

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

GRACEWAY PHARMACEUTICALS, LLC,  
*et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 11-13036 (PJW)

Jointly Administered

**Related Docket No. 12**

**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**”)<sup>2</sup> 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:

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<sup>1</sup> 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), Case No. 11-13037 (PJW); Graceway Holdings, LLC, a Delaware limited liability company (2502), Case No. 11-13038 (PJW); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385), Case No. 11-13036 (PJW); Chester Valley Holdings, LLC, a Delaware limited liability company (9457), Case No. 11-13039 (PJW); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713), Case No. 11-13041 (PJW); Graceway Canada Holdings, Inc., a Delaware corporation (6663), Case No. 11-13042 (PJW); and Graceway International, Inc., a Delaware corporation (2399), Case No. 11-13043 (PJW). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy). On October 4, 2011, Graceway Canada Company filed an application in the Ontario Superior Court of Justice (Commercial List) pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C. 43.

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

- (i) the sale of certain assets of the Debtors;
- (ii) the entry into, performance under and terms and conditions of the Asset Purchase Agreement dated as of November 18, 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 Medicis Pharmaceutical Corporation (“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”, provided, that the agreements set forth on Schedule 7.4(h) of the APA shall not be “Assigned Agreements” for purposes of this Order until either further order of the Court or the consent of the counterparty to such agreement); and
- (iv) other related relief;

and the Court having entered an order approving the bidding procedures (the “Bidding Procedures”) and granting certain related relief on October 17, 2011 [Docket No. 119] (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 November 22, 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 October 17, 2011 (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:<sup>3</sup>**

**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.

**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

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<sup>3</sup> All findings of fact and conclusions of law announced by the Bankruptcy Court at the Sale Hearing in  
(Continued...)

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.

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relation to the Sale Motion are hereby incorporated to the extent not inconsistent herewith.

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 constitutes the highest and best offer for the Acquired Assets; and the APA presents the best opportunity to realize the value of the Debtors. 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.

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 or the Transactions 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 APA is a valid and binding contract between the Debtor and the Buyers and shall be enforceable pursuant to its terms.

S. The Debtors have, to the extent necessary, satisfied the requirements of Bankruptcy Code section 363(b)(1) because no personally identifiable information will be transferred. 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.

T. 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).

U. 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 and Permitted Encumbrances, 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 (except with respect to setoffs that were effected prior to the Petition Date), 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, except with respect to setoffs that were effected prior to the Petition Date.

V. 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 and Permitted Encumbrances.

W. 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.

X. 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.

Y. 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.

Z. 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.

AA. 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**

BB. 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.

CC. 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.

DD. 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.

EE. 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.

FF. 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.

GG. There is no legal or equitable reason to delay the Transactions.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

**General Provisions**

2. The Motion is granted and approved as set forth herein
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, including the Break-Up Fee (as defined in the Bidding Procedures) and Expense Reimbursement Amount (as defined in the Bidding Procedures Order). Any amounts 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)(1) 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.

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 and Permitted Encumbrances, 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, 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 (except with respect to setoffs that were effected prior to the Petition Date), 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, except with respect to setoffs that were effected prior to the Petition Date. 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. Notwithstanding anything to the contrary contained in this Order, this Order shall not limit the ability of Fougera Pharmaceuticals Inc. (f/k/a Nycomed US Inc.) ("**Fougera**") to assert, in the Nycomed Litigation (or in any other lawsuit or other proceeding involving the Buyer or any successor in interest to the Buyer), any defenses, affirmative defenses, claims, offset rights or counterclaims; provided, however, that with respect to the Buyer, or any successor in interest to the Buyer, any such defenses, affirmative defenses, claims, offset rights or counterclaims that seek monetary relief based on actions taken by the Debtors before the Closing may only be asserted to reduce or to offset any potential monetary liability of Fougera, and in no event shall Fougera, or any successor in interest to Fougera, have the right to obtain an affirmative monetary recovery from or against the Buyer (or any successor in interest to the Buyer) based on actions taken by the Debtors before the Closing; provided further, however, that nothing herein shall limit the ability of Fougera (a) to seek an affirmative monetary recovery from or against the Buyer, or any successor in interest to the Buyer, based on actions taken by the Buyer, or any successor in interest to the Buyer, whether such actions were taken before, on or after the Closing or (b) to file a proof of claim or otherwise seek an affirmative monetary (or other) recovery, consistent with any requirements or limitations imposed by bankruptcy and/or other applicable law, from or against the Debtors, their estates, or the proceeds of the Transactions.

10. 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 and Permitted Encumbrances. 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.

11. This Order (a) shall be effective as a determination that, as of the Closing, (i) no Claims (other than Assumed Liabilities and Permitted Encumbrances) 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, or who may be required to report or insure any title or state of title in or to any lease; 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.

12. Except as otherwise expressly provided in the APA with respect to the Assumed Liabilities and Permitted Encumbrances, 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.

13. 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 and Permitted Encumbrances. 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.

14. 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.

15. 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.

16. All persons and entities that are in possession of some or all of the Acquired Assets as of the Closing Date are directed to surrender possession of such Acquired Assets to the Buyers on the Closing Date.

