this Agreement pursuant to Section 11.1(c)(i), in accordance with Section 11.2 (a "Buyer Default Termination"). At the Closing, the Parties shall instruct the Escrow Agent to deliver the Deposit to an account designated by Sellers by wire transfer of immediately available funds as payment of a portion of the Purchase Price.

Section 3.3 Closing Date Payment. At the Closing, Buyer shall pay to Sellers and the Receiver in accordance with the Allocation Schedule(s) in cash by wire transfer of immediately available funds an amount equal to the Cash Consideration, *less* the amount of the Deposit (such amount to be paid to Sellers at the Closing, the "Closing Date Payment").

Section 3.4 Discharge of Assumed Liabilities After Closing. Buyer shall pay, perform or satisfy the Assumed Liabilities from time to time and as such Assumed Liabilities become due and payable or are required to be performed or satisfied in accordance with their respective terms.

Section 3.5 Allocation of Purchase Price. No later than twenty (20) Business Days prior to the Closing, Buyer shall deliver to Sellers allocation schedule(s) allocating the Purchase Price (as may be adjusted pursuant to the terms of this Agreement), including the Assumed Liabilities to the extent such Liabilities are required to be treated as part of the purchase price for Tax purposes, (i) between the Acquired Assets of Canadian Seller (the "Canadian Assets"), on the one hand, and the Acquired Assets other than the Canadian Assets, on the other hand, (ii) for

the Canadian Assets, among the province(s) in which the Canadian Assets are located, and (iii) among the Acquired Assets (the "Allocation Schedule(s)") in accordance with Section 1060 of the Code and the regulations thereunder. In administering any Proceeding, the Bankruptcy Court shall not be required to apply the Allocation Schedule(s) in determining the manner in which the Purchase Price should be allocated as between any of the US Sellers and their respective estates or between the US Sellers and their estates and the Canadian Seller and its estate. In administering the Canadian Proceedings, the Canadian Court shall not be required to apply the Allocation Schedule(s) in determining the manner in which the Purchase Price should be allocated as between the US Sellers and their estates and the Canadian Seller and its estate. Buyer and Sellers will each file all Tax Returns (including, but not limited to, IRS Forms 8594) consistent with the Allocation Schedule(s) established pursuant to the terms of this Section 3.5. Sellers, on the one hand, and Buyer, on the other hand, each agree to provide the other promptly with any other information required to complete IRS Forms 8594. Neither Buyer nor any Seller shall take any Tax position inconsistent with such Allocation Schedule(s) and neither Buyer nor any Seller shall agree to any proposed adjustment based upon or arising out of Allocation Schedule(s) by any Governmental Authority without first giving the other Party prior written notice; *provided, however*, that nothing contained herein shall prevent Buyer or any Seller from settling any proposed deficiency or adjustment by any Governmental Authority based upon or arising out of the Allocation Schedule(s), and neither Buyer nor any Seller shall be required to litigate before any court any proposed deficiency or adjustment by any Governmental Authority based upon or arising out of such Allocation Schedule(s). The Allocation Schedule(s) shall be revised in accordance with Section 1060 of the Code and the regulations thereunder to appropriately take into account any payments made under this Agreement.

Section 3.6 Withholding. If Buyer is required by applicable Laws to withhold or deduct any amount of Tax from the payment of the Purchase Price hereunder, then Buyer shall withhold or deduct (and, to the extent required by applicable Laws, remit to the appropriate Governmental Authority) the amount of any such Tax and such withheld amount shall be treated for all purposes of this Agreement as having been paid to Sellers.

ARTICLE IV
CLOSING

Section 4.1 Closing Date. Upon the terms and subject to the conditions hereof, the closing of the sale of the Acquired Assets and the assumption of the Assumed Liabilities contemplated hereby (the "Closing") shall take place at the offices of Latham & Watkins LLP, 233 S. Wacker Drive, Suite 5800, Chicago, Illinois, no later than the third (3rd) Business Day following the date on which the conditions set forth in Article IX and Article X have been satisfied or (if permissible) waived (other than the conditions which by their nature are to be satisfied by actions taken at the Closing, but subject to the satisfaction or (if permissible) waiver of such conditions), or at such other place or time as Buyer, Sellers and the Receiver may mutually agree. The date and time at which the Closing actually occurs is referred to as the "Closing Date."

Section 4.2 Buyer's Deliveries. At the Closing, Buyer shall deliver to Sellers:

(a) the Closing Date Payment, in accordance with Section 3.3;

(b) the Bill of Sale, duly executed by Buyer;

(c) the Canadian Bill of Sale, duly executed by Buyer;

(d) an assignment and assumption agreement with respect to the Assigned Agreements, in the form attached hereto as Exhibit F (the "Assignment and Assumption Agreement"), assigning to Buyer all of Sellers' right, title and interest in and to such Assigned Agreements, duly executed by Buyer;

(e) each other Transaction Document to which Buyer is a party, duly executed by Buyer;

(f) the certificates of Buyer to be received by Sellers pursuant to Sections 10.1 and 10.4; and

(g) such other assignments and other good and sufficient instruments of assumption and transfer, in form reasonably satisfactory to Sellers, as Sellers may reasonably request to transfer and assign the Acquired Assets and Assumed Liabilities to Buyer.

Section 4.3 Sellers' Deliveries. At the Closing, Sellers and the Receiver, as applicable, shall deliver to Buyer:

(a) the Bill of Sale, one or more Assignment and Assumption Agreements, and each other Transaction Document to which any Seller is a party, duly executed by each applicable Seller or the Receiver;

(b) the Canadian Bill of Sale, duly executed by the Receiver;

(c) a copy of the Sale Order entered by the Bankruptcy Court;

(d) a copy of the Canadian Sale and Vesting Order as entered by the Canadian Court;

(e) a copy of the Receiver's Certificate referred to in the Canadian Sale and Vesting Order duly executed by the Receiver and as filed with the Canadian Court;

(f) the certificates of Sellers to be received by Buyer pursuant to Sections 9.1 and 9.2;

(g) a certificate of non-foreign status executed by each Seller (or, if applicable, a direct or indirect owner of a Seller) that is not a disregarded entity for U.S. federal income tax purposes, prepared in accordance with Treasury Regulation Section 1.1445-2(b); and

(h) such other bills of sale, special warranty deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Buyer, as Buyer may reasonably request to vest in Buyer all the right, title and interest of Sellers in, to or under any or all the Acquired Assets.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby represent and warrant to Buyer that the statements contained in this Article V are true and correct:

Section 5.1 Organization and Good Standing. Each Seller is an entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization. Sellers have the requisite corporate or limited liability company power and authority to own or lease and to operate and use its properties and to carry on the Business as now conducted. Except as set forth on Schedule 5.1, Sellers are duly qualified or licensed to do business and are in good standing in each jurisdiction where the character of its business or the nature of its properties makes such qualification or licensing necessary, except for such failures to be so qualified or licensed or in good standing as would not, individually or in the aggregate, have a Material Adverse Effect.

Section 5.2 Authority; Validity; Consents. Sellers have, subject to requisite Bankruptcy Court approval and Canadian Court approval, as applicable, the requisite corporate or limited liability company power and authority necessary to enter into and perform its obligations under this Agreement and the other Transaction Documents to which each such Seller is a party and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly and validly executed and delivered by Sellers and each other Transaction Document required to be executed and delivered by Sellers at the Closing will be duly and validly executed and delivered by Sellers at the Closing. Subject to requisite Bankruptcy Court approval and Canadian Court approval, as applicable, this Agreement and the other Transaction Documents constitute, with respect to Sellers, the legal, valid and binding obligations of Sellers, enforceable against Sellers in accordance with their respective terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Subject to requisite Bankruptcy Court approval and Canadian Court approval, as applicable, except (a) as required to comply with the HSR Act, (b) for entry of the Sale Order or the Canadian Sale and Vesting Order and (c) for notices, filings and consents required in connection with the Bankruptcy Case or the Canadian Proceedings, Sellers are not required to give any notice to, make any filing with or obtain any consent from any Person (including any Governmental Authority) in connection with the execution and delivery of this Agreement and the other Transaction Documents or the consummation or performance of any of the transactions contemplated hereby and thereby, except for such notices, filings and consents, the failure of which to provide, make or obtain, would not, individually or in the aggregate, have a Material Adverse Effect.

Section 5.3 No Conflict. When the consents and other actions described in Section 5.2 have been obtained and taken, the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions provided for herein and therein will not result in the material breach of any of the terms and provisions of, or constitute a material default under, or materially conflict with, or require consent or the giving of notice under, or cause any acceleration of any material obligation of Sellers under (a) any Order or (b) any Law.

Section 5.4 Environmental and Health and Safety Matters. Except as set forth on Schedule 5.4 or as would not, individually or in the aggregate, have a Material Adverse Effect:

(a) the current operations of the Business at the Real Property comply with all applicable Laws concerning environmental, health or safety matters ("Environmental, Health and Safety Laws"), and Sellers have not received written notice alleging that the activities of the Business are in violation of any Environmental Health and Safety Laws; and

(b) no Seller has caused any Release of any Hazardous Substances that requires reporting under applicable Environmental, Health and Safety Laws at, on or under any of the Real Property, and, to Sellers' Knowledge, none of such properties has been used by any Person as a landfill or storage, treatment or disposal site for any type of Hazardous Substance or non-hazardous solid wastes as defined under the Resource Conservation and Recovery Act of 1976, as amended.

Section 5.5 Title to Acquired Assets. Sellers have, and, immediately prior to Closing, will have, and, upon delivery to Buyer on the Closing Date of the instruments of transfer contemplated by Section 4.3, and subject to the terms of the Sale Order and the Canadian Sale and Vesting Order, Sellers will thereby transfer to Buyer, good title to, or, in the case of personal property leased by Sellers, a valid leasehold interest in, all of the Acquired Assets material to the Business, taken as a whole, and the assets set forth on Schedule 5.5, free and clear of all Encumbrances, except (a) as set forth on Schedule 5.5, (b) for the Assumed Liabilities, (c) for Permitted Encumbrances, and (d) subject to the limitation that certain transfers, assignments, licenses, sublicenses, leases and subleases, as the case may be, of Acquired Assets, Assigned Agreements and Permits, and any claim or right or benefit arising thereunder or resulting therefrom, may require consent of a Person or Governmental Authority, which has not been obtained.

Section 5.6 Taxes. Except as set forth on Schedule 5.6, all income and other material Tax Returns required to be filed by Sellers have been timely filed (taking into account any extension of time to file granted, or to be obtained with respect thereto), and all such Tax Returns are complete and accurate in all material respects. Except as set forth on Schedule 5.6, on the Effective Date (a) no examination by any Governmental Authority of any such Tax Return is currently in progress; and (b) no material Tax deficiencies of Sellers are being claimed, proposed or assessed by any Governmental Authority. All material amounts of Tax due and payable by Sellers have been duly and timely paid. There are no Liens for Taxes on any of the Acquired Assets other than Permitted Encumbrances.

Section 5.7 Legal Proceedings. As of the date hereof, except for the Bankruptcy Case, the Canadian Proceedings and as set forth on Schedule 5.7, there is no Proceeding or Order pending, outstanding or, to Sellers' Knowledge, threatened against any Seller that (a) seeks to restrain or prohibit or otherwise challenge the consummation, legality or validity of the transactions contemplated hereby or (b) would have, individually or in the aggregate, a Material Adverse Effect. Since December 31, 2006, there has not been made or, to Sellers' Knowledge, threatened, any material product liability or other material product-related claims by any third party arising from the sale, distribution or manufacturing with respect to the safety of the

Products of any Product and, to Seller's Knowledge, there are no material safety concerns with respect to any Product.

Section 5.8 Compliance with Laws; Permits. Except as set forth in Schedule 5.8, Sellers are not, and since January 1, 2009, have not been in violation in any material respect of any Law applicable to the operation of the Business and hold all Permits required for Sellers to conduct the Business as it is currently conducted. Except as set forth in Schedule 5.8, there are no Proceedings pending, or to Sellers' Knowledge threatened, regarding any of the Permits, except where the failure to hold the same or such Proceedings regarding the same would not reasonably be expected to materially impair the conduct of the Business as currently conducted. Sellers are in compliance with the terms of all Permits, except for such non-compliance as would not reasonably be expected to materially impair the conduct of the Business as currently conducted. Notwithstanding the foregoing, this Section 5.8 shall not apply to environmental and health and safety matters, Taxes or regulatory matters, which are the subject exclusively of the representations and warranties in Section 5.4, Section 5.6 and Section 5.11, respectively.

Section 5.9 Sellers' Intellectual Property.

(a) Schedule 5.9(a)(i) sets forth a true and complete list of all U.S. and foreign (A) issued patents and pending applications for patents; (B) registered trademarks, Internet domain names and pending applications for trademarks; and (C) registered copyrights and pending applications for copyrights, in each case consisting of Business Intellectual Property and which are material to the Business as currently conducted (collectively, the "Material Business Intellectual Property"). To Sellers' Knowledge, Schedule 5.9(a)(ii) sets forth a true and complete list of all unregistered trademarks consisting of Business Intellectual Property and which are material to the Business as currently conducted (the "Material Unregistered Trademarks"). Except as set forth on Schedule 5.9(a)(iii) and for Permitted Encumbrances, Sellers have all right, title and interest in and to the Material Business Intellectual Property designated as owned by Sellers on Schedule 5.9(a)(i), free and clear of all Encumbrances.

(b) Except as set forth on Schedule 5.9(b), to Sellers' Knowledge, each item of the Material Business Intellectual Property is in full force and effect, and has not been abandoned or passed into the public domain, and all necessary registration, maintenance and renewal documentation and fees in connection with the applicable Material Business Intellectual Property have been timely filed with the appropriate authorities and paid. Sellers have in place commercially reasonable policies and procedures, consistent with industry standards, to maintain the secrecy of all Trade Secrets included in the Business Intellectual Property. To Sellers' Knowledge, the Business is not using any Material Business Intellectual Property in a manner that would reasonably be expected to result in the cancellation or unenforceability of such Material Business Intellectual Property.

(c) Except as set forth on Schedule 5.9(c), there are no claims, actions, suits or proceedings before any court, tribunal or other Governmental Authority with respect to the Material Business Intellectual Property or Material Unregistered Trademarks (other than proceedings related to usual and customary patent or trademark prosecutions in the Ordinary Course of Business, including with the United States Patent and Trademark Office or equivalent foreign or multi-national authority).

(d) Except as disclosed on Schedule 5.9(d), to Sellers' Knowledge (i) the conduct of the Business by Sellers as conducted as of the date hereof does not infringe or otherwise violate any Person's Intellectual Property rights, and no claims with respect to such infringement or violation are pending or threatened in writing against Sellers, and (ii) no Person is infringing or otherwise violating any Business Intellectual Property, and no claims with respect to any such infringement or violation are pending or threatened against any Person by Sellers.

Section 5.10 Assigned Agreements. Each Assigned Agreement listed or described in Schedule 1.1(a) is in full force and effect and is a valid and binding obligation of Sellers and, to Sellers' Knowledge, the other parties thereto, in accordance with its terms and conditions, in each case except (a) as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity and (b) as set forth on Schedule 5.10. Sellers have made available to Buyer correct and complete copies of all Assigned Agreements. Upon entry of the Sale Order and payment of the Cure Costs and except as set forth on Schedule 5.10, (i) no Seller will be in material breach or default of its obligations under any such Assigned Agreement, (ii) no condition exists that with notice or lapse of time or both would constitute a material default by any Seller under any such Assigned Agreement and (iii) to Sellers' Knowledge, no other party to any such Assigned Agreement is in material breach or default thereunder. Other than as disclosed in Schedule 1.1(a) (as amended from time to time in accordance with the terms of this Agreement), Schedule 2.2(d) (as amended from time to time in accordance with the terms of this Agreement), Schedule 5.13, Schedule 5.14 and Schedule 5.15, as of the Effective Date, no Seller is party to a Contract that is material to the Business.

Section 5.11 Regulatory Matters.

(a) Except as disclosed on Schedule 5.11(a), Sellers are in compliance in all material respects with all health care laws, statutes, ordinances, codes, rules, regulations, decrees and orders of Governmental Authorities (collectively, "Health Care Laws") applicable to the conduct of the Business as currently conducted by Sellers. Health Care Laws include, but are not limited to, the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §§ 1320d et seq.) as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. §§ 17921 et seq.), the exclusion laws (42 U.S.C. § 1320a-7), the FD&C Act and related FDA regulations, the DESI program, the Public Health Service Act, the Controlled Substances Act, Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act), the Food and Drugs Act, RSC 1985, cF-27, the Food and Drugs Regulations CRC, C870, the Patent Act R.S.C., 1985, c. P-4, the Patented Medicines (Notice of Compliance) Regulations SOR/93-133 and the Controlled Drugs and Substances Act, SC 1996, c 19, as well as any comparable foreign, federal or state laws, and the regulations promulgated pursuant to such laws. Except as disclosed on Schedule 5.11(a), no Seller has received any notification of any pending or, to Sellers' Knowledge, threatened, claim, suit, proceeding, hearing, enforcement, audit, inquiry, investigation, arbitration or other action from any Governmental Authority, including, without limitation, the FDA, the Centers for Medicare & Medicaid Services, and the U.S. Department of Health and Human

Services Office of Inspector General, alleging potential or actual non-compliance by, or liability of, Sellers under any Health Care Laws, except as would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the Business as currently conducted.

(b) Sellers hold Product Registrations required for the conduct of the Business as currently conducted by Sellers, and such Product Registrations are in full force and effect, except where the failure to hold a Product Registration would not, individually or in the aggregate, reasonably be expected to materially impair the conduct of the Business as currently conducted. Sellers have fulfilled and performed, and are performing, all of their material obligations with respect to the Product Registrations, and no event has occurred which allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other impairment of the rights of the holder of any Product Registration, except where the failure to so perform, or the occurrence of such event would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the Business as currently conducted. Except as disclosed on Schedule 5.11(b), Sellers have not received any notice, letters or other correspondence from the FDA, Health Canada or any other Governmental Authority or person (i) contesting any of their Product Registrations or (ii) otherwise alleging any violation of Health Care Laws by Sellers.

(c) Except as disclosed on Schedule 5.11(c), all material reports, documents, claims and notices required to be filed, maintained, or furnished to the FDA or Health Canada by Sellers (including, but not limited to, drug registration and listing submissions to the FDA or Health Canada) have been so filed, maintained or furnished and, to Sellers' Knowledge, were complete and correct in all material respects on the date filed (or were corrected in or supplemented by a subsequent filing).

(d) Except as set forth on Schedule 5.11(d), during the one (1) year period prior to the Effective Date, no Seller has voluntarily or involuntarily initiated, conducted or issued, or caused to be initiated, conducted or issued, any recalls, market withdrawals, replacements, warnings, "dear doctor" letters, investigator notices, MedWatch safety alerts or other notice of material action relating to an alleged lack of safety, efficacy or regulatory compliance of the Products (each a "Safety Notice").

(e) Except as set forth on Schedule 5.11(e), during the one (1) year prior to the Effective Date, no Seller has received any FDA Form 483, notice of adverse finding, warning letter, untitled letter, or other notice, in each case, alleging a material lack of safety from the FDA, Health Canada or any other Governmental Authority.

(f) During the one (1) year prior to the Effective Date, no Seller has received any notification from the FDA regarding Products marketed under the DESI program (i) alleging or finding that a Product is illegally marketed; (ii) requesting that Sellers voluntarily submit an application for a Product Registration with the FDA in order to market or continue marketing a Product; (iii) providing notice of action in a *Federal Register* notice against a Product and/or (iv) initiating a seizure, injunction or other action against a Product.

(g) To Sellers' Knowledge, the clinical and pre-clinical studies conducted or sponsored by Sellers, or in which Sellers, the Products or Sellers' product candidates have

participated were, and if still pending, are being conducted in accordance with standard medical and scientific research procedures and all applicable Health Care Laws, including, but not limited to, the FD&C Act and its applicable implementing regulations at 21 C.F.R. Parts 50, 54, 56, 58 and 312, except as would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the Business as currently conducted.

(h) To Sellers' Knowledge, no officer, employee, or agent of Sellers has made an untrue statement of a material fact or fraudulent statement to the FDA, Health Canada or any other Governmental Authority, failed to disclose a material fact required to be disclosed to the FDA, Health Canada or any other Governmental Authority, or committed an act, made a statement, or failed to make a statement that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA, Health Canada or any other Governmental Authority to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," set forth in 56 Fed. Reg. 46191 (Sept. 10, 1991) or any similar policy. To Sellers' Knowledge, no officer, employee, or agent of Sellers has engaged in any conduct that has resulted, or would reasonably be expected to result, in debarments under 21 U.S.C. § 335a(a) or any similar laws, rules, or regulations.

Section 5.12 Brokers or Finders. Except as set forth on Schedule 5.12 hereof, Sellers have not incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement, the other Transaction Documents or the transactions contemplated hereby or thereby for which Buyer is or will become liable, and Sellers shall indemnify and hold harmless Buyer from any claims with respect to any such fees or commissions.

Section 5.13 Affiliate Transactions. Other than as set forth on Schedule 5.13 hereof or as otherwise expressly contemplated by this Agreement, there are no loans, leases or other continuing transactions between Sellers, on the one hand, and any present or former member, manager, stockholder, director or officer thereof, as applicable, on the other hand, that will not be terminated and of no further effect prior to or simultaneously with the Closing.

Section 5.14 Insurance. The physical properties, assets, business, operations, employees, officers, directors and managers of Sellers are insured to the extent disclosed in Schedule 5.14 and (i) to Sellers' Knowledge, there is no claim by Sellers pending under any such policies as to which coverage has been questioned, denied or disputed by the insurer, (ii) such insurance policies and arrangements are in full force and effect, all premiums with respect thereto are currently paid, and Sellers are in compliance in all material respects with the terms thereof, and (iii) no notice of cancellation or termination has been received by Sellers with respect to any insurance policy described in Schedule 5.14.

Section 5.15 3M. Schedule 5.15 lists all agreements between Sellers and/or the Business, on the one hand, and 3M Company or any of its Affiliates, on the other hand. As of the date hereof, to the Knowledge of Sellers, Sellers have not received any notice and have no reason to believe that 3M Company or any of its Affiliates has (i) terminated or intends to terminate its business dealings with the Business, (ii) materially reduced or will materially reduce its supply to the Business, or (iii) otherwise materially changed or intends to materially

change the pricing, terms or amount of business with the Business in a manner adverse to the Business, in each case, as a result of this Agreement, the Bankruptcy Case, or otherwise.

Section 5.16 Inventory; Products. Inventory that is finished goods or samples (i) with an expiration date fourteen (14) months or longer from the Closing Date and (ii) not in quarantine, is in good and marketable condition, and is saleable in the ordinary course of business, other than for normal discounts and liquidations in the Ordinary Course of Business.

Section 5.17 Canadian Competition Act. Neither (i) the aggregate value of the Acquired Assets in Canada of Sellers, nor (ii) the gross revenues from sales in or from Canada from such assets exceeds Cdn$73 million as determined in accordance with the Notifiable Transaction Regulations promulgated under the Competition Act (Canada).

Section 5.18 Financial Statements. Schedule 5.18 sets forth the (i) audited consolidated financial statements of Sellers as at and for the years ended December 31, 2009 and December 31, 2010 (the "Audited Financial Statements") and (ii) unaudited consolidated financial statements of the Business as at and for the period ended July 31, 2011 (the "Unaudited Financial Statements"), including in each of clauses (i) and (ii) a balance sheet, statement of income and statements of cash flows and operations and for clause (i) a statement of retained earnings (the Audited Financial Statements and the Unaudited Financial Statements collectively, the "Financial Statements"). The Financial Statements have been prepared in accordance with United States generally accepted accounting principles and practices in effect from time to time applied on a consistent basis throughout the periods indicated and present fairly, in all material respects, the financial condition of Sellers at their respective dates, *provided, however,* that in the case of clause (ii) the unaudited financial statements were prepared on a going concern basis and do not include footnotes.

Section 5.19 No Other Representations or Warranties.

(a) Buyer acknowledges that, except for the representations and warranties contained in Article V, neither Sellers nor any other Person on behalf of Sellers makes any express or implied representation or warranty with respect to Sellers (including representations and warranties as to the condition of the Acquired Assets) or with respect to any information provided by or on behalf of Sellers to Buyer. Neither Sellers nor any other Person will have or be subject to any liability or indemnification obligation to Buyer or any other Person resulting from the distribution to Buyer, or use by Buyer, of any such information, including any information, documents, projections, forecasts or other material made available to Buyer in any "data rooms," "data sites," responses to inquiries, confidential information memoranda or management presentations in expectation of or in connection with the transactions contemplated by this Agreement or any other Transaction Document. Any documents, title information, assessments, surveys, plans, specifications, reports and studies, or other information made available to Buyer by Sellers or their Representatives, including any other material made available to Buyer in any "data rooms," "data sites," responses to inquiries, confidential information memoranda or management presentations (collectively, "Review Documents") are provided as information only. Buyer shall not rely upon Sellers' provision of any Review Document(s) in lieu of conducting its own due diligence. Except for the specific representations and warranties contained in this Article V (in each case as modified by the Disclosure Schedules

hereto), Sellers have not made, do not make, and have not authorized anyone else to make any representation as to: (i) the accuracy, reliability or completeness of any of the Review Documents; (ii) the operating condition of the Acquired Assets; (iii) the Environmental Conditions of the Real Property INCLUDING, WITHOUT LIMITATION, THE PRESENCE OR ABSENCE OF ANY HAZARDOUS SUBSTANCES; (iv) the enforceability of, or Buyer's ability to obtain the benefits of, any agreement of record affecting the Acquired Assets, (v) the transferability or assignability of any Contract or Permit or (vi) any other matter or thing affecting or relating to the Acquired Assets.

(b) In connection with investigation by Buyer, Buyer has received or may receive from Sellers certain projections, forward-looking statements and other forecasts and certain business plan information. Buyer acknowledges that there are uncertainties inherent in attempting to make such estimates, projections and other forecasts and plans, that Buyer is familiar with such uncertainties, that Buyer is taking full responsibility for making its own evaluation of the adequacy and accuracy of all estimates, projections and other forecasts and plans so furnished to it (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans), and that Buyer shall have no claim against anyone with respect thereto. Accordingly, Buyer acknowledges that, without limiting any representation or warranty in this Article V or any other term of this agreement, Sellers make no representation or warranty with respect to such estimates, projections, forecasts or plans (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans).

ARTICLE VI
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Sellers that the statements contained in this Article VI are true and correct:

Section 6.1 Organization and Good Standing. Buyer is a corporation, duly organized, validly existing and in good standing under the laws of the Country of Switzerland. Buyer has the requisite power and authority to own or lease and to operate and use its properties and to carry on its business as now conducted.

Section 6.2 Authority; Validity; Consents. Buyer has the requisite power and authority necessary to enter into and perform its obligations under this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated herein have been duly and validly authorized by all requisite corporate actions in respect thereof. This Agreement has been duly and validly executed and delivered by Buyer and each other Transaction Document to which Buyer is a party will be duly and validly executed and delivered by Buyer at the Closing. This Agreement and the other Transaction Documents to which Buyer is a party constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Except as required to comply with the HSR Act and Investment Canada Act, Buyer is not and will not be required to give any notice to or obtain any

consent from any Person in connection with the execution and delivery of this Agreement and the other Transaction Documents to which it is a party or the consummation or performance of any of the transactions contemplated hereby or thereby.

Section 6.3 No Conflict. When the consents and other actions described in Section 6.2 have been obtained and taken, the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions provided for herein and therein will not result in the breach of any of the terms and provisions of, or constitute a default under, or conflict with, or cause any acceleration of any obligation of Buyer under (a) any agreement, indenture, or other instrument to which it is bound, (b) the certificate incorporation of Buyer, (c) any Order or (d) any Law.

Section 6.4 Availability of Funds; Solvency.

(a) Buyer will have at the Closing sufficient cash in immediately available funds (without giving effect to any unfunded financing, regardless of whether any such financing is committed) to pay the Cash Consideration, and all other costs, fees and expenses required to be paid by it under this Agreement and the other Transaction Documents.

(b) As of the Closing and immediately after consummating the transactions contemplated by this Agreement and the other transactions contemplated by the Transaction Documents, Buyer will not, assuming the accuracy of Sellers' representations and warranties under this Agreement, (i) be insolvent (either because its financial condition is such that the sum of its debts is greater than the fair value of its assets or because the present fair value of its assets will be less than the amount required to pay its probable Liability on its debts as they become absolute and matured), (ii) have unreasonably small capital with which to engage in its business or (iii) have incurred or plan to incur debts beyond its ability to repay such debts as they become absolute and matured.

Section 6.5 Litigation. There are no Proceedings pending or, to the knowledge of Buyer, threatened, that would affect in any material respect Buyer's ability to perform its obligations under this Agreement or any other Transaction Documents or to consummate the transactions contemplated hereby or thereby.

Section 6.6 Brokers or Finders. Neither Buyer nor any Person acting on behalf of Buyer has paid or become obligated to pay any fee or commission to any broker, finder, investment banker, agent or intermediary for or on account of the transactions contemplated by this Agreement for which Sellers are or will become liable, and Buyer shall hold harmless and indemnify Sellers from any claims with respect to any such fees or commissions.

ARTICLE VII
ACTION PRIOR TO THE CLOSING DATE

Section 7.1 Investigation of the Business by Buyer. After the Effective Date and prior to the Closing Date, Sellers shall, at Buyer's sole cost and expense and in accordance with reasonable procedures to be established in good faith by mutual agreement of Sellers' Interim Access Manager and Buyer's Interim Access Manager, (a) afford Buyer's authorized Representatives access during normal business hours to the offices, properties, key employees,

outside accountants, agreements and other documentation and financial records (including computer files, retrieval programs and similar documentation) with respect to the Business to the extent Buyer reasonably deems necessary, and permit Buyer and its authorized Representatives to make copies of such materials, (b) furnish to Buyer or its authorized Representatives such additional information concerning the Business as shall be reasonably requested by Buyer or its authorized Representatives and (c) use commercially reasonable efforts to cause their outside accountants and outside counsel to cooperate with Buyer in its investigation; *provided* that Buyer shall submit to Sellers requests for such access, information or cooperation, including reasonable detail regarding the requested access, information or cooperation, a reasonable period in advance of the time at which such access, information or cooperation is to be provided, and all such requests shall be submitted only to John A. A. Bellamy, as Sellers' designated representative, or to such other individuals as John A. A. Bellamy may designate from time to time to receive such requests ("Sellers' Interim Access Manager"). Such requests of Buyer shall be submitted only by Scott McCrea or another individual reasonably acceptable to Sellers' Interim Access Manager as Scott McCrea's successor, as Buyer's designated representative ("Buyer's Interim Access Manager"). Notwithstanding anything herein to the contrary, no such access, information or cooperation shall be permitted or required to the extent that it would require Sellers to disclose information subject to attorney-client privilege or would be prohibited by Law or would otherwise contravene any antitrust or competition Law.

Section 7.2 Operations Prior to the Closing Date. Sellers covenant and agree that, except (i) as expressly contemplated by this Agreement, (ii) as disclosed in Schedule 7.2 or any other Schedule as of the date hereof, (iii) for the failure to pay or otherwise honor (A) Rebates, Chargebacks and return obligations relating to Products sold by Sellers prior to the Filing or (B) any patient coupon program, (iv) with the prior written consent of Buyer (which consent shall not be unreasonably withheld or delayed), (v) as required by, arising out of, relating to or resulting from the Bankruptcy Case, the Canadian Proceedings or otherwise approved by the Bankruptcy Court or the Canadian Court and (vi) as otherwise required by Laws, after the Effective Date and prior to the Closing Date:

(a) Sellers shall use commercially reasonable efforts, taking into account US Sellers' status as a debtor-in-possession in the Bankruptcy Case and Canadian Seller's status as a debtor in the Canadian Proceedings, to carry on in the Ordinary Course of Business (including by paying all fees due to any regulatory authority in the Ordinary Course of Business, including all fees due to the FDA or Health Canada prior to Closing), to maintain in full force and effect the Permits, to maintain and preserve the Acquired Assets in their present condition, other than reasonable wear and tear, and to keep intact the business relationships relating to the Acquired Assets; and, without limiting the generality of the forgoing,

(b) Sellers shall not:

(i) other than the sale of Products in accordance with Section 7.2(b)(vii) or pursuant to any debtor-in-possession financing or cash collateral agreement or order, sell, lease (as lessor), transfer or otherwise dispose of, or mortgage or pledge, or voluntarily impose or suffer to be imposed, any Encumbrance (other than Assumed Liabilities and Permitted Encumbrances) on any Acquired Asset;

(ii) issue, deliver or sell or authorize the issuance, delivery or sale of, any membership or other equity interests of Sellers;

(iii) fail to pay any maintenance or similar fees in connection with the prosecution and maintenance of applicable Material Business Intellectual Property, or otherwise fail to protect and maintain Material Business Intellectual Property consistent with past practice in all material respects;

(iv) amend any of the Assigned Agreements or any Contract included in the Acquired Assets other than non-material amendments made in the Ordinary Course of Business;

(v) other than in the Ordinary Course of Business, enter into any new, or amend any existing, license or other similar agreement concerning any Business Intellectual Property material to the Business, taken as a whole;

(vi) except in the Ordinary Course of Business, cancel or compromise any material claim or waive or release any material right, in each case, that is a claim or right related to an Acquired Asset;

(vii) sell more than 3,300 units of Zyclara Products in the aggregate (including all strengths and methods of delivery) in any given week or materially increase the sale of other Products outside of the Ordinary Course of Business; or

(viii) enter into any agreement or commitment to take any action prohibited by this Section 7.2.

Without in any way limiting any Party's rights or obligations under this Agreement, the Parties understand and agree that (i) nothing contained in this Agreement shall give Buyer, directly or indirectly, the right to control or direct the operations of Sellers, or the Business prior to the Closing and (ii) prior to the Closing, Sellers shall exercise, consistent with, and subject to, the terms and conditions of this Agreement, complete control and supervision over the Business and their operations. Notwithstanding anything herein to the contrary, Sellers shall be permitted to take all actions that are necessary or desirable to comply with the Worker Adjustment and Retraining Notification Act and WARN Act, including without limitation, providing any notices required under the WARN Act, and no such actions shall constitute a violation of this Section 7.2.

Section 7.3 HSR Act; Reasonable Best Efforts.

(a) Subject to Section 7.3(c), within fifteen (15) Business Days following the Effective Date, Sellers, on the one hand, and Buyer, on the other hand, shall each prepare and file, or cause to be prepared and filed, any notifications required to be filed under the HSR Act with the United States Federal Trade Commission and the Department of Justice, and request early termination of the waiting period under the HSR Act. Buyer, on the one hand, and Sellers, on the other hand, shall as soon as reasonably practicable respond to any requests for additional information in connection with such filings and shall take all other actions necessary to cause the

waiting periods under the HSR Act to terminate or expire at the earliest practicable date after the date of filing. Buyer shall be responsible for payment of the applicable filing fee under the HSR Act.

(b) In addition to the actions to be taken under Section 7.3(a), Sellers, on the one hand, and Buyer, on the other hand, shall use all best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated hereby, including using best efforts to accomplish the following: (i) the taking of all reasonable acts necessary to cause the conditions precedent set forth in Article IX and Article X to be satisfied, (ii) the obtaining of all necessary Governmental Authorizations and the making of all necessary registrations, declarations and filings (including registrations, declarations and filings with Governmental Authorities, if any) and the taking of all steps as may be necessary to avoid any Proceeding by any Governmental Authority, (iii) the defending of any Proceedings challenging this Agreement or the consummation of the transaction contemplated hereby, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Authority vacated or reversed, and (iv) the execution or delivery of any additional instruments necessary to consummate the transactions contemplated hereby and to fully carry out the purposes of this Agreement.

(c) Buyer further agrees that it shall, to the extent necessary to obtain the waiver or consent from any Governmental Authority required to satisfy the conditions set forth in Article IX and Article X, as applicable, or to avoid the entry of or have lifted, vacated or terminated any Closing Legal Impediment, take the following actions: (i) propose, negotiate, offer to commit and effect (and if such offer is accepted, commit to and effect), by consent decree, hold separate order or otherwise, and in connection with the consummation of the transactions contemplated by this Agreement and the other Transaction Documents, the sale, divestiture or disposition (including by licensing any intellectual property rights) of any Acquired Assets and/or any other assets or businesses of Buyer or any of its Affiliates (or equity interests held by Buyer or any of its Affiliates in entities with assets or businesses); (ii) terminate any existing relationships and contractual rights and obligations; (iii) otherwise offer to take or offer to commit to take any action which it is capable of taking and, if the offer is accepted, take or commit to take such action, that limits its freedom of action with respect to, or its ability to retain, any of the Acquired Assets and/or any other assets or businesses of Buyer or any of its Affiliates (or equity interests held by Buyer or any of its Affiliates in entities with assets or businesses); and (iv) take promptly, in the event that any permanent or preliminary injunction or other order is entered or becomes reasonably foreseeable to be entered in any proceeding that would make consummation of the transactions contemplated by this Agreement and the other Transaction Documents unlawful or that would prevent or delay consummation of the transactions contemplated by this Agreement and the other Transaction Documents, any and all steps (including the appeal thereof, the posting of a bond or the taking of the steps contemplated by clauses (i), (ii) and (iii) of this Section 7.3(c)) necessary to vacate, modify or suspend such injunction or order. For the avoidance of doubt, Buyer's obligations under this Section 7.3 shall be absolute and not qualified by "commercially reasonable efforts." The Parties agree that Sellers' obligations under this Section 7.3 shall not include any obligation on the part of Sellers or their respective Affiliates to commit to or effect, by consent decree, hold separate orders, trust

or otherwise the sale or disposition of such of its assets or businesses (including the Acquired Assets) as may be required to be divested in order to avoid the entry of, or to effect the dissolution of, any decree, order, judgment, injunction, temporary restraining order or other order in any suit or preceding.

(d) Sellers, on the one hand, and Buyer, on the other hand, (i) shall promptly inform each other of any communication from any Governmental Authority concerning this Agreement, the transactions contemplated hereby, and any filing, notification or request for approval and (ii) shall permit the other to review in advance any proposed written or material oral communication or information submitted to any such Governmental Authority in response thereto and shall discuss and attempt to reasonably account for any comments or suggestions of the other Party. In addition, none of Parties shall agree to participate in any meeting with any Governmental Authority in respect of any filings, investigation or other inquiry with respect to this Agreement or the transactions contemplated hereby, unless such Party consults with the other Parties in advance and, to the extent not prohibited by any such Governmental Authority, gives the other Parties the opportunity to attend and participate thereat, in each case to the maximum extent practicable. Subject to any restrictions under applicable laws, rules or regulations, Buyer, on the one hand, and Sellers, on the other hand, shall furnish the other with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective Representatives on the one hand, and the Governmental Authority or members of its staff on the other hand, with respect to this Agreement, the transactions contemplated hereby (excluding documents and communications which are subject to preexisting confidentiality agreements or to the attorney-client privilege or work product doctrine) or any such filing, notification or request for approval. In carrying out their obligations under this Section 7.3, subject to applicable Law, each of the Parties shall not submit or otherwise provide any information to such Governmental Authority without first having provided a reasonable opportunity to the other Party and its counsel to comment upon such information. Each Party shall also furnish the other Party with such necessary information and assistance as such other Party and its Affiliates may reasonably request in connection with their preparation of necessary filings, registration or submissions of information to the Governmental Authority in connection with this Agreement, the transactions contemplated hereby and any such filing, notification or request for approval. Any Party may, as it deems advisable and necessary, reasonably designate any sensitive material provided to the other Party under this Section 7.3, or otherwise pursuant to this Agreement, as "outside counsel only." Such materials and the information contained therein shall be given only to the outside legal counsel of the recipient and will not be disclosed by such outside counsel to the directors, officers or employees of the recipient, unless express written permission is obtained in advance from the source of the materials.

(e) Neither Buyer nor Sellers shall, after the entry of the Sale Order, agree to accept any agreement that would have the effect of delaying the consummation of any action contemplated by this Agreement without the written consent of the other Party. For the avoidance of doubt, no Party shall commit to or agree with any Governmental Authority to stay, toll or extend any applicable waiting period under the HSR Act or other applicable Laws, without the prior written consent of the other Parties.

(f) Neither Buyer nor any of its controlled Affiliates shall take any action or acquire any assets or securities of any other Person or agree to acquire assets or securities of any other Person if such action, acquisition or agreement would reasonably be expected to impair Buyer's ability to consummate the transactions contemplated hereby.

Section 7.4 Bankruptcy Court Filings and Approval.

(a) US Sellers shall use their commercially reasonable efforts to obtain entry of the Bidding Procedures Order and the Sale Order and such other relief from the Bankruptcy Court as may be necessary or appropriate in connection with this Agreement and the consummation of the transactions contemplated by this Agreement. US Sellers shall file with the Bankruptcy Court, on or prior to the end of the third (3rd) Business Day following the later of the Filing or execution of this Agreement, the motion seeking entry of the Bidding Procedures Order and the Sale Order authorizing US Sellers to enter into this Agreement and to consummate the transactions contemplated hereunder. Buyer agrees that it will promptly take such actions as are reasonably requested by US Sellers to assist in obtaining entry of the Bidding Procedures Order and the Sale Order and, consistent with Section 8.3(a) below, a finding by the Bankruptcy Court of adequate assurance of future performance by Buyer.

(b) As promptly as possible, but in no event later than five (5) Business Days following the Filing, Canadian Seller shall bring application in the Canadian Court seeking an Order under the CJA (i) appointing a receiver to oversee the sale of the assets of Canadian Seller and (ii) granting certain other relief customarily granted in receivership orders made by the Canadian Court including, without limitation, a stay of proceedings against Canadian Seller (the "Canadian Receivership Order"), which Order shall be in form and substance acceptable to Buyer, acting reasonably. As promptly as possible, but in no event later than two (2) Business Days following entry of the Bidding Procedures Order and on notice to Persons designated by Buyer, the Canadian Seller shall bring a motion seeking an Order in the Canadian Proceedings approving this Agreement (including the Break-Up Fee and the Expense Reimbursement Amount) and the transactions contemplated herein as a stalking horse agreement, and approving the Bidding Procedures as they relate to Canadian Seller, and granting such other relief as Canadian Seller and Buyer may deem necessary or advisable (the "Canadian Bidding Procedures Order"), which Order shall be in form and substance acceptable to Buyer, acting reasonably.

(c) As promptly as possible, but in no event later than two (2) Business Days following entry of the Sale Order and on notice to Persons designated by Buyer, Canadian Seller shall bring a motion seeking an Order in the Canadian Proceeding, *inter alia*, (i) approving this Agreement and the transactions contemplated herein, (ii) exempting the transaction from the provisions of the Bulk Sales Act (Ontario), and (iii) vesting the Canadian Assets in Buyer free and clear of all claims, liens and encumbrances (other than Permitted Encumbrances) effective upon delivery to Buyer of the Receiver's Certificate confirming that the Purchase Price has been paid, the conditions to Closing have been satisfied or waived and the transactions contemplated in this Agreement have closed to the satisfaction of the Receiver (such order, the "Canadian Sale and Vesting Order"), which Order shall be substantially in the form attached hereto as Exhibit G, with such changes as Buyer may accept acting reasonably. Buyer agrees that it will take such actions as are reasonably requested by Sellers to assist in obtaining entry of the Canadian

Receivership Order, the Canadian Bidding Procedures Order and the Canadian Sale and Vesting Order.

(d) Prior to the filing by Sellers of the motion contemplated by the second sentence of Section 7.4(a) and the applications and motions for the Canadian Orders, Sellers will (i) provide a copy thereof (including, in each case, the related forms of order and notice and supporting materials) to Buyer and its counsel, (ii) provide Buyer and its counsel a reasonable opportunity to review and comment on such document, and any amendment or supplement thereto and (iii) incorporate any reasonable comments of Buyer and its counsel into such document and any amendment or supplement thereto.

(e) Sellers and Buyer acknowledge that this Agreement and the sale of the Acquired Assets and the assumption and assignment of the Assigned Agreements are subject to Bankruptcy Court approval and approval of the Canadian Court. Sellers and Buyer acknowledge that (i) to obtain such approval, Sellers must demonstrate that they have taken reasonable steps to obtain the highest and otherwise best offer possible for the Acquired Assets and (ii) Buyer must provide adequate assurance of future performance under the Assigned Agreements to be assigned by US Sellers.

(f) Sellers shall give appropriate notice, and provide appropriate opportunity for hearing, to all Persons entitled thereto, of all motions (including the motions seeking entry of the Bidding Procedures Order, the Sale Order and the Canadian Orders), orders, hearings and other proceedings relating to this Agreement and the transactions contemplated hereby and thereby and such additional notice as ordered by the Bankruptcy Court or the Canadian Court or as Buyer may reasonably request.

(g) In the event an appeal is taken or a stay pending appeal is requested, from the Bidding Procedures Order, Sale Order or any of the Canadian Orders, Sellers shall immediately notify Buyer of such appeal or stay request and shall provide to Buyer promptly a copy of the related notice of appeal or order of stay. Sellers shall also provide Buyer with written notice of any motion or application filed in connection with any appeal from or stay request in respect of either of such orders. Sellers and Buyer shall use their respective commercially reasonable efforts to defend such appeal or stay request and obtain an expedited resolution of such appeal.

(h) After entry of the Sale Order and the Canadian Sale and Vesting Order, to the extent Buyer is the Successful Bidder at the Auction, Sellers shall not take any action which is intended to, or fail to take any action the intent of which failure to act is to, result in the reversal, voiding, modification or staying of the Sale Order or the Canadian Sale and Vesting Order.

Section 7.5 Bidding Procedures. The bidding procedures to be employed with respect to this Agreement shall be those reflected in the Bidding Procedures Order. Buyer agrees and acknowledges that Sellers and their Representatives and Affiliates are and may continue soliciting inquiries, proposals or offers for the Acquired Assets in connection with any alternative transaction pursuant to the terms of the Bidding Procedures Order.

Section 7.6 Break-Up Fee; Expense Reimbursement Amount.

(a) Subject to entry of the Bidding Procedures Order and the Canadian Bidding Procedures Order, if this Agreement is terminated pursuant to Section 11.1(a)(iv), Section 11.1(b)(iii), Section 11.1(c)(ii) or Section 11.1(c)(iii) and, in each case, Sellers consummate an Alternative Transaction, then Sellers, jointly and severally, shall pay in cash to Buyer, on the date of the consummation of the Alternative Transaction and from the proceeds of the Alternative Transaction, a break-up fee in the amount of Eight Million Two Hundred Fifty Thousand United States Dollars (USD$8,250,000) (the "Break-Up Fee") by wire transfer of immediately available funds to the account specified by Buyer to Sellers in writing.

(b) Subject to entry of the Bidding Procedures Order and the Canadian Bidding Procedures Order, if this Agreement is terminated pursuant to Section 11.1(a)(i) (unless due to Buyer's breach of this Agreement), Section 11.1(a)(iv), Section 11.1(b)(i), Section 11.1(b)(iii), Section 11.1(c)(ii) or Section 11.1(c)(iii), then Sellers, jointly and severally, shall pay in cash to Buyer, within five (5) Business Days of such termination, an amount equal to the reasonable and documented costs, fees and expenses incurred by Buyer and its Affiliates (including fees and expenses of legal, accounting and financial advisors) in connection with this Agreement and the transactions contemplated hereby up to a maximum of One Million Five Hundred Thousand United States Dollars (USD$1,500,000) (the "Expense Reimbursement Amount") by wire transfer of immediately available funds to the account specified by Buyer to Sellers in writing. If the Break-Up Fee is later determined to be payable, it shall be reduced by the Expense Reimbursement Amount received by Buyer from Sellers pursuant to this Section 7.6.

(c) The obligations of Sellers to pay the Break-Up Fee and the Expense Reimbursement Amount as provided herein shall be entitled to administrative expense status with priority over any and all administrative expenses of the kind specified in Sections 503(b)(1) and 507(a) of the Bankruptcy Code in the Bankruptcy Case and senior to all other superpriority administrative expenses in the Bankruptcy Case.

(d) Sellers agree and acknowledge that Buyer's due diligence, efforts, negotiation and execution of this Agreement have involved substantial investment of management time and have required significant commitment of financial, legal and other resources by Buyer and its Affiliates and that such due diligence, efforts, negotiation and execution have provided value to Sellers.

Section 7.7 Communications with Customers and Suppliers. Prior to the Closing, Buyer shall not, and shall cause its Affiliates and Representatives not to, contact, or engage in any discussions or otherwise communicate with, any of Sellers' landlords, clients, suppliers and other Persons with which Sellers have material commercial dealings without obtaining the prior consent of Sellers, which consent shall not be unreasonably withheld, conditioned or delayed; provided that nothing herein shall in any way restrict or limit Buyer or its Affiliates from contacting, or engaging in discussions or otherwise communicating with, any Person in the ordinary course of the business of Buyer and its Affiliates as conducted as of the date hereof. In no event shall Buyer request any client, customer or any other Person to return any Products sold by Seller.

Section 7.8 Financing. Buyer covenants and agrees with Sellers that it will take all actions necessary to ensure that as of the Closing Date Buyer will have immediately available funds, in the aggregate, sufficient to pay the Cash Consideration, and all other costs, fees and expenses required to be paid by it under this Agreement and the other Transaction Documents.

Section 7.9 Notification of Certain Matters. From the Effective Date through one (1) Business Day prior to the Sale Hearing, Sellers shall use commercially reasonable efforts to promptly (and in no event later than five (5) Business Days prior to the Sale Hearing, except with respect to Contracts entered into after such date) supplement or update Schedule 2.2(d) by providing Buyer written notice of any Contract to which any Seller is a party as of the Effective Time which was not set forth on Schedule 1.1(a) or Schedule 2.2(d) as of the Effective Time and any Contracts that relate to the Business and arise in the Ordinary Course of Business after the Effective Date. From the Effective Date through one (1) Business Day prior to the Sale Hearing, Buyer may amend Schedule 2.2(d) or Schedule 1.1(a) to move any Contract from Schedule 2.2(d) to Schedule 1.1(a) or vice versa by providing Seller with written notice thereof, *provided, however*, that Buyer shall have no right to add any Contract rejected, in accordance with Section 365 of the Bankruptcy Code, by Sellers prior to Sellers receiving written notice from Buyer to include such Contract on Schedule 1.1(a)), *provided further*, that, following the Auction, Buyer may amend Schedule 2.2(d) or Schedule 1.1(a) to move any Contract from Schedule 2.2(d) to Schedule 1.1(a), but not vice versa, *provided further*, that Buyer may not amend Schedule 2.2(d) or Schedule 1.1(a) to move any Contract from Schedule 1.1(a) to Schedule 2.2(d) which is also listed on Schedule 5.15 without the prior written consent of Sellers.

ARTICLE VIII
ADDITIONAL AGREEMENTS

Section 8.1 Taxes.

(a) Any sales, use, property transfer or gains, documentary, stamp, registration, recording or similar Tax (including, for certainty, goods and services tax, harmonized sales tax and land transfer tax) payable in connection with the sale or transfer of the Acquired Assets ("Transfer Taxes") shall be borne by Buyer and, to the extent any Seller is required by applicable Law to pay Transfer Taxes, such Transfer Taxes shall be paid by the Buyer to the appropriate Seller at Closing. Sellers and Buyer shall use reasonable efforts and cooperate in good faith to exempt the sale and transfer of the Acquired Assets from any such Transfer Taxes. Buyer shall prepare and file all necessary Tax Returns or other documents with respect to all such Transfer Taxes; *provided, however*, that in the event any such Tax Return requires execution by Sellers, Buyer shall prepare and deliver to Sellers a copy of such Tax Return at least three (3) Business Days before the due date thereof, and Sellers shall promptly execute such Tax Return and deliver it to Buyer, which shall cause it to be filed. Buyer shall reimburse Sellers for any Tax described in this Section 8.1(a) that is paid by Sellers to a Governmental Authority.

(b) Buyer shall be responsible for all personal property Taxes and similar ad valorem obligations levied with respect to the Acquired Assets (the "Property Taxes"), without

regard to the taxable period such Property Taxes are attributable to, that are due and payable after the Closing Date.

(c) Buyer and Sellers agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Business and the Acquired Assets (including access to Documents) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any taxing authority and the prosecution or defense of any claims, suit or proceeding relating to any Tax; *provided, however*, that (other than as required pursuant to this Section 8.1(c)) neither Buyer nor any Seller shall be required to disclose the contents of its income tax returns to any Person. Any expenses incurred in furnishing such information or assistance pursuant to this Section 8.1(c) shall be borne by the Party requesting it.

(d) Notwithstanding any other provisions in this Agreement, Buyer and Sellers hereby waive compliance with all "bulk sales," "bulk transfer" and similar laws that may be applicable with respect to the sale and transfer of any or all of the Acquired Assets to Buyer.

(e) If requested by Sellers prior to Closing, Buyer and Canadian Seller shall jointly execute and file an election pursuant to subsection 20(24) of the *Income Tax Act* (Canada) and the corresponding provisions of any applicable provincial Tax legislation in prescribed manner and within the prescribed time limits with respect to Buyer's assumption of Canadian Seller's obligations in respect of undertakings to which paragraph 12(1)(a) of *Income Tax Act* (Canada) apply. Buyer and Canadian Seller acknowledge that Canadian Seller is transferring assets of equal value to Buyer as consideration for the assumption of such obligations. Buyer and Canadian Seller shall file all of their respective Canadian Tax Returns in a manner consistent with any elections completed under this Section 8.1(e).

Section 8.2 Payments Received. Sellers, on the one hand, and Buyer, on the other hand, each agree that, after the Closing, each will hold and will promptly transfer and deliver to the other, from time to time as and when received by them, any cash, checks with appropriate endorsements (using their best efforts not to convert such checks into cash) or other property that they may receive on or after the Closing which properly belongs to the other and will account to the other for all such receipts.

Section 8.3 Assigned Agreements; Adequate Assurance of Future Performance.

(a) With respect to each Assigned Agreement, Buyer shall provide adequate assurance as required under the Bankruptcy Code of the future performance by Buyer of each such Assigned Agreement. Buyer and Sellers agree that they will promptly take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been an adequate demonstration of adequate assurance of future performance under the Assigned Agreements, such as furnishing affidavits, non-confidential financial information and other documents or information for filing with the Bankruptcy Court and making Buyer's and Sellers' Representatives available to testify before the Bankruptcy Court.

(b) Subject to the other terms and conditions of this Agreement, Buyer shall, from and after the Closing Date, (i) assume all Liabilities of Sellers under the Assigned

Agreements and (ii) satisfy and perform all of the Liabilities related to each of the Assigned Agreements when the same are due thereunder.

Section 8.4 Rebates, Chargebacks and Returns.

(a) On or following the Closing, Buyer shall take all actions necessary to obtain its own NDC Numbers, DINs and any other license number, code or other similar reference required for the distribution, marketing, and sale of each Product by Buyer in each jurisdiction in the relevant Territory (collectively, "Buyer Required Code"). Such actions shall include labeling all Product inventory acquired by Buyer pursuant to this Agreement with Buyer's Buyer Required Code, as applicable, such that all sales of Product by Buyer are tracked with Buyer Required Code in each applicable jurisdiction in the relevant Territory. Buyer will not sell or otherwise transfer any Products that have a label or packaging that includes any Seller NDC Number, DIN or foreign equivalent or counterpart.

(b) As promptly as practicable following the Closing, Sellers and Buyer will issue a joint letter to customers of the Products, advising such customers of Sellers' and Buyer's responsibilities in connection with returns and credits. Sellers shall be responsible only for returned Product that bears Sellers' NDC Number, DIN or foreign counterpart and evidenced as being sold by Sellers prior to the Closing by lot number or otherwise, *provided* that, any processing of returns of Product shall be in compliance with Sellers' return policy. Buyer shall be responsible only for returned Product that bears the Buyer's NDC Number, DIN or foreign counterpart or evidenced as being sold by Buyer on or after the Closing Date by lot number or otherwise, *provided* that, any such returns of Product shall be in compliance with Buyer's then current return policy. Neither Sellers nor Buyer shall take any action to encourage or delay return of any Product. If Sellers or Buyer receive a Product for which the other was responsible as set forth in Section 8.4(b), that party shall ship the returned Product to the responsible party at the expense of the responsible party, together with such information as is necessary to support the return. All payments due to Sellers from Buyer or due to Buyer from Sellers under this Section 8.4(b), shall be made within 30 days of submission to the responsible party of invoices that describe the requested payment in reasonable detail.

(c) Subject to the terms and conditions of this Agreement, after the Closing Date, Buyer shall have the responsibility to process, and shall have all Liability for, all Rebates and Chargebacks for Products sold by Buyer. Sellers shall retain all Liability for Rebates and Chargebacks relating to Products sold by Sellers.

(d) Without limiting the generality of the foregoing or Section 8.5, or being limited thereby, after the Closing, Buyer shall make all appropriate filings and submissions with the Centers for Medicare & Medicaid Services, any Canadian programs and other Government Authorities in regard to all Chargebacks and Rebates owing to such Government Authorities for Products sold by Buyer, including without limitation updates to Buyer's Medicaid Drug Rebate Agreement and any required filings. Sellers shall bear no responsibility for Buyer's failure to make such filings and submissions or any delays resulting therefrom.

(e) Nothing in this Section 8.4 shall prohibit Sellers from ceasing operations or winding up their affairs following the Closing.

Section 8.5 Transfer of Regulatory Matters.

(a) Promptly after the Closing and in any event within one (1) day after the Closing, Sellers and Buyer shall file with the FDA, Health Canada or other Governmental Authority the notices and information required pursuant to any applicable regulation or requirement, such as 21 C.F.R. § 314.72, or any successor regulation thereto, to transfer the Product Registrations from Sellers to Buyer. The Parties also agree to use all commercially reasonable efforts, and in any event within thirty (30) days, to take any and all other actions required by the FDA, Health Canada, or other Governmental Authority, if any, to effect the transfer of the Product Registrations from Sellers to Buyer.

(b) Promptly after the Closing and in any event within thirty (30) days after the Closing, Sellers and Buyer shall make all appropriate filings and submissions with Governmental Authorities, including but not limited to, the Centers for Medicare & Medicaid Services, the FDA and Health Canada, to register NDC Numbers and DINs and transfer all regulatory responsibilities, excluding all Excluded Liabilities, attaching thereto of each Product, from Sellers to Buyer.

(c) Except as provided in Section 8.5(a) and Section 8.5(b), from and after the Closing, Buyer, at its cost, shall be solely responsible and liable for (i) taking all actions, paying all fees and conducting all communication with the appropriate Governmental Authority required by any Law in respect of the Product Registrations, including preparing and filing all reports (including adverse drug experience reports) with the appropriate Governmental Authority, (ii) paying all future Chargebacks and Rebates due to any Governmental Authority for Products sold by Buyer, (iii) taking all actions and conducting all communication with Third Parties in respect of Products sold by Buyer, including responding to (A) complaints in respect thereof, including complaints related to tampering or contamination, and (B) all medical information requests, (iv) investigating all complaints and adverse drug experiences in respect of such Products, *provided further* that nothing in this Section 8.5(c) shall prohibit Sellers from ceasing operations or winding up their affairs following the Closing.

(d) Subject to Section 12.15, Sellers shall be solely responsible and liable for all Chargebacks and Rebates due to any Governmental Authority for Products bearing Seller's NDC Number.

Section 8.6 Adverse Event Reporting. Each of Buyer and Sellers shall promptly notify the other of any significant adverse events that relate to the Products or are required in accordance with any Law, including adverse drug experiences and governmental inquiries, and each of Buyer and Sellers shall cooperate with the other in connection therewith as reasonably requested by the other Party and as follows:

(a) Serious Adverse Events related to any Product of which Sellers become aware shall be submitted to Buyer within three (3) Business Days but no more than four (4) calendar days from the date Sellers first become aware of such Serious Adverse Event. Non-Serious Adverse Events for any Product that are reported to Sellers shall be submitted to Buyer no more than one (1) month from the date received by Sellers; *provided, however*, that medical and scientific judgment should be exercised in deciding whether expedited reporting is

appropriate in other situations, such as important medical events that may not be immediately life-threatening or result in death or hospitalization but may jeopardize the patient or may require intervention to prevent a Serious Adverse Event outcome. In no event shall Sellers submit to Buyer any adverse event report or similar information that does not relate to the Products.

(b) Until the reporting procedures referenced in Section 8.6(d) herein have been instituted by Buyer and Sellers, a "Serious Adverse Event" for any Product shall have the meaning set forth in 21 C.F.R. § 314.80(a), as amended from time to time, and a "Non-Serious Adverse Event" for any Product is defined any adverse event that is not a Serious Adverse Event.

(c) As provided in Section 8.5(c) above, from and after the Closing, Buyer shall be solely responsible for reporting adverse events related to the Products to Governmental Authorities to the extent required by applicable Laws.

(d) As soon as reasonably practicable after the Closing Date, Buyer and Sellers shall discuss and develop mutually acceptable guidelines and procedures for the receipt, recordation, reporting, communication (as between the Parties) and exchange of Serious Adverse Event and Non-Serious Adverse Event information, as applicable, to the other Party; *provided* that Buyer shall have exclusive responsibility for communications with Governmental Authorities concerning the Products and related Serious Adverse Event and Non-Serious Adverse Event information. The Parties shall bear their respective costs incurred in connection with receiving, recording, reviewing, reporting, communicating and exchanging with each other regarding and, as applicable, reporting and responding to Serious Adverse Events and Non-Serious Adverse Events.

Section 8.7 Use of Sellers' Brand. Other than as expressly provided in this Agreement and the Transaction Documents, Buyer will have no right, title, interest, license or any other right whatsoever in or to, and shall not use or permit any of its Affiliates to use, the name "Graceway" or any names, words, service marks, trademarks, trade names, identifying symbols, logos, emblems, signs, insignia or other business identifiers containing or comprising the foregoing, including any derivations, translations, modifications or alterations thereof, or any word, name or mark confusingly similar thereto (the "Sellers' Brand"); *provided* that Sellers hereby grant to Buyer a non-exclusive, non-transferable, non-sublicensable limited right and license to use, Sellers' Brand as it appears on existing (as of the Closing Date) Labeling and packaging for existing Inventory purchased hereunder for a period of time ending on the one hundred eightieth (180th) day after the Closing Date. Buyer and its Affiliates shall indemnify and hold harmless Sellers and any of their Affiliates for any claims (other than claims resulting from the gross negligence of Sellers or any of their Affiliates or representatives) arising from or relating to the use by Buyer or any of its Affiliates of the Sellers' Brand pursuant to this Section 8.7. The Parties agree that damages would be an inadequate remedy in the event of a breach of this Section 8.7, and that a Person seeking to enforce this Section 8.7 shall be entitled to seek specific performance and injunctive relief as remedies for any breach hereof in addition to any other remedies available at law or in equity.

Section 8.8 Post-Closing Books and Records and Personnel. For seven (7) years after the Closing Date (or such longer period as may be required by any Governmental Authority or ongoing claim), (a) neither Buyer nor any Seller shall dispose of or destroy any of the business

records and files of the Business and (b) Buyer and Sellers (including, for clarity, any trust established under a Chapter 11 plan of Sellers or any other successors of Sellers) shall allow each other and their respective Representatives reasonable access during normal business hours, and upon reasonable advance notice, to all employees, files and any books and records and other materials included in the Acquired Assets for purposes relating to the Bankruptcy Case, the Canadian Proceedings, the wind-down of the operations of Sellers, the functions of any such trusts or successors, or other reasonable business purposes, including Tax matters, governmental contracts, litigation, or potential litigation, each as it relates to any Product, the Business, the Acquired Assets or the Assumed Liabilities prior to the Closing Date (with respect to Sellers) or from and after the Closing Date (with respect to the Buyer), and Buyer and Sellers (including any such trust or successors) and such Representatives shall have the right to make copies of any such files, books, records and other materials. In addition, from and after the Closing for a period of 60 days, Sellers will permit Buyer and its Representatives access to such personnel of Sellers during normal business hours as Buyer may reasonably request to assist with the transfer of the Inventory, Permits, Documents, Business Intellectual Property and Product Registrations, *provided* that (i) nothing in this Section 8.8 shall prohibit Sellers from ceasing operations or winding up their affairs following the Closing and (ii) Buyer shall reimburse Sellers for any reasonable and documented out-of-pocket expenditure or obligation incurred by Sellers after the Closing directly related to assistance provided pursuant to this Section 8.8 with the transfer and integration of the Inventory, Permits, Documents, Business Intellectual Property and Product Registrations.

Section 8.9 Confidentiality.

(a) Sellers agree not to, and shall use commercially reasonable efforts to cause its employees not to, divulge to any Person (other than Buyer or its Affiliates or any persons employed or designated by such entities), publish or make use of any information of any type whatsoever of a confidential nature relating to the Products or the Acquire Assets, including, without limitation, all types of trade secrets, client lists or information, information regarding product development, marketing plans, management organization information, operating policies or manuals, performance results, packaging design or other financial, commercial, business or technical information, except (i) such knowledge or information that is in the public domain through no wrongful act by any Seller without the prior written consent of Buyer or its Affiliates (as the case may be), (ii) for disclosure made pursuant to and in accordance with any Contract to which any Seller or any Affiliate of Seller is a party, (iii) for disclosures made to facilitate the Auction in accordance with the Bidding Procedures, and (iv) as required by applicable law, by an order of a court having competent jurisdiction or under subpoena from an appropriate government agency. This confidentiality provision has no temporal or geographical limitation.

(b) Sellers and Buyer hereby agree that the Confidentiality Agreement, dated April 20, 2011, between Graceway Pharmaceuticals, LLC and Galderma Pharma S.A. shall terminate, and no party shall have any further obligations thereunder, effective concurrently with the Closing.

Section 8.10 Nycomed Litigation. After the Closing Date, if Buyer receives any proceeds, judgments, payments, expense reimbursements, property or rights (without regard to how any such items are characterized by a court, arbitrator, agreement or the parties to the

Nycomed Litigation and specifically including, but not limited, to rights to future royalties or revenue streams, license or cross-licensing rights, marketing rights, services, or any other rights the value of which can be reasonably ascertained or estimated) relating to or arising from the final resolution of all or any portion of the Nycomed Litigation, the value of such proceeds, judgments, payments, expense reimbursements, property or rights (the "Nycomed Award Amount"), such Nycomed Award Amount shall be distributed as follows:

(a) first, any such proceeds up to an aggregate amount of $3 million shall be transferred to Sellers in cash by wire transfer of immediately available funds;

(b) second, Buyer shall retain any additional proceeds up to the amount of reasonable, documented out-of-pocket costs, fees and expenses incurred by Buyer and its Affiliates in connection with the Nycomed Litigation;

(c) third, Buyer shall transfer any additional proceeds to Sellers, in cash by wire transfer of immediately available funds, up to an amount, when taken together with the $3 million of proceeds transferred to Sellers pursuant to Section 8.10(a), that equals the amount of reasonable, documented out-of-pocket costs, fees and expenses incurred by Sellers prior to the Closing in connection with the Nycomed Litigation (which shall in no event exceed $9,000,000); and

(d) fourth, Buyer shall (i) retain 50% of any additional proceeds and (ii) transfer the remaining 50% of such proceeds to Sellers in cash by wire transfer of immediately available funds.

Within ten (10) Business Days after indefeasible receipt by Buyer of any funds constituting Sellers' portion of the Nycomed Award Amount, Buyers shall pay to US Sellers in cash by wire transfer of immediately available funds an amount equal to the amount apportioned to Sellers above (or the applicable portion thereof). To the extent all or any portion of the Nycomed Award Amount may be payable to Buyers in future increments. Buyers and Sellers shall negotiate in good faith appropriate arrangements for the payment to Sellers of Sellers' portion of such delayed payments either (x) over time as such amounts are received by Buyers or (y) as a single lump sum of the agreed net present value of such payment streams. For the avoidance of doubt, Buyer shall have full control over the defense of the Nycomed Litigation and any decisions related thereto, including any potential settlements, and Sellers shall cooperate with Buyer in connection with such defense. On and after the Closing Date, Buyers shall keep Sellers informed of any material developments in the Nycomed Litigation including any settlement offers and acceptances. Buyer shall provide Sellers reasonably detailed information, including copies of any related settlement agreement or license agreement as well as supporting documents and materials, related to any resolution (whether or not appealable) of the matters related to the Nycomed Litigation, and Buyer shall allow Sellers reasonable access to employees and outside counsel of Buyer to resolve any questions or ambiguities related to such information.

Section 8.11 Acquired Assets "AS IS"; Buyer's Acknowledgment Regarding Same. Buyer agrees, warrants and represents that (a) Buyer is purchasing the Acquired Assets on an "AS IS" and "WITH ALL FAULTS" basis based solely on Buyer's own investigation of the Acquired Assets and (b) except as set forth in this Agreement, neither Sellers nor any

Representative of Sellers have made any warranties, representations or guarantees, express, implied or statutory, written or oral, respecting the Acquired Assets, any part of the Acquired Assets, the financial performance of the Acquired Assets or the Business, or the physical condition of the Acquired Assets. Buyer further acknowledges that the consideration for the Acquired Assets specified in this Agreement has been agreed upon by Sellers and Buyer after good-faith arms-length negotiation in light of Buyer's agreement to purchase the Acquired Assets "AS IS" and "WITH ALL FAULTS." Buyer agrees, warrants and represents that, except as set forth in this Agreement, Buyer has relied, and shall rely, solely upon its own investigation of all such matters, and that Buyer assumes all risks with respect thereto. EXCEPT AS SET FORTH IN THIS AGREEMENT, SELLERS HEREBY DISCLAIM ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, PROJECTION, FORECAST, STATEMENT, OR INFORMATION MADE, COMMUNICATED, OR FURNISHED (ORALLY OR IN WRITING) TO BUYER OR ITS AFFILIATES OR REPRESENTATIVES (INCLUDING ANY OPINION, INFORMATION, PROJECTION, OR ADVICE THAT MAY HAVE BEEN OR MAY BE PROVIDED TO BUYER BY ANY DIRECTOR, OFFICER, MANAGER, EMPLOYEE, AGENT, CONSULTANT, OR REPRESENTATIVE OF SELLERS OR ANY OF THEIR AFFILIATES). EXCEPT AS SET FORTH IN THIS AGREEMENT, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES TO BUYER REGARDING THE PROBABLE SUCCESS, PROFITABILITY OR VALUE OF ANY OF THE PURCHASED ASSETS.

ARTICLE IX
CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER TO CLOSE

The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

Section 9.1 Accuracy of Representations. The representations and warranties of Sellers contained in Article V shall be true and correct as of the Closing Date as though made on and as of the Closing Date (except that those representations and warranties which address matters only as of a particular date need only be true and correct as of such date); *provided, however*, that the condition in this Section 9.1 shall be deemed to be satisfied so long as any failure of such representations and warranties to be true and correct (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein), individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect. Buyer shall have received a certificate of Sellers, signed by a duly authorized officer of Sellers, to that effect.

Section 9.2 Sellers' Performance. Sellers shall have performed and complied with in all material respects the covenants and agreements that Sellers are required to perform or comply with pursuant to this Agreement at or prior to the Closing, and Buyer shall have received a certificate of Sellers to such effect signed by a duly authorized officer thereof.

Section 9.3 No Order. No Governmental Authority shall have enacted, issued, promulgated or entered any Order which is in effect and has the effect of making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement (a

"Closing Legal Impediment"); *provided, however*, that prior to asserting this condition Buyer shall have taken all actions required by Section 7.3, subject to the last sentence of Section 7.3(c), to prevent the occurrence or entry of any such Closing Legal Impediment and to remove or appeal as promptly as possible any such Closing Legal Impediment.

Section 9.4 Governmental Authorizations. Any applicable waiting period under the HSR Act and any other material waiting period under any applicable antitrust or competition Law shall have expired or been terminated and any other material approval under any applicable antitrust or competition Law shall have been received.

Section 9.5 Sellers' Deliveries. Each of the deliveries required to be made to Buyer pursuant to Section 4.3 shall have been so delivered.

Section 9.6 Sale Order. The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall be a Final Order.

Section 9.7 Canadian Sale and Vesting Order. The Canadian Court shall have entered the Canadian Sale and Vesting Order and the Canadian Sale and Vesting Order shall be a Final Order.

ARTICLE X
CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLERS TO CLOSE

Sellers' obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

Section 10.1 Accuracy of Representations. The representations and warranties of Buyer contained in this Agreement shall be true and correct as of the Closing Date as though made on and as of the Closing Date (except that those representations and warranties which address matters only as of a particular date need only be true and correct as of such date); *provided, however*, that the condition in this Section 10.1 shall be deemed to be satisfied so long as any failure of such representations and warranties to be true and correct (without giving effect to any limitation as to "materiality" or "material adverse effect" set forth therein), individually or in the aggregate, has not had and would not reasonably be expected to prevent or materially impair the ability of Buyer to consummate the transactions contemplated by this Agreement. Sellers shall have received a certificate of Buyer, signed by a duly authorized officer of Buyer, to that effect.

Section 10.2 Sale Order in Effect. The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall be a Final Order.

Section 10.3 Canadian Sale and Vesting Order. The Canadian Court shall have entered the Canadian Sale and Vesting Order and the Canadian Sale and Vesting Order shall be a Final Order.

Section 10.4 Buyer's Performance. Buyer shall have performed and complied with in all material respects the material covenants and agreements that Buyer is required to perform or

comply with pursuant to this Agreement at or prior to the Closing, and Sellers shall have received a certificate of Buyer to such effect signed by a duly authorized officer thereof.

Section 10.5 No Order. No Closing Legal Impediment shall be in effect.

Section 10.6 Governmental Authorizations. Any applicable waiting period under the HSR Act and any other material waiting period under any applicable antitrust or competition Law shall have expired or been terminated and any other material approval under any applicable antitrust or competition Law shall have been received.

Section 10.7 Buyer's Deliveries. Each of the deliveries required to be made to Sellers pursuant to Section 4.2 shall have been so delivered.

ARTICLE XI
TERMINATION

Section 11.1 Termination Events. Anything contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated at any time prior to the Closing Date:

(a) by either Sellers or Buyer:

(i) if the Bankruptcy Court declines to approve this Agreement for any reason, if the Canadian Court fails to enter the Canadian Sale and Vesting Order or if a Governmental Authority issues a final, non-appealable ruling or Order permanently prohibiting the transactions contemplated hereby, *provided, however*, that the right to terminate this Agreement pursuant to this Section 11.1(a)(i) shall not be available to any party whose breach of any of its representations, warranties, covenants or agreements contained herein results in such ruling or Order;

(ii) by mutual written consent of Sellers and Buyer;

(iii) if the Closing shall not have occurred by the close of business on January 27, 2012 (the "Outside Date"); *provided, however*, that (A) Buyer shall be permitted to terminate this Agreement pursuant to this Section 11.1(a)(iii) only if (x) Buyer is not in breach of any of its representations, warranties, covenants or agreements contained herein in such a way that would result in the failure of a condition set forth in Section 10.1 or Section 10.4 to be satisfied and (y) Buyer has provided written notice to Sellers of its intention to exercise its rights under this Section 11.1(a)(iii) and Sellers have not taken all actions necessary to close the transactions contemplated by this Agreement on or before the date that is five (5) Business Days after the date of such notice from Buyer, and (B) Sellers shall be permitted to terminate this Agreement pursuant to this Section 11.1(a)(iii) only if (x) Sellers are not themselves in breach of any of their representations, warranties, covenants or agreements contained herein in such a way that would result in the failure of a condition set forth in Section 9.1 or Section 9.2 to be satisfied and (y) Sellers have provided written notice to Buyer of their intention to

exercise their rights under this Section 11.1(a)(iii) and Buyer has not taken all actions necessary to close the transactions contemplated by this Agreement on or before the date that is five (5) Business Days after the date of such notice from Sellers; or

(iv) if Sellers file any stand-alone plan of reorganization or liquidation (or announce support of any such plan filed by any other party) or consummate an Alternative Transaction;

(b) by Buyer:

(i) in the event of any breach by any Seller of any of its agreements, covenants, representations or warranties contained herein (*provided* such breach would result in the failure of a condition set forth in Section 9.1 or Section 9.2 to be satisfied), and the failure of Sellers to cure such breach by the earlier of (A) the Outside Date and (B) the date that is thirty (30) days after receipt of the Buyer Termination Notice; *provided, however*, that (1) Buyer is not in material breach of any of its representations, warranties, covenants or agreements contained herein or in the Bidding Procedures Order or the Sale Order, (2) Buyer notifies Sellers in writing (the "Buyer Termination Notice") of its intention to exercise its rights under this Section 11.1(b)(i) as a result of the breach, and (3) Buyer specifies in the Buyer Termination Notice the representation, warranty, covenant or agreement contained herein of which Sellers are allegedly in breach; or

(ii) if the Bankruptcy Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code and neither such dismissal nor conversion expressly contemplates the transactions provided for in this Agreement;

(iii) if Buyer is not the Successful Bidder at the Auction, except that if Buyer is designated as the second highest bidder, then upon the earlier of the consummation of the transaction with the Successful Bidder and 30 days after the conclusion of the Sale Hearing;

(iv) if the Bidding Procedures Order has not been entered on or before forty-five (45) days after the date hereof (or is vacated or stayed as of such date); or

(v) if the Sale Order has not been entered on or before January 2, 2012 (or is vacated or stayed as of such date).

(c) by Sellers:

(i) in the event of any breach by Buyer of any of its agreements, covenants, representations or warranties contained herein (*provided* such breach would result in the failure of a condition set forth in Section 10.1 or Section 10.4 to be satisfied), and the failure of Buyer to cure such breach by the earlier of (A) the Outside Date and (B) the date that is thirty (30) days after receipt of the Sellers Termination Notice; *provided, however*, that Sellers (1) are not themselves

in material breach of any of their representations, warranties, covenants or agreements contained herein or in the Bidding Procedures Order or the Sale Order, (2) with concurrence of the Receiver, notify Buyer in writing (the "Sellers Termination Notice") of their intention to exercise their rights under this Section 11.1(c) as a result of the breach, and (3) specify in the Sellers Termination Notice the representation, warranty, covenant or agreement contained herein of which Buyer is allegedly in breach;

(ii) if Buyer is not the Successful Bidder at the Auction; or

(iii) if Sellers enter into (or provide written notice to Buyer of their intent to enter into) one or more agreements to sell, transfer or otherwise dispose of any portion of the Acquired Assets in a transaction or series of transactions with one or more Persons other than Buyer in accordance with the Bidding Procedures.

For the avoidance of doubt, the Parties acknowledge and agree, that in the event that Sellers determine, in their reasonable discretion, that the last Overbid (as defined in the Bidding Procedures) submitted by Buyer is better than all other Qualified Bids (as defined in the Bidding Procedures) as such Qualified Bids may be amended by an Overbid submitted at the Auction, then within two (2) Business Days following the conclusion of the Auction, Sellers and Buyer shall enter into an amendment to this Agreement to reflect Buyer's last Overbid; it being acknowledged and agreed that this Agreement shall not be deemed to have terminated by virtue of Buyer's having submitted the winning bid at the Auction.

Section 11.2 Effect of Termination.

(a) In the event of a termination of this Agreement pursuant to Section 11.1(c)(i), the Escrow Agent shall, within two (2) Business Days after receiving joint notice of the Buyer Default Termination from Sellers and Buyer, disburse the Deposit to an account designated by Sellers by wire transfer of immediately available funds to be retained by Sellers for their own account; *provided* that disbursement of the Deposit shall not constitute liquidated damages or otherwise limit Sellers' remedies against Buyer in any respect of any claim against Buyer arising under this Agreement or otherwise (except that any damages that may be awarded against Buyer by any court shall be reduced by the amount of the Deposit). Sellers acknowledge and agree that, in such event, the Deposit shall be allocated among US Sellers and Canadian Seller on the same basis as contemplated by clause (i) of Section 3.5.