#### **No Successor or Transferee Liability**

17. 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.

18. Other than as expressly set forth in the APA with respect to Assumed Liabilities and Permitted Encumbrances, 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.

19. 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.

20. 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 (except with respect to setoffs that were effected prior to the Petition Date), right of subrogation or recoupment (except as asserted solely as a defense against a claim asserted by Buyer) 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**

21. 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.

22. Neither the Debtors nor Buyer have engaged in any collusion with other bidders or any other 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 is not less than the value of such assets and the Transactions may not be avoided under section 363(n) of the Bankruptcy Code.

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

#### **Assumption and Assignment of Assigned Agreements**

24. The Debtors are authorized and directed to assume and assign each of the Assigned Agreements upon the Closing of the Transactions, free and clear of all Claims. A list of the Assigned Agreements and corresponding Cure Costs is attached hereto as Exhibit B. 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.

25. 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, breach, condition, setoff (except with respect to setoffs that were effected prior to the Petition Date) 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 and Permitted Encumbrances.

26. 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.

27. All defaults or other obligations of the Debtors under the Assigned Agreements arising or accruing prior to the Closing Date (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) shall

be deemed cured upon payment of the Cure Costs and the Buyer shall have no liability or obligation arising or accruing under the Assigned Agreements on or prior to the Closing Date, except as otherwise expressly set forth in the APA. 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, setoff (except with respect to setoffs that were effected prior to the Petition Date) 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.

28. 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**

29. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the transactions authorized herein, including, without limitation, the APA and the Transactions.

30. In connection with the Closing of the Transactions, the Cash Consideration from the Sale, less the Break Up Fee paid to the Stalking Horse Bidder (as defined in the Bidding Procedures) pursuant to the terms of the Bidding Procedures Order (the "**Net Cash Consideration**"), shall be paid directly by the Buyer 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. 52], entered on September 30, 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. 219], entered on November 7, 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:

- (i) \$15,123,306.14 shall be funded into a segregated account to pay the applicable Debtors’ Cure Costs in accordance with the APA (the “**Cure Account**”)<sup>4</sup>;
- (ii) \$4,404,683.67 (the “**Canadian Cash Consideration**”),<sup>5</sup> constituting the portion of the Net 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 Buyer to Lazard on the Closing Date if permitted by the Bankruptcy Court or, if not so permitted on the Closing Date deposited into a

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<sup>4</sup> This amount excludes those (a) Cure Costs that the Buyer is obligated to pay and discharge at Closing pursuant to Section 2.3(c) and 2.3(f) of the APA and (b) Cure Costs that Buyer has agreed to pay and discharge to Ei, Inc. pursuant to the *Order Resolving (I) Limited Objection by Ei Inc. to Debtors’ Sale Motion and (II) Objection by Ei, Inc. to Debtors’ Amended Cure Amounts* entered concurrently herewith.

<sup>5</sup> The amount for the Canadian Cash Consideration will be adjusted pursuant to the Finalization Mechanism as set forth and defined in the *Supplement to Debtors’ Motion for Entry of an Order Determining the Value of the Assets of Graceway Canada Company Proposed to be Purchased Under the Stalking Horse Asset Purchase Agreement* [Docket No. 153].

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) \$11,457,000 *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 30, *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 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 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 Buyer 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

31. 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 30 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.

32. From and after the Closing Date to and 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 the first Friday occurring two full weeks after the Closing Date and ending 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).

33. 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.

34. 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.

35. 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.

36. Nothing in this Order or the APA releases, nullifies, precludes, or enjoins the enforcement of any liability to a governmental unit under police and regulatory statutes or regulations that any entity would be subject to as the owner or operator of property after the date of entry of this Order. Nothing in this Order or the APA authorizes the transfer of any governmental licenses, permits, registrations, or other governmental authorizations and approvals

without compliance with all applicable legal requirements under non-bankruptcy law governing such transfers. Nothing in this Order or the APA divests any tribunal of any jurisdiction it may have under environmental law or other governmental regulatory non-bankruptcy law.

37. 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.

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

39. 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.

40. 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.



41. 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.

42. At the conclusion of the Auction, Sun Pharma Global FZE (the "Back-up Bidder") was chosen by the Debtors to be the Back-up Bidder (as defined in the Bidding Procedures). In the event the Buyer <sup>fails</sup> ~~is unable~~ to close the Transactions, the Debtors shall have the right to terminate the APA and accept the bid of the Back-up Bidder. In the event the Debtors accept the bid of the Back-up Bidder, the Debtors shall be permitted to submit a revised order on substantially the terms set forth herein naming the Back-up Bidder as the purchaser upon certification of counsel among the Debtors, the Back-up Bidder, the Receiver (as defined in the Bidding Procedures), the First Lien Agent (as defined in the Bidding Procedures) and the Committee (as defined in the Bidding Procedures) or seek an emergency hearing for entry of such order.

43. 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.

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

45. 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: November 22, 2011  
Wilmington, Delaware

  
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PETER J. WALSH  
UNITED STATES BANKRUPTCY JUDGE