(b) In the event of a termination of this Agreement pursuant to this Article XI (other than a termination of this Agreement pursuant to Section 11.1(c)(i)), Sellers and Buyer shall instruct the Escrow Agent to, and the Escrow Agent shall, promptly (but in any event within two (2) Business Days of such instruction) return to Buyer the Deposit by wire transfer of immediately available funds and the return thereof shall, except as specified in Section 11.2(c), below, constitute the sole and exclusive remedy of Buyer in the event of a termination hereunder.

(c) If the Bidding Procedures Order has been entered and this Agreement is terminated in the circumstances set forth in Section 7.6(a) or Section 7.6(b), then Sellers, jointly

and severally, shall pay to Buyer the Break-Up Fee or the Expense Reimbursement Amount in accordance with Section 7.6, as applicable. The Break-Up Fee and the Expense Reimbursement Amount are in the nature of liquidated damages and shall, except as specified in Section 11.2(b), constitute the sole and exclusive remedy of Buyer in the event of a termination hereunder.

ARTICLE XII
GENERAL PROVISIONS

Section 12.1 Public Announcements. The initial press release relating to this Agreement shall be a joint press release, the text of which shall be agreed to by Buyer, on the one hand, and Sellers, on the other hand. Buyer, on the one hand, and Sellers, on the other hand, shall consult with each other before issuing any other press release or otherwise making any public statement with respect to this Agreement, the transactions contemplated hereby or the activities and operations of the other and shall not issue any such release or make any such statement without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

Section 12.2 Notices. All notices, consents, waivers and other communications under this Agreement must be in writing and shall be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by facsimile (with written confirmation of receipt), (c) received by the addressee, if sent by a delivery service (prepaid, receipt requested) or (d) received by the addressee, if sent by registered or certified mail (postage prepaid, return receipt requested), in each case to the appropriate addresses, representatives (if applicable) and facsimile numbers set forth below (or to such other addresses, representatives and facsimile numbers as a Party may designate by notice to the other Parties):

(a) If to Sellers, then to:

Graceway Pharmaceuticals, LLC
340 Martin Luther King Jr. Blvd., Suite 500
Bristol, Tennessee 37620
Attn: John A. A. Bellamy
Facsimile: 423-274-5520

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

Latham & Watkins LLP
233 South Wacker Drive, Suite 5800
Chicago, Illinois 60606
Attn: Josef Athanas and Zachary Judd
Facsimile: 312-993-9767

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

Goodmans LLP
333 Bay St., Suite 3400
Toronto, Ontario
Attn: Joseph Latham and Cristina Alaimo

Facsimile: 416-979-1234

(b) If to Buyer:

Galderma S.A.
c/o Galderma Laboratories, L.P.
14501 North Freeway
Fort Worth, TX 76177
Attn: General Counsel
Facsimile: (817) 961-0034

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

Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022
Attn: Kevin Rinker and My Chi To
Facsimile: (212) 909-6836

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

Bennett Jones LLP
1 First Canadian Place, Suite 3400
P.O. Box 130
Toronto, Ontario M5X 1A4
Attn: Kevin Zych and Mark Laugesen
Facsimile: (416) 863-1716

(c) After the appointment of the Receiver, all notices to Canadian Seller shall also be copied to:

RSM Richter Inc.
200 King Street West, Suite 1100
Toronto, Ontario M5H 3T4
Attn: Robert Kofman
Facsimile: (416) 932-6200

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

Davies, Ward, Phillips & Vineberg LLP
1 First Canadian Place, 44th Floor
Toronto, Ontario M5X 1B1
Attn: Jay Swartz
Facsimile: (416) 863-0871

Section 12.3 Waiver. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement shall operate as a waiver of such right, power or privilege, and no single or partial exercise of

any such right, power, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given, and (b) no notice to or demand on one Party shall be deemed to be a waiver of any right of the Party giving such notice or demand to take further action without notice or demand.

Section 12.4 Entire Agreement; Amendment. This Agreement (including the Schedules and the Exhibits) and the other Transaction Documents supersede all prior agreements between Buyer, on the one hand, and Sellers, on the other hand, with respect to its subject matter and constitute a complete and exclusive statement of the terms of the agreements between Buyer, on the one hand, and Sellers, on the other hand, with respect to their subject matter. This Agreement may not be amended except by a written agreement executed by all of the Parties.

Section 12.5 Assignment. This Agreement, and the rights, interests and obligations hereunder, shall not be assigned by any Party by operation of law or otherwise without the express written consent of the other Parties (which consent may be granted or withheld in the sole discretion of such other Party); *provided, however*, that Buyer shall be permitted, upon prior notice to Sellers, to assign all or part of its rights or obligations hereunder to an Affiliate, but no such assignment shall relieve Buyer of its obligations under this Agreement, and Sellers shall be permitted to assign all or part of their rights or obligations hereunder pursuant to a plan of reorganization or liquidation approved by the Bankruptcy Court.

Section 12.6 Severability. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability.

Section 12.7 Expenses. Whether or not the transactions contemplated by this Agreement are consummated, the Parties shall bear their own respective expenses (including all compensation and expenses of counsel, financial advisors, consultants, actuaries and independent accountants) incurred in connection with this Agreement and the transactions contemplated hereby (except as otherwise specified herein).

Section 12.8 Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code or the provisions of the CJA or other Laws applicable in the Canadian Proceedings apply, this Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to Contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of Delaware applicable hereto.

(b) Without limitation of any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby (except for such matters as must be dealt with by the Canadian Court in the Canadian Proceedings) and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding; *provided, however*, that, if the Bankruptcy Case is closed, all Proceedings arising out of or relating to this Agreement shall be heard and determined in a Delaware state court or a federal court sitting in the State of Delaware, and the Parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding. The Parties consent to service of process by mail (in accordance with Section 12.2) or any other manner permitted by law.

(c) THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF SELLERS OR BUYER OR THEIR RESPECTIVE REPRESENTATIVES IN THE NEGOTIATION OR PERFORMANCE HEREOF.

Section 12.9 Counterparts. This Agreement and any amendment hereto may be executed in one or more counterparts, each of which shall be deemed to be an original of this Agreement or such amendment and all of which, when taken together, shall be deemed to constitute one and the same instrument. Notwithstanding anything to the contrary in Section 12.2, delivery of an executed counterpart of a signature page to this Agreement or any amendment hereto by telecopier, facsimile or email attachment shall be effective as delivery of a manually executed counterpart of this Agreement or such amendment, as applicable.

Section 12.10 Parties in Interest; No Third Party Beneficiaries. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

Section 12.11 Non-Recourse. No past, present or future director, manager, officer, employee, incorporator, member, unitholder, partner or equityholder of any Seller shall have any liability for any obligations or liabilities of Sellers under this Agreement or any other Transaction Document, for any claim based on, in respect of, or by reason of the transactions contemplated hereby and thereby, and Buyer hereby covenants, on behalf of itself and its Affiliates, not to sue any past, present or future director, manager, officer, employee, incorporator, member, unitholder, partner or equityholder of any Seller for any such claim.

Section 12.12 Schedules; Materiality. The inclusion of any matter in any Schedule shall be deemed to be an inclusion for all purposes of this Agreement, to the extent that such

disclosure is sufficient to identify the Section to which such disclosure is responsive, but inclusion therein shall not be deemed to constitute an admission, or otherwise imply, that any such matter is material or creates a measure for materiality for purposes of this Agreement. The disclosure of any particular fact or item in any Schedule shall not be deemed an admission as to whether the fact or item is "material" or would constitute a "Material Adverse Effect."

Section 12.13 Specific Performance. The Parties acknowledge and agree that (a) irreparable injury, for which monetary damages, even if available, would not be an adequate remedy, will occur in the event that any of the provisions of this Agreement are not performed in accordance with the specific terms hereof or are otherwise breached, and (b) the non-breaching Party or Parties shall therefore be entitled, in addition to any other remedies that may be available, to obtain (without the posting of any bond) specific performance of the terms of this Agreement. If any Proceeding is brought by the non-breaching Party or Parties to enforce this Agreement, the Party in breach shall waive the defense that there is an adequate remedy at law.

Section 12.14 Survival. All covenants and agreements contained herein which by their terms are to be performed in whole or in part, or which prohibit actions, subsequent to the Closing shall survive the Closing in accordance with their terms. All other covenants and agreements contained herein, and all representations and warranties contained herein or in any certificated deliveries hereunder, shall not survive the Closing and shall thereupon terminate.

Section 12.15 Prepetition Claims and Liabilities. Notwithstanding anything contained herein to the contrary, and taking into account US Sellers' status as debtors-in-possession in the Bankruptcy Cases and the limitations set forth in the Bankruptcy Code (including, without limitation, with respect the payment of prepetition claims (including, without limitation, prepetition claims on account of Rebates, returns, Chargebacks or coupons)), US Seller shall not be required to pay or otherwise satisfy any prepetition claims or liabilities (other than (i) Sellers' obligations to pay Cure Costs to the extent required by this Agreement, (ii) Sellers' obligations to pay any fees due to any regulatory authority in the Ordinary Course of Business in accordance with Section 7.2(a), except, for the avoidance of doubt, those related to any Rebates, returns, Chargebacks or coupons, (iii) Sellers' obligations under Section 7.2(b)(iii) to pay any Governmental Authority with respect to the prosecution and maintenance of applicable Material Business Intellectual Property, and (iv) Sellers' obligations to Buyer under Sections 3.2, 11.2(b) and 11.2(c) of this Agreement) and none of Sellers' covenants or obligations hereunder shall be construed, directly or indirectly, to require such payment or satisfaction.

Section 12.16 Receiver. For greater certainty, nothing herein or in any bill of sale or similar document shall constitute an express or implied representation or warranty by the Receiver or shall create any liability or obligation for the Receiver.

[*Signature pages follow.*]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives, all as of the Effective Date.

GRACEWAY PHARMACEUTICALS, LLC

By: _____
Jefferson J. Gregory
Chief Executive Officer

GRACEWAY CANADA HOLDINGS, INC.

By: _____
Jefferson J. Gregory
Chief Executive Officer

GRACEWAY CANADA COMPANY

By: _____
Jefferson J. Gregory
Chief Executive Officer

GRACEWAY INTERNATIONAL, INC.

By: _____
Jefferson J. Gregory
Chief Executive Officer

CHESTER VALLEY HOLDINGS, LLC

By: _____
Jefferson J. Gregory
Chief Executive Officer

CHESTER VALLEY PHARMACEUTICALS, LLC

By: _____
Jefferson J. Gregory
Chief Executive Officer

GALDERMA S.A.

By: _____

Name: Humberto C. Antunes

Title: President & Chief Executive Officer

[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]

Annex A

Subsidiary Sellers

Graceway Canada Holdings, Inc.
Graceway International, Inc.
Chester Valley Holdings, LLC
Chester Valley Pharmaceuticals, LLC

Disclosure Schedules

[Intentionally omitted; available upon request]

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: GRACEWAY PHARMACEUTICALS, LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 11-_____ (____) Jointly Administered **Related Docket No. [____]**

ORDER APPROVING AND AUTHORIZING (A) BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF CERTAIN ASSETS OF THE DEBTORS, (B) STALKING HORSE BID PROTECTIONS, (C) FORM AND MANNER OF NOTICE OF THE SALE HEARING AND (D) RELATED RELIEF

Upon the portion of the motion (the "**Motion**")[2] of Graceway Pharamaceuticals, LLC and its affiliates, as debtors and debtors-in-possession (collectively, the "**Debtors**"), for entry of an order approving and authorizing (a) bidding procedures, including stalking horse bidder protections, in connection with the receipt and analysis of competing bids for certain assets of the Debtors, (b) procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale, (c) the form and manner of notice of the Sale and scheduling the sale hearing and setting related dates and deadlines, and (d) other related relief, pursuant to sections 105(a), 363, 365, 503(b), 507 and, if applicable, 1146(a) of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 6004, 6006 and 9014 of the Federal Rules of

1 The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).

2 All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Motion.

Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rules 2002-1, 6004-1 and 9006-1(b) of the Local Bankruptcy Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"); and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and a hearing having been held on _____ __, 2011 (the "**Bidding Procedures Hearing**"); and this Court having reviewed the Motion and the exhibits thereto and the arguments of counsel made and the evidence proffered or adduced, as applicable, at the Bidding Procedures Hearing; and this Court having determined that the legal and factual bases set forth in the Motion and at the Bidding Procedures Hearing establish just cause for the relief granted herein; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and this Court having found the form and manner of notice of the Bidding Procedures Hearing is good, sufficient and appropriate under the circumstances and that no other or further notice need be provided or is necessary; and after due deliberation and sufficient cause appearing therefor, this Court FINDS AND DETERMINES THAT:[3]

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3 The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

A. Bidding Procedures. The Debtors have articulated good and sufficient reasons for authorizing and approving the Bidding Procedures attached as **Exhibit 1** hereto (the "**Bidding Procedures**"), which are fair, reasonable and appropriate under the circumstances and represent the best method for maximizing the recovery on, and realizable value of, the Acquired Assets.

B. Stalking Horse Bid Protections. The Debtors have demonstrated a compelling and sound business justification for authorizing the payment of the Break-Up Fee and the Expense Reimbursement Amount and establishing the Initial Minimum Overbid Increment (collectively, the "**Bid Protections**") to the Stalking Horse Bidder under the circumstances, including, without limitation, that:

i. the Bid Protections are the product of negotiations among the Debtors and the Stalking Horse Bidder conducted in good faith and at arm's-length, and the APA (including the Bid Protections) is the culmination of a process undertaken by the Debtors and their professionals to negotiate a transaction with a bidder who was prepared to pay the highest or otherwise best purchase price to date for the Acquired Assets in order to maximize the value of the Debtors' estates;

ii. the Break-Up Fee and the Expense Reimbursement Amount are an actual and necessary cost and expense of preserving the respective Debtors' estates, within the meaning of Sections 503(b) and 507(a)(2) of the Bankruptcy Code;

iii. the Bid Protections are fair, reasonable and appropriate in light of, among other things, the size and nature of the proposed Sale under the APA and comparable transactions, the substantial efforts that have been and will be expended by the Stalking Horse Bidder, notwithstanding that the proposed Sale is subject to higher or better offers, and the substantial benefits the Stalking Horse Bidder has provided to the Debtors, their estates and creditors and all parties in interest herein, including, among other things, by increasing the likelihood that the best possible price for the Acquired Assets will be received;

iv. the protections afforded to the Stalking Horse Bidder by way of the Bid Protections were material inducements for, and express conditions of, the Stalking Horse Bidder's willingness to enter into, and to continue to be bound by, the APA, and were necessary to ensure that the Stalking Horse

Bidder would continue to pursue the proposed acquisition on terms acceptable to the Debtors in their sound business judgment, subject to competitive bidding; and

v. the assurance of the payment of the Break-Up Fee and/or the Expense Reimbursement Amount, as applicable, (I) has promoted more competitive bidding by inducing the Stalking Horse Bidder's bid, which otherwise would not have been made, without which competitive bidding would be limited, and which may be the highest and best available offer for the Acquired Assets, and has induced the Stalking Horse Bidder to conduct due diligence with respect to the Debtors' business, assets, operations and liabilities, and propose the Sale contemplated by the APA, including, among other things, submission of a bid that will serve as a minimum or floor bid on which all other bidders can rely and (II) increases the likelihood that the final purchase price reflects the true value of the Acquired Assets.

C. Assumption Procedures. The Motion, this Order, and the Contract Notice are reasonably calculated to provide counterparties to the Assumed Contracts with proper notice of the intended assumption and assignment of their executory contracts or unexpired leases, any Cure Amounts relating thereto and the Assumption and Assignment Procedures.

D. Sale Notice. The Sale Notice is reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale, including, without limitation: (i) the date, time and place of the Auction (if one is held); (ii) the Bidding Procedures and the dates and deadlines related thereto; (iii) the objection deadline for the sale motion and the date, time and place of the Sale Hearing; (iv) reasonably specific identification of the Acquired Assets; (v) instructions for promptly obtaining a copy of the APA; (vi) representations describing the Sale as being free and clear of liens, claims, interests and other encumbrances, with all such liens, claims, interests and other encumbrances attaching with the same validity and priority to the sale proceeds; (vi) the commitment by the Stalking Horse Bidder to assume certain liabilities of the Debtors; and (vii) notice of the proposed assumption and assignment of contracts and leases to the Stalking Horse Bidder pursuant to the APA (or to another Successful Bidder arising

from the Auction, if any), the proposed cure amounts relating thereto and the right, procedures and deadlines for objecting thereto, and no other or further notice of the Sale shall be required.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is granted to the extent set forth herein.

2. All objections to the relief requested in the Motion that have not been withdrawn, waived or settled as announced to the Court at the hearing on the Motion or by stipulation filed with the Court, are overruled.

I. Important Dates and Deadlines

3. **Sale Hearing**. _____ __, 2011, at _:00 _.m. prevailing Eastern Time, is the date and time the sale hearing (the "**Sale Hearing**") will be held before the Honorable Judge [_____], United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at: 824 North Market Street, [__] Floor, Wilmington, Delaware 19801. At the Sale Hearing, the Debtors will seek the entry of an order of this Court approving and authorizing the Sale to the Stalking Horse Bidder or the Successful Bidder (if other than the Stalking Horse Bidder), as applicable. Any obligations of the Debtors set forth in the APA that are intended to be performed prior to the Sale Hearing and/or entry of the Sale Order pursuant to the APA are authorized as set forth herein and are fully enforceable as of the date of entry of this Order. **Please take notice that:** the Sale Hearing (or any portion thereof) may be adjourned by this Court or the Debtors from time to time without further notice other than by announcement in open court, on this Court's calendar or through the filing of a notice or other document on this Court's docket.

4. **Sale Objection Deadline**. _____ __, 2011 at 4:00 p.m. prevailing Eastern Time, is the deadline to object to the relief requested in the Motion, including entry of the proposed Sale Order (the "**Sale Objection Deadline**"). Objections, if any, **must**: (i) be in writing;

(ii) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (iv) be filed with this Court and served so *actually received* no later than the Sale Objection Deadline by (A) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002 and (B) the following parties (the "**Notice Parties**"):

Debtors	Counsel to Debtors
Graceway Pharmaceuticals, LLC 340 Martin Luther King Jr. Blvd. Suite 500 Bristol, Tennessee 37620 Attn: John Bellamy	Latham & Watkins LLP 233 South Wacker Drive Chicago, IL 60606 Attn: Josef S. Athanas, Esq. and Matthew L. Warren, Esq. Young Conaway Stargatt & Taylor, LLP 1000 West Street, 17th Floor Wilmington, Delaware 19801 Attn: Michael R. Nestor, Esq. and Kara Hammond Coyle, Esq.
Special Bankruptcy and Restructuring Counsel to the Agent for the First Lien Lenders	**United States Trustee**
Wachtell, Lipton, Rosen & Katz 51 West 52nd Street New York, NY 10019 Attn: Scott K. Charles, Esq. and Michael S. Benn, Esq. DLA Piper LLP 919 North Market Street, 15th Floor Suite 1500 Wilmington, DE 19801 Attn: Stuart M. Brown, Esq.	Office of the United States Trustee for the District of Delaware 844 King Street J. Caleb Boggs Federal Building Room 2207, Lockbox 35 Wilmington, DE 19801 Attn: [_____]
Financing Counsel to the Agent for the First Lien Lenders	**Counsel to the Creditors' Committee**
Morgan Lewis 225 Franklin Street, 16th Floor Boston, Massachusetts 02110 Attn: Sula Fiszman, Esq.	
Counsel to the Agent for the Second Lien Lenders	**Counsel to the Stalking Horse Bidder**
Sidley Austin LLP One South Dearborn, Chicago, IL 60603 Attn: Larry Nyhan, Esq.	Debevoise & Plimpton LLP 919 Third Avenue New York, NY 10022 Attn: My Chi To, Esq. and Kevin A. Rinker, Esq. Morris, Nichols, Arsht & Tunnell LLP 1201 North Market Street, 18th Floor Wilmington, DE 19801 Attn: Gregory W. Werkheiser, Esq.

Notwithstanding anything to the contrary in this paragraph 4, the Sale Objection Deadline may be extended by the Debtors in consultation with the Stalking Horse Bidder.

5. **The failure to timely file an objection in accordance with this Order shall forever bar the assertion of any objection to the Motion, entry of the Sale Order and/or consummation of the Sale, including the assumption and assignment of contracts and leases to the Successful Bidder pursuant to the APA, and shall be deemed to constitute any such party's consent to entry of the Sale Order and consummation of the Sale and all transactions related thereto.**

6. **Reply Deadline**. _____ __, 2011 at 4:00 p.m. prevailing Eastern Time, is the deadline for the Debtors, the Stalking Horse Bidder and other parties in interest to file replies to any timely-filed objection to entry of the Sale Order with this Court; *provided*, that such deadline may be extended by agreement of the Debtors and the affected objecting party.

7. **Competitive Bidding**. The following dates and deadlines regarding competitive bidding are hereby established (subject to modification as needed):

a. **Bid Deadline**: _____ __, 2011 at _:00 _.m. prevailing Eastern Time, is the deadline by which all "Qualified Bids" (as defined in the Bidding Procedures) must be *actually received* by the parties specified in the Bidding Procedures (the "**Bid Deadline**"); and

b. **Auction**: _____ __, 2011 at _:00 _.m. prevailing Eastern Time, is the date and time of the Auction, if one is needed, will be held at the offices of counsel to the Debtors: Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022-4834.

II. Bidding Procedures and Related Relief

A. Bidding Procedures

8. The Bidding Procedures, substantially in the form annexed hereto as **Exhibit 1** and incorporated by reference as though fully set forth herein, are hereby approved in their

entirety. The Bidding Procedures shall govern the submission, receipt and analysis of all bids relating to the proposed Sale, and any party desiring to submit a higher or better offer for the Acquired Assets shall do so strictly in accordance with the terms of the Bidding Procedures and this Order. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.

9. The Bid Protections described in the Motion are hereby approved. The Debtors are authorized to pay any and all amounts owing to the Stalking Horse Bidder in accordance with the terms of the APA, including the Break-Up Fee and the Expense Reimbursement Amount, without further order of this Court, except as otherwise provided herein. The Debtors' obligation to pay the Bid Protections to the Stalking Horse Bidder shall constitute an administrative expense claim in accordance with Sections 105(a), 503 and 507 of the Bankruptcy Code, senior to all other superpriority administrative expense claims in the Debtors' Bankruptcy Cases.

10. No person or entity other than the Stalking Horse Bidder shall, pursuant to the Bidding Procedures or otherwise, be entitled to any expense reimbursement, break-up fees, "topping," termination or other similar fee or payment in connection with the sale of the Acquired Assets pursuant to the terms of this Order.

11. As described in the Bidding Procedures, if the Debtors do not receive any Qualified Bids other than from the Stalking Horse Bidder or if no Qualified Bidder other than the Stalking Horse Bidder indicates its intent to participate in the Auction, the Debtors will not hold the Auction, the Stalking Horse Bidder will be named the Successful Bidder and the Debtors will seek approval of the APA at the Sale Hearing. If one or more Qualified Bids is timely received from a Qualified Bidder (other than the Stalking Horse Bidder) in accordance with the Bidding Procedures, the Debtors shall conduct the Auction as set forth herein.

12. If the Auction is conducted, each Qualified Bidder participating in the Auction shall be required to confirm that it has not engaged in any collusion with respect to the bidding process or the Sale, the Auction will be conducted openly and the Auction shall be transcribed or videotaped.

III. Assumption Procedures

13. The following procedures regarding the assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale are hereby approved to the extent set forth herein, and shall govern the assumption and assignment of all executory contracts and unexpired leases proposed to be assumed by the Debtors pursuant to Section 365(b) of the Bankruptcy Code and assigned to the Stalking Horse Bidder (or other Successful Bidder following the Auction, if any) pursuant to Section 365(f) of the Bankruptcy Code under the APA:

c. **Designation Deadline**. On or before one day prior to the Sale Hearing, the Stalking Horse Bidder or other Successful Bidder shall have the right to (a) designate any Contract to be an Assigned Agreement by amending Schedule 1.1(a) to the APA (Assigned Agreements) to add such Contract and (b) designate any Contract to not be an Assigned Agreement by amending Schedule 1.1(a) to the APA (Assigned Agreements) to remove such Contract; provided that, following the conclusion of the Auction, the Stalking Horse Bidder or such other Successful Bidder (i) may designate any Contract to be an Assigned Agreement by amending Schedule 1.1(a) to add such Contract to Schedule 1.1(a) and (ii) may not remove any Contract that was on Schedule 1.1(a) as of the conclusion of the Auction from Schedule 1.1(a).

d. **Notices for Assigned Agreements**. As soon as practicable, the Debtors shall serve on all non-Debtor counterparties to any Contract (the "**Contract Notice Parties**") that may be assumed by the Debtors and assigned to the Successful Bidder, a "**Contract Notice**" in the form attached hereto as **Exhibit 3** that identifies, to the extent applicable (a) the Contract that may be an Assigned Agreement, (b) the name of the counterparty to such Contract, (c) any applicable cure amount for such Contract if it becomes an Assigned Agreement, and (d) the deadline by which any such Contract counterparty must file a "**Contract Objection**" to the proposed assumption and assignment; provided, however, that the

presence of a Contract on a Contract Notice does not constitute an admission that such Contract is an executory contract. As soon as practicable after the conclusion of the Auction, the Debtors shall file with the Court and serve on the Contract Notice Parties party to an Assigned Agreement identified by the Successful Bidder a further notice in the form attached hereto as **Exhibit 4** (the "**Assumption Notice**") identifying the Successful Bidder and stating which Contracts will be Assigned Agreements, and no other or further notice will be required with respect to the Assigned Agreements. If the Successful Bidder designates any additional Contracts during the period between the Auction and the day prior to the Sale Hearing pursuant to subsection (a) above, the Debtors shall file with the Court and serve on such additionally affected Contract Notice Parties a revised Assumption Notice. The Contract Notice, substantially in the form attached hereto as Exhibit 3, is hereby approved. The Assumption Notice, substantially in the form attached hereto as Exhibit 4, is hereby approved.

e. **Objections to Assumption of Contracts.** For all non-Debtor counterparties to an Assigned Agreement served a Contract Notice in accordance with this Order more than 14 days prior to the Sale Hearing, to which no Contract Objection was timely filed within 14 days after mailing of the Contract Notice, the counterparty to such Assigned Agreement shall be deemed to have waived and released any right to assert an objection to the assignment and assumption of such Assigned Agreement and to have otherwise consented to such assumption and assignment and cure amount, and the assignment will be deemed effective in accordance with the Sale Order. For all non-Debtor counterparties to an Assigned Agreement served with a Contract Notice 14 days or less prior to the Sale Hearing, if a timely filed Contract Objection is not received at or prior to the Sale Hearing, the counterparty to such Assigned Agreement shall be deemed to have waived and released any right to assert an objection to the assignment and assumption of such Assigned Agreement and to have otherwise consented to such assumption and assignment and cure amount, and the assignment will be deemed effective in accordance with the Sale Order. If any counterparty timely files a Contract Objection that cannot be resolved by the Debtors and the counterparty, the Court shall resolve such Contract Objection prior to assumption and assignment of such designated Contract, and upon entry of an order by the Court resolving such Contract Objection, the assignment shall be deemed effective in accordance with the Sale Order.

14. Any party failing to timely file a Contract Objection shall be forever barred and estopped from objecting thereto, including asserting against the Debtors or any of the Debtors' estates, the Stalking Horse Bidder or other Successful Bidder that any additional cure or default

amounts are due or conditions to assumption and assignment must be satisfied under such executory contract(s) or unexpired lease(s) and shall be deemed to consent to the Sale and the assumption and assignment of such executory contract(s) or unexpired lease(s) effectuated in connection therewith.

15. A properly filed and served Contract Objection will reserve such objecting party's rights against the Debtors with respect to the relevant cure objection, but will not constitute an objection to the remaining relief requested in the Motion.

A. Sale Hearing Notice and Related Relief

16. The Sale Notice, substantially in the form annexed hereto as **Exhibit 2**, is hereby approved. Within three (3) business days of the entry of this Order or as soon thereafter as practicable, the Debtors shall cause the Sale Notice to be served upon, without limitation, (i) the U.S. Trustee; (ii) counsel to the Committee; (iii) financing counsel to the agent for the First Lien Lenders; (iv) special bankruptcy and restructuring counsel to the agent for the First Lien Lenders; (v) local counsel to the agent for the First Lien Lenders, (vi) counsel to the agent for the Second Lien Lenders, (vii) the attorneys general for each of the States in which the Debtors conduct operations; (viii) all taxing authorities having jurisdiction over any of the Acquired Assets, including the Internal Revenue Service; (ix) the Environmental Protection Agency; (x) the Tennessee Environmental Protection Agency, (xi) the Pension Benefit Guaranty Corporation; (xii) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002; (xiii) all parties that are known or reasonably believed to have expressed an interest in acquiring all or a substantial portion of the Acquired Assets; (xiv) all parties that are known or reasonably believed to have asserted any lien, encumbrance, claim or other interest in the Acquired Assets; (xv) all governmental agencies that are an interested party with respect to

the Sale and transactions proposed thereunder; (xvi) all non-Debtor parties to the Assigned Agreements and (xvii) all other known creditors of the Debtors.

17. Within five (5) business days of the entry of this Order or as soon as practicable thereafter, the Debtors shall publish the Sale Notice once in *The Wall Street Journal*, and such publication notice shall be deemed proper notice to any other interested parties whose identities are unknown to the Debtors.

18. Compliance with the foregoing notice provisions shall constitute sufficient notice to all parties in interest, including those whose identities are unknown to the Debtors, of the Sale of the Acquired Assets, the contemplated assumption and assignment of the Assigned Agreements and the cure amounts, and no additional notice of such contemplated transactions need be given.

19. The Debtors are authorized to execute and deliver all instruments and documents, and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated by this Order.

20. The Court finds that the requirements set forth in Local Rules 6004-1 and 9013-1 are hereby satisfied or waived.

21. Notwithstanding any applicability of Bankruptcy Rule 6004(h), 6006(d), 7062 or 9014, the terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

22. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from, based upon or related to this Order.

Date: _____ ___, 2011
Wilmington, Delaware

_____
United States Bankruptcy Judge

EXHIBIT 1

Bidding Procedures

BIDDING PROCEDURES

Set forth below are the bidding procedures (the "Bidding Procedures") to be employed with respect to the potential sale (the "Sale") of certain assets (the "Assets") of Graceway Pharmaceuticals, LLC, and certain of its subsidiaries, as debtors and debtors-in-possession (collectively, the "Debtors"), in jointly administered case no. [_____] under chapter 11 of the Bankruptcy Code pending in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). Pursuant to the Bidding Procedures Order (defined below), the Bankruptcy Court has approved Galderma S.A. or its assignee(s) or designee(s) as the stalking horse bidder (the "Stalking Horse Bidder") for the Assets as set forth more fully in that certain Asset Purchase Agreement among Galderma S.A., the Debtors and Graceway Canada Company, dated as of September [__], 2011 (the "APA").

On September [__], 2011, the Debtors filed a motion pursuant to 11 U.S.C. §§ 105(A), 363, 365, 503, and 507 and Federal Bankruptcy Rules 2002, 6004, 6006, and 9014: (a) approving and authorizing (i) bidding procedures in connection with the sale of certain assets of the Debtors; (ii) stalking horse bid protections; (iii) form and manner of notice of the sale hearing and (iv) related relief; and (b) authorizing (i) the sale of such assets free and clear of all claims, liens, liabilities, rights, interests and encumbrances; (ii) the Debtors to enter into and perform their obligations under the APA; (iii) the Debtors to assume and assign certain executory contracts; and (iv) related relief. On [_____] [__], 2011 the Bankruptcy Court entered an order approving the Bidding Procedures set forth herein (the "Bidding Procedures Order"). The Bidding Procedures Order also set [_____], 2011 as the date the Bankruptcy Court will conduct the Sale Hearing (as defined below). At the Sale Hearing, the Debtors may seek entry of an order from the Bankruptcy Court authorizing and approving the Sale of the Assets to the Stalking Horse Bidder or another Qualified Bidder (as defined below) that the Debtors determine to have made the highest or best offer for the Assets.

Assets to be Sold

The Debtors are offering to sell in one or more transactions the Assets and Qualified Bidders may submit bids for all or substantially all of the Assets. The Debtors shall retain all rights to the Assets that are not subject to a bid accepted by the Debtors and approved by the Bankruptcy Court at the Sale Hearing.

Bid Deadline

All offers, solicitations, or proposals (each, a "Bid") must be submitted in writing so that they are actually **received** no later than 4:00 p.m. (Eastern Time) on **[____], 2011** (the "Bid Deadline"). Prior to the Bid Deadline, a Qualified Bidder that wants to make a Bid shall deliver written copies of its Bid to investment bankers for the Debtors, Lazard Freres & Co., LLC ("Lazard"), 190 South LaSalle Street, 31st Floor, Chicago, Illinois 60603, Attn: Daniel Aronson, Daniel.aronson@lazard.com and Sachin Lulla, sachin.lulla@lazard.com, and Lazard will promptly (and in no event later than twenty-four (24) hours of receipt) deliver such Bid to: (a) the Debtors, c/o Graceway Holdings, LLC, 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, Tennessee 37620, Attn: John Bellamy, john.bellamy@gracewaypharma.com; (b) co-counsel to the Debtors, (i) Latham & Watkins LLP, 233 South Wacker Drive, Suite 5800,

Chicago, Illinois 60606, Attn: David Heller, Josef Athanas, and Zak Judd, david.heller@lw.com, josef.athanas@lw.com, zachary.judd@lw.com; and (ii) Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17th Floor, Wilmington, Delaware 19801, Attn: Michael R. Nestor and Kara Hammond Coyle, mnestor@ycst.com and kcoyle@ycst.com; (c) co-counsel to the Stalking Horse Bidder, (i) Debevoise & Plimpton LLP, 919 Third Avenue, New York, New York 10022, Attn: Kevin Rinker and My Chi To, karinker@debevoise.com and mcto@debevoise.com and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 18th Floor, Wilmington, DE 19801, Attn: Gregory W. Werkheiser, gwerkheiser@mnat.com; (d) financing counsel to the agent (the "First Lien Agent") to the lenders party to the Debtors' prepetition first lien credit agreement (the "First Lien Lenders"), Morgan Lewis, 225 Franklin Street, 16th Floor, Boston, Massachusetts 02110, Attn: Sula Fiszman, sfiszman@morganlewis.com; (e) special bankruptcy and restructuring counsel to the First Lien Agent, Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019, Attn: Scott K. Charles and Michael S. Benn, SKCharles@wlrk.com and MSBenn@wlrk.com; (f) counsel to the agent (the "Second Lien Agent") to the lenders party to the Debtors' prepetition second lien credit agreement (the "Second Lien Lenders"), Sidley Austin LLP, One South Dearborn, Chicago, IL 60603, Attn: Larry Nyhan, lnyhan@sidley.com; (g) local counsel to the First Lien Agent, DLA Piper LLP, 919 North Market Street, 15th Floor, Suite 1500, Wilmington, Delaware 19801, Attn: Stuart M. Brown, stuart.brown@dlapiper.com; and (h) counsel to the Official Committee of Unsecured Creditors, [_____], Attn: [_____] (collectively, the "Notice Parties"), by the Bid Deadline. A Bid received after the Bid Deadline shall not constitute a Qualified Bid (as defined below). A Bid shall be delivered to all Notice Parties at the same time. Interested bidders requesting information about the qualification process, including a form asset purchase agreement, and information in connection with their due diligence, should contact Sachin Lulla, Lazard Freres & Co., LLC, 190 South LaSalle Street, 31st Floor, Chicago, Illinois 60603, (312) 407-6626, Sachin.Lulla@lazard.com.

Participant Requirements

To participate in the process detailed by the Bidding Procedures and to otherwise be considered for any purpose hereunder, each Bid and each bidder submitting a Bid (a "Potential Bidder") must be determined by the Debtors to have satisfactorily provided the Debtors with each of the following (unless such requirement other than the "Confidentiality Agreement requirement set forth in clause (c) below is waived by the Debtors) on or before the Bid Deadline (the "Participant Requirements"):

(a) Identification of Potential Bidder. Identification of the Potential Bidder and any Principals (defined below), and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;

(b) Corporate Authority. Written evidence of the Potential Bidder's chief executive officer or other appropriate senior executive's approval of the contemplated transaction and acceptance of the terms set forth in the Bidding Procedures; *provided, however*, that, if the Potential Bidder is an entity specially formed for the purpose of effectuating the contemplated transaction (an "Acquisition Entity"), then the Potential Bidder must

furnish written evidence reasonably acceptable to the Debtors of the approval of the contemplated transaction by the equity holder(s) of such Potential Bidder (the "Principals");

(c) Confidentiality Agreement. An executed confidentiality agreement (the "Confidentiality Agreement") in form and substance acceptable to the Debtors and their counsel;

(d) Proof of Financial Ability to Perform. Written evidence upon which the Debtors may reasonably conclude that the Potential Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. Such information should include, among other things, the following:

(i) the Potential Bidder's or, in the case of an Acquisition Entity, the Principals', current financial statements (audited if they exist);

(ii) contact names and numbers for verification of financing sources;

(iii) evidence of the Potential Bidder's or Principals' internal resources and written evidence of a commitment for debt or equity funding that is needed to close the contemplated transaction; and

(iv) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors demonstrating that such Potential Bidder has the ability to close the contemplated transaction; provided, however, that the Debtors shall determine, in their reasonable discretion, in consultation with their advisors, whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Potential Bidder's financial qualifications.

Designation as Qualified Bidder

A "Qualified Bidder" is a Potential Bidder (or combination of Potential Bidders whose Bids for the Assets do not overlap and who agreed to have their Bids combined for purposes of the determination of whether such Potential Bidders together constitute a Qualified Bidder, and who shall also be referred to herein as a single Qualified Bidder) that delivers the documents described in paragraphs (a) through (d) above, and that the Debtors in their reasonable determination and with assistance from their advisors (after consultation with special bankruptcy and restructuring counsel to the First Lien Agent and counsel to the Official Committee of Unsecured Creditors) determine is reasonably likely to submit a bona fide offer that would result in greater cash value being received for the benefit of the Debtors' creditors than under the APA and to be able to consummate a sale if selected as a Successful Bidder (defined below) within the approximate overall time frame contemplated by the APA.

Upon the receipt from a Potential Bidder of the information required under paragraphs (a) through (d) above, as soon as is practicable, the Debtors shall, in consultation with special bankruptcy and restructuring counsel to the First Lien Agent and counsel to the Official Committee of Unsecured Creditors, determine and notify the Potential Bidder with respect to whether such Potential Bidder is a Qualified Bidder.

The Stalking Horse Bidder is a Qualified Bidder.

Access to Due Diligence Materials

Only Potential Bidders that execute the Confidentiality Agreement are eligible to receive due-diligence access or additional non-public information; provided, however, if the Debtors determine in their reasonable discretion that a Potential Bidder who has satisfied the Participant Requirements does not constitute a Qualified Bidder, then such Potential Bidder's right to receive due-diligence access or additional non-public information shall terminate. The Debtors will designate an employee or other representative to coordinate all reasonable requests for additional information and due-diligence access from such Qualified Bidders. The Debtors shall not be obligated to furnish any due diligence information after the Bid Deadline. The Debtors are not responsible for, and will bear no liability with respect to, any information obtained by Qualified Bidders in connection with the sale of the Assets. If the Debtors furnish any material information related to the Debtors not theretofore given to the Stalking Horse Bidder, then the Debtors shall place such information in one of the data rooms.

Due Diligence From Bidders

Each Potential Bidder and Qualified Bidder (collectively, a "Bidder") shall comply with all reasonable requests for additional information and due-diligence access by the Debtors or their advisors regarding such Bidder and its contemplated transaction. Failure by a Potential Bidder to comply with requests for additional information and due-diligence access will be a basis for the Debtors to determine that the Potential Bidder is not a Qualified Bidder. Failure by a Qualified Bidder to comply with requests for additional information and due-diligence access will be a basis for the Debtors to determine that a Bid made by a Qualified Bidder is not a Qualified Bid.

Bidding Process

The Debtors and their advisors shall: (a) determine whether a Potential Bidder is a Qualified Bidder; (b) coordinate the efforts of Bidders in conducting their due-diligence investigations, as permitted by the provisions herein; (c) receive offers from Qualified Bidders; and (d) negotiate any offers made to purchase the Assets. Subject to the Bidding Procedures Order, the Debtors shall have the right to adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein), that, in the Debtors' reasonable discretion, will better promote the goals of the Bidding Process.

Bid Requirements

To participate in the Auction (as defined below), each Bid (including any credit bid by the First Lien Agent (other than with respect to clause (h) below) or the Second Lien

Agent) and Qualified Bidder submitting such a Bid must be determined by the Debtors to satisfy each of the following conditions:

(a) Written Submission of APA and Commitment to Close. Qualified Bidders must submit by the Bid Deadline a blackline of the APA reflecting their proposed changes, and a written commitment that they intend to close on the terms and conditions set forth therein;

(b) Identification of Executory Contracts and Leases to be Assumed. Qualified Bidders must submit by the Bid Deadline a comprehensive list of all executory contracts and leases that they will assume and the corresponding cure amounts associated with the assumption and assignment of such leases and contracts;

(c) Irrevocable. A Bid must be irrevocable until five (5) business days after the Assets have been sold pursuant to the closing of the sale or sales approved by the Bankruptcy Court in a final, non-appealable order (the "Termination Date") unless such Bid is designated as the Back-Up Bid (defined below);

(d) Contingencies. A Bid may not be conditioned on obtaining financing, regulatory contingencies (other than on the condition that any applicable waiting period under The Hart–Scott–Rodino Antitrust Improvements Act of 1976 (Public Law 94-435) be satisfied, which may occur subsequent to the date of the Bid Deadline), any internal approval or on the outcome or review of due diligence. Any other contingencies or conditions associated with a Bid may not be more burdensome taken as a whole than those set forth in the APA taken as a whole;

(e) Financing Sources. A Bid must contain written evidence of a firm commitment for financing or other evidence of the financial wherewithal and ability to consummate the sale and which the Debtors reasonably believe to be sufficient to satisfy the standards to provide adequate assurance of future performance under Bankruptcy Code Section 365, with appropriate contact information for such financing sources;

(f) No Fees Payable to Qualified Bidder. A Bid may not request or entitle the Qualified Bidder to any break-up fee, expense reimbursement fee or similar type of payment. Further, by submitting a Bid, a Bidder shall be deemed to waive its right to pursue a substantial contribution claim under Section 503 of the Bankruptcy Code or in any way related to the submission of its Bid or the Bidding Procedures;

(g) Good-Faith Deposit. Each Bid must be accompanied by a deposit (the "Good Faith Deposit") in the form of a certified check or cash payable to the order of Graceway Pharmaceuticals, LLC in the amount of not less

than $27,500,000 to be held in escrow by the Debtors until the Termination Date;

(h) Minimum Overbid. The consideration proposed by the Bid may include only cash and assumed liabilities. The aggregate consideration must equal or exceed the sum of the cash "Purchase Price" and assumed liabilities provided for under the APA, in the aggregate, plus the cash amount of the Break-Up Fee ($8,250,000) (defined below), *plus* the cash amount of $2,500,000 (the "Initial Minimum Overbid Increment");

(i) Terms. A Bid must be on terms that, taken as a whole, are determined by the Debtors not to be materially more burdensome or conditional than the terms of the APA taken as a whole; and

(j) Purchase of Assets and Assumption of Liabilities. A Bid must provide for the purchase of all or a substantial portion of the Assets and payment or assumption of all or a substantial portion of the liabilities to be paid or assumed under the APA.

A Bid received from a Qualified Bidder before the Bid Deadline that meets the above requirements, and that satisfies the Bid Deadline requirement above, shall constitute a "Qualified Bid," if the Debtors believe, in their reasonable discretion (after consultation with special bankruptcy and restructuring counsel to the First Lien Agent and counsel to the Official Committee of Unsecured Creditors), that such Bid would be consummated if selected as the Successful Bid (as defined below). For purposes herein, the APA shall constitute a Qualified Bid. A Qualified Bid shall be considered such Qualified Bidder's "Baseline Bid."

If any Bid is determined by the Debtors not to be a Qualified Bid, the Bidder shall be refunded its Good Faith Deposit and all accumulated interest thereon within three (3) business days after that determination.

Any Bid that is not deemed a Qualified Bid shall not be considered by the Debtors.

Auction

Only if a Qualified Bid (other than that of the Stalking Horse Bidder) is received by the Bid Deadline shall the Debtors conduct an auction (the "Auction") to determine the highest and/or best bid with respect to the Assets. The Auction shall commence on [_____], 2011, at 10:00 a.m. (Eastern Time), at the offices of Latham & Watkins, LLP, 885 Third Avenue, Suite 1000, New York, New York 10022-4834.

If no such Qualified Bid is received by the Bid Deadline, then (i) the Auction will not be held, (ii) the Stalking Horse Bidder will be deemed the Successful Bidder, (iii) the APA will be the Successful Bid, and (iv) at the Sale Hearing on [_____, **2011** at _:00 _.m.] (Eastern Time), the Debtors will seek approval of and authority to consummate the proposed sale to the Stalking Horse Bidder as contemplated by the APA.

The Auction shall be conducted according to the following procedures:

(a) Participation At The Auction

Only a Qualified Bidder that has submitted a Qualified Bid is eligible to participate at the Auction. Only the authorized representatives of each of the Qualified Bidders, the Debtors, the official committee of unsecured creditors and the First Lien Agent shall be permitted to attend. During the Auction, bidding shall begin initially with the highest Qualified Bid (the "Opening Bid") and subsequently continue in minimum increments of at least $2,500,000 (or such other amount the Debtors determine to facilitate the Auction). At least two (2) business days prior to the Auction, each Qualified Bidder that has submitted a Qualified Bid must inform the Debtors whether it intends to participate at the Auction. The Debtors shall provide copies of the Opening Bid to the Stalking Horse Bidder and all Qualified Bidders that have indicated their intent to participate at the Auction at least one (1) business day prior to the Auction.

(b) The Debtors Shall Conduct The Auction

The Debtors and their professionals shall direct and preside over the Auction. The determination of which Qualified Bid constitutes the Opening Bid shall take into account any factors the Debtors reasonably deem relevant to the value of the Qualified Bid to the estate, including, among other things, the following: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities; (iii) the ability of the Qualified Bidder to close the proposed transaction; (iv) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (v) any purchase-price adjustments; (vi) the impact of the contemplated transaction on any actual or potential litigation; (vii) the net economic effect of any changes from the APA, if any, contemplated by the contemplated transaction documents (the "Contemplated Transaction Documents"); (viii) the net after-tax consideration to be received by the Debtors' estates; and (ix) such other considerations the Debtors deem relevant in their reasonable discretion (collectively, the "Bid Assessment Criteria"). All Bids made thereafter shall be Overbids (as defined below) and shall be made and received on an open basis, and all material terms of each Bid shall be fully disclosed to all other Qualified Bidders. The Debtors shall arrange for the actual bidding at the Auction to be transcribed or videotaped. Each Qualified Bidder participating in the Auction will be required to confirm that it has not engaged in any collusion regarding the Bidding Procedures, the Auction or the proposed transaction.

(c) Terms of Overbids

An "Overbid" is any Bid made at the Auction subsequent to the Debtors' announcement of the Opening Bid. To submit an Overbid for purposes of this Auction, a Qualified Bidder must comply with the following conditions:

(i) Minimum Overbid Increment

Any Overbid after the Opening Bid shall be made in increments of at least $2,500,000 (or such other amount the Debtors determine to facilitate the Auction).

(ii) Remaining Terms are the same as for Qualified Bids

Except as modified herein, an Overbid must comply with the conditions for a Qualified Bid set forth above, *provided, however*, that the Bid Deadline and the Initial Minimum Overbid Increment shall not apply. Any Overbid made by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (A) the Debtors accept a higher Qualified Bid as an Overbid and (B) such Overbid is not selected as the Back-up Bid (as defined below).

To the extent not previously provided (which shall be determined by the Debtors), a Qualified Bidder submitting an Overbid must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtor) demonstrating such Qualified Bidder's ability to close the transaction proposed by such Overbid.

(iii) Consideration of Overbids

The Debtors reserve the right, in their reasonable business judgment, to make one or more adjournments in the Auction to, among other things: (A) facilitate discussions between the Debtors and individual Qualified Bidders; (B) allow individual Qualified Bidders to consider how they wish to proceed; (C) consider and determine the current highest and best Overbid at any given time during the Auction; and (D) give Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment, may require that the Qualified Bidder (other than Stalking Horse Bidder) has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. The Break-Up Fee will be taken into account in each round of bidding. For the avoidance of doubt, during the Auction, any bid by the Stalking Horse Bidder shall be deemed to be increased by the amount of the Break-Up Fee, *provided* that in the event that the Stalking Horse Bidder is the Successful Bidder and its Successful Bid includes the Break-Up Fee, the Stalking Horse Bidder shall be entitled to credit the amount of the Break-Up Fee against the purchase price.

(d) Additional Procedures

The Debtors, in their reasonable discretion, may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the Bidding Procedures, the Bidding Procedures Order or the Bankruptcy Code.

(e) Closing the Auction

Upon conclusion of the bidding, the Auction shall be closed, and the Debtors shall (i) immediately review the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale, and (ii) identify the highest, best, and/or otherwise financially superior offer for the Assets (the "Successful Bid" and the entity submitting such Successful Bid, the "Successful Bidder"), which highest, best and/or otherwise financially superior offer will provide the greatest amount of net cash value to the Debtor, and the next highest or otherwise best offer after the Successful Bid (the "Back-up Bid"), and advise the Qualified Bidders and Notice Parties of such determination. No additional bids may be

considered following the closing of the Auction. If the Stalking Horse Bidder's final Bid is deemed to be highest and best at the conclusion of the Auction, the Stalking Horse Bidder will be the Successful Bidder, and such Bid, the Successful Bid.

Within one (1) day after the closing of the Auction, the Debtors shall file with the Bankruptcy Court and serve upon all Qualified Bidders and entities that have requested notice in the Bankruptcy Cases a notice identifying the Successful Bidder.

(f) Consent to Jurisdiction as Condition to Bid.

All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Auction, and the construction and enforcement of the Bidder's Contemplated Transaction Documents, as applicable.

(g) Terms of Break-Up Fee

If the APA terminates because the Debtors have accepted or selected, and the Bankruptcy Court has approved, the Bid or Bids (including a credit bid) of any Qualified Bidder(s) other than Stalking Horse Bidder to purchase all or a substantial portion of the Debtors' Assets, and such transaction or transactions contemplated by any such Bid or Bids has been consummated, the Debtors shall pay the Stalking Horse Bidder out of the proceeds of such transaction or transactions at the closing the "Break-Up Fee".

Acceptance of Successful Bid

The Debtors shall sell the Assets to the Successful Bidder upon the approval of the Successful Bid by the Bankruptcy Court. The Debtors' presentation of a particular Qualified Bid to the Bankruptcy Court for approval does not constitute the Debtors' acceptance of the Bid. The Debtors will be deemed to have accepted a Bid only when the Bid has been approved by the Bankruptcy Court.

Credit Bidding by First Lien Lenders

In the event the Bankruptcy Court permits the First Lien Lenders to credit bid, in addition to the requirements set forth in the section titled "Bid Requirements" above (other than with respect to clause (h) of such section), in order to be a Qualified Bid, a credit bid must provide for (a) the payment in cash at the closing of the Break-Up Fee, (b) the payment in cash at closing and/or the assumption of the unpaid administrative expense claims of the Debtors owning such collateral (other than the Break-Up Fee and the Lazard Success Fee (as defined in the Interim Cash Collateral Order)) incurred from the Petition Date through and including the date on which the closing of the sale occurs, (c) the payment in cash at closing of all claims that are senior to the claims of the First Lien Lenders pursuant to the DIP Financing Order or otherwise, (d) a description of all assets to be purchased that are not subject to a valid and perfected security interest held by the agent for the First Lien Lenders, (e) payment in cash in an amount equal to the fair value of such unencumbered assets and (f) payment in cash of the Lazard Success Fee. In the event the agent for the First Lien Lenders submits a credit bid for all of its collateral pursuant to these Bidding Procedures at the Auction, the Debtors reserve their

rights to not consult with the agent for the First Lien Lenders as to whether a Potential Bidder is a Qualified Bidder with respect to such Assets.

Credit Bidding by Second Lien Lenders

In the event that the Bankruptcy Court permits the Second Lien Lenders to credit bid, in addition to the requirements set forth in the section titled "Bid Requirements" above, in order to be a Qualified Bid, a credit bid by the Second Lien Lenders must provide for (a) the payment in cash at closing of the Break-Up Fee, (b) the payment in full in cash of all obligations owed to the First Lien Lenders and to other the holders of claims with claims senior to those of the Second Lien Lenders pursuant to the Interim Cash Collateral Order or otherwise, (c) the payment in cash at closing and/or the assumption of the unpaid administrative expense claims of the Debtors owning such collateral incurred from the Petition Date through and including the date on which the closing of the sale occurs, (d) a description of all assets to be purchased that are not subject to a valid and perfected first priority security interest held by the agent for the Second Lien Lenders, (d) payment in cash in an amount equal to the fair value of such unencumbered assets and (e) payment in cash of the Lazard Success Fee. In the event the agent for the Second Lien Lenders submits a credit bid for all of its collateral pursuant to these Bidding Procedures at the Auction, the Debtors reserve their rights to not consult with the agent for the Second Lien Lenders as to whether a Potential Bidder is a Qualified Bidder with respect to such Assets. Notwithstanding the right to credit bid afforded them in the Bidding Procedures, the Second Lien Agent and the Second Lien Lenders shall be deemed to have consented and waived any and all applicable rights under Bankruptcy Code Section 363(f).

"As Is, Where Is"

The sale of the Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtors, their agents or estates except to the extent set forth in the APA or the purchase agreement of another Successful Bidder. The Stalking Horse Bidder and each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures and (a) as to the Stalking Horse Bidder, the terms of the sale of the Assets set forth in the APA, or (b) as to another Successful Bidder, the terms of the sale of the Assets set forth in the applicable purchase agreement.

Free Of Any And All Encumbrances

Except as otherwise provided in the APA or another Successful Bidder's purchase agreement, all of the Debtors' right, title, and interest in and to the Assets subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the "Encumbrances") in accordance with 11 U.S.C. § 363, with such Encumbrances to attach to the net proceeds of the sale of the Assets.

Sale Hearing

A hearing to approve the sale of the Assets to the Successful Bidder shall be conducted by the Bankruptcy Court on [_____,**2011**, at _:00 _.m.] (Eastern Time), located at 824 North Market Street, [_]th Floor, Courtroom No. [_] Wilmington, Delaware (the "Sale Hearing"). Following the approval of the sale of the Assets to the Successful Bidder at the Sale Hearing, if such Successful Bidder fails to consummate an approved sale within fourteen (14) days after entry of order by the Bankruptcy Court approving the sale of the Assets (except where the sole cause of any delay in closing is as a result of default by the Debtors), the Debtors shall be authorized, but not required, to deem the Back-up Bid, as disclosed at the Sale Hearing, the Successful Bid and the Debtors shall be authorized, but not required, to consummate the sale with the Qualified Bidder submitting such Back-up Bid without further notice or orders of the Bankruptcy Court. The Sale Hearing may be adjourned or rescheduled without notice other than by announcement of the adjourned date at the Sale Hearing. If the Stalking Horse Bidder is not the Successful Bidder at the Auction but is designated as the bidder that has submitted the Back-Up Bid, then such Back-Up Bid must remain open until the earlier of the consummation of the transaction with the Successful Bidder and 30 days after the conclusion of the Sale Hearing. If any other bidder submits the Back-Up Bid, such Back-Up Bid must remain open until the consummation of the Sale to the Successful Bidder.

Return of Good Faith Deposit

The Good Faith Deposit of the Successful Bidder shall be applied to the purchase price of such transaction at closing. Good Faith Deposits of all other Qualified Bidders shall be held by the Debtors until five (5) business days after closing of the transactions contemplated by the Successful Bid, and thereafter returned to the respective Qualified Bidders. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtors shall be entitled to retain the Good Faith Deposit as part of their damages resulting from the breach or failure to perform by the Successful Bidder. Notwithstanding anything herein to the contrary, the terms under which the Stalking Horse Bidder provided a Good Faith Deposit and the terms of its use, release and return to the Stalking Horse Bidder shall be governed by the APA.

Modifications and Reservations

The Debtors may (a) determine which Qualified Bid, if any, is the highest, best, and/or otherwise financially superior offer; and (b) reject at any time before entry of orders of the Bankruptcy Court approving a Qualified Bid, any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of sale, or (iii) contrary to the best interests of the Debtors, their estates and creditors.

At or before the Sale Hearing, the Debtors may impose such other terms and conditions as the Debtors may determine to be in the best interests of their estate and creditors and other parties in interest thereof that are not inconsistent with the Bidding Procedures Order, the Bidding Procedures or the Bankruptcy Code.

The Bidding Procedures may be materially modified only upon the express written consent of the Debtors and the Stalking Horse Bidder (such consent not to be unreasonably withheld), or by order of the Bankruptcy Court.

Reservation of Rights

Subject to the Bidding Procedures Order, the Debtors reserve the right as they may determine to be in the best interests of their estates to: (a) determine which Potential Bidders are Qualified Bidders; (b) determine which Bids are Qualified Bids; (c) determine which Qualified Bid is the highest and best proposal and which is the next highest and best proposal; (d) reject any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures Order or the requirements of the Bankruptcy Code or any other orders entered by the Bankruptcy Court, or (iii) contrary to the best interests of the Debtors and their estates or stakeholders, as applicable; (e) impose additional terms and conditions with respect to any or all Potential Bidders other than the Stalking Horse Bidder; (f) adjourn the Auction and/or Sale Hearing in open court without further notice; and (h) with the consent of the Stalking Horse Bidder, remove a portion of the Assets from the Auction. Without limiting the foregoing, the Debtors may determine to distribute or not distribute copies of other Qualified Bids to other Qualified Bidders prior to or during the Auction other than with respect to the distribution of the Opening Bid as set forth above.

EXHIBIT 2

Sale Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
GRACEWAY PHARMACEUTICALS, LLC, *et al.*,[1]	Case No. 11-_____ (____)
	Jointly Administered
Debtors.	

NOTICE OF PUBLIC AUCTION AND SALE HEARING

("**Sale Notice**")

PLEASE TAKE NOTICE that the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**"), have entered into an asset purchase agreement, dated [_____], 2011 (the "**APA**")[2], with [_____], a [_____], formed by [_____] (the "**Stalking Horse Bidder**") to sell certain assets of the Debtors free and clear of all liens, claims, encumbrances and other interests to the Stalking Horse Bidder, subject to the submission of higher or better offers in an auction process (the "**Auction**").

PLEASE TAKE FURTHER NOTICE that in connection with the proposed sale (the "**Sale**") to the Stalking Horse Bidder, on [_____], 2011, the Debtors filed a motion [Docket No. [___]] (the "**Motion**") seeking a court order for approval and authorization of, among other things, (a) bidding procedures governing the Sale, (b) payment of a break-up fee and reimbursable expenses to the Stalking Horse Bidder in certain instances under the terms and conditions set forth in the APA, including if the Stalking Horse Bidder is not the successful bidder at the Auction, (c) the form and manner of notices related to the Sale, and (d) procedures related to the assumption and assignment of executory contracts and unexpired leases in connection with the Sale.

PLEASE TAKE FURTHER NOTICE that, on [_____], 2011, the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**") entered an order [Docket No. [___]] (the "**Bidding Procedures Order**") approving the bidding procedures (the "**Bidding Procedures**"), which set the key dates and times related to the Sale. All interested bidders should carefully read the Bidding Procedures. The summary of the Bidding Procedures contained in this Sale Notice is provided for convenience only. To the extent that there are any

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[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).

[2] All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the APA.

inconsistencies between the Bidding Procedures and the summary description in this Sale Notice, the terms of the Bidding Procedures shall control.

PLEASE TAKE FURTHER NOTICE that copies of the Motion, Bidding Procedures and Bidding Procedures Order, as well as all related exhibits including the APA, are available on the website of the Court-appointed claims, noticing soliciting and balloting agent for the Debtors' chapter 11 cases, BMC Group, Inc., at www.bmcgroup.com/graceway, or can be requested by calling (888) 909-0100 from within the United States or +1 310 321 5555 from outside the United States.

PLEASE TAKE FURTHER NOTICE that, if the Debtors receive one or more qualified competing bids that satisfy the requirements and time frame specified by the Bidding Procedures, the Debtors will conduct the Auction to determine the highest or otherwise best bid for the purchased assets on [_____], 2011 at 10:00 a.m. prevailing Eastern Time at the offices of Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022, or at any such other location as the Debtors may hereafter designate (with notice of such alternate location given to all qualified bidders under the Bidding Procedures).

PLEASE TAKE FURTHER NOTICE that the Debtors will seek approval of the Sale before the Honorable [_____], United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at: 824 North Market Street, [__]th Floor, Wilmington, Delaware 19801, on [_____], 2011 at [_____] [_].m. prevailing Eastern Time.

PLEASE TAKE FURTHER NOTICE that objections to the Motion if any, **must**: (i) be in writing; (ii) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules for the United States Bankruptcy Court for the District of Delaware; (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (iv) be filed with the Court and served so *actually received* no later than [____], 2011 at 4:00 p.m. prevailing Eastern Time by all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002 and the following parties:

Debtors	Counsel to Debtors
Graceway Pharmaceuticals, LLC 340 Martin Luther King Jr. Blvd. Suite 500 Bristol, Tennessee 37620 Attn: John Bellamy	Latham & Watkins LLP 233 South Wacker Drive Chicago, IL 60606 Attn: Josef S. Athanas, Esq. and Matthew L. Warren, Esq. Young Conaway Stargatt & Taylor, LLP 1000 West Street, 17th Floor Wilmington, Delaware 19801 Attn: Michael R. Nestor, Esq. and Kara Hammond Coyle, Esq.

Special Bankruptcy and Restructuring Counsel to the Agent for the First Lien Lenders	United States Trustee
Wachtell, Lipton, Rosen & Katz 51 West 52nd Street New York, NY 10019 Attn: Scott K. Charles, Esq. and Michael S. Benn, Esq. DLA Piper LLP 919 North Market Street, 15th Floor Suite 1500 Wilmington, DE 19801 Attn: Stuart M. Brown, Esq.	Office of the United States Trustee for the District of Delaware 844 King Street J. Caleb Boggs Federal Building Room 2207, Lockbox 35 Wilmington, DE 19801 Attn: [_____], Esq.
Financing Counsel to the Agent for the First Lien Lenders	**Counsel to the Creditors' Committee**
Morgan Lewis 225 Franklin Street, 16th Floor Boston, Massachusetts 02110 Attn: Sula Fiszman, Esq.	[to come]
Counsel to the Agent for the Second Lien Lenders	**Counsel to the Stalking Horse Bidder**
Sidley Austin LLP One South Dearborn, Chicago, IL 60603 Attn: Larry Nyhan, Esq.	Debevoise & Plimpton LLP 919 Third Avenue New York, NY 10022 Attn: My Chi To, Esq. and Kevin A. Rinker, Esq. Morris, Nichols, Arsht & Tunnell LLP 1201 North Market Street, 18th Floor Wilmington, DE 19801 Attn: Gregory W. Werkheiser, Esq.

CONSEQUENCES OF FAILING TO TIMELY FILE AND SERVE AN OBJECTION

ANY PARTY OR ENTITY WHO FAILS TO TIMELY FILE AND SERVE AN OBJECTION TO THE SALE ON OR BEFORE THE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE PROPERTY FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS AFFECTED THEREUNDER.

NO SUCCESSOR OR TRANSFEREE LIABILITY

The proposed Sale Order provides that the purchaser in the Sale (the "**Purchaser**") will have no responsibility for, and the assets will be sold free and clear of, any successor liability, including the following:

The Purchaser shall not be deemed, as a result of any action taken in connection with the APA, the consummation of the Transactions (as defined in the Sale Order) contemplated by the APA, or the transfer or operation of the Acquired Assets, to (a) be a legal successor, or otherwise be deemed a successor to the Debtors (other than, for the Purchaser, with respect to any obligations as an assignee under the Assigned Agreements arising after the Closing); (b) have, *de facto* or otherwise, merged with or into the Debtors; or (c) be an alter ego or mere continuation or substantial continuation of the Debtors including, without limitation, within the meaning of any foreign, federal, state or local revenue law, pension law, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the WARN Act (29 U.S.C. §§ 2101 et seq., the Comprehensive Environmental Response Compensation and Liability Act ("**CERCLA**"), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended), the National Labor Relations Act, 29 U.S.C. § 151, et seq., environmental liabilities, debts, claims or obligations arising from conditions first existing on or prior to Closing (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including, without limitation, under CERCLA, any liabilities, debts or obligations of or required to be paid by the Debtors for any taxes of any kind for any period, labor, employment, or other law, rule or regulation (including without limitation filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine. Other than as expressly set forth in the APA with respect to Assumed Liabilities, the Purchaser shall not have any responsibility for (a) any liability or other obligation of the Debtors or related to the Acquired Assets or (b) any remaining Claims (as defined in the Sale Order) against the Debtors or any of their predecessors or affiliates. The Purchaser shall have no liability whatsoever with respect to the Debtors' (or their predecessors' or affiliates') respective businesses or operations or any of the Debtors' (or their predecessors' or affiliates') obligations based, in whole or part, directly or indirectly, on any theory of successor or vicarious liability of any kind or character, or based upon any theory of antitrust, environmental, successor or transferee liability, *de facto* merger or substantial continuity, labor and employment or products liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Acquired Assets prior to the Closing.

IF YOU HAVE ANY QUESTIONS REGARDING THIS SALE NOTICE, PLEASE CONTACT THE RESTRUCTURING HOTLINE ESTABLISHED IN CONNECTION WITH THE DEBTORS' CHAPTER 11 CASES AT (888) 909-0100 FROM WITHIN THE UNITED STATES OR +1 310 321 5555 FROM OUTSIDE THE UNITED STATES

EXHIBIT 3

Contract Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: GRACEWAY PHARMACEUTICALS, LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 11-_____ (____) Jointly Administered **Sale Hearing: [____] 2011 at [___] [].m. (ET)** **Objection Deadline: [____] 2011 at [___] [].m. (ET**

NOTICE OF (I) CURE AMOUNT WITH RESPECT TO EXECUTORY CONTRACTS TO BE ASSUMED AND ASSIGNED AND (II) POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. Pursuant to the *Order Approving and Authorizing (A) Bidding Procedures in Connection with the Sale of Certain Assets of the Debtors, (B) Stalking Horse Bid Protections, (C) Form and Manner of Notice of the Sale Hearing and (D) Related Relief* [Docket No. ___] (the "**Bidding Procedures Order**") entered by the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**") on [_____], 2011, the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**") hereby provide notice that they are a party to various executory contracts and unexpired leases as set forth on Exhibit 1 attached hereto (individually, a "**Contract**", collectively the "**Contracts**") and they intend to seek to assume and assign some or all of the Contracts (individually, a "**Potentially Assumed**

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).

Contract", collectively, the "**Potentially Assumed Contracts**") to the Successful Bidder[2] in connection with the proposed sale of certain of the Debtors' assets.

2. You have been identified as a party to a Potentially Assumed Contract. If your Contract is **actually** to be assumed or assigned, a separate notice of such assumption and assignment will be provided.

3. The Potentially Assumed Contract with respect to which you have been identified as a non-Debtor counterparty, and the corresponding proposed amount the Debtors' records reflect is owing to cure any and all defaults under such Potentially Assumed Contract so as to permit the assumption and assignment of such Potentially Assumed Contract (if designated for assumption and assignment by the Successful Bidder) pursuant to 11 U.S.C. § 365 (the "**Cure Amount**"), have been set forth on Exhibit 1, as attached hereto. The Debtors' records reflect, as of the date hereof, that all postpetition amounts owing under your Potentially Assumed Contract have been paid and will continue to be paid and that there are no other defaults under the Potentially Assumed Contract. Amounts due and owing under the Contracts with respect to the period after the petition date and after the closing date of the Sale are not included in the calculation of the Cure Amounts.

4. Objections, if any, to the proposed Cure Amount, or to the possible assumption and assignment of any Potentially Assumed Contract, must be made in writing, filed with the United States Bankruptcy Court for the District of Delaware, at: 824 North Market Street, [__]th

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[2] Capitalized terms not otherwise defined in this notice shall have the meanings set forth in the Bidding Procedures approved as part of the Bidding Procedures Order. All documents filed with the Bankruptcy Court in connection with these Chapter 11 Cases, including orders of the Bankruptcy Court, are available for free on the website of the Court-appointed claims, noticing, soliciting and balloting agent in these Chapter 11 Cases, BMC Group, Inc., at www.bmcgroup.com/graceway, or can be requested by calling (888) 909-0100 from within the United States or +1 310 321 5555 if calling from outside the United States.

Floor, Wilmington, Delaware 19801, and served so as to be received on or before [_____] [_].m. on [_____], 2011 (the "**Objection Deadline**"). Service should be made by mail to:

Debtors	Counsel to Debtors
Graceway Pharmaceuticals, LLC 340 Martin Luther King Jr. Blvd. Suite 500 Bristol, Tennessee 37620 Attn: John Bellamy	Latham & Watkins LLP 233 South Wacker Drive Chicago, IL 60606 Attn: Josef S. Athanas, Esq. and Matthew L. Warren, Esq. Young Conaway Stargatt & Taylor, LLP 1000 West Street, 17th Floor Wilmington, Delaware 19801 Attn: Michael R. Nestor, Esq. and Kara Hammond Coyle, Esq.
Special Bankruptcy and Restructuring Counsel to the Agent for the First Lien Lenders	**United States Trustee**
Wachtell, Lipton, Rosen & Katz 51 West 52nd Street New York, NY 10019 Attn: Scott K. Charles, Esq. and Michael S. Benn, Esq. DLA Piper LLP 919 North Market Street, 15th Floor Suite 1500 Wilmington, DE 19801 Attn: Stuart M. Brown, Esq.	Office of the United States Trustee for the District of Delaware 844 King Street J. Caleb Boggs Federal Building Room 2207, Lockbox 35 Wilmington, DE 19801 Attn: [_____], Esq.
Financing Counsel to the Agent for the First Lien Lenders	**Counsel to the Creditors' Committee**
Morgan Lewis 225 Franklin Street, 16th Floor Boston, Massachusetts 02110 Attn: Sula Fiszman, Esq.	[to come]
Counsel to the Agent for the Second Lien Lenders	**Counsel to the Stalking Horse Bidder**
Sidley Austin LLP One South Dearborn, Chicago, IL 60603 Attn: Larry Nyhan, Esq.	Debevoise & Plimpton LLP 919 Third Avenue New York, NY 10022 Attn: My Chi To, Esq. and Kevin A. Rinker, Esq. Morris, Nichols, Arsht & Tunnell LLP 1201 North Market Street, 18th Floor Wilmington, DE 19801 Attn: Gregory W. Werkheiser, Esq.

5. An objection to any Cure Amount must (i) be in writing; (ii) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules for the United States Bankruptcy Court for the District of Delaware; and (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor.

6. If an objection to the Cure Amount, or the possible assumption and assignment, is timely filed and cannot be resolved by the Debtors and the counterparty to the Potentially Assumed Contract, a hearing with respect to the objection will be held before the Honorable [_____], United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at: 824 North Market Street, [__]th Floor, Wilmington, Delaware 19801, on [_____], 2011 at [_____] [].m. prevailing Eastern Time or at a later hearing, as determined by the Debtors. A hearing regarding objections to a Cure Amount, if any, may be continued at the sole discretion of the Debtors.

7. Regardless of whether a Potentially Assumed Contract will be assumed and assigned at the closing of the Sale as provided for in the APA, unless a non-debtor party to any Potentially Assumed Contract files an objection to the Cure Amount by the Objection Deadline, then such counterparty shall be (i) forever barred from objecting to the Cure Amount or the assumption and assignment of such Potentially Assumed Contract; and (ii) forever barred and estopped from asserting or claiming any amounts under the Contracts outstanding as of the effective date of assumption and assignment to the Successful Bidder, other than the Cure Amount on Exhibit 1, against the Debtors, any Successful Bidder or any other assignee of the relevant contract.

8. The Debtors will file and serve a further notice that identifies any Successful Bidder and provides notice of the particular Potentially Assumed Contracts that the Debtors will seek to assume and assign at the Sale Hearing (the "**Assumption Notice**").

9. At the Sale Hearing, the Debtors shall present evidence necessary to demonstrate adequate assurance of future performance by the Successful Bidder. At the Sale Hearing, you

will have the opportunity to evaluate and, if necessary, challenge, the ability of the Successful Bidder to provide adequate assurance of future performance under the Assumed Contracts.

10. The presence of a contract, lease or other agreement on Exhibit 1, as attached hereto, does not constitute an admission that such contract, lease or other agreement is an executory contract or unexpired lease or that such contract or lease will be assumed by the Debtors and assigned to any Successful Bidder. The Debtors reserve all of their rights, claims and causes of action with respect to the contracts, leases and other agreements listed on Exhibit 1, as attached hereto.

Dated: _____, 2011
Wilmington, Delaware

Respectfully Submitted,

_____

Michael R. Nestor (No. 3526)
Kara Hammond Coyle (No. 4410)
YOUNG CONAWAY STARGATT & TAYLOR, LLP
1000 West Street, 17th Floor
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

-and-

David S. Heller
Josef S. Athanas
Matthew L. Warren
LATHAM & WATKINS LLP
Suite 5800
233 South Wacker Drive
Chicago, IL 60606
Telephone: (312) 876-7700
Facsimile: (312) 993-9767

PROPOSED ATTORNEYS FOR DEBTORS AND DEBTORS-IN-POSSESSION

EXHIBIT 4

Assumption Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: GRACEWAY PHARMACEUTICALS, LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 11-_____ (____) Jointly Administered **Hearing Date: [_____], 2011 at [___] [].m. (ET)**

NOTICE OF ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On [_____], 2011, the United States Bankruptcy Court for the District of Delaware (this "**Court**") entered the *Order Approving and Authorizing (A) Bidding Procedures in Connection with the Sale of Certain Assets of the Debtors, (B) Stalking Horse Bid Protections, (C) Form and Manner of Notice of the Sale Hearing and (D) Related Relief* [Docket No. _____] (the "**Bidding Procedures Order**").

2. Pursuant to the Bidding Procedures Order, the Debtors have accepted the bid of [_____] (the "**Successful Bidder**") for the purchase of certain of the assets (the "**Assets**") related to the Debtors' business (the "**Sale**"). The terms of the bid are set forth in that certain asset purchase agreement (the "**APA**"), dated as of [_____], 2011 among the Debtors and the Successful Bidder, as filed with the Court [Docket No. _____].

3. The Bidding Procedures Order, among other things, authorized procedures for the Debtors to assume and assign certain executory contracts and unexpired leases (the "**Assumed**

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1 The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).

Contracts") to the Successful Bidder. Attached hereto as Exhibit 1 is a list of the Assumed Contracts that the Debtors will assign to the Successful Bidder in connection with the closing of the Sale and the cure amount, if any, with respect to each Assumed Contract.

4. As set forth in the Bidding Procedures Order, the hearing to approve the Sale will be held on [_____], 2011, at [_____] [].m. prevailing Eastern Time before the Honorable [_____], United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at: 824 North Market Street, [__]th Floor, Wilmington, Delaware 19801.

5. All documents filed with this Court in connection with these Chapter 11 Cases, including orders of this Court, are available for free on the website of the Court-appointed claims, noticing, soliciting and balloting agent in these Chapter 11 Cases, BMC Group, Inc., at www.bmcgroup.com/graceway, or can be requested by calling (888) 909-0100 from within the United States or +1 310 321 5555 from outside the United States.

Dated: _____, 2011
Wilmington, Delaware

Respectfully Submitted,

_____

Michael R. Nestor (No. 3526)
Kara Hammond Coyle (No. 4410)
YOUNG CONAWAY STARGATT & TAYLOR, LLP
1000 West Street, 17th Floor
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

-and-

David S. Heller
Josef S. Athanas
Matthew L. Warren
LATHAM & WATKINS LLP
Suite 5800
233 South Wacker Drive
Chicago, IL 60606
Telephone: (312) 876-7700
Facsimile: (312) 993-9767

PROPOSED ATTORNEYS FOR DEBTORS AND DEBTORS-IN-POSSESSION

EXHIBIT 1

ASSUMED CONTRACTS

EXHIBIT B

BILL OF SALE

This BILL OF SALE (this "Bill of Sale") is made as of [•], 2011, by and among **GALDERMA S.A.**, a Switzerland corporation ("Buyer"), and **GRACEWAY PHARMACEUTICALS, LLC**, a Delaware limited liability company, and its Subsidiaries set forth on Annex A to the Asset Purchase Agreement (as defined below) (collectively, "Sellers" and each individually a "Seller").

WHEREAS, Buyer and Sellers entered into that certain Asset Purchase Agreement, dated as of September [•], 2011 (the "Asset Purchase Agreement"); and

WHEREAS, pursuant to the Asset Purchase Agreement, Sellers have agreed to sell, convey, transfer, assign and deliver to Buyer all of the Acquired Assets, and Buyer has agreed to purchase the Acquired Assets from Sellers.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, it is hereby agreed that:

1. Definitions. Unless otherwise defined herein, all capitalized terms used in this Bill of Sale shall have the meanings set forth in the Asset Purchase Agreement.

2. Transfer of Assets. Effective as of the Closing Date, Sellers hereby sell, convey, transfer, assign and deliver to Buyer all of Sellers' right, title and interest in, to and under the tangible Acquired Assets, and Buyer hereby purchases such tangible Acquired Assets and accepts such conveyance, transfer, assignment and delivery; *provided, however*, that any Acquired Assets that are specifically assigned or transferred pursuant to any other Transaction Document shall not be assigned or transferred pursuant to this Section 2.

3. Subject to the Asset Purchase Agreement. This Bill of Sale is subject in all respects to the terms and conditions of the Asset Purchase Agreement, and all of the representations, warranties, covenants and agreements of Sellers and Buyer contained therein, all of which shall survive the execution and delivery of this Bill of Sale in accordance with the terms of the Asset Purchase Agreement. The Acquired Assets are being delivered for good and valuable consideration, pursuant to the terms and conditions contained in the Asset Purchase Agreement. Nothing contained herein shall supersede, amend, alter or modify (nor shall it be deemed or construed to supersede, amend, alter or modify) any of the terms or conditions of the Asset Purchase Agreement in any manner whatsoever. In the event of any conflict between the provisions of this Bill of Sale and the provisions of the Asset Purchase Agreement, the provisions of the Asset Purchase Agreement shall control and prevail.

4. Representations and Warranties. Except as set forth in the Asset Purchase Agreement, Sellers make no representations or warranties, express or implied, with respect to the Acquired Assets, and Sellers expressly disclaim any implied warranties.

5. Assignment. This Bill of Sale, and the rights, interests and obligations hereunder, shall not be assigned by any Party by operation of law or otherwise without the express written consent of the other Parties (which consent may be granted or withheld in the sole discretion of

such other Party); provided, however, that Buyer shall be permitted, upon prior notice to Sellers, to assign all or part of its rights or obligations hereunder to an Affiliate, but no such assignment shall relieve Buyer of its obligations under this Bill of Sale, and Sellers shall be permitted to assign all or part of their rights or obligations hereunder pursuant to a plan of reorganization or liquidation approved by the Bankruptcy Court.

6. Parties in Interest; No Third Party Beneficiaries. This Bill of Sale shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. This Bill of Sale is for the sole benefit of the Parties and their permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

7. Counterparts. This Bill of Sale and any amendment hereto may be executed in one or more counterparts, each of which shall be deemed to be an original of this Bill of Sale or such amendment and all of which, when taken together, shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Bill of Sale or any amendment hereto by telecopier, facsimile or email attachment shall be effective as delivery of a manually executed counterpart of this Bill of Sale or such amendment, as applicable.

8. Waiver. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Bill of Sale or the documents referred to in this Bill of Sale shall operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given, and (b) no notice to or demand on one Party shall be deemed to be a waiver of any right of the Party giving such notice or demand to take further action without notice or demand.

9. Entire Agreement; Amendment. This Bill of Sale and the other Transaction Documents supersede all prior agreements between Buyer, on the one hand, and Sellers, on the other hand, with respect to its subject matter and constitute a complete and exclusive statement of the terms of the agreements between Buyer, on the one hand, and Sellers, on the other hand, with respect to their subject matter. This Bill of Sale may not be amended except by a written agreement executed by all of the Parties.

10. Severability. The provisions of this Bill of Sale shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Bill of Sale, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Bill of Sale and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability.

11. Governing Law; Jurisdiction.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Bill of Sale shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to Contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of Delaware applicable hereto.

(b) Without limitation of any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Bill of Sale and to decide any claims or disputes which may arise or result from, or be connected with, this Bill of Sale, any breach or default hereunder, or the transactions contemplated hereby and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding; *provided, however,* that, if the Bankruptcy Case is closed, all Proceedings arising out of or relating to this Bill of Sale shall be heard and determined in a Delaware state court or a federal court sitting in the State of Delaware, and the Parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding. The Parties consent to service of process by mail (in accordance with Section 12.2 of the Asset Purchase Agreement) or any other manner permitted by law.

(c) THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS BILL OF SALE OR THE ACTIONS OF SELLERS OR BUYER OR THEIR RESPECTIVE REPRESENTATIVES IN THE NEGOTIATION OR PERFORMANCE HEREOF.

SIGNATURE PAGES FOLLOW

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

GRACEWAY PHARMACEUTICALS, LLC

By: _____
Name:
Title:

GRACEWAY CANADA HOLDINGS, INC.

By: _____
Name:
Title:

GRACEWAY INTERNATIONAL, INC.

By: _____
Name:
Title:

CHESTER VALLEY HOLDINGS, LLC

By: _____
Name:
Title:

CHESTER VALLEY PHARMACEUTICALS, LLC

By: _____
Name:
Title:

GALDERMA S.A.

By: _____
Name:
Title:

[Signature Page to Bill of Sale]

EXHIBIT C

BILL OF SALE

This BILL OF SALE (this "Bill of Sale") is made as of [•], 2011, by and among **GALDERMA S.A.**, a Switzerland corporation ("Buyer"), **GRACEWAY CANADA COMPANY**, a Nova Scotia unlimited liability company ("Canadian Seller"), and **RSM RICHTER INC.**, in its capacity as the Receiver of the Canadian Seller (the "Receiver") appointed in the Canadian Proceedings pursuant to the Receivership Order in order to carry out the terms of the Canadian Sale and Vesting Order and all other Orders received by the Canadian Seller in the Canadian Proceedings relating to the Asset Purchase Agreement (as defined below) and the transactions contemplated therein.

WHEREAS, Graceway Pharmaceuticals, LLC, its Subsidiaries set forth on Annex A to the Asset Purchase Agreement, Graceway Canada and Buyer entered into that certain Asset Purchase Agreement dated as of September [•], 2011 (the "Asset Purchase Agreement");

WHEREAS, pursuant to the Asset Purchase Agreement, Canadian Seller has agreed to sell, convey, transfer, assign and deliver to Buyer all of the Canadian Assets, and Buyer has agreed to purchase the Canadian Assets from Canadian Seller; and

WHEREAS, pursuant to the Canadian Sale and Vesting Order, the Receiver is authorized to conclude the transactions contemplated by the Asset Purchase Agreement on behalf of the Debtor, and the Receiver and the Debtor are thereby authorized to take such additional steps and to execute such additional documents as may be necessary or desirable for the conveyance of the Canadian Assets to the Buyer;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, it is hereby agreed that:

1. Definitions. Unless otherwise defined herein, all capitalized terms used in this Bill of Sale shall have the meanings set forth in the Asset Purchase Agreement.

2. Transfer of Assets. Effective as of the Closing Date, pursuant to the authority and powers granted in the Canadian Sale and Vesting Order, the Receiver hereby sells, conveys, transfers, assigns and delivers to Buyer all right, title and interest of Canadian Seller and Receiver in, to and under the Canadian Assets, including, without limitation, all Intellectual Property (as defined in the Asset Purchase Agreement) of the Canadian Seller, and Buyer hereby purchases such Canadian Assets and accepts such sale, conveyance, transfer, assignment and delivery; *provided, however*, that any Canadian Assets that are specifically assigned or transferred pursuant to any other Transaction Document shall not be assigned or transferred pursuant to this Section 2.

3. Subject to the Asset Purchase Agreement. This Bill of Sale is subject in all respects to the terms and conditions of the Asset Purchase Agreement, and all of the representations, warranties, covenants and agreements of Canadian Seller and Buyer contained therein, all of which shall survive the execution and delivery of this Bill of Sale in accordance with the terms of the Asset Purchase Agreement. The Canadian Assets are being delivered for

good and valuable consideration, pursuant to the terms and conditions contained in the Asset Purchase Agreement and pursuant to the powers granted to the Receiver pursuant to the Canadian Orders. Nothing contained herein shall supersede, amend, alter or modify (nor shall it be deemed or construed to supersede, amend, alter or modify) any of the terms or conditions of the Asset Purchase Agreement in any manner whatsoever. In the event of any conflict between the provisions of this Bill of Sale and the provisions of the Asset Purchase Agreement, the provisions of the Asset Purchase Agreement shall control and prevail.

4. Representations and Warranties. Except as set forth in the Asset Purchase Agreement and this Bill of Sale, in respect of Canadian Seller, neither of Canadian Seller nor the Receiver makes any representations or warranties, express or implied, with respect to the Acquired Assets, and each of Canadian Seller and the Receiver expressly disclaims any implied warranties. For greater certainty, nothing in this Bill of Sale or in the Asset Purchase Agreement or similar document shall create any liability for the Receiver. The Receiver represents and warrants to the Buyer that (a) the Receiver is a court-appointed receiver of the Canadian Seller and, pursuant to the Canadian Sale and Vesting Order, has the power, authority and capacity to enter into this Bill of Sale and to complete the Transaction related to the Canadian Assets as contemplated by the Asset Purchase Agreement; (b) the Receiver has not created any encumbrance on the Canadian Assets, other than the Receiver's Charge as contemplated in the Receivership Order; and (c) the Receiver is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada).

5. Parties in Interest; No Third Party Beneficiaries. This Bill of Sale shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. This Bill of Sale is for the sole benefit of the Parties and their permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

6. Counterparts. This Bill of Sale and any amendment hereto may be executed in one or more counterparts, each of which shall be deemed to be an original of this Bill of Sale or such amendment and all of which, when taken together, shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Bill of Sale or any amendment hereto by telecopier, facsimile or email attachment shall be effective as delivery of a manually executed counterpart of this Bill of Sale or such amendment, as applicable.

7. Waiver. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Bill of Sale or the documents referred to in this Bill of Sale shall operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given, and (b) no notice to or demand on one Party shall be deemed to be a waiver of any right of the Party giving such notice or demand to take further action without notice or demand.

8. Entire Agreement; Amendment. Subject to Section 3 of this Bill of Sale, this Bill of Sale and the other Transaction Documents supersede all prior agreements between Buyer, on the one hand, and Canadian Seller, on the other hand, with respect to its subject matter and constitute a complete and exclusive statement of the terms of the agreements between Buyer, on the one hand, and Canadian Seller, on the other hand, with respect to their subject matter. This Bill of Sale may not be amended except by a written agreement executed by all of the Parties.

9. Severability. The provisions of this Bill of Sale shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Bill of Sale, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Bill of Sale and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability.

10. Governing Law; Jurisdiction.

(a) This Bill of Sale is to be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

(b) Without limitation of any Party's right to appeal any Canadian Order of the Canadian Court, (i) the Canadian Court shall retain exclusive jurisdiction to enforce the terms of this Bill of Sale and to decide any claims or disputes which may arise or result from, or be connected with, this Bill of Sale, any breach or default hereunder, or the transactions contemplated hereby and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Canadian Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Canadian Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding. The Parties consent to service of process (in accordance with Section 12.2 of the Asset Purchase Agreement) or any other manner permitted by law.

SIGNATURE PAGE FOLLOWS

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

GRACEWAY CANADA COMPANY

By: _____
Name:
Title:

RSM RICHTER INC., in its capacity as the Receiver of Graceway Canada Company, and not in its personal capacity

By: _____
Name:
Title:

GALDERMA S.A.

By: _____
Name:
Title:

EXHIBIT D

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
GRACEWAY PHARMACEUTICALS, LLC, *et al.*,[1]	Case No. 11-_____ (____)
	Joint Administration Requested
Debtors.	Related Docket No. [__]

ORDER AUTHORIZING (A) THE SALE OF CERTAIN ASSETS OF THE DEBTORS FREE AND CLEAR OF ALL CLAIMS, LIENS, LIABILITIES, RIGHTS, INTERESTS AND ENCUMBRANCES; (B) THE DEBTORS TO ENTER INTO AND PERFORM THEIR OBLIGATIONS UNDER THE ASSET PURCHASE AGREEMENT; (C) THE DEBTORS TO ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (D) GRANTING RELATED RELIEF

Upon the portion of the motion (the "**Motion**")[2] of Graceway Holdings, LLC and the other above-captioned debtors, as debtors and debtors-in-possession (collectively, the "**Debtors**") for entry of orders, pursuant to sections 105(a), 363, 365, 503 and 507 of the United States Bankruptcy Code (the "**Bankruptcy Code**"), and Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") authorizing and approving the following:

(i) the sale of certain assets of the Debtors;

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1 The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).

2 Unless indicated otherwise, capitalized terms used but not defined herein have the meanings ascribed to them in the APA (as defined below).

(ii) the entry into, performance under and terms and conditions of the Asset Purchase Agreement dated as of September [__], 2011 (collectively with all related agreements, amendments, documents or instruments and all exhibits, schedules and addenda to any of the foregoing, the "**APA**"), substantially in the form attached hereto as **Exhibit A**, whereby the Debtors have agreed to sell, and Galderma S.A. ("**Buyer**") has agreed to buy, certain of the Debtors' assets (specifically as set forth and defined in the APA, the "**Acquired Assets**"), free and clear of all Claims (as defined below), Liens (defined below), liabilities, rights, interests, setoff rights and encumbrances except where the Debtors have agreed to transfer and Buyer has expressly agreed to assume certain of the Debtors' liabilities (specifically as set forth and defined in the APA, the "**Assumed Liabilities**") (collectively, and including all actions taken or required to be taken in connection with the implementation and consummation of the APA, the "**Transactions**");

(iii) the assumption and assignment to Buyer or an Affiliate (as defined in the APA) of Buyer of certain executory contracts and unexpired leases of the Debtors designated for assumption and assignment as Assigned Agreements in accordance with this Order, the Bidding Procedures Order (defined below) and the APA (collectively the "**Assigned Agreements**"); and

(iv) other related relief;

and the Court having entered an order approving the bidding procedures and granting certain related relief on [_____], 2011 [Docket No. _____] (the "**Bidding Procedures Order**"); an auction having been conducted in accordance with the Bidding Procedures Order (the "**Auction**") and Buyer having submitted the highest and best offer; and the Court having conducted a hearing on the Motion commencing on [_____], 2011 (the "**Sale Hearing**") at which time all interested parties were offered an opportunity to be heard with respect to the Motion; and the Court having reviewed and considered the Motion, the APA, the Bidding Procedures Order, the record of the hearing before the Court on [_____] (the "**Bidding Procedures Hearing**") at which the Bidding Procedures Order was approved, and all objections to the Transactions and the APA filed in accordance with the Bidding Procedures Order; and the appearance of all interested parties and all responses and objections to the Sale Motion having been duly noted in the record of the Sale Hearing; and upon the record of the Sale Hearing, and

having heard statements of counsel and the evidence presented in support of the relief requested in the Motion at the Sale Hearing; and upon all of the proceedings had before the Court, and all objections and responses to the relief requested in the Motion having been heard and overruled, continued or resolved on the terms set forth in this Order, and it appearing that due notice of the Motion, the APA, the Bidding Procedures Order and the Auction having been provided; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their stakeholders and all other parties-in-interest; and it appearing that the Court has jurisdiction over this matter; and it further appearing that the legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein; and after due deliberation thereon,

THE COURT EXPRESSLY FINDS AS FOLLOWS:[3]

Jurisdiction, Venue and Final Order

A. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h), 6006(d) and 7062, and to the extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of this Order as set forth herein.

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3 All findings of fact and conclusions of law announced by the Bankruptcy Court at the Sale Hearing in relation to the Sale Motion are hereby incorporated to the extent not inconsistent herewith.

Notice of the Transactions, APA, Sale Hearing, Auction and the Cure Costs

C. As evidenced by the affidavits of service and publication previously filed with this Court, proper, timely, adequate and sufficient notice of the Motion, the Auction, the Sale Hearing, the APA and the Transactions has been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9014. The Debtors have complied with all obligations to provide notice of the Motion, the Auction, the Sale Hearing, the APA and the Transactions as required by the Bidding Procedures Order. The aforementioned notices are good, sufficient and appropriate under the circumstances, and no other or further notice of the Motion, the Auction, the Sale Hearing, the APA or the Transactions is required for the entry of this Order.

D. A reasonable opportunity to object or to be heard regarding the relief requested in the Motion was afforded to all interested persons and entities.

E. In accordance with the Bidding Procedures Order, the Debtors have served a notice (as amended, modified or otherwise supplemented from time to time, the "**Contract Notice**") of the potential assumption and assignment of the Assigned Agreements and of the Cure Costs upon each non-Debtor counterparty to an Assigned Agreement. The service and provision of the Contract Notice was good, sufficient and appropriate under the circumstances and no further notice need be given in respect of assumption and assignment of the Assigned Agreements or establishing a Cure Cost for the respective Assigned Agreements. Non-Debtor counterparties to the Assigned Agreements have had an adequate opportunity to object to assumption and assignment of the applicable Assigned Agreements and the Cure Cost set forth in the Contract Notice (including objections related to the adequate assurance of future performance and objections based on whether applicable law excuses the non-Debtor counterparty from accepting performance by, or rendering performance to, Buyer for purposes of section 365(c)(1)

of the Bankruptcy Code). The deadline to file an objection to the assumption and assignment to Buyer of any Assigned Agreement (a "**Contract Objection**") has expired and to the extent any such party timely filed a Contract Objection, all such Contract Objections have been resolved, withdrawn, overruled, or continued to a later hearing by agreement of the parties. To the extent that any such party did not timely file a Contract Objection by the Contract Objection deadline, such party shall be deemed to have consented to (i) the assumption and assignment of the Assigned Agreement, and (ii) the proposed Cure Cost set forth on the Contract Notice.

Highest or Otherwise Best Offer

F. As demonstrated by the evidence proffered or adduced at the Sale Hearing and the representations of counsel made on the record at the Sale Hearing, the Debtors have otherwise complied in all respects with, the Bidding Procedures Order. The Auction was duly noticed and conducted in a noncollusive, fair and good faith manner and the Auction process set forth in the Bidding Procedures Order afforded a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase all of the Acquired Assets and assume all of the Assumed Liabilities.

G. The Acquired Assets were adequately marketed by the Debtors, and the consideration provided by Buyer under the APA constitutes the highest and best offer and provides fair and reasonable consideration to the Debtors for the sale of all Acquired Assets and the assumption of all Assumed Liabilities. The consideration provided by Buyer under the APA will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the consideration provided by Buyer under the APA constitutes the highest and best offer for the Acquired Assets constitutes a valid and sound exercise of the Debtors' business judgment.

H. Approval of the Motion and the APA and the consummation of the Transactions contemplated thereby are in the best interests of the Debtors, their respective creditors, estates and other parties in interest. The Debtors have demonstrated good, sufficient and sound business reasons and justifications for entering into the Transactions and the performance of their obligations under the APA.

I. Entry of an order approving the APA and all the provisions thereof is a necessary condition precedent to Buyer's consummation of the Transactions.

J. The APA was not entered into, and none of the Debtors or Buyer has entered into the APA or propose to consummate the Transactions, for the purpose of hindering, delaying or defrauding the Debtors' present or future creditors. None of the Debtors or Buyer is entering into the APA, or proposing to consummate the Transactions, fraudulently, for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

K. The offer of Buyer, upon the terms and conditions set forth in the APA, including the form and total consideration to be realized by the Debtors pursuant to the APA: (i) is the highest and best offer received by the Debtors; (ii) is fair and reasonable; (iii) is in the best interests of the Debtors' creditors and estates and (iv) constitutes fair value, fair, full and adequate consideration, reasonably equivalent value and reasonable market value for the Acquired Assets.

L. Buyer is the Successful Bidder for the Acquired Assets in accordance with the Bidding Procedures Order. Buyer has complied in all respects with the Bidding Procedures

Order and any other applicable order of this Court in negotiating and entering into the APA, and the sale and the APA likewise comply with the Bidding Procedures Order and any other applicable order of this Court.

Good Faith of Debtors and Buyer

M. The sales process conducted by the Debtors, including without limitation, the Bidding Procedures set forth in the Bidding Procedures Order, was at arms' length, non-collusive, in good faith, and substantively and procedurally fair to all parties.

N. The Debtors, Buyer and their respective professionals have complied, in good faith, in all respects with the Bidding Procedures Order. As demonstrated by (i) any testimony and other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, substantial marketing efforts and a competitive sale process were conducted in accordance with the Bidding Procedures Order, the Debtors (a) afforded all creditors and other parties in interest and all potential purchasers a full, fair and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase the Acquired Assets, (b) provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Acquired Assets, and (c) considered any bids submitted on or before the Bid Deadline (as defined in the Bidding Procedures).

O. The APA and the Transactions contemplated thereunder were proposed, negotiated and entered into by and among the Debtors and Buyer without collusion, in good faith and at arms' length. None of the Debtors or Buyer has engaged in any conduct that would cause or permit the APA or the Transactions to be avoided under section 363(n) of the Bankruptcy Code.

P. Neither Buyer nor any of its affiliates, present or contemplated members, officers, directors, shareholders or any of their respective successors and assigns is an "insider" of any of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code. Buyer is entering into the Transactions in good faith and is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to the full protection of that provision, and otherwise has proceeded in good faith in all respects in connection with this proceeding. Neither the Debtors nor Buyer have engaged in any action or inaction that would cause or permit the APA to be avoided or impose any costs or damages under section 363(n) of the Bankruptcy Code.

Section 363 Is Satisfied

Q. The Debtors have demonstrated a sufficient basis and compelling circumstances requiring them to (i) enter into the APA, and (ii) sell the Acquired Assets and assume and assign the Assigned Agreements and such actions are appropriate exercises of the Debtors' business judgment and in the best interests of the Debtors, their estates and their creditors. Such business reasons include, but are not limited to, the fact that (i) the APA constitutes the highest and best offer for the Acquired Assets; (ii) the APA presents the best opportunity to realize the value of the Debtors; and (iii) unless the sale is concluded expeditiously as provided for in the Motion and pursuant to the APA, recoveries of creditors may be diminished.

R. The Debtors have, to the extent necessary, satisfied the requirements of Bankruptcy Code section 363(b)(1). Accordingly, appointment of a consumer privacy ombudsman pursuant to Bankruptcy Code sections 363(b)(1) or 332 is not required with respect to the relief requested in the Motion.

S. The Acquired Assets constitute property of the Debtors' estates and title thereto is presently vested in the Debtors' estates within the meaning of Bankruptcy Code section 541(a).

T. The sale of all Acquired Assets to Buyer under the terms of the APA meets the applicable provisions of section 363(f) of the Bankruptcy Code such that the sale of the Acquired Assets will be free and clear of any and all Claims, and except as expressly provided in the APA with respect to the Assumed Liabilities, the (i) transfer of the Acquired Assets to Buyer and (ii) assumption and/or assignment to Buyer or an Affiliate of Buyer of the Assigned Agreements and Assumed Liabilities will be free and clear of all Claims and will not subject Buyer or any of Buyer's assets to any liability for any Claims whatsoever (including, without limitation, under any theory of equitable law, antitrust, setoff, or successor or transferee liability). All holders of Claims who did not object, or withdrew their objections to the Transactions, are deemed to have consented to the Transactions pursuant to section 363(f)(2) of the Bankruptcy Code, and all holders of Claims are adequately protected — thus satisfying section 363(e) of the Bankruptcy Code — by having their Claims, if any, attach to the proceeds of the Transactions ultimately attributable to the property against or in which they assert a Claim or other specifically dedicated funds, in the same order of priority and with the same validity, force and effect that such Claim holder had prior to the Transactions, subject to any rights, claims and defenses of the Debtors or their estates, as applicable, or as otherwise provided herein; provided, however, that setoff rights will be extinguished to the extent there is no longer mutuality after the consummation of the Transactions.

U. Buyer would not have entered into the APA and would not consummate the sale of all Acquired Assets, thus adversely affecting the Debtors, their estates, creditors, employees and other parties in interest, if the sale of the Acquired Assets was not free and clear of all Claims or if Buyer would, or in the future could, be liable for any Claims, including, without limitation and as applicable, certain liabilities that expressly are not assumed by Buyer as set

forth in the APA or in this Order. Buyer asserts that it will not consummate the Transactions unless the APA specifically provides, and this Court specifically orders, that none of Buyer, its assets or the Acquired Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any (i) Claim or (ii) any successor or transferee liability for any of the Debtors other than the Assumed Liabilities.

V. The transfer of the Acquired Assets to Buyer under the APA will be a legal, valid and effective transfer of all of the legal, equitable and beneficial right, title and interest in and to the Acquired Assets free and clear of all Claims. The Debtors may sell their interests in the Acquired Assets free and clear of all Claims because, in each case, one or more of the standards set forth in section 363(f) of the Bankruptcy Code has been satisfied. The transfer of the Acquired Assets to Buyer will vest Buyer with good and marketable title to the Acquired Assets.

W. Buyer is not a successor to the Debtors or their respective estates by reason of any theory of law or equity and Buyer shall not assume or in any way be responsible for any liability or obligation of any of the Debtors or their respective estates, except as otherwise expressly provided in the APA or this Sale Order. Buyer is not a continuation of the Debtors or their respective estates and there is no continuity between Buyer and the Debtors. Buyer is not holding itself out to the public as a continuation of the Debtors or their respective estates and the Transactions do not amount to a consolidation, merger or *de facto* merger of Buyer and the Debtors.

X. There is no legal or equitable reason to delay the Transactions. The Transactions must be approved and consummated promptly in order to preserve the value of the Debtors' assets.

Y. The Debtors have demonstrated both (i) good, sufficient and sound business purposes and justifications and (ii) compelling circumstances for the Transactions pursuant to section 363(b) of the Bankruptcy Code prior to, and outside of, a plan of reorganization in that, among other things, absent the immediate consummation of the Transactions, the value of the Debtors' assets will be harmed. To maximize the value of the Purchased Assets, it is essential that the Transactions occur within the timeframe set forth in the APA. Time is of the essence in consummating the Transactions.

Z. The sale and assignment of the Acquired Assets outside of a plan of reorganization pursuant to the APA neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan for the Debtors. Neither the APA nor the transactions contemplated thereby constitute a sub rosa chapter 11 plan.

Assumption and Assignment of the Assigned Agreements

AA. The assumption and assignment of the Assigned Agreements (as such Assigned Agreements may be amended, supplemented or otherwise modified prior to assumption and assignment without further order of the Court with the consent of the Debtors, the contract counterparty and Buyer) that are designated for assumption and assignment pursuant to the terms of this Order and the APA are integral to the APA, are in the best interests of the Debtors and their respective estates, creditors and other parties in interest, and represent the reasonable exercise of sound and prudent business judgment by the Debtors.

BB. No section of any Assigned Agreement which purports to prohibit, restrict, or condition the use, consideration or assignment of any such Assigned Agreement in connection with the Transactions shall have any force or effect.

CC. The Debtors have met all requirements of section 365(b) of the Bankruptcy Code for each of the Assigned Agreements. The Debtors (and, in certain cases, Buyer, as applicable under the APA) have (a) cured and/or provided adequate assurance of cure of any default existing prior to the Closing under all of the Assigned Agreements, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code; and (b) provided compensation or adequate assurance of compensation to any counterparty for actual pecuniary loss to such party resulting from a default prior to the Closing under any of the Assigned Agreements, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. Each of the Assigned Agreements is free and clear of all Claims against Buyer.

DD. Buyer has demonstrated adequate assurance of its future performance under the relevant Assigned Agreements within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code. Pursuant to section 365(f) of the Bankruptcy Code, the Assigned Agreements to be assumed and assigned under the APA shall be assigned and transferred to, and remain in full force and effect for the benefit of, Buyer notwithstanding any provision in the contracts or other restrictions prohibiting their assignment or transfer.

EE. No defaults exist in the Debtors' performance under the Assigned Agreements as of the date of this Sale Order other than the failure to pay amounts equal to the Cure Costs or defaults that are not required to be cured as contemplated in section 365(b)(1)(A) of the Bankruptcy Code.

THEREFORE, IT IS HEREBY ORDERED THAT:

General Provisions

2. The Motion is granted in its entirety and approved in all respects.

3. All objections to the Motion or the relief requested therein that have not been withdrawn, waived or settled as announced to the Court at the Sale Hearing or by stipulation

filed with the Court or as resolved in this Order, and all reservations of rights included therein, are hereby overruled on the merits with prejudice. All persons and entities given notice of the Motion that failed to timely object thereto are deemed to consent to the relief sought therein including without limitation all non-Debtor parties to the Assigned Agreements.

4. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Approval of the APA

5. The APA, all of the terms and conditions thereof, and all of the Transactions contemplated therein are approved in all respects. The failure specifically to include any particular provision of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the APA be authorized and approved in its entirety. The transfer of the Acquired Assets by the Debtors to Buyer shall be a legal, valid and effective transfer of the Acquired Assets. The consummation of the Transactions is hereby approved and authorized under section 363(b) of the Bankruptcy Code.

6. The Debtors are authorized to (a) take any and all actions necessary or appropriate to perform, consummate, implement and close the Transactions, including the sale to Buyer of all Acquired Assets, in accordance with the terms and conditions set forth in the APA and this Order, including without limitation executing, acknowledging and delivering such deeds, assignments, conveyances and other assurance, documents and instruments of transfer and taking any action for purposes of assigning, transferring, granting, conveying, and confirming to Buyer, or reducing to possession, any or all of the Acquired Assets and (b) to assume and assign any and

all Assigned Agreements. The Debtors are further authorized to pay, without further order of this Court, whether before, at or after the Closing, any expenses or costs that are required to be paid in order to consummate the Transactions or perform their obligations under the APA. [Except for the Break Up Fee (as defined in the APA), which is only payable out of the proceeds of an Alternative Transaction (as defined in the APA), any amounts, including the Expense Reimbursement Amount, that become payable by the Debtors to Buyer pursuant to the APA, (and related agreements executed in connection therewith) shall constitute administrative expenses of the Debtors' estates under sections 503(b) and 507(a)(l) of the Bankruptcy Code (to the extent set forth in the Bidding Procedures Order, the APA and such related agreements) and shall be treated with such priority if the above-captioned bankruptcy cases convert to cases under chapter 7 of the Bankruptcy Code.][4]

7. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with, or which would be inconsistent with, the ability of the Debtors to transfer the Acquired Assets to Buyer in accordance with the APA and this Order.

Sale and Transfer Free and Clear of Claims

8. Except as otherwise expressly provided in the APA and the terms of this Order with respect to Assumed Liabilities, the Acquired Assets shall be sold free and clear of all claims, Liens, liabilities, interests, rights and encumbrances, including, without limitation, the following: all mortgages, restrictions (including, without limitation, any restriction on the use, voting rights, transfer rights, claims for receipt of income or other exercise of any attributes of ownership), hypothecations, charges, indentures, loan agreements, instruments, leases, licenses,

[4] Note to draft: to be revised after determination of Successful Bidder.

options, deeds of trust, security interests, equity interests, conditional sale rights or other title retention agreements, pledges, judgments, demands, rights of first refusal, consent rights, offsets, contract rights, rights of setoff, recoupment rights, rights of recovery, reimbursement rights, contribution claims, indemnity rights, exoneration rights, product liability claims, alter-ego claims, environmental rights and claims (including, without limitation, toxic tort claims), labor rights and claims, employment rights and claims, pension rights and claims, tax claims, regulatory violations by any governmental entity, decrees of any court or foreign or domestic governmental entity, charges of any kind or nature, debts arising in any way in connection with any agreements, acts, or failures to act, reclamation claims, obligation claims, demands, guaranties, option rights or claims, rights, contractual or other commitment rights and claims, rights of licensees or sublicensees under section 365(n) of the Bankruptcy Code or any similar statute, and all other matters of any kind and nature, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of this Bankruptcy Case (but, for the avoidance of doubt, in each case arising from the ownership of the Acquired Assets or the operation of the Business prior to the Closing Date), and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under any theory, law or doctrine of successor liability or related theories (all of the foregoing collectively being referred to in this Order as "**Claims**", and, as used in this Order, the term Claims includes, without limitation, any and all "claims" as that term is defined and used in the Bankruptcy Code, including section 101(5) thereof), with all such Claims to attach to the proceeds of the

Transactions to be received by the Debtors with the same validity, force, priority and effect which they now have as against the Acquired Assets and subject to any claims and defenses the Debtors or other parties may possess with respect thereto; provided, however, that setoff rights will be extinguished to the extent there is no longer mutuality after the consummation of the Transactions. As used in this Order, the term "**Liens**" includes, without limitation, any statutory lien on real and personal property and any and all "liens" as that term is defined and used in the Bankruptcy Code, including section 101(37) thereof.

9. At Closing, all of the Debtors' right, title and interest in and to, and possession of, the Acquired Assets shall be immediately vested in Buyer pursuant to sections 105(a), 363(b), 363(f) and 365 of the Bankruptcy Code free and clear of any and all Claims except for Assumed Liabilities. Such transfer shall constitute a legal, valid, binding and effective transfer of such Acquired Assets. All person or entities, presently or on or after the Closing, in possession of some or all of the Acquired Assets are directed to surrender possession of the Acquired Assets to Buyer or its designees on the Closing or at such time thereafter as Buyer may request.

10. This Order (a) shall be effective as a determination that, as of the Closing, (i) no Claims (other than Assumed Liabilities) will be capable of being asserted against Buyer or any of its assets (including the Acquired Assets), (ii) the Acquired Assets shall have been transferred to Buyer free and clear of all Claims and (iii) the conveyances described herein have been effected; and (b) is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of

law, the duties of their office or contract, to accept, file, register or otherwise record or release any documents or instruments; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA. The Acquired Assets are sold free and clear of any reclamation rights.

11. Except as otherwise expressly provided in the APA with respect to the Assumed Liabilities, all persons and entities (and their respective successors and assigns), including, but not limited to, all debt security holders, equity security holders, affiliates, governmental, tax and regulatory authorities, lenders, customers, vendors, employees, trade creditors, litigation claimants and other creditors holding Claims arising under or out of, in connection with, or in any way relating to, the Debtors, the Acquired Assets, the ownership, sale or operation of the Acquired Assets and the Business prior to Closing or the transfer of the Acquired Assets to Buyer, are hereby forever barred, estopped and permanently enjoined from asserting such Claims against Buyer, its successors or assigns, their property or the Acquired Assets. Following the Closing, no holder of any Claim shall interfere with Buyer's title to or use and enjoyment of the Acquired Assets based on or related to any such Claim, or based on any action the Debtors may take in their Chapter 11 cases.

12. If any person or entity that has filed financing statements, mortgages, mechanic's Claims, *lis pendens* or other documents or agreements evidencing Claims against or in the Acquired Assets shall not have delivered to the Debtors prior to the Closing of the Transactions, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Claims that the person or entity has with respect to the Acquired Assets or otherwise, then only with regard to the Acquired Assets that are purchased by

Buyer pursuant to the APA and this Order (a) the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Acquired Assets and (b) Buyer is hereby authorized to file, register or otherwise record a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Claims against Buyer and the applicable Acquired Assets; and (c) Buyer may seek in this Court or any other court to compel appropriate parties to execute termination statements, instruments of satisfaction, and releases of all Claims with respect to the Acquired Assets other than Assumed Liabilities. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department or office. Notwithstanding the foregoing, the provisions of this Order authorizing the sale and assignment of the Acquired Assets free and clear of Claims shall be self-executing, and none of the Debtors nor Buyer shall be required to execute or file releases, termination statements, assignments, consents or other instruments in order to effectuate, consummate and implement the provisions of this Order.

13. To the maximum extent permitted under applicable law, Buyer shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtors with respect to the Acquired Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to Buyer as of the Closing Date.

14. To the extent permitted by Bankruptcy Code section 525, no governmental unit may revoke or suspend any permit or license relating to the operation of the Acquired Assets

sold, transferred, assigned or conveyed to Buyer on account of the filing or pendency of these chapter 11 cases or the consummation of the Transactions.

No Successor or Transferee Liability

15. Buyer shall not be deemed, as a result of any action taken in connection with the APA, the consummation of the Transactions contemplated by the APA, or the transfer or operation of the Acquired Assets to (a) be a legal successor, or otherwise be deemed a successor to the Debtors (other than, for Buyer, with respect to any obligations as an assignee under the Assigned Agreements arising after the Closing); (b) have, *de facto* or otherwise, merged with or into the Debtors; or (c) be an alter ego or a mere continuation or substantial continuation of the Debtors including, without limitation, within the meaning of any foreign, federal, state or local revenue law, pension law, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act ("**COBRA**"), WARN (defined below), CERCLA (defined below), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended), the National Labor Relations Act, 29 U.S.C. § 151, *et seq.* (the "**NLRA**"), environmental liabilities, debts, claims or obligations arising from conditions first existing on or prior to Closing (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including, without limitation, under CERCLA, any liabilities, debts or obligations of or required to be paid by the Debtors for any taxes of any kind for any period, labor, employment, or other law, rule or regulation (including without limitation filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine.

16. Other than as expressly set forth in the APA with respect to Assumed Liabilities, Buyer shall not have any responsibility for (a) any liability or other obligation of the Debtors or related to the Acquired Assets or (b) any remaining Claims against the Debtors or any of their predecessors or affiliates. Buyer shall have no liability whatsoever with respect to the Debtors' (or their predecessors' or affiliates') respective businesses or operations or any of the Debtors' (or their predecessors' or affiliates') obligations (as described herein, "**Successor or Transferee Liability**") based, in whole or part, directly or indirectly, on any theory of successor or vicarious liability of any kind or character, or based upon any theory of antitrust, environmental, successor or transferee liability, *de facto* merger or substantial continuity, labor and employment or products liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Acquired Assets prior to the Closing. Buyer shall have no liability or obligation under the WARN Act (29 U.S.C. §§ 2101 et seq.) ("**WARN**") or the Comprehensive Environmental Response Compensation and Liability Act ("**CERCLA**"), or any foreign, federal, state or local labor, employment, or environmental law whether of similar import or otherwise by virtue of Buyer's purchase of the Acquired Assets or assumption of the Assumed Liabilities by Buyer or an Affiliate of Buyer.

17. Nothing in this Order or the APA shall require Buyer to (a) continue or maintain in effect, or assume any liability in respect of any employee, collective bargaining agreement, pension, welfare, fringe benefit or any other benefit plan, trust arrangement or other agreements to which the Debtors are a party or have any responsibility therefor including, without limitation, medical, welfare and pension benefits payable after retirement or other termination of

employment; or (b) assume any responsibility as a fiduciary, plan sponsor or otherwise, for making any contribution to, or in respect of the funding, investment or administration of any employee benefit plan, arrangement or agreement (including but not limited to pension plans) or the termination of any such plan, arrangement or agreement.

18. Effective upon the Closing, all persons and entities are forever prohibited and enjoined from commencing or continuing in any matter any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against Buyer, or its assets (including the Acquired Assets), with respect to any (a) Claim or (b) Successor or Transferee Liability including, without limitation, the following actions with respect to clauses (a) and (b): (i) commencing or continuing any action or other proceeding pending or threatened; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (iii) creating, perfecting or enforcing any lien, claim, interest or encumbrance; (iv) asserting any setoff, right of subrogation or recoupment of any kind; (v) commencing or continuing any action, in any manner or place, that does not comply with, or is inconsistent with, the provisions of this Sale Order or other orders of this Court, or the agreements or actions contemplated or taken in respect hereof; or (vi) revoking, terminating or failing or refusing to renew any license, permit or authorization to operate any of the Acquired Assets or conduct any of the businesses operated with such assets.

Good Faith of Buyer

19. The Transactions contemplated by the APA are undertaken by Buyer without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the sale shall not affect the validity of the Transactions (including the assumption and assignment of the Assigned Agreements), unless such authorization and consummation of

the sale are duly and properly stayed pending such appeal. Buyer is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

20. Neither the Debtors nor Buyer have engaged in any action or inaction that would cause or permit the Transactions to be avoided or costs or damages to be imposed under section 363(n) of the Bankruptcy Code. The consideration provided by Buyer for the Acquired Assets under the APA is fair and reasonable and the Transactions may not be avoided under section 363(n) of the Bankruptcy Code.

21. Buyer is not an "insider" as that term is defined in section 101(31) of the Bankruptcy Code.

Assumption and Assignment of Assigned Agreements

22. The Debtors are authorized and directed at to assume and assign each of the Assigned Agreements upon the Closing of the Transactions, free and clear of all Claims. The payment of the applicable Cure Costs by the Debtors (or, in certain cases, Buyer, as applicable under the APA) shall (a) effect a cure of all defaults existing thereunder as of the Closing Date, (b) compensate for any actual pecuniary loss to such non-Debtor counterparty resulting from such default, and (c) together with the assumption of the Assigned Agreements by the Debtors and the assignment of the Assigned Agreements to Buyer or an Affiliate of Buyer, constitute adequate assurance of future performance thereof.

23. Any provisions in any Assigned Agreement that prohibit or condition the assignment of such Assigned Agreement or allow the counterparty to such Assigned Agreement to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Assigned Agreement, constitute unenforceable anti-assignment provisions that are void and of no force and effect. All other requirements and

conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to Buyer or an Affiliate of Buyer of the Assigned Agreements have been satisfied. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, Buyer shall be fully and irrevocably vested with all right, title and interest of the Debtors under the Assigned Agreements, and such Assigned Agreements shall remain in full force and effect for the benefit of Buyer. Each non-Debtor counterparty to the Assigned Agreements shall be forever barred, estopped, and permanently enjoined from (a) asserting against the Debtors or Buyer or their respective property any assignment fee, acceleration, default, breach or claim or pecuniary loss, or condition to assignment existing, arising or accruing as of the Closing Date or arising by reason of the Closing, including any breach related to or arising out of change-in-control in such Assigned Agreements, or any purported written or oral modification to the Assigned Agreements and (b) asserting against Buyer (or its property, including the Acquired Assets) any claim, counterclaim, defense, breach, condition, setoff asserted or capable of being asserted against the Debtors existing as of the Closing Date or arising by reason of the Closing except for the Assumed Liabilities.

24. Upon the Closing and the payment of the relevant Cure Costs, Buyer shall be deemed to be substituted for the Debtors as a party to the applicable Assigned Agreements and the Debtors shall be released, pursuant to section 365(k) of the Bankruptcy Code, from any liability under the Assigned Agreements. There shall be no assignment fees, increases or any other fees charged to Buyer or the Debtors as a result of the assumption and assignment of the Assigned Agreements.

25. Each non-Debtor party to an Assigned Agreement is forever barred, estopped and permanently enjoined from asserting against Buyer, or its property (including without limitation

the Acquired Assets), any default existing as of the date of the Sale Hearing, or any counterclaim, defense, setoff or other claim asserted or capable of being asserted against the Debtors. Other than the Assigned Agreements, Buyer assumed none of the Debtors' other contracts or leases and shall have no liability whatsoever thereunder.

26. The assignments of each of the Assigned Agreements are made in good faith under sections 363(b) and (m) of the Bankruptcy Code.

Other Provisions

27. In connection with the Closing of the Transactions, the Cash Consideration from the Sale[, less the Break Up Fee paid to Buyer pursuant to the terms of the APA (the "**Net Cash Consideration**")][5], shall be paid directly by the Successful Bidder to the First Lien Agent (as defined in the *Interim Order (I) Authorizing Debtors to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to the Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364; (III) Authorizing Debtors to Obtain Postpetition Financing Pursuant to 11 U.S.C. § 364 and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(B)* [Docket No. ___], entered on _____, 2011, and the *Final Order (I) Authorizing Debtors to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to the Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364 and (III) Authorizing Debtors to Obtain Postpetition Financing Pursuant to 11 U.S.C. § 364* [Docket No. ____], entered on ____, 2011, and any amendments to each of the foregoing (collectively, the "**DIP Order**")) on the Closing Date for distribution to the First Lien Claimholders (as defined in the DIP Order), except that:

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[5] NTD: This provision will be included/excluded after the Successful Bidder is determined.

(i) $[•] shall be funded into a segregated escrow account to pay the applicable Debtors' Cure Costs in accordance with the APA (the "**Cure Account**");

(ii) $[•] (the "**Canadian Cash Consideration**"), constituting the portion of the [Net][6] Cash Consideration allocated by the Bankruptcy Court to the Acquired Assets of Graceway Canada Company ("**Graceway Canada**") less any Cure Costs required to be paid by Graceway Canada in accordance with the APA, shall be paid directly to the Receiver from Graceway Canada's payment of its creditors and equity holders in accordance with applicable law;

(iii) the sum of the outstanding principal amount and all capitalized or accrued interest thereon under the $6,000,000 postpetition intercompany term loans authorized pursuant to the DIP Order from Graceway Canada to Graceway Pharmaceuticals, LLC (the "**Intercompany Loan Balance**") shall be paid to Graceway Canada;

(iv) solely to pay the Sale Transaction Fee due and owing to Lazard Freres & Co. LLC ("**Lazard**") as defined in and pursuant to the terms of that certain engagement letter, dated March 12, 2010, between Lazard and Graceway Pharmaceuticals, LLC (the "**Success Fee**"), an amount equal to the Success Fee shall be paid directly by the Successful Bidder to Lazard on the Closing Date if permitted by the Bankruptcy Court or, if not so permitted on the Closing Date deposited into a segregated interest bearing account (the "**Lazard Account**") to be maintained at, and at all times under the control of, the First Lien Agent pending approval by the Bankruptcy Court of the Success Fee for distribution to Lazard;

(v) only after the Intercompany Loan Balance shall be paid to Graceway Canada in accordance with sub-clause (iii) above, an amount equal to(A) $[•] *plus* (B) any unpaid amounts incurred and earned prior to the Closing Date under each of the Debtors' Professionals Carve-Out Cap and the Committee Professionals Carve-Out Cap (each as defined in the DIP Order) (including, without limitation, any unbilled amounts) *minus* (C) the sum of (1) any Cash Collateral (as defined in the DIP Order), (2) the amount of all retainers, if any, held by professionals retained by the Debtors and/or Graceway Canada and not applied prior to the closing of the sale and (3) $2,616,007 (or $0 if the amount of Cash Collateral on hand immediately prior to the closing of the sale, *plus* the amount of all such retainers, *plus* $2,616,007 is greater than or equal to $[•] *plus* any unpaid amounts incurred and earned prior to the Closing Date under each of the Debtors' Professionals Carve-Out Cap and the Committee Professionals Carve-Out Cap (including, without limitation, any unbilled amounts)) shall be deposited into a separate interest bearing account (the "**Designated Account**") to be maintained at, and all times under the control of, the First Lien Agent for purposes of funding any shortfall with respect to (X) the Carve-Out (as defined in the DIP Order) (less the

[6] NTD: This word will be included/excluded after the Successful Bidder is determined.

amount of the Success Fee) and (Y) solely to the extent a Carve-Out Trigger Notice (as defined in the DIP Order) has not been delivered or a plan of reorganization or liquidation in the Bankruptcy Case is confirmed, distributions on account of (I) allowed priority claims and allowed administrative claims (including, without limitation, claims arising under Section 503(b)(9) of the Bankruptcy Code) not to exceed in the aggregate $[•] (excluding any amounts approved under Section 330 of the Bankruptcy Code to the extent of the Carve-Out) and (II) allowed prepetition claims authorized to be paid by the Bankruptcy Court pursuant to the orders approving those certain documents, motions and pleadings, filed by the Debtors with the Bankruptcy Court on the Petition Date (as defined in the DIP Order), pursuant to which the Debtors sought authorization to pay the prepetition obligations specifically described therein or any motions filed by the Debtors after the Petition Date consented to by the Approving Majority First Lien Lenders (as defined in the DIP Order) that seek authorization to pay the prepetition obligations specifically described therein (the "**Prepetition Claims Motions**") and not paid as of the Closing Date, not to exceed in the aggregate $[•]; provided, however, that nothing contained herein shall be construed as prohibiting the Debtors from paying any allowed prepetition claims authorized to be paid by the Bankruptcy Court pursuant to the orders approving the Prepetition Claims Motions, allowed priority claims and allowed administrative claims, in each case, incurred in the ordinary course of business prior to delivery of a Carve-Out Trigger Notice;

(vi) an amount equal to one percent (1.0%) of the portion of the [Net] Cash Consideration allocated to the Acquired Assets of the Debtors in accordance with the procedures set forth in the Sale Motion net of the sum of (A) the amount equal to the Intercompany Loan Balance, (B) any Cure Costs required to be paid in accordance with the APA and (C) the Canadian Cash Consideration, shall be deposited into a separate interest bearing account (the "**1.0% Holdback Account**") to be maintained at, and at all times under the control of, the First Lien Agent; and

(vii) an amount equal to $2,616,007 less (A) the amount of all severance and liabilities under the provisions of the Consolidated Omnibus Budget Reconciliation Act, as set forth in Section 4980B of the Code, or any other similar state law ("**COBRA**") paid by the Debtors during the period from and including the Petition Date to and including the Closing Date and (B) any amounts paid during the period from and including the Petition Date to and including the Closing Date to the Debtors' employees on account of vacation, personal and sick days, holidays and permitted time off for service on a jury, service in the military or bereavement, in each case, under the Debtors' paid time off plans existing during the period from and including the Petition Date to and including the Closing Date (it being understood that the amounts described in subclauses (A) and (B) of this clause shall not in the aggregate exceed $2,616,007) shall be deposited into a separate interest bearing account (the "**Employee Account**" and, together with the Cure Account, Lazard Account, Designated Account and 1.0% Holdback Account, the "**Reserve Accounts**") to be maintained at, and all times under the control of, the First Lien

Agent for purposes of funding the Debtors' severance and COBRA liabilities budgeted for under the DIP Order.

Any contingent payments under the APA not yet due and payable on the Closing Date shall be paid by the Successful Bidder as and when they become due and payable following the Closing Date directly to the First Lien Agent for distribution to the First Lien Claimholders

28. Without limiting any provision hereunder, it is hereby acknowledged and agreed that (i) the liens of the First Lien Agent, for the benefit of the First Lien Claimholders and other secured creditors, if any, shall attach in the same priority and to the same extent as existed on the Acquired Assets prior to the consummation of the transactions contemplated by the APA to each of the Reserve Accounts (provided, that distributions, if any, of the funds in such Reserve Accounts in accordance with paragraph 26 shall be distributed free and clear of any liens, claims, interests or encumbrances of the First Lien Agent or any liens, claims, interests or encumbrances junior in priority thereto), and (ii) to the extent any such funds (and any interest accruing thereon) remain in such segregated interest bearing Reserve Accounts (other than the 1% Holdback Account) after the final payment of all amounts for which such funds are designed (as specified herein), any such excess funds shall be paid to the First Lien Agent for prompt distribution to the First Lien Claimholders. Notwithstanding anything to the contrary in this Order, the funds in the 1.0% Holdback Account shall be distributed to the First Lien Administrative Agent for prompt distribution to the First Lien Lenders upon the earlier of the effective date of a plan of reorganization or liquidation in the Chapter 11 Cases and [July 31, 2012].

29. The requirements set forth in Bankruptcy Rules 6003(b), 6004 and 6006 and Local Bankruptcy Rules 6004-1 and 9013-1 have been satisfied or otherwise deemed waived.

30. Buyer shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the APA or any other sale-related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence, provided however that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

31. Notwithstanding anything to the contrary contained in the APA, the Acquired Assets shall not include any causes of action concerning directors' and officers' liability. In addition to the foregoing, neither the APA, nor this Order shall transfer to Buyer any avoidance claims or causes of action under the Bankruptcy Code or applicable law, including all such rights and avoidance actions of the Debtors' estates arising under chapter 5 of the Bankruptcy Code.

32. This Order is binding upon and inures to the benefit of any successors and assigns of the Debtors or Buyer, including any trustee appointed in any subsequent case of the Debtors under chapter 7 of the Bankruptcy Code.

33. The provisions of this Order and the APA are non-severable and mutually dependent.

34. The APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates.

35. The Court shall retain exclusive jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the APA, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtors are a party or which has been assigned by the Debtors

to Buyer, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Transactions. This Court retains jurisdiction to compel delivery of the Acquired Assets, to protect Buyer and its assets, including the Acquired Assets, against any Claims and Successor and Transferee Liability and to enter orders, as appropriate, pursuant to sections 105, 363 or 365 (or other applicable provisions) of the Bankruptcy Code necessary to transfer the Acquired Assets and the Assigned Agreements to Buyer.

36. As provided by Bankruptcy Rules 7062 and 9014, the terms and conditions of this Order shall be effective immediately upon entry and shall not be subject to the stay provisions contained in Bankruptcy Rules 6004(h) and 6006(d). Time is of the essence in closing the sale and the Debtors and Buyer intend to close the sale as soon as possible. Therefore, any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay or risk their appeal being foreclosed as moot.

37. This Order and the APA shall be binding in all respects upon all creditors of (whether known or unknown), and holders of equity interests in, any Debtor, any holders of Claims in, against or on all or any portion of the Acquired Assets, all non-Debtor counterparties to the Assigned Agreements, all successors and assigns of Buyer, the Debtors and their affiliates and subsidiaries and any subsequent trustees appointed in these chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code, and shall not be subject to rejection. Nothing contained in any chapter 11 plan confirmed in these chapter 11 cases, any order confirming any such chapter 11 plan or any order approving wind-down or dismissal of these chapter 11 cases or any subsequent chapter 7 cases shall conflict with or derogate from the provisions of the APA or this Order, and to the extent of any conflict or derogation between this

Order or the APA and such future plan or order, the terms of this Order and the APA shall control.

38. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

39. To the extent any provisions of this Order conflict with, or are otherwise inconsistent with, the terms and conditions of the APA or the Bidding Procedures Order, this Order shall govern and control.

Dated: [_____] [•], 2011
Wilmington, Delaware

_____

UNITED STATES BANKRUPTCY JUDGE

Exhibit A

APA

Exhibit E: Form of Escrow Agreement

[Intentionally omitted; available upon request]

EXHIBIT F

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment Agreement") is made as of [•], 2011, by and among **GALDERMA S.A.**, a Switzerland corporation ("Buyer"), and **GRACEWAY PHARMACEUTICALS, LLC**, a Delaware limited liability company, and its Subsidiaries set forth on Annex A to the Asset Purchase Agreement (as defined below) (collectively, "US Sellers" and each individually a "US Seller"), and **GRACEWAY CANADA COMPANY**, a Nova Scotia unlimited liability company ("Canadian Seller" and collectively with US Sellers, "Sellers" and each individually a "Seller").

WHEREAS, Buyer and Sellers entered into that certain Asset Purchase Agreement, dated as of September [•], 2011 (the "Asset Purchase Agreement"); and

WHEREAS, pursuant to the Asset Purchase Agreement, Sellers have agreed to sell, convey, transfer, assign and deliver to Buyer all of Sellers' right, title and interest in, to and under the Acquired Assets, and Buyer has agreed to assume, timely perform and discharge in accordance with their respective terms, the Assumed Liabilities.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, it is hereby agreed that:

1. Definitions. Unless otherwise defined herein, all capitalized terms used in this Assignment Agreement shall have the meanings set forth in the Asset Purchase Agreement.

2. Assignment of Acquired Assets. Effective as of the Closing Date, Sellers hereby sell, convey, transfer, assign and deliver to Buyer all of Sellers' right, title and interest in, to and under the Acquired Assets, and Buyer hereby accepts such sale, conveyance, transfer, assignment and delivery from Sellers; *provided, however*, that the tangible Acquired Assets are being specifically assigned and transferred pursuant to the Bill of Sale and any other Acquired Assets that are specifically assigned or transferred pursuant to any other Transaction Document are being specifically assigned and transferred pursuant to such other Transaction Documents and, in each case, shall not be assigned or transferred pursuant to this Section 2.

3. Assumption of Assumed Liabilities. Effective as of the Closing Date, Buyer hereby assumes, accepts and agrees to timely perform and discharge in accordance with their respective terms any and all of the Assumed Liabilities; *provided, however*, that any Assumed Liabilities that are specifically assumed by Buyer pursuant to any other Transaction Document shall not be assumed pursuant to this Section 3.

4. Subject to the Asset Purchase Agreement. This Assignment Agreement is subject in all respects to the terms and conditions of the Asset Purchase Agreement, and all of the representations, warranties, covenants and agreements of Sellers and Buyer contained therein, all of which shall survive the execution and delivery of this Assignment Agreement in accordance with the terms of the Asset Purchase Agreement. Nothing in this Assignment Agreement shall supersede, amend, alter or modify (nor shall it be deemed or construed to supersede, amend, alter

or modify) any of the terms or conditions of the Asset Purchase Agreement in any manner whatsoever. In the event of any conflict between the provisions of this Assignment Agreement and the provisions of the Asset Purchase Agreement, the provisions of the Asset Purchase Agreement shall control and prevail.

5. Representations and Warranties. Except as set forth in the Asset Purchase Agreement, Sellers make no representations or warranties, express or implied, with respect to the Acquired Assets or the Assumed Liabilities, and Sellers expressly disclaim any implied warranties.

6. Assignment. This Assignment Agreement, and the rights, interests and obligations hereunder, shall not be assigned by any Party by operation of law or otherwise without the express written consent of the other Parties (which consent may be granted or withheld in the sole discretion of such other Party); provided, however, that Buyer shall be permitted, upon prior notice to Sellers, to assign all or part of its rights or obligations hereunder to an Affiliate, but no such assignment shall relieve Buyer of its obligations under this Assignment Agreement, and Sellers shall be permitted to assign all or part of their rights or obligations hereunder pursuant to a plan of reorganization or liquidation approved by the Bankruptcy Court.

7. Parties in Interest; No Third Party Beneficiaries. This Assignment Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. This Assignment Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

8. Counterparts. This Assignment Agreement and any amendment hereto may be executed in one or more counterparts, each of which shall be deemed to be an original of this Assignment Agreement or such amendment and all of which, when taken together, shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Assignment Agreement or any amendment hereto by telecopier, facsimile or email attachment shall be effective as delivery of a manually executed counterpart of this Assignment Agreement or such amendment, as applicable.

9. Waiver. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Assignment Agreement or the documents referred to in this Assignment Agreement shall operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given, and (b) no notice to or demand on one Party shall be deemed to be a waiver of any right of the Party giving such notice or demand to take further action without notice or demand.

10. Entire Agreement; Amendment. This Assignment Agreement and the other Transaction Documents supersede all prior agreements between Buyer, on the one hand, and Sellers, on the other hand, with respect to its subject matter and constitute a complete and

exclusive statement of the terms of the agreements between Buyer, on the one hand, and Sellers, on the other hand, with respect to their subject matter. This Assignment Agreement may not be amended except by a written agreement executed by all of the Parties.

11. Severability. The provisions of this Assignment Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Assignment Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Assignment Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability.

12. Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code or the provisions of the CJA or other Laws applicable in the Canadian Proceedings apply, this Assignment Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to Contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of Delaware applicable hereto.

(b) Without limitation of any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Assignment Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Assignment Agreement, any breach or default hereunder, or the transactions contemplated hereby (except for such matters as must be dealt with by the Canadian Court in the Canadian Proceedings) and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding; *provided*, *however*, that, if the Bankruptcy Case is closed, all Proceedings arising out of or relating to this Assignment Agreement shall be heard and determined in a Delaware state court or a federal court sitting in the State of Delaware, and the Parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding. The Parties consent to service of process by mail (in accordance with Section 12.2 of the Asset Purchase Agreement) or any other manner permitted by law.

(c) THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS ASSIGNMENT AGREEMENT OR THE ACTIONS OF SELLERS OR BUYER OR THEIR RESPECTIVE REPRESENTATIVES IN THE NEGOTIATION OR PERFORMANCE HEREOF.

SIGNATURE PAGES FOLLOW

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

GRACEWAY PHARMACEUTICALS, LLC

By: _____
Name:
Title:

GRACEWAY CANADA HOLDINGS, INC.

By: _____
Name:
Title:

GRACEWAY CANADA COMPANY

By: _____
Name:
Title:

GRACEWAY INTERNATIONAL, INC.

By: _____
Name:
Title:

CHESTER VALLEY HOLDINGS, LLC

By: _____
Name:
Title:

CHESTER VALLEY PHARMACEUTICALS, LLC

By: _____
Name:
Title:

GALDERMA S.A.

By: _____
Name:
Title:

[Signature Page to Assignment and Assumption Agreement]

EXHIBIT G

Court File No. ●

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE ●	)	●, THE ●
	)	
JUSTICE ●	)	DAY OF ●, 2011

IN THE MATTER OF THE RECEIVERSHIP OF GRACEWAY CANADA COMPANY

Applicant

AND IN THE MATTER OF THE *COURTS OF JUSTICE ACT*, AS AMENDED

SALE AND VESTING ORDER

THIS MOTION, made by RSM Richter Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of Graceway Canada Company (the "**Debtor**") appointed by Order of the Court dated ●, 2011 (the "**Receivership Order**"), for an order approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement (the "**Asset Purchase Agreement**") among Galderma S.A., as the purchaser, the Debtor, Graceway Pharmaceuticals, LLC and its U.S. affiliates signatory thereto (collectively with Graceway Pharmaceuticals, LLC, the "**U.S. Sellers**") dated September ●, 2011, and vesting in the Purchaser the Debtor's right, title and interest in and to the Canadian Assets (as defined in the Asset Purchase Agreement), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the ● Report of the Receiver dated ●, 2011 (the "**Report**"), **[and the affidavit of ● sworn on ●,]** and on hearing the submissions of counsel for the Receiver, the Debtor, the Purchaser and ●, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ● sworn ●, 2011 filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction (including the allocation of the Purchase Price (as defined in the Asset Purchase Agreement) as between the Debtor's estate and the estates of the U.S. Sellers) is hereby approved, the Receiver is hereby authorized and directed to conclude the Transaction on behalf of the Debtor, and the Receiver and the Debtor are hereby authorized and directed to take such additional steps and to execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Canadian Assets to ● (the "**Purchaser**").

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Canadian Assets described in the Asset Purchase Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order **[or the Bidding Procedures Order of this Court dated ●, 2011]**; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system, but excluding the Permitted Encumbrances (as defined in the Asset Purchase Agreement) (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Canadian Assets are hereby expunged and discharged as against the Canadian Assets.

3. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Canadian Assets shall stand in the place and stead of the Canadian Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Canadian Assets with the same priority as they had with respect to the Canadian Assets immediately prior to the sale, as if the Canadian Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

5. 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 Debtor and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Canadian Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, 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.

6. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

EXHIBIT G

Schedule A – Form of Receiver's Certificate

Court File No. ●

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE RECEIVERSHIP OF GRACEWAY CANADA COMPANY

Applicant

AND IN THE MATTER OF THE *COURTS OF JUSTICE ACT*, AS AMENDED

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable ● of the Ontario Superior Court of Justice (the "**Court**") dated ●, 2011, RSM Richter Inc. was appointed as the receiver (the "**Receiver**") of Graceway Canada Company (the "**Debtor**").

B. Pursuant to an Order of the Court dated ●, 2011, the Court approved the asset purchase agreement made as of ●, 2011 (the "**Asset Purchase Agreement**") among Galderma S.A., as the purchaser, the Debtor, Graceway Pharmaceuticals, LLC and its U.S. affiliates signatory thereto and provided for the vesting in ● (the "**Purchaser**") of the Debtor's right, title and interest in and to the Canadian Assets, which vesting is to be effective with respect to the Canadian Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Canadian Assets; (ii) that the conditions to Closing as set out in section ● of the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Asset Purchase Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Canadian Assets payable on the Closing Date pursuant to the Asset Purchase Agreement;

2. The conditions to Closing as set out in section ● of the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and

3. The Transaction has been completed to the satisfaction of the Receiver.

4. This Certificate was delivered by the Receiver at ● on ●, 2011.

RSM Richter Inc., in its capacity as Receiver of Graceway Canada Company, and not in its personal capacity

Per: _____

Name:

Title:

EXHIBIT H

U.S. TRADEMARK ASSIGNMENT

This U.S. TRADEMARK ASSIGNMENT, dated as of _____, 2011 (the "Assignment"), is made by and between Graceway Pharmaceuticals, LLC, a Delaware limited liability company ("Assignor"), and Galderma S.A., a Switzerland corporation ("Assignee").

WHEREAS, Assignee, Assignor, Graceway Canada Company and certain Subsidiaries of Assignor are parties to the Asset Purchase Agreement, dated as of September __, 2011 ("Purchase Agreement"), providing for the execution and delivery of this Assignment (capitalized terms used herein without definition shall have the meanings set forth in the Purchase Agreement);

WHEREAS, Assignor is the sole and exclusive owner of the marks set forth on Exhibit A and incorporated by reference herein, which are registered, or for which application for registration has been filed, in the United States Patent and Trademark Office (collectively, the "Assigned Marks"); and

WHEREAS, Assignee desires to purchase and acquire all of Assignor's right, title and interest in and to the Assigned Marks together with the goodwill of the Business symbolized by the Assigned Marks, which is ongoing.

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

1. Assignment. Assignor does hereby sell, transfer, assign, convey and deliver to Assignee all of Assignor's right, title and interest in and to the Assigned Marks together with the goodwill of the Business symbolized by the Assigned Marks, including without limitation all of the rights in damages for past, present and future infringements of the Assigned Marks.

2. Recordation. Assignor authorizes and requests the Commissioner of Patents and Trademarks of the United States to record ownership of the Assigned Marks as the property of Assignee.

3. Governing Law. Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Assignment shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to Contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of Delaware applicable hereto.

4. Further Action. From time to time after the date hereof, and for no further consideration, Assignor and Assignee shall execute, acknowledge and deliver such

assignments, transfers, consents, assumptions and other documents and instruments and take such other actions as may reasonably be necessary to consummate the transactions contemplated hereby.

5. Counterparts. This Assignment may be executed simultaneously in one or more counterparts (including by facsimile or electronic .pdf submission), and by the different parties in separate counterparts, each of which when executed shall be deemed to be an original, but all of which shall constitute one and the same agreement.

[Signature Page Follows.]

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

ASSIGNOR:

GRACEWAY PHARMACEUTICALS, LLC

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF NEW YORK)
:SS:
COUNTY OF)

On , 2011 before me, the undersigned, personally appeared

_____

personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
(signature and office of individual taking acknowledgment)

ASSIGNEE:

GALDERMA S.A.

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF NEW YORK)
:SS:
COUNTY OF)

On , 2011 before me, the undersigned, personally appeared

_____

personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
(signature and office of individual taking acknowledgment)

EXHIBIT A

Assigned Marks

[TO COME]

EXHIBIT I

U.S. PATENT ASSIGNMENT

This U.S. PATENT ASSIGNMENT, dated as of _____, 2011 (the "Assignment"), is made by and between Graceway Pharmaceuticals, LLC, a Delaware limited liability company ("Assignor"), and Galderma S.A., a Switzerland corporation ("Assignee").

WHEREAS, Assignee, Assignor, Graceway Canada Company and certain Subsidiaries of Assignor are parties to the Asset Purchase Agreement, dated as of September __, 2011 ("Purchase Agreement"), providing for the execution and delivery of this Assignment (capitalized terms used herein without definition shall have the meanings set forth in the Purchase Agreement);

WHEREAS, Assignor is the sole and exclusive owner of the patents and patent applications set forth on Exhibit A and incorporated by reference herein, which have been issued, or for which application has been filed, in the United States Patent and Trademark Office (collectively, the "Assigned Patents"); and

WHEREAS, Assignee desires to purchase and acquire all of Assignor's right, title and interest in and to the Assigned Patents.

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

1. Assignment. Assignor does hereby sell, transfer, assign, convey and deliver to Assignee all of Assignor's right, title and interest in and to the Assigned Patents, including without limitation all of the rights in damages for past, present and future infringements of the Assigned Patents.

2. Recordation. Assignor authorizes and requests the Commissioner of Patents and Trademarks of the United States to record ownership of the Assigned Patents as the property of Assignee.

3. Governing Law. Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Assignment shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to Contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of Delaware applicable hereto.

4. Further Action. From time to time after the date hereof, and for no further consideration, Assignor and Assignee shall execute, acknowledge and deliver such assignments, transfers, consents, assumptions and other documents and instruments and

take such other actions as may reasonably be necessary to consummate the transactions contemplated hereby.

5. Counterparts. This Assignment may be executed simultaneously in one or more counterparts (including by facsimile or electronic .pdf submission), and by the different parties in separate counterparts, each of which when executed shall be deemed to be an original, but all of which shall constitute one and the same agreement.

[Signature Page Follows.]

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

ASSIGNOR:

GRACEWAY PHARMACEUTICALS, LLC

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF NEW YORK)
:SS:
COUNTY OF)

On , 2011 before me, the undersigned, personally appeared

_____

personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
(signature and office of individual taking acknowledgment)

ASSIGNEE:

GALDERMA S.A.

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF NEW YORK)
:SS:
COUNTY OF)

On , 2011 before me, the undersigned, personally appeared

_____

personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
(signature and office of individual taking acknowledgment)

EXHIBIT A

Assigned Patents

[TO COME]

Exhibit B

Interim Cash Collateral Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
GRACEWAY PHARMACEUTICALS, LLC, *et al.*,[1]	Case No. 11-_____ (____)
	Joint Administration Requested
Debtors.	Related Docket No.

INTERIM ORDER (I) AUTHORIZING DEBTORS TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363; (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364; (III) AUTHORIZING DEBTORS TO OBTAIN POSTPETITION FINANCING PURSUANT TO 11 U.S.C. § 364 AND (IV) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001

("***Interim DIP Order***")

Upon the motion, dated September 29, 2011, (the "***DIP Motion***"), of Graceway Pharma Holding Corp. ("***Parent***"), Graceway Holdings, LLC ("***Holdings***"), Graceway Pharmaceuticals, LLC (the "***Borrower***"), and the other debtors in possession (collectively, the "***Debtors***") in the above-referenced Chapter 11 cases (the "***Chapter 11 Cases***" and each of the Chapter 11 Cases upon either appointment of any trustee or any other estate representative or conversion to a case under Chapter 7 of the Bankruptcy Code (as defined below) and any other proceedings related to the Chapter 11 Cases, a "***Successor Case***"), seeking entry of an interim order (this "***Interim Order***") pursuant to Sections 105, 361, 362, 363, 364(c)(1), 364(c)(3), 364(d)(1), 364(e), 507 and 552 of Chapter 11 of title 11 of the United States Code (as amended, the "***Bankruptcy***

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620.

Code"), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***") and Rules 2002-1 and 4001-2 of the Local Bankruptcy Rules for the District of Delaware (the "***Local Rules***"), that, among other things:

(i) authorizes the Debtors to use Prepetition Collateral (as defined below), including, without limitation, "cash collateral," as such term is defined in Section 363 of the Bankruptcy Code (the "***Cash Collateral***"), in which the Prepetition Secured Parties (as defined below) have a Lien or other interest, whether existing on the Petition Date (as defined below), arising pursuant to this Interim Order or otherwise;

(ii) authorizes the Borrower to obtain, and authorizes each of the other Debtors (other than Parent) unconditionally to guarantee, jointly and severally, the Borrower's obligations in respect of, senior secured postpetition financing, which if approved would consist of $6,000,000 in aggregate principal amount of intercompany term loans (the "***Intercompany Loan***") from Graceway Canada Company ("***Graceway Canada***" and in its capacity as lender under the Intercompany Loan, the "***Postpetition Lender***") to the Borrower;

(iii) grants, as of the Petition Date and in accordance with the relative priorities set forth herein, the Prepetition Secured Parties' Adequate Protection (as defined below);

(iv) authorizes the Borrower and each of the other Debtors to grant to the Postpetition Lender the DIP Protections (as defined below);

(v) modifies the automatic stay imposed by Section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms and provisions of this Interim Order and subject in all respects to the Debtors' rights under paragraph 14 herein;

(vi) schedules a final hearing on the DIP Motion to be held within thirty-five (35) days after the Petition Date (the "***Final Hearing***") to consider entry of a final order

acceptable in form and substance to the First Lien Agent (as defined below) and Majority First Lien Lenders (as defined below), which grants all of the relief requested in the DIP Motion on a final basis (the "***Final Order***"); and

(vii) waives any applicable stay (including under Bankruptcy Rule 6004) and provides for immediate effectiveness of this Interim Order.

Having considered the DIP Motion, the *Declaration of Gregory C. Jones in Support of Chapter 11 Petitions and First Day Motions* (the "***First Day Declaration***") and the evidence submitted or proffered at the hearing to consider the entry of this Interim Order (the "***Interim Hearing***"); and in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d) and 9014 and Local Rules 4001-2 and 2002-1, notice of the DIP Motion and the Interim Hearing having been provided in a sufficient manner; an Interim Hearing having been held and concluded on September 30, 2011; and it appearing that approval of the interim relief requested in the DIP Motion is necessary to avoid immediate and irreparable harm to the Debtors pending the Final Hearing and otherwise is fair and reasonable and in the best interests of the Debtors, their creditors, their estates and all parties in interest, and is essential for the continued operation of the Debtors' business; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED[2], that:

A. **Petition Date**. On September 29, 2011, (the "***Petition Date***"), each of the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (this "***Court***"). The Debtors have continued in the management and operation of their business and properties as debtors-in-

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[2] Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No statutory committee of unsecured creditors (to the extent such committee is appointed, the "***Committee***"), trustee, or examiner has been appointed in the Chapter 11 Cases.

B. **Jurisdiction and Venue**. This Court has core jurisdiction over the Chapter 11 Cases, the DIP Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue for the Chapter 11 Cases and proceedings on the DIP Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are Sections 105, 361, 362, 363, 364, 507 and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014 and Local Rules 2002-1 and 4001-2.

C. **Notice**. The Interim Hearing is being held pursuant to the authorization of Bankruptcy Rule 4001 and Local Rule 4001-2(b). Notice of the Interim Hearing and the emergency relief requested in the DIP Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery, on September 29, 2011, to certain parties in interest, including: (i) the Office of the United States Trustee for the District of Delaware, (ii) the Internal Revenue Service, (iii) those entities or individuals included on the Debtors' list of 30 largest unsecured creditors on a consolidated basis, (iv) the First Lien Agent (as defined below), (v) financial counsel and special restructuring and bankruptcy counsel to the First Lien Agent, (vi) the Second Lien Agent (as defined below), (vii) counsel to the Second Lien Agent, (viii) counsel to the administrative agent for the lenders under the Debtors' prepetition unsecured mezzanine credit facility, (ix) the United States Food and Drug Administration, (x) any entity with an interest in the Adequate Protection Collateral (as defined below) known to the Debtors and (xi) all parties requesting notice pursuant to Bankruptcy Rule 2002. The aforementioned notices are appropriate under the circumstances, and no other or further notice of

the DIP Motion, the relief requested therein and the Interim Hearing is required for entry of this Interim Order.

D. **Debtors' Stipulations Regarding the Prepetition Secured Credit Facilities**. Without prejudice to the rights of parties in interest to the extent set forth in paragraph 7 below, the Debtors admit, stipulate, acknowledge and agree (paragraphs D(i) through D(ix) hereof shall be referred to herein collectively as the "***Debtors' Stipulations***") as follows:

(i) First Lien Credit Facility. Pursuant to that certain First Lien Credit Agreement dated as of May 3, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "***First Lien Credit Agreement***"), among, *inter alia*, Holdings, the Borrower, the lenders party thereto (collectively, the "***First Lien Lenders***"), and Bank of America, N.A. ("***BofA***"), as administrative agent for the First Lien Lenders and collateral agent for the First Lien Claimholders (as defined in the Intercreditor Agreement (as defined below), without giving effect to any cap provided for therein) (BofA, in such capacity, the "***First Lien Agent***"), Swing Line Lender and L/C Issuer, the First Lien Agent, the First Lien Lenders, the Swing Line Lender and the L/C Issuer agreed to extend certain loans to, and issue letters of credit for the account of, the Borrower. The First Lien Credit Agreement, along with any other agreements and documents executed or delivered in connection therewith, including, without limitation, the First Lien Credit Documents (as defined in the Intercreditor Agreement), are collectively referred to herein as the "***First Lien Documents***" (as the same may be amended, restated, supplemented or otherwise modified from time to time). All obligations of the Debtors arising under the First Lien Credit Agreement, together with any other First Lien Obligations (as defined in the Intercreditor Agreement without giving effect to any cap provided for therein), shall collectively be referred to herein as the "***First Lien Obligations***."

(ii) Second Lien Credit Facility. Pursuant to that certain Second Lien Credit Agreement dated as of May 3, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "***Second Lien Credit Agreement***"), among, *inter alia*, Holdings, the Borrower, the lenders party thereto (collectively, the "***Second Lien Lenders***") and Deutsche Bank Trust Company Americas ("***DB***"), as administrative agent for the Second Lien Lenders and collateral agent for the Second Lien Claimholders (as defined in the Intercreditor Agreement) (the Second Lien Claimholders and First Lien Claimholders collectively, the "***Prepetition Secured Parties***") (DB, in such capacity, the "***Second Lien Agent***"), the Second Lien Agent and the Second Lien Lenders agreed to extend certain loans to the Borrower. The Second Lien Credit Agreement, along with any other agreements and documents executed or delivered in connection therewith, including, without limitation, the Second Lien Credit Documents (as defined in the Intercreditor Agreement), are collectively referred to herein as the "***Second Lien Documents***" (as the same may be amended, restated, supplemented or otherwise modified from time to time). All obligations of the Debtors arising under the Second Lien Credit Agreement, together with any other Second Lien Obligations (as defined in the Intercreditor Agreement), shall collectively be referred to herein as the "***Second Lien Obligations***" and, together with the First Lien Obligations, the "***Prepetition Obligations***."

(iii) First Priority Liens and First Lien Collateral. Pursuant to the Collateral Documents (as such documents are amended, restated, supplemented or otherwise modified from time to time, the "***First Lien Collateral Documents***"), by and between each of the Debtors (other than Parent) and the First Lien Agent, each Debtor (other than Parent) granted to the First Lien Agent, for the benefit of the First Lien Claimholders, to secure the First Lien Obligations, a valid, binding, enforceable and perfected first priority continuing security interest in substantially

all of such Debtor's assets and property (which for the avoidance of doubt includes Cash Collateral) and all proceeds thereof, collateral therefor, income, royalties and other payments due and payable with respect thereto and supporting obligations relating thereto, in each case whether then owned or existing or thereafter acquired or arising (the "***First Priority Liens***"). All collateral granted or pledged by the Debtors (other than Parent) pursuant to any First Lien Collateral Document or any other First Lien Document, including, without limitation, the Collateral (as defined in the First Liens Credit Agreement), and all prepetition and postpetition proceeds thereof shall collectively be referred to herein as the "***First Lien Collateral***."

(iv) Second Priority Liens and Second Lien Collateral. Pursuant to the Collateral Documents (as defined in the Second Lien Credit Agreement) (as such documents are amended, restated, supplemented or otherwise modified from time to time, the "***Second Lien Collateral Documents***"), by and between each of the Debtors (other than Parent) and the Second Lien Agent, each Debtor (other than Parent) granted to the Second Lien Agent, for the benefit of the Second Lien Claimholders, to secure the Second Lien Obligations, a valid, binding, enforceable and perfected second priority continuing security interest in substantially all of such Debtor's assets and property (which for the avoidance of doubt includes Cash Collateral) and all proceeds thereof, collateral therefor, income, royalties and other payments due and payable with respect thereto and supporting obligations relating thereto, in each case whether then owned or existing or thereafter acquired or arising (the "***Second Priority Liens***" and, together with the First Priority Liens, the "***Prepetition Liens***"). All collateral granted or pledged by the Debtors (other than Parent) pursuant to any Second Lien Collateral Document or any other Second Lien Document, including, without limitation, the Collateral (as defined in the Second Lien Credit Agreement), and all prepetition and postpetition proceeds thereof shall collectively be referred to

herein as the "***Second Lien Collateral***" and, together with the First Lien Collateral, the "***Prepetition Collateral.***"

(v) Intercreditor Agreement. Pursuant to the Intercreditor Agreement, dated as of May 3, 2007 (the "***Intercreditor Agreement***" and, together with the First Lien Documents and the Second Lien Documents, the "***Prepetition Documents***"), among Holdings, the Borrower, the First Lien Agent, the Second Lien Agent and BofA as Control Agent, the Second Priority Liens are subject and subordinate on the terms contained in the Intercreditor Agreement to the First Priority Liens.

(vi) First Priority Liens and First Lien Obligations. (I) The First Priority Liens (a) are valid, binding, enforceable, and perfected Liens that have attached to the First Lien Collateral, (b) were granted to, or for the benefit of, the First Lien Claimholders, as applicable, for fair consideration and reasonably equivalent value, (c) are not subject to avoidance, recharacterization, or subordination or other legal or equitable relief adversely affecting the First Priority Liens, in each case, pursuant to the Bankruptcy Code or applicable non-bankruptcy law (except for the priming contemplated herein) and (d) are subject and subordinate in all respects only to (A) the DIP Liens (as defined below), (B) the Carve-Out (as defined below) and (C) the Prepetition Prior Liens (as defined below) and (II) (w) the First Lien Obligations constitute legal, valid and binding obligations of the applicable Debtors, enforceable in accordance with the terms of the applicable First Lien Documents (other than in respect of the stay of enforcement arising from Section 362 of the Bankruptcy Code), (x) no setoffs, recoupments, offsets, defenses or counterclaims to any of the First Lien Obligations exist, (y) no portion of the First Lien Obligations or any payments made to any or all of the First Lien Claimholders is subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or

any other "claim" (as defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law and (z) the Guaranty of each Guarantor continues in full force and effect notwithstanding any use of the Prepetition Collateral, including, without limitation the Cash Collateral, permitted hereunder, or the Intercompany Loan.

(vii) Second Priority Liens and Second Lien Obligations. (I) The Second Priority Liens (a) are valid, binding, enforceable, and perfected Liens that have attached to the Second Lien Collateral, (b) were granted to, or for the benefit of, the Second Lien Claimholders, as applicable, for fair consideration and reasonably equivalent value, (c) are not subject to avoidance, recharacterization, or subordination or other legal or equitable relief adversely affecting the First Priority Liens, in each case, pursuant to the Bankruptcy Code or applicable non-bankruptcy law (except for the priming contemplated herein) and (d) are subject and subordinate in all respects only to (A) the DIP Liens, (B) the Carve-Out, (C) the Prepetition Prior Liens (as defined below) and (D) the First Priority Liens (pursuant to the terms of the Intercreditor Agreement), and (II) (w) the Second Lien Obligations constitute legal, valid and binding obligations of the applicable Debtors, enforceable in accordance with the terms of the applicable Second Lien Documents (other than in respect of the stay of enforcement arising from Section 362 of the Bankruptcy Code), (x) no setoffs, recoupments, offsets, defenses or counterclaims to any of the Second Lien Obligations exist, (y) no portion of the Second Lien Obligations or any payments made to any or all of the Second Lien Claimholders is subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or any other "claim" (as defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law and (z) the Guaranty (as defined in the Second Lien Credit Agreement) of each Guarantor (as defined in the Second Lien Credit Agreement)

continues in full force and effect notwithstanding any use of the Prepetition Collateral, including, without limitation the Cash Collateral, permitted hereunder, or the Intercompany Loan.

(viii) Amounts Owed under Prepetition Documents. As of the Petition Date, the Debtors were truly and justly indebted (i) to the First Lien Claimholders pursuant to the First Lien Documents, without defense, counterclaim or offset of any kind, in respect of loans made and letters of credit issued by the First Lien Agent, the First Lien Lenders, the L/C Issuer and the Swing Line Lender in the aggregate principal amount of not less than $430,698,397.58, including, without limitation, an undrawn letter of credit in the amount of $350,000, *plus* all accrued or, subject to Section 506(b) of the Bankruptcy Code, hereafter accruing, and unpaid interest thereon, and any additional fees and expenses (including any attorneys', accountants', appraisers' and financial advisors' fees and expenses that are chargeable or reimbursable under the First Lien Documents) now or hereafter due under the First Lien Credit Agreement and the other First Lien Documents and (ii) to the Second Lien Claimholders pursuant to the Second Lien Documents, without defense, counterclaim or offset of any kind, in respect of loans made by the Second Lien Agent and Second Lien Lenders in the aggregate principal amount of not less than $330,000,000, *plus* all accrued and unpaid interest thereon and any additional fees and expenses (including any attorneys', accountants', appraisers' and financial advisors' fees and expenses that are chargeable or reimbursable under the Second Lien Documents), in each case, due under the Second Lien Credit Agreement and the other Second Lien Documents as of the Petition Date.

(ix) Release of Claims. Each Debtor and its estate shall be deemed to have forever waived, discharged, and released the First Lien Agent, First Lien Claimholders, the Second Lien Agent and the Second Lien Claimholders, together with their respective affiliates,

agents, attorneys, financial advisors, consultants, officers, directors, and employees (all of the foregoing, collectively, the "***Secured Party Releasees***") of any and all "claims" (as defined in the Bankruptcy Code), counterclaims, causes of action, defenses, setoff, recoupment, or other offset rights against any and all of the Secured Party Releasees, whether arising at law or in equity, with respect to the First Lien Obligations, First Priority Liens, Second Lien Obligations and Second Priority Liens, as applicable, including, without limitation, (I) any recharacterization, subordination, avoidance, or other claim arising under or pursuant to Section 105 or Chapter 5 of the Bankruptcy Code, or under any other similar provisions of applicable state or federal law, and (II) any right or basis to challenge or object to the amount, validity, or enforceability of the First Lien Obligations or Second Lien Obligations, as applicable, or the validity, enforceability, priority, perfection or non-avoidability of the First Priority Liens or Second Priority Liens, as applicable, securing the First Lien Obligations or Second Lien Obligations, as applicable.

E. **Need to Use the Prepetition Collateral (including, without limitation, the Cash Collateral) and to Obtain Intercompany Loan**.

(i) The Debtors have an immediate need to use the Prepetition Collateral, including, without limitation, the Cash Collateral, and obtain the Intercompany Loans, to, among other things, permit the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures and to satisfy other working capital and operational needs. The Debtors' access to sufficient working capital and liquidity through the use of the Cash Collateral and borrowing the Intercompany Loan is of vital importance and in the best interest of the Debtors' estates.

(ii) As set forth in the DIP Motion and in the First Day Declaration in support thereof, the Debtors are unable to obtain financing on more favorable terms from a source other

than the Postpetition Lender. The Debtors are unable to obtain adequate unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable under Sections 364(c) and (d) of the Bankruptcy Code without (i) granting to the Postpetition Lender the rights, remedies, privileges, benefits and protections provided herein, including, without limitation, the DIP Liens and the DIP Super-Priority Claims (as defined below, and together with the DIP Liens, the "***DIP Protections***") and (ii) providing the Prepetition Secured Parties the adequate protection more fully described in paragraph F below.

F. **Adequate Protection for Prepetition Secured Parties**. The First Lien Agent and certain First Lien Lenders holding a majority of the First Lien Obligations and that have consented to the use of the Prepetition Collateral, including, without limitation, the Cash Collateral (the "***Majority First Lien Lenders***"), have negotiated in good faith regarding the Debtors' use of the Prepetition Collateral, including, without limitation, the Cash Collateral, to fund the administration of the Debtors' estates and maintain the continued operation of their businesses. The First Lien Agent and Majority First Lien Lenders have agreed to permit the Debtors to use the Prepetition Collateral, including, without limitation, the Cash Collateral, for the period through the Cash Collateral Termination Date (as defined below), subject to the terms and conditions set forth herein. In addition, the Intercompany Loan contemplated hereby provides for a priming of the Prepetition Liens pursuant to Section 364(d) of the Bankruptcy Code. The Prepetition Secured Parties are entitled to the adequate protection set forth herein pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code for the Diminution in Value (as defined below) of the Prepetition Collateral. Based on the DIP Motion and on the record presented to this Court at the Interim Hearing, the terms of the proposed adequate protection

arrangements, the use of the Prepetition Collateral, including, without limitation, the Cash Collateral and the Intercompany Loan, in each case, contemplated hereby are fair and reasonable and reflect the Debtors' prudent exercise of business judgment.

G. **Limited Consent**. The consent of the First Lien Agent and Majority First Lien Lenders to (i) the priming of the First Priority Liens by the DIP Liens is limited to the financing presently before this Court, with Graceway Canada as lender, and shall not, and shall not be deemed to, extend to any other postpetition financing or to any modified version of the Intercompany Loan and (ii) the Debtors' use of the Prepetition Collateral, including, without limitation, the Cash Collateral, is limited to use of the Prepetition Collateral, including, without limitation, the Cash Collateral, pursuant to the terms of this Interim Order and shall not, and shall not be deemed to, extend to any other use of the Prepetition Collateral, including, without limitation, the Cash Collateral. Nothing in this Interim Order, including, without limitation, any of the provisions herein with respect to adequate protection, shall constitute, or be deemed to constitute, a finding that the interests of the First Lien Agent or any First Lien Claimholder are or will be adequately protected with respect to any non-consensual postpetition financing or use of Prepetition Collateral, including, without limitation, the Cash Collateral.

H. **Section 552(b)**. In light of the subordination of the Prepetition Liens to (i) in the case of the First Lien Claimholders, the Carve-Out and DIP Liens, and (ii) in the case of the Second Lien Claimholders, the Carve-Out, DIP Liens and Adequate Protection Replacement Liens (as defined below) granted to the First Lien Agent for the benefit of the First Lien Claimholders, each of the First Lien Claimholders and Second Lien Claimholders is entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code, and, subject to the entry of the Final Order, the "equities of the case" exception shall not apply.

I. **Business Judgment and Good Faith Pursuant to Section 364(e)**. Based on the record presented to this Court by the Debtors, it appears that:

(i) Graceway Canada has indicated a willingness to provide postpetition secured financing via the Intercompany Loan to the Borrower in accordance with this Interim Order.

(ii) The terms and conditions of the Intercompany Loan pursuant to this Interim Order are fair, reasonable and the best available under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and are supported by reasonably equivalent value and consideration.

(iii) The Intercompany Loan was negotiated in good faith among the Debtors and the Postpetition Lender and shall be deemed to have been extended by the Postpetition Lender for valid business purposes and uses and in good faith, as that term is used in Section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by Section 364(e) of the Bankruptcy Code, and the DIP Liens and the DIP Super-Priority Claims shall be entitled to the full protection of Section 364(e) of the Bankruptcy Code in the event this Interim Order or any other order or any provision hereof or thereof is vacated, reversed, amended or modified, on appeal or otherwise.

J. **Relief Essential; Best Interest**. For the reasons stated above, the Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and Local Rule 4001-2(b). Absent granting the relief set forth in this Interim Order, the Debtors' estates and their ability successfully to operate their businesses will be immediately and irreparably harmed. Consummation of the Intercompany Loan and authorization of the use of Prepetition Collateral, including, without limitation, the Cash Collateral, in accordance with

this Interim Order is therefore in the best interests of the Debtors' estates and consistent with their fiduciary duties.

NOW, THEREFORE, on the DIP Motion and the record before this Court with respect to the DIP Motion, and with the consent of the Debtors, the First Lien Agent, the Majority First Lien Lenders and the Postpetition Lender to the form and entry of this Interim Order, and good and sufficient cause appearing therefor,

IT IS ORDERED that:

1. **Motion Granted**. The DIP Motion is hereby granted in accordance with the terms and conditions set forth in this Interim Order. Any objections to the DIP Motion with respect to the entry of this Interim Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled.

2. **Use of the Prepetition Collateral (including, without limitation, the Cash Collateral) and Authorization to Incur Intercompany Loan**. To enable the Debtors to continue to operate their business, during the period from the entry of this Interim Order through and including the date of entry of the Final Order (the "***Interim Period***"), the Debtors are hereby authorized to use the Prepetition Collateral, including, without limitation, the Cash Collateral, and the Borrower is hereby authorized to borrow and use the proceeds of the Intercompany Loan, in each case, only in accordance with the terms and conditions of this Interim Order, including, without limitation, the Approved Budget and Budget Covenants (in each case, as defined below). Following the expiration of the Interim Period, the Debtors' authority to use the Prepetition Collateral, including, without limitation, the Cash Collateral, and the Borrower's authority to use the proceeds of the Intercompany Loan will, in each case, be governed by the terms and

conditions of the Final Order, including, without limitation, the Approved Budget and Budget Covenants. Any amount repaid under the Intercompany Loan may not be reborrowed.

3. **Approved Budget; Budget Covenants; Events of Default**.

(a) Approved Budget. Attached hereto as Exhibit A is (i) a rolling weekly cash flow budget from and including the Petition Date through and including January 27, 2012 (the "***Pre-Sale Approved Budget***") and (ii) a rolling monthly cash flow budget from and including January 28, 2012 through and including June 30, 2012 (the "***Wind-Down Approved Budget***" and together with the Pre-Sale Approved Budget, the "***Approved Budget***"), in each case, (A) as may be amended or modified from time to time with the consent of the First Lien Agent and the Approving Majority First Lien Lenders (as defined below) and (B) reflecting on a line-item basis the Debtors' projected (1) aggregate cash receipts, (2) disbursements (including, without limitation, professional fees and capital expenditures) and (3) cash on hand (collectively, "***Aggregate Liquidity***"), in each case, on a weekly or monthly basis, as applicable; provided, that if (x) the Debtors shall have filed plans of reorganization or liquidation in the Chapter 11 Cases that are reasonably acceptable to the First Lien Agent and Approving Majority First Lien Lenders and the Court shall have entered an order approving the Debtors' disclosure statement in connection with such plans of reorganization or liquidation, in each case, on or before June 30, 2012 and (y) the Debtors are using reasonable best efforts to confirm such plans of reorganization or liquidation, the Wind-Down Approved Budget shall automatically be extended to include the period from and including June 30, 2012 to and including July 31, 2012; provided, however, that the Debtors shall be prohibited from using Prepetition Collateral, including, without limitation, Cash Collateral, pursuant to such extended Wind-Down Approved Budget in

excess of the amounts provided under the Wind-Down Approved Budget through and including June 30, 2012.

(b) Budget Covenants.

(i) From and including the Petition Date to and including January 27, 2012, for each 8-week period set forth in the Pre-Sale Approved Budget, tested weekly on a rolling basis by reference to the Pre-Sale Variance Report (as defined below), commencing with the 8-week period ending November 25, 2011, the aggregate disbursements (including, without limitation, professional fees (but excluding the First Lien Professional Fees (as defined below) and, if any, the Committee's professional fees permitted under the Pre-Sale Approved Budget and the amount budgeted therefor) and capital expenditures) by the Debtors shall not exceed one hundred fifteen percent (115%) of the aggregate amount of disbursements budgeted for each such 8-week period pursuant to the Pre-Sale Approved Budget. The Debtors shall provide to the Postpetition Lender, a duly appointed representative of Graceway Canada (the "***Canadian Representative***"), the First Lien Agent, the Second Lien Agent and the Committee, so as actually to be received on or prior to the Thursday following the end of each week, commencing with the Thursday following the fourth week after the Petition Date, a variance report (a "***Pre-Sale Variance Report***") certified by the chief executive officer, chief financial officer, treasurer, controller or general counsel of the Borrower (each an "***Authorized Officer***"), in form acceptable to the Postpetition Lender, the First Lien Agent and the Approving Majority First Lien Lenders, each, in their respective sole discretion, setting forth (A) the actual cash receipts and aggregate disbursements (including, without limitation, professional fees (including, without limitation, the First Lien Professional Fees and, if any, the Committee's professional fees permitted under the Pre-Sale Approved Budget) and capital expenditures) for such immediately preceding calendar

week and the Aggregate Liquidity as of the end of such calendar week (provided, however, that the initial Pre-Sale Variance Report provided by the Debtors in accordance with the terms of this Interim Order shall set forth actual cash receipts and aggregate disbursements (including, without limitation, professional fees (including, without limitation, the First Lien Professional Fees and, if any, the Committee's professional fees permitted under the Pre-Sale Approved Budget) and capital expenditures) for each immediately preceding calendar week since the Petition Date and the Aggregate Liquidity as of the end of each such calendar week) and (B) with respect to each 8-week period commencing with the 8-week period ending on the Friday of the eighth week after the Petition Date, the variance in dollar amounts and percentage terms of the actual aggregate disbursements (including, without limitation, professional fees (but excluding the First Lien Professional Fees and, if any, the Committee's professional fees permitted under the Pre-Sale Approved Budget and the amount budgeted therefor) and capital expenditures) from those reflected for the corresponding period in the Pre-Sale Approved Budget.

(ii) From and including January 28, 2012 through and including June 30, 2012 (or, if the Wind-Down Approved Budget is extended in accordance with paragraph 3(a) above, July 31, 2012), for each period from January 28, 2012 through the end of each month thereafter set forth in the Wind-Down Approved Budget, tested at the end of each such month on a cumulative basis by reference to the Wind-Down Variance Report (as defined below) (it being understood that (I) the period from and including January 28, 2012 to and including January 31, 2012 shall be included in the period tested at the end of February 2012 and (II) an amount equal to the aggregate amount of all budgeted disbursements incurred but not paid during the 8-week period ending January 27, 2012 under the Pre-Sale Approved Budget (if any) shall be added to the "Corporate, Employee and Other Wind Down Expenses" line item in the Wind-Down

Approved Budget for the month of February 2012), the aggregate disbursements (including, without limitation, professional fees (but excluding the First Lien Professional Fees and, if any, the Committee's professional fees permitted under the Wind-Down Approved Budget and the amount budgeted therefor) and capital expenditures) by the Debtors shall not exceed one hundred ten percent (110%) of the aggregate amount of disbursements budgeted for each such cumulative period pursuant to the Wind-Down Approved Budget. The Debtors shall provide to the Postpetition Lender, the Canadian Representative, the First Lien Agent, the Second Lien Agent and the Committee, so as actually to be received on or prior to the fourth business day immediately following the end of each month, commencing with the fourth business day of March 2012, a variance report (a "***Wind-Down Variance Report***") certified by an Authorized Officer, in form acceptable to the Postpetition Lender, the First Lien Agent and the Approving Majority First Lien Lenders, each, in their respective sole discretion, setting forth (A) the actual cash receipts and aggregate disbursements (including, without limitation, professional fees (including, without limitation, the First Lien Professional Fees and, if any, the Committee's professional fees permitted under the Wind-Down Approved Budget) and capital expenditures) for such immediately preceding month and the Aggregate Liquidity as of the end of such immediately preceding month, and (B) with respect to each such cumulative period, the variance in dollar amounts and percentage terms of the actual aggregate disbursements (including, without limitation, professional fees (but excluding the First Lien Professional Fees and, if any, the Committee's professional fees permitted under the Wind-Down Approved Budget and the amount budgeted therefor) and capital expenditures) from those reflected for the corresponding period in the Wind-Down Approved Budget.

(iii) The proceeds of the Intercompany Loan (subject to paragraph 5(a) below) and the Cash Collateral shall be used only as follows: (A) prior to the Cash Collateral Termination Date, solely for payment of the disbursements set forth in the Approved Budget subject to the terms and conditions of this Interim Order (including, without limitation, any variance permitted under this paragraph 3(b)) and (B) on or after the Cash Collateral Termination Date, solely (x) to fund (1) unpaid fees required to be paid in these Chapter 11 Cases to the clerk of this Court and to the office of the United States Trustee under 28 U.S.C. § 1930(a), whether arising prior to or after the delivery of the Carve-Out Trigger Notice (as defined below), in an amount equal to $201,250, (2) any unpaid amounts incurred and earned prior to the occurrence of the Cash Collateral Termination Date under each of the Debtors' Professionals Carve-Out Cap (as defined below) and Committee Professionals Carve-Out Cap (as defined below) and (3) the Debtors' Professionals Post Carve-Out Cap (as defined below) and Committee Professionals Post Carve-Out Cap (as defined below) (the aggregate of such amounts in clauses (1), (2) and (3) above, the "***Maximum Carve-Out Amount***") (it being understood that such pre-funded unpaid fees required to be paid in these Chapter 11 Cases to the clerk of this Court and to the office of the United States Trustee under 28 U.S.C. § 1930(a), the pre-funded amounts incurred and earned prior to the occurrence of the Cash Collateral Termination Date under each of the Debtors' Professionals Carve-Out Cap and Committee Professionals Carve-Out Cap and the pre-funded amounts in respect of the Debtors' Professionals Post Carve-Out Cap and Committee Professionals Post Carve-Out Cap shall be escrowed in accordance with paragraph 8(e) below and paid to the applicable retained professionals only if and when such amounts are incurred, earned and allowed by this Court under Sections 105(a), 330 and 331 of the Bankruptcy Code) and (y) to pay the First Lien Professional Fees.

The undertakings of the Debtors provided for in this paragraph 3(b) shall be collectively referred to herein as the "***Budget Covenants***."

(c) Events of Default. Subject to paragraph 14(b) below, upon the occurrence of any Event of Default (as defined below), the consensual Cash Collateral use arrangement contained in this Interim Order shall terminate automatically without any further notice or action (including, without limitation, further notice, motion or application to, order of or hearing before this Court) unless the occurrence of such Event of Default is waived in writing at any time by at least two First Lien Lenders holding in aggregate a majority of the then outstanding First Lien Obligations held by the Consenting First Lien Lenders (as defined in the Sale Support Agreement, dated as of September 28, 2011 (the "***Sale Support Agreement***"), entered by and among the Debtors, Graceway Canada and the First Lien Lenders from time to time party thereto) (the "***Approving Majority First Lien Lenders***"). Each of the following events shall constitute an event of default (collectively, the "***Events of Default***"):

(i) the failure to obtain the entry by this Court of the Final Order on or within thirty-five (35) days after the Petition Date;

(ii) on or prior to January 27, 2012, with respect to each of the following line items in the Pre-Sale Approved Budget, the payment by the Debtors of any disbursements in excess of the cumulative amount budgeted for each such line item in the Pre-Sale Approved Budget plus fifteen percent (15%) of the cumulative amount of disbursements with respect to such line item: (i) "Payroll & Benefits", (ii) "R&D, Licensing & Regulatory", (iii) "Advertising & Promotions and Sales Expenses", (iv) "Corporate, Occupancy, Utilities & Other Expenses", (v) "Ropes & Gray", (vi) "Edwards Angell Palmer & Dodge", (vii) "Hogan Lovells US LLP", (viii) "Other Non-Restructuring Professionals" and (ix) "CapEx";

(iii) after January 27, 2012, with respect to the "Total Corporate, Employee and Other Wind Down Expenses" line item in the Wind-Down Approved Budget, the payment by the Debtors of any disbursements in excess of the cumulative amount budgeted for such line item in the Wind-Down Approved Budget plus ten percent (10%) of the cumulative amount of disbursements with respect to such line item;

(iv) any violation of the Budget Covenants;

(v) (A) the entry of an order by any court invalidating, disallowing or limiting in any respect, as applicable, either (1) the enforceability, priority, or validity of the First Priority Liens or Adequate Protection Replacement Liens, in each case, securing the First Lien Obligations or (2) any of the First Lien Obligations or Adequate Protection Super-Priority Claims (as defined below) granted to the First Lien Claimholders or (B) with respect to any of the foregoing, any Debtor's application for, consent to, or acquiescence in, any such relief;

(vi) the incurrence by any Debtor after the Petition Date of indebtedness that is (A) secured by a security interest, mortgage or other Lien on all or any portion of the Prepetition Collateral which is equal or senior to any security interest, mortgage or other Lien of the First Lien Agent and the First Lien Claimholders, as applicable, or (B) entitled to priority administrative expense status which is equal or senior to that granted to the First Lien Agent and First Lien Claimholders, as applicable, herein, except, in each case, (x) any such indebtedness used to refinance the First Lien Obligations in full and (y) the Intercompany Loan;

(vii) the entry of a final order by this Court (other than the Final Order) granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code (A) to allow any creditor to execute upon or enforce a Lien on or security interest in any Prepetition Collateral with a value in excess of $250,000 or (B) with respect to any Lien on or the granting of any Lien on any Prepetition Collateral to any state or local environmental or regulatory agency (in each case with a value in excess of $250,000);

(viii) reversal, vacatur, stay or modification (without the express prior written consent of the Postpetition Lender, the First Lien Agent and the Approving Majority First Lien Lenders, in their respective sole discretion) of this Interim Order;

(ix) (A) the entry by this Court of an order, or the filing by the Debtors of a motion with this Court which seeks the entry of an order, accomplishing (x) the conversion of one or more of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code or (y) the dismissal, termination, stay or modification of one or more of the Chapter 11 Cases or (B) with respect to any of the foregoing, any Debtor's application for, consent to, or acquiescence in, any such relief;

(x) the entry by this Court of an order, or the filing by the Debtors of a motion with this Court, which seeks the entry of an order, accomplishing the appointment of an interim or permanent trustee, receiver or examiner with expanded powers to operate or manage the financial affairs, business or reorganization of any Debtor in one or more of the Chapter 11 Cases;

(xi) any material breach by any Debtor of any of their obligations, representations, warranties or covenants set forth in this Interim Order (except as

covered by any other Event of Default under this paragraph 3(c)) or the Asset Purchase Agreement (as defined in the DIP Motion), as applicable, which material breach is not cured on or within five (5) Business Days after the giving of written notice of such breach to the Debtors;

(xii) any material breach by Graceway Canada of any of its obligations, representations, warranties or covenants set forth in the Asset Purchase Agreement, as applicable, which material breach is not cured on or within five (5) Business Days after the giving of written notice of such breach to the Debtors;

(xiii) the failure to make adequate protection payments or pay professional fees, costs and expenses of the First Lien Agent, in each case, when and as provided for under this Interim Order;

(xiv) the Debtors fail to file the Sale Motion (as defined in the DIP Motion) on or within three (3) Business Days following the Petition Date seeking approval of the Bidding Procedures (as defined in the Asset Purchase Agreement) and Sale (as defined in the DIP Motion) in this Court;

(xv) the Debtors fail to obtain entry by this Court of (a) the Bidding Procedures Order (as defined in the Asset Purchase Agreement) within forty-five (45) days after the Petition Date or (b) the Sale Order (as defined in the Asset Purchase Agreement) by January 2, 2012;

(xvi) (a) the termination of the Asset Purchase Agreement other than in connection with acceptance of an Alternative Transaction (as defined in the Asset Purchase Agreement) that is acceptable to the Postpetition Lender and Approving Majority First Lien Lenders in their respective sole discretion, (b) the amendment or modification of, or filing of a pleading by any Debtor seeking to amend or modify, the Asset Purchase Agreement or any documents related thereto (including, without limitation, the Bidding Procedures, Bidding Procedures Order or Sale Order), in a manner not acceptable to the Postpetition Lender and Approving Majority First Lien Lenders in their respective sole discretion or (c) execution of definitive documents in respect of an Alternative Transaction that are not acceptable to the Postpetition Lender and Approving Majority First Lien Lenders in their respective sole discretion;

(xvii) the failure to consummate the Sale on or before January 27, 2012;

(xviii) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any ruling or order enjoining the consummation of a material portion of the Sale;

(xix) the filing by any Debtor of any stand-alone plan of reorganization or liquidation (or the announcement of any Debtor's support of any such plan filed by any other party) prior to consummation of the Sale; and

(xx) the entry by this Court of an order, or the filing by the Debtors of a motion with this Court which seeks the entry of an order, authorizing the use of Cash Collateral for any purpose other than to pay the First Lien Obligations in full or as permitted in this Interim Order.

provided, however, that the consensual use arrangement of Prepetition Collateral, including, without limitation, Cash Collateral, described in this Interim Order shall, unless it shall have terminated earlier pursuant to the terms hereof, terminate on June 30, 2012 (unless extended automatically in accordance with paragraph 3(a) or by consent of the Approving Majority First Lien Lenders). The earliest date upon which the consensual Cash Collateral use arrangement described in this Interim Order is terminated pursuant to this paragraph 3(c) shall be referred to herein as the "***Cash Collateral Termination Date***." In the event this Interim Order terminates pursuant to this clause (c), the Adequate Protection Collateral will be used to fund the Maximum Carve-Out Amount pursuant to paragraph 8 below and to satisfy the Intercompany Loan pursuant to paragraph 5(d) before being used to satisfy any other obligation, including, without limitation, the First Lien Obligations.

(d) Payments on Account of Prepetition Obligations. Without limiting the foregoing, the Debtors shall not be permitted to make any payments on account of any prepetition debt or obligation prior to the effective date of a Chapter 11 plan or plans with respect to any of the Debtors, except (i) as set forth in this Interim Order; (ii) as provided in the first day orders, which first day orders shall be in form and substance reasonably acceptable to the Postpetition Lender, First Lien Agent and Majority First Lien Lenders; and (iii) as provided in the other motions, orders and requests for relief filed by the Debtors, each in form and substance reasonably acceptable to the Postpetition Lender, First Lien Agent and Approving Majority First Lien Lenders.

(e) Enforceable Obligations. No obligation, payment, transfer or grant of security under this Interim Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under Sections 502(d), 544, 547, 548 or 549 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual or otherwise), counterclaim, cross-claim, defense or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

4. **Adequate Protection for Prepetition Secured Parties**. The Prepetition Secured Parties shall receive the following adequate protection (collectively referred to as the "***Prepetition Secured Parties' Adequate Protection***"):

(a) Adequate Protection Replacement Liens. To the extent of the diminution in value of the respective interests of the Prepetition Secured Parties in the respective Prepetition Collateral, including, without limitation, the Cash Collateral, from and after the Petition Date, calculated in accordance with Section 506(a) of the Bankruptcy Code, resulting from the use, sale or lease by the Debtors of the applicable Prepetition Collateral, including, without limitation, the Cash Collateral, the granting of the DIP Liens, the subordination of the Prepetition Liens thereto and to the Carve-Out and the imposition or enforcement of the automatic stay of Section 362(a) (collectively, "***Diminution in Value***") (in addition to (but without duplication of) any claim for Diminution in Value that may arise during the course of the Chapter 11 Cases, the First Lien Claimholders shall have (solely upon entry of the Final Order) a valid, binding and enforceable claim for Diminution in Value equal to the product of (x) 1 minus the quotient of the

U.S. Cash Consideration and the Cash Consideration (in each case, as defined in the Sale Support Agreement) and (y) the sum of the amounts set forth in Section 4(b) of the Sale Support Agreement that are authorized to be paid in accordance with the Sale Order), the First Lien Agent and Second Lien Agent, as applicable, for the benefit of the First Lien Claimholders and Second Lien Claimholders, as applicable, are hereby granted, subject to the terms and conditions set forth below, pursuant to Sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, replacement Liens upon all property of the Debtors, now existing or hereinafter acquired, including, without limitation, all cash and cash equivalents (whether maintained with the First Lien Agent or otherwise), and any investment in such cash or cash equivalents, money, inventory, goods, accounts receivable, other rights to payment, intercompany loans and other investments, investment property, contracts, contract rights, properties, plants, equipment, machinery, general intangibles, payment intangibles, accounts, deposit accounts, documents, instruments, chattel paper, documents of title, letters of credit, letter of credit rights, supporting obligations, leases and other interests in leaseholds, real property, fixtures, patents, copyrights, trademarks, trade names, other intellectual property, intellectual property licenses, capital stock of subsidiaries, tax and other refunds, insurance proceeds, commercial tort claims, proceeds of the Debtors' claims and causes of action under Sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law ("***Avoidance Actions***") (solely upon entry of the Final Order), rights under Section 506(c) of the Bankruptcy Code (solely upon entry of the Final Order), all other Prepetition Collateral and all other "property of the estate" (within the meaning of the Bankruptcy Code) of any kind or nature, real or personal, tangible, intangible or mixed, now existing or hereafter acquired or created, and all rents, products, substitutions, accessions, profits,

replacements and cash and non-cash proceeds of all of the foregoing (all of the foregoing collateral collectively referred to as the "***Adequate Protection Collateral***" and such adequate protection replacement liens, the "***Adequate Protection Replacement Liens***"). The Adequate Protection Replacement Liens on such Adequate Protection Collateral shall be subject and subordinate only to (i) the DIP Liens, (ii) the Prepetition Prior Liens, (iii) the payment of the Carve-Out and (iv) with respect to the Adequate Protection Replacement Liens granted to the Second Lien Agent for the benefit of the Second Lien Claimholders only, the Adequate Protection Replacement Liens granted to the First Lien Agent for the benefit of the First Lien Claimholders. For the avoidance of doubt, the Adequate Protection Replacement Liens granted to the Second Lien Agent for the benefit of the Second Lien Claimholders shall be subordinated to the Adequate Protection Replacement Liens granted to the First Lien Agent for the benefit of the First Lien Claimholders on the same basis as the Second Priority Liens are subordinated to the First Priority Liens under the Intercreditor Agreement.

(b) Adequate Protection Super-Priority Claims. To the extent of Diminution in Value, the First Lien Claimholders and Second Lien Claimholders are hereby granted allowed super-priority administrative claims (such adequate protection super-priority claims, the "***Adequate Protection Super-Priority Claims***") against each of the Debtors pursuant to Sections 361, 363(e), 364(d)(1) and 507(b) of the Bankruptcy Code, which shall have priority, subject only to (i) the DIP Super-Priority Claims, (ii) the payment of the Carve-Out and (iii) with respect to the Adequate Protection Super-Priority Claims granted to the Second Lien Claimholders, the Adequate Protection Super-Priority Claims granted to the First Lien Claimholders, over all administrative expense claims, adequate protection and other diminution claims, unsecured claims and all other claims against the Debtors, now existing or hereafter arising, of any kind or

nature whatsoever, including, without limitation, administrative expenses or other claims of the kinds specified in, or ordered pursuant to, Sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) (subject to the entry of the Final Order), 507(a), 507(b), 546, 726, 1113 and 1114 or any other provision of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment Lien or other non-consensual Lien, levy or attachment. The Adequate Protection Super-Priority Claims shall for purposes of Section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under Section 503(b) of the Bankruptcy Code, shall be against each Debtor on a joint and several basis, and shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and their estates and all proceeds thereof, provided, however, that (i) to the extent the Cash Collateral Termination Date shall have occurred, the Maximum Carve-Out Amount shall be funded and the Intercompany Loan shall be paid in full (including all accrued and previously capitalized interest thereon) in cash pursuant to paragraph 5(d) before any payments shall be made on account of the Adequate Protection Super-Priority Claims and (ii) to the extent the Cash Collateral Termination Date shall not have occurred, all amounts set forth in section 4(b) of the Sale Support Agreement shall be funded (provided, the Sale shall have been consummated) and the Intercompany Loan shall be paid in full (including all accrued and previously capitalized interest thereon) in cash pursuant to paragraph 5(d) before any payments shall be made on account of the Adequate Protection Super-Priority Claims, in each case, in accordance with the terms of this Interim Order. Other than as provided in this Interim Order with respect to the Carve-Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under Sections 328, 330, and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these proceedings, or in any Successor Cases, and no priority claims are, or will be,

senior to, prior to or on a parity with the Adequate Protection Replacement Liens and the Adequate Protection Super-Priority Claims.

(c) Adequate Protection Payments, Professional Fees and Information. As further adequate protection, and in consideration, and as a requirement, for obtaining the consent of the First Lien Agent and Majority First Lien Lenders to the entry of this Interim Order and the Debtors' consensual use of the Prepetition Collateral, including, without limitation, the Cash Collateral, as provided herein, the Debtors shall (i) within three (3) Business Days of the date of entry of this Interim Order pay to the First Lien Agent a cash amount equal to $973,838.09, (ii) timely pay in cash all reasonable out of pocket fees, costs and expenses of the First Lien Agent (including, without limitation, payment in advance of the agency fee required to be paid pursuant to Section 2.11(c) of the First Lien Credit Agreement) and its professionals, including, without limitation, Morgan, Lewis & Bockius LLP, as financing counsel, Wachtell, Lipton, Rosen & Katz, as special restructuring and bankruptcy counsel, DLA Piper LLP, as local counsel, one foreign counsel and one financial advisor (collectively, the "***First Lien Professional Fees***"), in each case, on a regular monthly basis during the Chapter 11 Cases, without further notice, motion or application to, order of, or hearing before, this Court; provided that after consummation of the Sale, if the proceeds of the Sale are not sufficient to satisfy the claims of the First Lien Claimholders in full, the First Lien Agent shall pay such fees and expenses from proceeds of the Sale that would otherwise be distributed to the First Lien Agent for the benefit of the First Lien Claimholders withheld for such purpose, and (iii) deliver to the First Lien Agent, the Second Lien Agent and their respective advisors all information, reports, documents and other material that they may reasonably request, either directly or through their professionals (it being understood that the First Lien Agent, the Second Lien Agent and their respective advisors

shall be permitted in their sole discretion to distribute such information, reports, documents and other material to the First Lien Claimholders and Second Lien Claimholders, as applicable, upon request). Notwithstanding anything contained herein or otherwise, (A) all such professional fees (in each case, as described above) pursuant to this Interim Order shall be subject to recharacterization and reapplication pursuant to further order of this Court if and to the extent the First Lien Obligations are determined by this Court to be undersecured and (B) the Debtors shall not be obligated to reimburse any Prepetition Secured Party with respect to the defense of Claims and Defenses in the event such Claims and Defenses are asserted pursuant to paragraph 7 of this Interim Order.

(d) Notice of Professional Fees. None of the fees, costs and expenses incurred by professionals engaged by the First Lien Agent shall be subject to Court approval or U.S. Trustee guidelines, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with this Court; provided, that such professionals shall submit copies of their respective professional fee invoices to the Debtors, the U.S. Trustee, counsel for the Postpetition Lender and counsel for the Committee (if appointed) (and any subsequent trustee of the Debtors' estates). Such invoices may be redacted to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential or privileged information, and the provision of such invoices shall not constitute any waiver of any privilege (including, without limitation, the attorney-client privilege) or of any benefits of the attorney work product doctrine. The Debtors, the U.S. Trustee, the Postpetition Lender and the Committee (if appointed) (and any subsequent trustee of the Debtors' estates) may object to the reasonableness or necessity of the particular items or categories of the fees, costs and expenses included in any professional fee

invoice submitted by such professionals; provided that, any such objection shall be forever waived and barred unless (i) it is filed with this Court and served on the applicable professional, the First Lien Agent and the Debtors no later than five (5) days after delivery of the applicable professional fee invoice to the objecting party and (ii) it describes with particularity the specific basis for the objection. Any hearing on an objection to payment of any fees, costs and expenses set forth in such professional fee invoice shall be limited to the reasonableness or necessity of the particular items or categories of the fees, costs and expenses which are the subject of such objection. All such unpaid fees, costs and expenses that have not been disallowed by this Court on the basis of an objection filed by the Debtors, the U.S. Trustee, the Postpetition Lender or the Committee (if appointed) (or any subsequent trustee of the Debtors' estates) in accordance with the terms hereof shall constitute First Lien Obligations and shall be secured by the Adequate Protection Collateral as specified in this Interim Order. The Debtors shall pay in accordance with the terms and conditions of this Interim Order the undisputed fees, costs and expenses reflected on any professional fee invoice no later than ten (10) Business Days after the submission thereof, or, in the case of any fees, cost and expenses timely objected to by the Debtors, the U.S. Trustee, the Postpetition Lender or the Committee (if appointed) (or any subsequent trustee of the Debtors' estates) in accordance with the terms hereof, no later than ten (10) Business Days after such objection has been resolved by this Court.

(e) Right to Seek Additional Adequate Protection. Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, this Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Prepetition Secured Parties. However, subject to the terms of the Intercreditor Agreement, any Prepetition Secured Party may request further or different adequate

protection, and the Debtors or any other party in interest may (subject to the Intercreditor Agreement) contest any such request; provided that any such further or different adequate protection shall at all times be subordinate and junior to the DIP Super-Priority Claims and DIP Liens of the Postpetition Lender granted under this Interim Order.

(f) Consent to Priming and Adequate Protection. The First Lien Agent and the Majority First Lien Lenders consent to the use of the Prepetition Collateral, including, without limitation, the Cash Collateral, the Prepetition Secured Parties' Adequate Protection and the priming provided for herein; provided, however, that such consent is expressly conditioned upon the entry of this Interim Order and shall not be deemed to extend to any other replacement financing or debtor-in-possession financing other than the Intercompany Loan or any other use of the Prepetition Collateral, including, without limitation, the Cash Collateral other than as specified herein; and provided, further, that (I) such consent shall be of no force and effect in the event this Interim Order is not entered or is entered and subsequently reversed, vacated, stayed or modified (unless such reversal, vacatur, stay or modification is acceptable to the First Lien Agent and the Approving Majority First Lien Lenders, in their sole discretion) and (II) in the event of the occurrence of the Cash Collateral Termination Date, nothing herein shall alter the burden of proof set forth in the applicable provisions of the Bankruptcy Code at any hearing concerning the continued use of the Prepetition Collateral, including, without limitation, the Cash Collateral, by the Debtors.

5. **Intercompany Loan**.

(a) Tranches. The Intercompany Loan shall consist of a tranche A intercompany term loan in aggregate principal amount equal to $3,800,000 (the "***Tranche A Intercompany Loan***") and a tranche B intercompany term loan in aggregate principal amount

equal to $2,200,000 (the "***Tranche B Intercompany Loan***"). The Borrower shall borrow the Tranche A Intercompany Loan and Tranche B Intercompany Loan, in each case, no later than the third day after the entry by the Court of this Interim Order. The Borrower is hereby authorized, and agrees, to use the proceeds of (i) the Tranche A Intercompany Loan only in accordance with the terms and conditions of this Interim Order, including, without limitation, the Approved Budget and Budget Covenants and (ii) the Tranche B Intercompany Loan only in accordance with the terms and conditions of this Interim Order, including, without limitation, the Approved Budget and Budget Covenants, and with the prior written consent of the Approving Majority First Lien Lenders (it being understood that the Approving Majority First Lien Lenders shall be deemed to have consented to the Debtors' use of the proceeds of the Tranche B Intercompany Loan to pay the Expense Reimbursement Amount (as defined in the Asset Purchase Agreement) if approved by the Court pursuant to the Bidding Procedures Order and due and payable pursuant to the terms of the Asset Purchase Agreement).

(b) Interest and Fees. Interest on the outstanding principal amount of the Intercompany Loan shall be capitalized and added thereto until the outstanding principal amount (including all previously capitalized interest) is paid in full on the Maturity Date (as defined below). Interest shall accrue at 4.75% per annum. Interest shall be capitalized quarterly, commencing with the Debtors' fiscal quarter ending December 31, 2011. No fees, costs, expenses or other charges shall accrue or be payable in connection with the Intercompany Loan.

(c) Maturity. The Intercompany Loan shall mature and be paid in full (including all accrued and previously capitalized interest thereon) in cash on the earlier of one year from the date of entry of this Interim Order or closing of the Sale (the "***Maturity Date***").

(d) Remedies. Failure to pay the entire principal amount of the Intercompany Loan to the Postpetition Lender on the Maturity Date shall constitute a default under the Intercompany Loan (an "***Intercompany Loan Default***"). The Debtors shall cure any Intercompany Loan Default within three (3) Business Days following receipt of notice of such default, provided, that, if the Debtors fail to cure the Intercompany Loan Default, the Postpetition Lender may seek an emergency hearing before this Court for the sole purpose of determining whether an Intercompany Loan Default has occurred and seeking relief from the automatic stay to exercise its rights and remedies with respect to the Adequate Protection Collateral in accordance with this Interim Order and applicable law.

(e) DIP Liens. As security for the Intercompany Loan, pursuant to Section 364(d)(1) of the Bankruptcy Code the Debtors hereby grant to the Postpetition Lender a perfected first priority, senior priming Lien (the "***DIP Liens***") on all Adequate Protection Collateral (including, without limitation, Cash Collateral) that is senior and priming to (A) the Prepetition Liens, (B) the Adequate Protection Replacement Liens and (C) any Liens that are junior to the Prepetition Liens, after giving effect to any intercreditor or subordination agreements (the Liens referenced in clauses (A), (B) and (C), collectively, the "***Primed Liens***"). The DIP Liens shall immediately and without any further action by any Person, be valid, binding, permanent, perfected, continuing, enforceable and non-avoidable upon the date this Court enters this Interim Order.

(f) DIP Lien Priority. Notwithstanding anything to the contrary contained in this Interim Order, for the avoidance of doubt, the DIP Liens granted to the Postpetition Lender shall in each and every case be first priority senior Liens that (i) are subject only to (A) valid, enforceable, non-avoidable and perfected Liens in existence on the Petition Date that (I) after

giving effect to any intercreditor or subordination agreement, are senior in priority to the Prepetition Liens and (II) are perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code and after giving effect to any intercreditor or subordination agreement are senior in priority to the Prepetition Liens (collectively, the "***Prepetition Prior Liens***") and (B) the Carve-Out (to the extent provided in the provisions of this Interim Order), and (ii) except as provided in sub-clause (i) of this clause (f), are senior to all prepetition and postpetition Liens of any other person or entity (including, without limitation, the Primed Liens). The DIP Liens and the DIP Super-Priority Claims (A) shall not be subject to Sections 510, 549, 550 or 551 of the Bankruptcy Code or, subject to entry of the Final Order, Section 506(c) of the Bankruptcy Code, (B) shall not be subordinate to, or *pari passu* with, (x) any Lien that is avoided and preserved for the benefit of the Debtors and their estates under Section 551 of the Bankruptcy Code or (y) any other intercompany or affiliate Liens of the Debtors, and (C) shall be valid and enforceable in any Successor Case and/or upon the dismissal of any of the Chapter 11 Cases.

(g) Super-Priority Administrative Claim Status. In addition to the DIP Liens granted herein, effective immediately upon entry of this Interim Order, except with respect to Avoidance Actions, the Intercompany Loan shall constitute an allowed super-priority administrative claim pursuant to Section 364(c)(1) of the Bankruptcy Code, which shall have priority, subject only to the payment of the Carve-Out, over all administrative expense claims, adequate protection and other diminution claims (including the Adequate Protection Super-Priority Claims), unsecured claims and all other claims against the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses or other claims of the kinds specified in, or ordered pursuant to, Sections 105, 326, 328,

330, 331, 503(a), 503(b), 506(c) (subject to the entry of the Final Order), 507(a), 507(b), 546, 726, 1113 and 1114 or any other provision of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment Lien or other non-consensual Lien, levy or attachment (the "***DIP Super-Priority Claims***"). The DIP Super-Priority Claims shall for purposes of Section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under Section 503(b) of the Bankruptcy Code, shall be against each Debtor on a joint and several basis, and shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and their estates and all proceeds thereof after funding of either (i) the Maximum Carve-Out Amount to the extent the Cash Collateral Termination Date shall have occurred or (ii) all amounts set forth in section 4(b) of the Sale Support Agreement to the extent the Cash Collateral Termination Date shall not have occurred and the Sale shall have been consummated, in each case, in accordance with the terms of this Interim Order. Other than as provided in this Interim Order with respect to the Carve-Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under Sections 328, 330, and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these proceedings, or in any Successor Cases, and no priority claims are, or will be, senior to, prior to or on a parity with the DIP Liens and the DIP Super-Priority Claims.

6. **Automatic Postpetition Lien Perfection**. This Interim Order shall be sufficient and conclusive evidence of the validity, enforceability, perfection and priority of the Adequate Protection Replacement Liens and the DIP Liens without the necessity of (a) filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or (b) taking any other action to validate or perfect the Adequate Protection Replacement Liens and the DIP Liens or to entitle the

Adequate Protection Replacement Liens and the DIP Liens to the priorities granted herein. Notwithstanding the foregoing, each of the First Lien Agent, the Second Lien Agent and the Postpetition Lender, as applicable (in the case of the First Lien Agent and Second Lien Agent, solely with respect to the Adequate Protection Replacement Liens), may, in its sole discretion, file financing statements, mortgages, security agreements, notices of Liens and other similar documents, and is hereby granted relief from the automatic stay of Section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, security agreements, notices and other agreements or documents shall be deemed to have been filed or recorded on the Petition Date. The applicable Debtors shall execute and deliver to each of the First Lien Agent, the Second Lien Agent and the Postpetition Lender, as applicable, all such financing statements, mortgages, notices and other documents as such party may reasonably request to evidence and confirm the contemplated priority of the Adequate Protection Replacement Liens granted pursuant hereto. Without limiting the foregoing, each of the First Lien Agent, the Second Lien Agent and the Postpetition Lender, as applicable, in its sole discretion, may file a photocopy of this Interim Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which any Debtor has real or personal property, and in such event, the subject filing or recording officer shall be authorized to file or record such copy of this Interim Order. Subject to the entry of the Final Order, any provision of any lease, loan document, easement, use agreement, proffer, covenant, license, contract, organizational document, or other instrument or agreement that requires the payment of any fees or obligations to any governmental entity or non-governmental entity in order for the Debtors to pledge, grant, mortgage, sell, assign, or otherwise transfer any fee or leasehold interest or the proceeds thereof

or other Adequate Protection Collateral, is and shall be deemed to be inconsistent with the provisions of the Bankruptcy Code and shall have no force or effect with respect to the Liens on such leasehold interests or other applicable Adequate Protection Collateral or the proceeds of any assignment and/or sale thereof by any Debtor in favor of the Prepetition Secured Parties in accordance with the terms of this Interim Order. To the extent that the First Lien Agent or Second Lien Agent is the secured party under any account control agreements, listed as loss payee under any of the Debtors' insurance policies or is the secured party under any First Lien Document or Second Lien Document, the Postpetition Lender shall also be deemed to be the secured party under such account control agreements, loss payee under the Debtors' insurance policies and the secured party under each such First Lien Loan Document or Second Lien Loan Document, shall have all rights and powers attendant to that position (including, without limitation, rights of enforcement) and shall act in that capacity and distribute any proceeds recovered or received first for its benefit and second, subsequent to payment in full of the Intercompany Loan, for the benefit of the Prepetition Secured Parties. The First Lien Agent or Second Lien Agent, as applicable, shall serve as agent for the Postpetition Lender for purposes of perfecting its Liens on all Adequate Protection Collateral that is of a type such that perfection of a Lien therein may be accomplished only by possession or control by a secured party.

7. **Reservation of Certain Third Party Rights and Bar of Challenges and Claims**. The Debtors' Stipulations shall be binding upon the Debtors, Graceway Canada and any Chapter 11 trustee in all circumstances. The Debtors' Stipulations shall be binding upon each other party in interest, including any Committee, unless (i) such Committee or any other party in interest (other than the Debtors, Graceway Canada or any Chapter 11 trustee) obtains the authority to commence and actually commences, or if the Chapter 11 Cases are converted to

cases under Chapter 7 prior to the expiration of the Challenge Period (as defined below), the Chapter 7 trustee in such Successor Cases actually commences, on or before sixty (60) days after the appointment of any Committee in the Chapter 11 Cases (or if no Committee has been so appointed, seventy-five (75) days from the Petition Date) (such time period shall be referred to as the "***Challenge Period***," and the date that is the last calendar day of the Challenge Period, in the event that no objection or challenge is raised during the Challenge Period, shall be referred to as the "***Challenge Period Termination Date***"), (x) a contested matter or adversary proceeding challenging or otherwise objecting to the admissions, stipulations, findings or releases included in the Debtors' Stipulations, or (y) a contested matter or adversary proceeding against any or all of the Prepetition Secured Parties in connection with or related to the Prepetition Obligations, or the actions or inactions of any or all of the Prepetition Secured Parties arising out of or related to the Prepetition Obligations, or otherwise, including, without limitation, any claim against any or all of the Prepetition Secured Parties in the nature of a "lender liability" cause of action, setoff, counterclaim or defense to the Prepetition Obligations (including but not limited to those under Sections 544, 547, 548, 549, 550 and/or 552 of the Bankruptcy Code or by way of suit against any or all of the Prepetition Secured Parties) (the objections, challenges, actions and claims referenced in clauses (x) and (y), collectively, the "***Claims and Defenses***") and (ii) this Court rules in favor of the plaintiff in any such timely and properly commenced contested matter or adversary proceeding; provided, that as to the Debtors, for themselves and not their estates, Graceway Canada, for itself and its estate, and any Chapter 11 trustee, all such Claims and Defenses are irrevocably waived and relinquished as of the Petition Date. Until the Challenge Period Termination Date, any party in interest (other than the Debtors, Graceway Canada and any Chapter 11 trustee, but including the Committee (if appointed)) may assert any Claims and

Defenses. If no Claims and Defenses with respect to the First Lien Claimholders or First Lien Obligations have been timely asserted in any such adversary proceeding or contested matter in accordance with this paragraph 7, then, upon the Challenge Period Termination Date, and for all purposes in these Chapter 11 Cases and any Successor Case, (i) all payments made to the First Lien Claimholders pursuant to this Interim Order or otherwise shall not be subject to counterclaim, set-off, subordination, recharacterization, defense or avoidance, (ii) any and all such Claims and Defenses by any party in interest shall be deemed to be forever released, waived and barred with respect to the First Lien Claimholders, (iii) the First Lien Obligations shall be deemed to be an allowed claim, and (iv) the Debtors' Stipulations with respect to the First Lien Claimholders, including, without limitation, the release provisions therein, shall be binding on all parties in interest, including any Committee. If no Claims and Defenses with respect to the Second Lien Claimholders or Second Lien Obligations have been timely asserted in any such adversary proceeding or contested matter in accordance with this paragraph 7, then, upon the Challenge Period Termination Date, and for all purposes in these Chapter 11 Cases and any Successor Case, (i) any and all such Claims and Defenses by any party in interest shall be deemed to be forever released, waived and barred with respect to the Second Lien Claimholders and (ii) the Debtors' Stipulations with respect to the Second Lien Claimholders, including, without limitation, the release provisions therein, shall be binding on all parties in interest, including any Committee. Notwithstanding the foregoing, to the extent any Claims and Defenses are timely asserted in any such adversary proceeding or contested matter, (x) the Debtors' Stipulations and the other provisions in clauses (i) through (iv) or clauses (i) and (ii), as applicable, in the immediately preceding sentences shall nonetheless remain binding and preclusive on any Committee (and any subsequent Chapter 7 trustee of the Debtors' estates) and

on any other party in interest from and after the Challenge Period Termination Date, except solely with respect to the party in interest timely asserting such Claims and Defenses to the extent that such Debtors' Stipulations or the other provisions in clauses (i) through (iv) or clauses (i) and (ii), as applicable, in the immediately preceding sentences were expressly challenged in such adversary proceeding or contested matter, and (y) any portion of the Debtors' Stipulations or other provisions in clauses (i) through (iv) or clauses (i) and (ii), as applicable, in the immediately preceding sentences that is the subject of a timely filed Claim and Defense shall become binding and preclusive on such party in interest timely asserting such Claims and Defenses to the extent set forth in any order of this Court resolving such Claim and Defense. The Challenge Period in respect of the First Lien Obligations may be extended by written agreement of the First Lien Agent and the Majority First Lien Lenders and in respect of the Second Lien Obligations may be extended by written agreement of the Second Lien Agent and the Required Lenders (as defined in the Second Lien Credit Agreement), as applicable, in their sole discretion. Nothing in this Interim Order vests or confers on any person or entity, including any Committee, standing or authority to pursue any cause of action belonging to any or all of the Debtors or their estates, including, without limitation, any Claim and Defense or other claim against any Prepetition Secured Parties.

8. **Carve-Out**. Subject to the terms and conditions contained in this paragraph 8, each of the DIP Liens, DIP Super-Priority Claims, Prepetition Liens, Prepetition Obligations. Adequate Protection Replacement Liens and Adequate Protection Super-Priority Claims shall be subject and subordinate to payment of the Carve-Out (as defined below):

(a) For purposes of this Interim Order, "***Carve-Out***" means (i) all unpaid fees required to be paid in these Chapter 11 Cases to the clerk of this Court and to the office of the

United States Trustee under 28 U.S.C. § 1930(a), whether arising prior to or after the delivery of the Carve-Out Trigger Notice (as defined below); (ii) all reasonable and documented unpaid fees and expenses, including, without limitation, success fees, of professionals retained by the Debtors in these Chapter 11 Cases (collectively, the "***Debtors' Professionals***") that are incurred and earned prior to the delivery by the First Lien Agent of a Carve-Out Trigger Notice, have been or are subsequently allowed by this Court under Sections 105(a), 330 and 331 of the Bankruptcy Code, do not exceed the cumulative amount budgeted for each such Debtors' Professional in the applicable line item therefor in the Approved Budget and remain unpaid after application of any retainers (each such budgeted amount, a "***Debtors' Professionals Carve-Out Cap***"); (iii) all reasonable and documented unpaid fees and expenses of professionals retained by the Committee in these Chapter 11 Cases (collectively, the "***Committee's Professionals***") and all reasonable and documented unpaid expenses of the members of such Committee ("***Committee Members***") that are, in each case, incurred and earned prior to the delivery by the First Lien Agent of a Carve-Out Trigger Notice and have been or are subsequently allowed by this Court under Sections 105(a), 330 and 331 of the Bankruptcy Code, in an aggregate amount (for both Committee Members and the Committee's Professionals) not to exceed $600,000 (the "***Committee Professionals Carve-Out Cap***"); (iv) all reasonable and documented unpaid fees and expenses, including, without limitation, success fees, of the Debtors' Professionals that are incurred and/or earned on or after the delivery by the First Lien Agent of a Carve-Out Trigger Notice, that are allowed by this Court under Sections 105(a), 330 and 331 of the Bankruptcy Code and remain unpaid after application of any retainers, in an aggregate amount not to exceed the sum of (A) if not paid prior to delivery by the First Lien Agent of a Carve-Out Trigger Notice, the Sale Transaction Fee due and owing to Lazard Frères & Co. LLC ("***Lazard***") as

defined in and pursuant to the terms of that certain engagement letter, dated March 12, 2010, between Lazard and the Borrower (the "***Lazard Success Fee***") and (B) $1,250,000 (the "***Debtors' Professionals Post Carve-Out Cap***"); and (v) all reasonable and documented unpaid fees and expenses of the Committee Professionals that are incurred and/or earned on or after the delivery by the First Lien Agent of a Carve-Out Trigger Notice and are allowed by this Court under Sections 105(a), 330 and 331 of the Bankruptcy Code, in an aggregate amount not to exceed $50,000 (the "***Committee Professionals Post Carve-Out Cap*** and together with the Debtors' Professionals Carve-Out Cap, the Debtors' Professionals Post Carve-Out Cap and Committee Professionals Carve-Out Cap, the "***Carve-Out Cap***") (clauses (i) through (v), collectively, the "***Carve-Out***"). The term "***Carve-Out Trigger Notice***" shall mean a written notice delivered by the First Lien Agent to the Debtors' lead counsel, counsel for the Postpetition Lender, the U.S. Trustee, counsel for the Second Lien Agent, and counsel to any Committee appointed in these Chapter 11 Cases, which notice may be delivered at any time following the occurrence and during the continuation of any Event of Default, expressly stating that the Carve-Out is invoked.

(b) Any payments actually made pursuant to Bankruptcy Code Sections 327, 328, 330, 331, 363, 503, 1103 or otherwise to Debtors' Professionals or Committee's Professionals shall in the case of any payments made on account of any fees and expenses described in clauses (iii), (iv) and (v) of the definition of Carve-Out, reduce the applicable Carve-Out Cap on a dollar-for-dollar basis.

(c) Notwithstanding any provision in this paragraph 8 to the contrary or otherwise, no portion of the Carve-Out, Cash Collateral, Prepetition Collateral, Adequate

Protection Collateral or proceeds of the Intercompany Loan shall be utilized for the payment of professional fees and disbursements to the extent restricted under paragraph 15 hereof.

(d) Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors, any Committee, any other official or unofficial committee in these Chapter 11 Cases, or of any other person or entity, or shall affect the right of any Prepetition Secured Party to object to the allowance and payment of such fees and expenses.

(e) On the Cash Collateral Termination Date, if any, the Debtors shall use the proceeds of the Intercompany Loan (subject to paragraph 5(a) above) and Cash Collateral (including, for the avoidance of doubt, proceeds of any liquidated Adequate Protection Collateral) to fund an amount equal to the unused portion of the Maximum Carve-Out Amount into an interest-bearing reserve escrow at a financial institution reasonably acceptable to the First Lien Agent (the "***Carve-Out Escrow Account***") in full and complete satisfaction of the Postpetition Lender's, First Lien Agent's, Second Lien Agent's, First Lien Claimholders' and Second Lien Claimholders' obligations in respect of the Carve-Out; provided, however, that any unused amounts held in the Carve-Out Escrow Account shall continue to be subject to the DIP Liens, Adequate Protection Replacement Liens and Prepetition Liens in accordance with the terms hereof. The funds held in the Carve-Out Escrow Account shall only be used by the Debtors to pay such amounts if and when incurred, earned and allowed by this Court under Sections 105(a), 330 and 331 of the Bankruptcy Code. For the avoidance of doubt, (i) the portion of the Carve-Out Escrow Account pertaining to the period prior to the delivery of the Carve-Out Trigger Notice allocated to each applicable retained professional shall be limited to the amount set forth in the Approved Budget for such professional, (ii) (except for the Lazard

Success Fee, which shall be allocated to Lazard) the portion of the Carve-Out Escrow Account pertaining to the Debtors' Professionals Post Carve-Out Cap shall be allocated to each applicable retained Debtors' professional based upon the amount set forth in the Approved Budget for such professional for the period prior to the delivery of a Carve-Out Trigger Notice divided by the total amount set forth in the Approved Budget for all of the Debtors' professionals during the period prior to the delivery of a Carve-Out Trigger Notice and (iii) the portion of the Carve-Out Escrow Account pertaining to the Committee Professionals Post Carve-Out Cap shall be allocated to each applicable retained Committee professional based upon the amount set forth in the Approved Budget for such professional for the period prior to the delivery of a Carve-Out Trigger Notice divided by the total amount set forth in the Approved Budget for all of the Committee professionals during the period prior to the delivery of a Carve-Out Trigger Notice.

9. **Waiver of Section 506(c) Claims**. Subject to the entry of the Final Order, as a further condition to the Debtors' use of the Prepetition Collateral, including, without limitation, the Cash Collateral, and to the payment of the Carve-Out to the extent provided herein, no costs or expenses of administration of the Chapter 11 Cases or any Successor Case (including, without limitation, any costs and expenses of preserving or disposing of property securing the Prepetition Obligations) shall be charged against or recovered from or against any or all of the Prepetition Secured Parties, the Adequate Protection Collateral, the Prepetition Collateral, and the Cash Collateral, in each case, pursuant to Section 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the First Lien Agent and the Majority First Lien Lenders and no such consent shall be implied from any other action, inaction, or acquiescence of any or all of the First Lien Claimholders.

10. **After-Acquired Property**. Subject to the entry of the Final Order, the "equities of the case" exception of Section 552 of the Bankruptcy Code shall not apply.

11. **Protection of First Lien Secured Parties' Rights**.

(a) Unless the First Lien Agent and Approving Majority First Lien Lenders shall have provided their prior written consent, there shall not be entered in these proceedings, or in any Successor Case, any order (other than this Interim Order and the Final Order) which authorizes the obtaining of credit or the incurrence of indebtedness that is secured by a security, mortgage, or collateral interest or other Lien on all or any portion of the Adequate Protection Collateral and/or that is entitled to administrative priority status, in each case which is superior to or *pari passu* with the Adequate Protection Replacement Liens granted to the First Lien Agent for the benefit of the First Lien Claimholders and the Adequate Protection Super-Priority Claims granted to the First Lien Claimholders (except the Intercompany Loan and any such indebtedness used to refinance the First Lien Obligations in full).

(b) The Debtors (and/or their legal and financial advisors) will (i) maintain books, records and accounts to the extent and as required by the First Lien Documents, (ii) cooperate with, consult with, and provide to the First Lien Agent and the Majority First Lien Lenders all such information as required or allowed under the First Lien Documents or the provisions of this Interim Order, (iii) permit representatives of the First Lien Agent and Majority First Lien Lenders such rights to visit and inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral audit and analysis of their respective inventory and accounts, to tour the Debtors' business premises and other properties, and to discuss, and consult with respect to, the Debtors' respective affairs, finances, properties, business operations and accounts with the Debtors'

respective officers, employees and independent public accountants and (iv) permit the First Lien Agent, the Majority First Lien Lenders and their respective representatives, to consult with the Debtors' management and advisors on matters concerning the general status of the Debtors' businesses, financial condition and operations.

12. **Cash Collection**. From and after the date of the entry of this Interim Order, all collections and proceeds of any Adequate Protection Collateral or Prepetition Collateral or services provided by any Debtor and all Cash Collateral which shall at any time come into the possession, custody or control of any Debtor, or to which any Debtor is now or shall become entitled at any time, shall be promptly deposited in the same bank accounts into which the collections and proceeds of the Prepetition Collateral were deposited under the First Lien Documents (or in such other accounts as are designated by First Lien Agent from time to time).

13. **Disposition of Collateral**. Except for the Sale and as otherwise permitted under this Interim Order, the Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the Prepetition Collateral or Adequate Protection Collateral outside of the ordinary course of business without the prior written consent of the First Lien Agent and the Majority First Lien Lenders (and no such consent shall be implied from any other action, inaction or acquiescence by the First Lien Agent or any First Lien Lender or any order of this Court). Upon any sale or disposition of substantially all of the Adequate Protection Collateral, (i) to the extent the Cash Collateral Termination Date shall have occurred, the Maximum Carve-Out Amount shall be funded and the Intercompany Loan shall be paid in full pursuant to paragraph 5(d) before any payments shall be made on account of the First Lien Obligations and (ii) to the extent the Cash Collateral Termination Date shall not have occurred, all amounts set forth in section 4(b) of the Sale Support Agreement shall be funded and the Intercompany Loan

shall be paid in full pursuant to paragraph 5(d) before any payments shall be made on account of the First Lien Obligations.

14. **Relief from Automatic Stay**.

(a) Any automatic stay otherwise applicable to the First Lien Claimholders is hereby modified, without requiring prior notice to or authorization of this Court, to the extent necessary to permit the Approving Majority First Lien Lenders to exercise the following remedies immediately upon the occurrence and during the continuance of an Event of Default (subject to the limitations set forth in this Paragraph 14): (i) declare a termination, reduction or restriction on the ability of the Debtors to use any Cash Collateral, including Cash Collateral derived solely from the proceeds of Adequate Protection Collateral, and to use Prepetition Collateral other than in the ordinary course (any such declaration to be made to the Debtors, the Postpetition Lender, counsel to the Committee (if appointed) and the United States Trustee and to be referred to herein as a "***Termination Declaration***" and the date on which the earliest of any such Termination Declaration occurs being herein referred to as the "***Termination Declaration Date***") and/or (ii) the First Lien Claimholders shall be permitted to reduce any claim to judgment.

(b) During the five (5) Business Day period after the Termination Declaration Date, the Debtors and any Committee shall be entitled to an emergency hearing before the Court for the sole purpose of contesting whether an Event of Default has occurred and Section 105 of the Bankruptcy Code may not be invoked by the Debtors in an effort to restrict or preclude any First Lien Lender from exercising any rights or remedies set forth in this Interim Order. Unless during such period the Court determines that an Event of Default has not occurred and/or is not continuing, this Interim Order shall automatically terminate (or, if the Approving Majority First

Lien Lenders shall have specified, in their sole discretion, in the Termination Declaration that the Prepetition Collateral, including, without limitation, Cash Collateral, use arrangement set forth herein shall instead be reduced or restricted, such use arrangement shall be so reduced or restricted) at the end of such 3 Business Day period in accordance with paragraph 3(c), without further notice or order. During such five (5) Business Day period, the Debtors may not use Cash Collateral except to pay payroll and other expenses critical to keep the business of the Debtors operating, in each case, in accordance with the Approved Budget.

(c) The automatic stay imposed under Bankruptcy Code Section 362(a) is hereby modified pursuant to the terms of this Interim Order as necessary to (i) permit the Debtors to grant the Adequate Protection Replacement Liens and the DIP Liens and to incur all liabilities and obligations to the Prepetition Secured Parties and the Postpetition Lender under this Interim Order, (ii) authorize the Postpetition Lender to retain and apply payments hereunder in connection with an Intercompany Loan Default and (iii) otherwise implement and effectuate the provisions of this Interim Order.

15. **Restriction on Use of Proceeds**. Notwithstanding anything herein to the contrary, no proceeds from the Intercompany Loan, Adequate Protection Collateral, Cash Collateral (including any prepetition retainers funded by any or all of the Prepetition Secured Parties), Prepetition Collateral, or any portion of the Carve-Out may be used by any of the Debtors, any Committee, any trustee or other estate representative appointed in the Chapter 11 Cases or any Successor Case, or any other person, party or entity to (or to pay any professional fees and disbursements incurred in connection therewith) (a) request authorization to obtain postpetition loans or other financial accommodations pursuant to Bankruptcy Code Section 364(c) or (d), or otherwise, other than the Intercompany Loan or loans used to refinance the First

Lien Obligations in full; or (b) investigate (except as set forth below), assert, join, commence, support or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of, in any capacity, any or all of the Prepetition Secured Parties and their respective officers, directors, employees, agents, attorneys, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, (i) any Claims and Defenses or any Avoidance Actions, in each case, with respect to the Prepetition Secured Parties; (ii) any so-called "lender liability" claims and causes of action with respect to the Prepetition Secured Parties; (iii) any action with respect to the validity, enforceability, priority and extent of the Prepetition Obligations, or the validity, extent, perfection and priority of the Prepetition Liens or the Adequate Protection Replacement Liens (or the value of any of the Prepetition Collateral or Adequate Protection Collateral); (iv) any action seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the Prepetition Liens, the Adequate Protection Replacement Liens or the other Prepetition Secured Parties' Adequate Protection; and/or (v) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to any or all of the Prepetition Secured Parties hereunder or the Prepetition Documents; provided, however, up to $25,000 in the aggregate of the Committee Professionals Carve-Out Cap and Committee Professionals Post Carve-Out Cap, any Adequate Protection Collateral, any Prepetition Collateral and any Cash Collateral may be used by the Committee (to the extent such committee is appointed) to investigate (but not prosecute) the extent, validity and priority of the Prepetition Obligations, the

Prepetition Liens or any other claims against the Prepetition Secured Parties so long as such investigation occurs within fifty (50) days after entry of the Final Order.

16. **Proofs of Claim**. Upon entry of the Final Order, the First Lien Agent, the First Lien Claimholders, the Second Lien Agent and the Second Lien Claimholders will not be required to file proofs of claim in any of the Chapter 11 Cases or Successor Cases for any claim allowed herein. The Debtors' Stipulations in paragraph D herein shall be deemed to constitute a timely filed proof of claim for the First Lien Agent, the First Lien Claimholders, the Second Lien Agent and the Second Lien Claimholders, as applicable. Notwithstanding any order entered by this Court in relation to the establishment of a bar date in any of the Chapter 11 Cases or Successor Cases to the contrary, the First Lien Agent for the benefit of itself and the other First Lien Claimholders and the Second Lien Agent for the benefit of itself and the other Second Lien Claimholders is hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim and/or aggregate proofs of claim in each of the Chapter 11 Cases or Successor Cases for any claim allowed herein or otherwise.

17. **Preservation of Rights Granted under the Interim Order**.

(a) No Non-Consensual Modification or Extension of Interim Order. The Debtors shall not seek, and it shall constitute an Event of Default (resulting, among other things, in the termination of the Debtors' right to use the Prepetition Collateral, including, without limitation, the Cash Collateral and the immediate maturity of the Intercompany Loan) if there is entered (except as otherwise provided herein) an order amending, supplementing, extending or otherwise modifying this Interim Order without the prior written consent of the First Lien Agent and the Majority First Lien Lenders, and no such consent shall be implied by any other action, inaction or acquiescence.

(b) Dismissal. If any order dismissing any of the Chapter 11 Cases under Section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with Sections 105 and 349 of the Bankruptcy Code), to the fullest extent permitted by law, that (i) the Prepetition Secured Parties' Adequate Protection and DIP Protections shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all Prepetition Secured Parties' Adequate Protection or the Intercompany Loan, as applicable, have been paid in full in cash or are otherwise satisfied in full (and that the Prepetition Secured Parties' Adequate Protection and DIP Protections shall, notwithstanding such dismissal, remain binding on all parties in interest), and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the Prepetition Secured Parties' Adequate Protection and DIP Protections.

(c) Modification of Interim Order. Based on the findings set forth in this Interim Order and in accordance with Section 364(e) of the Bankruptcy Code, which is applicable to the Intercompany Loan contemplated by this Interim Order, in the event any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed by a subsequent order of this Court or any other court, the Postpetition Lender shall be entitled to the protections provided in Section 364(e) of the Bankruptcy Code.

(d) Survival of Interim Order. The provisions of this Interim Order, any actions taken pursuant hereto, the Prepetition Secured Parties' Adequate Protection, the DIP Protections and all other rights, remedies, Liens, priorities, privileges, protections and benefits granted to any of the Prepetition Secured Parties or the Postpetition Lender shall survive, and shall not be modified, impaired or discharged by, the entry of any order confirming any plan of reorganization or liquidation in any Chapter 11 Case, converting any Chapter 11 Case to a case

under Chapter 7, dismissing any of the Chapter 11 Cases, withdrawing of the reference of any of the Chapter 11 Cases or any Successor Case or providing for abstention from handling or retaining of jurisdiction of any of the Chapter 11 Cases in this Court, or terminating the joint administration of these Chapter 11 Cases or by any other act or omission. The terms and provisions of this Interim Order, including the Prepetition Secured Parties' Adequate Protection, the DIP Protections and all other rights, remedies, Liens, priorities, privileges, protections and benefits granted to any of the Prepetition Secured Parties or Postpetition Lender, shall continue in full force and effect notwithstanding the entry of any such order, and the Prepetition Secured Parties' Adequate Protection and DIP Protections shall continue in these proceedings and in any Successor Case, and shall maintain their respective priorities as provided by this Interim Order.

18. **Other Rights and Obligations**.

(a) Binding Effect. Subject to paragraph 7 above, the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in these Chapter 11 Cases, including, without limitation, (i) the Prepetition Secured Parties, any Committee, the Debtors and the Postpetition Lender and their respective successors and assigns, (ii) any Chapter 7 or Chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, (iii) an examiner appointed pursuant to Section 1104 of the Bankruptcy Code and (iv) any other fiduciary or responsible person appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors, in each case, whether in any of the Chapter 11 Cases, in any Successor Cases, or upon dismissal of any such Chapter 11 Case or Successor Case; provided, however, that the Prepetition Secured Parties shall have no obligation to permit the use of Prepetition Collateral, including, without limitation, the Cash Collateral, by any Chapter 7 or Chapter 11 trustee or other responsible person appointed for the

estates of the Debtors in any Chapter 11 Case or Successor Case, other than the Debtors in accordance with the terms hereof.

(b) No Waiver. The failure of the First Lien Claimholders to seek relief or otherwise exercise their rights and remedies under this Interim Order, the First Lien Documents or otherwise (or any delay in seeking or exercising same) shall not constitute a waiver of any of such parties' rights hereunder, thereunder, or otherwise. Except as expressly provided herein, nothing contained in this Interim Order (including, without limitation, the authorization of the use of any Prepetition Collateral, including, without limitation, Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to any First Lien Claimholder, including, without limitation, rights of a party to a swap agreement, securities contract, commodity contract, forward contract or repurchase agreement with a Debtor to assert rights of setoff or other rights with respect thereto as permitted by law (or the right of a Debtor to contest such assertion). Except as prohibited by this Interim Order and the First Lien Documents, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair, the ability of the First Lien Claimholders under the Bankruptcy Code or under non-bankruptcy law to (i) request conversion of the Chapter 11 Cases to cases under Chapter 7, dismissal of the Chapter 11 Cases, or the appointment of a trustee in the Chapter 11 Cases, (ii) propose, subject to the provisions of Section 1121 of the Bankruptcy Code, any Chapter 11 plan or plans with respect to any of the Debtors, or (iii) exercise any of the rights, claims or privileges (whether legal, equitable or otherwise) of the First Lien Claimholders. Except to the extent otherwise expressly provided in this Interim Order, neither the commencement of the Chapter 11 Cases nor the entry of this Interim Order shall limit or otherwise modify the rights and remedies of the First Lien Claimholders with respect to non-

Debtor entities or their respective assets, whether such rights and remedies arise under the First Lien Documents, applicable law, or equity.

(c) No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary. In determining to permit the use of Prepetition Collateral, including, without limitation, the Cash Collateral, or in exercising any rights or remedies as and when permitted pursuant to this Interim Order, the First Lien Claimholders shall not (i) be deemed to be in control of the operations of the Debtors or (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates.

(d) No Marshaling. Neither the First Lien Claimholders nor the Postpetition Lender shall be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Adequate Protection Collateral or the Prepetition Collateral, as applicable.

(e) Amendments. Except as otherwise provided herein, no waiver, modification, or amendment of any of the provisions hereof shall be effective unless set forth in writing, signed by on behalf of all the Debtors and the First Lien Agent (after having obtained the approval of the Majority First Lien Lenders) and, except as provided herein, approved by this Court; provided, however, that any waiver, modification or amendment of any of the provisions hereof relating to the Intercompany Loan shall also be signed by or on behalf of the Postpetition Lender.

(f) Inconsistency. In the event of any inconsistency between the terms and conditions of the Prepetition Documents and the terms and conditions of this Interim Order, the provisions of this Interim Order shall govern and control.

(g) Enforceability. This Interim Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule, Local Rule or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Interim Order.

(h) Headings. Paragraph headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order.

19. **Final Hearing**.

(a) The Final Hearing to consider entry of the Final Order is scheduled for _____ ___, 2011, at _____ (prevailing Eastern time) at this Court. The proposed Final Order shall be substantially the same as the Interim Order except that those provisions in the Interim Order that are subject to the entry of the Final Order shall be included in the Final Order without such qualification. If no objections to the relief sought in the Final Hearing are filed and served in accordance with this Interim Order, no Final Hearing may be held, and a separate Final Order may be presented by the Debtors and entered by this Court.

(b) Final Hearing Notice. On or before October 3, 2011 the Debtors shall serve, by United States mail, first-class postage prepaid, (such service constituting adequate notice of the Final Hearing) (i) notice of the entry of this Interim Order and of the Final Hearing (the "***Final Hearing Notice***") and (ii) a copy of this Interim Order, on the parties having been given notice of the Interim Hearing and to any other party that has filed a request for notices with

this Court and to any Committee, if the same shall have been appointed, or Committee counsel. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of this Court no later than October ___, 2011, which objections shall be served upon: (a) the Debtors, Graceway Pharmaceuticals, LLC, 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620, Attn: John A. Bellamy, john.bellamy@gracewaypharma.com, (b) counsel for the Debtors, Latham & Watkins LLP, 233 South Wacker Drive, Chicago, Illinois 60606, Attn: Josef Athanas and Caroline Reckler, josef.athanas@lw.com and caroline.reckler@lw.com; (c) financing counsel to the First Lien Agent, Morgan, Lewis & Bockius LLP, 225 Franklin Street, 16th Floor, Boston, Massachusetts 02110, Attn: Jonathan K. Bernstein, jbernstein@morganlewis.com; (d) special restructuring and bankruptcy counsel to the First Lien Agent, Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019, Attn: Scott K. Charles and Michael S. Benn, SKCharles@wlrk.com and MSBenn@wlrk.com; (e) counsel to any Committee; (f) counsel to the Second Lien Agent, Sidley Austin LLP, One South Dearborn, Chicago, Illinois 60603, Attn: Larry J. Nyhan, lnyhan@sidley.com ; and (g) the Office of the United States Trustee for the District of Delaware, in each case to allow actual receipt of the foregoing no later than October ____, 2011, at 4:00 p.m. (prevailing Eastern time).

20. **Retention of Jurisdiction**. The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

Dated: September ___, 2011
Wilmington, Delaware

_____

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Approved Budget

EXHIBIT B

Intercompany Notes

Exhibit C

Form of Joinder Agreement

Reference is hereby made to that certain Sale Support Agreement, dated September ___, 2011 (as such agreement may be amended, modified or supplemented from time to time, the "***Sale Support Agreement***") by and among Graceway Pharmaceuticals, LLC, Graceway Pharma Holding Corp., Graceway Holdings, LLC, Chester Valley Holdings, LLC, Chester Valley Pharmaceuticals, LLC, Graceway Canada Holdings, Inc., Graceway Canada Company and Graceway International, Inc. and each of the first lien lenders party thereto. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Sale Support Agreement.

As a condition precedent to becoming the beneficial holder or owner of [_____] dollars ($_____) of First Lien Loan Claims, the undersigned transferee (the "***Transferee***") hereby agrees to become bound by all of the terms, conditions and obligations of the undersigned transferor (the "***Transferor***") set forth in or contemplated by the Sale Support Agreement with respect to not only the above referenced First Lien Loan Claims to be transferred by the Transferor but also any other First Lien Loan Claims owned by such Transferee prior to the date hereof. The Transferee acknowledges and agrees that (i) it has reviewed, or has had the opportunity to review, with the assistance of professional and legal advisors of its choosing, the Sale Support Agreement and (ii) all representations and warranties set forth in section 9 of the Sale Support Agreement are true and correct in all material respects as of the date hereof with respect to such Transferee.

This Joinder Agreement shall take effect and shall become an integral part of the Sale Support Agreement immediately upon its execution and the Transferee shall be deemed to be bound by all of the terms, conditions and obligations of the Sale Support Agreement as of the date hereof with respect to not only the above referenced First Lien Loan Claims to be transferred by the Transferor, but also any other First Lien Loan Claims owned by such Transferee prior to the date hereof.

IN WITNESS WHEREOF, this Joinder Agreement has been duly executed by the undersigned Transferee as of the date specified below.

Date: _____, 201_

	_____ Name of Transferee _____ Authorized Signatory of Transferee _____ (Type or Print Name and Title of Authorized Signatory) Address: _____ _____ _____ Attn:_____ Tel:_____ Fax:_____ Email:_____

[Signature Page to Joinder Agreement]