

**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

**DISCLOSURE STATEMENT FOR THE JOINT PLAN OF LIQUIDATION OF  
GRACEWAY PHARMACEUTICALS, LLC, et al.**

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Debtors-in-Possession

Dated: January 25, 2012

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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 400, 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.

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### **Exhibits To Disclosure Statement**

<b>Exhibit A</b>	<b>Joint Plan of Liquidation</b>
<b>Exhibit B</b>	<b>Claims Objections</b>
<b>Exhibit C</b>	<b>Curriculum Vitae of Kip Horton</b>
<b>Exhibit D</b>	<b>Liquidation Analysis</b>
<b>Exhibit E</b>	<b>Non-Insider Transfers Subject to Preference Review</b>
<b>Exhibit F</b>	<b>Insider Transfers Subject to Preference Review</b>
<b>Exhibit G</b>	<b>Tax Distribution Transfers to Insiders Within Two Years of Petition Date</b>

**DISCLOSURE STATEMENT FOR THE JOINT PLAN OF LIQUIDATION OF  
GRACEWAY PHARMACEUTICALS, LLC, et al.**

**I.  
INTRODUCTION**

Graceway Pharma Holding Corp., a Delaware corporation; Graceway Holdings, LLC, a Delaware limited liability company; Graceway Pharmaceuticals, LLC, a Delaware limited liability company; Chester Valley Holdings, LLC, a Delaware limited liability company; Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company; Graceway Canada Holdings, Inc., a Delaware corporation; and Graceway International, Inc., a Delaware corporation (collectively, the “Debtors”), provide this Disclosure Statement (the “Disclosure Statement”) to certain of the Debtors’ Impaired Creditors to permit such Creditors to make an informed decision in voting to accept or reject the Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al. (the “Plan”) filed on January 25, 2012 with the Bankruptcy Court (defined below) in connection with the above-captioned cases filed pursuant to chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). A copy of the Plan is attached to this Disclosure Statement as Exhibit A. **Capitalized terms used herein but not otherwise defined have the meanings assigned to such terms in the Plan.** Whenever the words “include,” “includes” or “including” are used in this Disclosure Statement, they are deemed to be followed by the words “without limitation.”

This Disclosure Statement is presented to certain holders of Claims against the Debtors in accordance with the requirements of Section 1125 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”). Section 1125 of the Bankruptcy Code requires that a disclosure statement provide information sufficient to enable a hypothetical and reasonable investor, typical of the Debtors’ Creditors and stockholders, to make an informed judgment whether to accept or reject the Plan. This Disclosure Statement may not be relied upon for any purpose other than that described above.

The Disclosure Statement is based on information publicly available in pleadings filed with the Bankruptcy Court, information provided by the Debtors’ management, claims information provided by BMC Group, Inc. (“BMC”), the official claims agent, a liquidation analysis (the “Liquidation Analysis”) prepared by the Debtors with the assistance of Alvarez and Marsal North America, LLC (“Alvarez”), financial advisors to the Debtors, and legal analysis by Latham & Watkins LLP (“Latham & Watkins”) and Young Conaway Stargatt & Taylor, LLP (“Young Conaway”), co-counsel for the Debtors.

**THIS DISCLOSURE STATEMENT AND THE PLAN ARE AN INTEGRAL PACKAGE, AND THEY MUST BE CONSIDERED TOGETHER FOR THE READER TO BE ADEQUATELY INFORMED. THIS INTRODUCTION IS QUALIFIED IN ITS ENTIRETY BY THE REMAINING PORTIONS OF THIS DISCLOSURE STATEMENT, AND THIS DISCLOSURE STATEMENT IN TURN IS QUALIFIED, IN ITS ENTIRETY, BY THE PLAN.**

**NO REPRESENTATIONS CONCERNING THE DEBTORS (PARTICULARLY AS TO THE VALUE OF THEIR PROPERTY) ARE AUTHORIZED BY THE DEBTORS OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT AND ITS EXHIBITS. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE OF THE PLAN OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT AND ITS EXHIBITS SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION, AND SUCH ADDITIONAL REPRESENTATIONS AND INDUCEMENTS SHOULD BE REPORTED TO COUNSEL FOR THE DEBTORS, WHO WILL IN TURN DELIVER SUCH INFORMATION TO THE BANKRUPTCY COURT FOR SUCH ACTION AS MAY BE APPROPRIATE.**

**THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, INCLUDING ANY EXHIBITS CONCERNING THE FINANCIAL CONDITION OF THE DEBTORS AND THE OTHER INFORMATION CONTAINED HEREIN, HAS NOT BEEN SUBJECT TO AN AUDIT OR INDEPENDENT REVIEW EXCEPT AS EXPRESSLY SET FORTH HEREIN. ACCORDINGLY, THE DEBTORS ARE UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONCERNING THE DEBTORS OR THEIR FINANCIAL CONDITION IS ACCURATE OR COMPLETE. THE PROJECTED INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PRESENTED FOR ILLUSTRATIVE PURPOSES ONLY, AND, BECAUSE OF THE UNCERTAINTY AND RISK FACTORS INVOLVED, ACTUAL RESULTS MAY NOT BE AS PROJECTED HEREIN.**

**ALTHOUGH AN EFFORT HAS BEEN MADE TO BE ACCURATE AND THE DEBTORS BELIEVE IN GOOD FAITH THAT THE INFORMATION HEREIN IS ACCURATE, THE DEBTORS DO NOT WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AND ITS EXHIBITS IS CORRECT. THIS DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN. EACH CREDITOR IS STRONGLY URGED TO REVIEW THE PLAN PRIOR TO VOTING ON IT.**

**THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE OF THIS DISCLOSURE STATEMENT UNLESS ANOTHER TIME IS SPECIFIED. THE DELIVERY OF THIS DISCLOSURE STATEMENT WILL NOT UNDER ANY CIRCUMSTANCES CREATE AN IMPLICATION THAT THERE HAS NOT BEEN ANY CHANGE IN THE FACTS SET FORTH SINCE THE DATE OF THIS DISCLOSURE STATEMENT.**

**A STATEMENT OF THE ASSETS AND LIABILITIES OF THE DEBTORS AS OF THE DATE OF THE COMMENCEMENT OF THEIR CHAPTER 11 CASES IS ON FILE WITH THE CLERK OF THE BANKRUPTCY COURT AND MAY BE INSPECTED BY INTERESTED PARTIES DURING REGULAR BUSINESS HOURS.**

**THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER**

**APPLICABLE NON-BANKRUPTCY LAW. ENTITIES HOLDING OR TRADING IN OR OTHERWISE PURCHASING, SELLING OR TRANSFERRING CLAIMS AGAINST, INTERESTS IN OR SECURITIES OF, THE DEBTORS SHOULD EVALUATE THIS DISCLOSURE STATEMENT ONLY IN LIGHT OF THE PURPOSE FOR WHICH IT WAS PREPARED.**

**THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS SUCH COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.**

**THIS DISCLOSURE STATEMENT WILL NOT BE CONSTRUED TO BE ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN. EACH CREDITOR SHOULD, THEREFORE, CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISERS AS TO ANY SUCH MATTERS CONCERNING THE SOLICITATION, THE PLAN OR THE TRANSACTIONS CONTEMPLATED THEREBY.**

Pursuant to the Bankruptcy Code, this Disclosure Statement and the Plan were filed on January 25, 2012. The Bankruptcy Court will hold a hearing on confirmation of the Plan beginning at 2:00 p.m. (prevailing Eastern time) on April 11, 2012, in the United States Bankruptcy Court, 824 North Market Street, 5th Floor, Wilmington, Delaware 19801 (the "Confirmation Hearing"). At that Confirmation Hearing, the Bankruptcy Court will consider whether the Plan satisfies the requirements of the Bankruptcy Code, including whether the Plan is in the best interests of the claimants, and will review a ballot report concerning votes cast for acceptance or rejection of the Plan.

To obtain, at your cost, additional copies of this Disclosure Statement or of the Plan, please contact:

BMC Group, Inc.  
Attn: Graceway Pharmaceuticals Document Requests  
PO Box 3020  
Chanhassen, MN 55317-3020  
Telephone: 888-909-0100  
[www.bmcgroup.com/graceway](http://www.bmcgroup.com/graceway)

**A. Overview of the Plan**

**THE FOLLOWING IS A BRIEF SUMMARY OF THE TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN. THE DESCRIPTION OF THE PLAN SET FORTH BELOW CONSTITUTES A SUMMARY ONLY AND IS QUALIFIED, IN ITS ENTIRETY, BY THE PLAN, THE LIQUIDATING TRUST AGREEMENT, AND THE OTHER PLAN DOCUMENTS. CREDITORS AND OTHER PARTIES IN INTEREST ARE URGED TO REVIEW THE MORE DETAILED DESCRIPTION OF THE PLAN CONTAINED IN SECTION IV OF THIS DISCLOSURE STATEMENT AND**

**THE PLAN ITSELF. THE PLAN IS ATTACHED AS EXHIBIT A TO THIS DISCLOSURE STATEMENT. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THIS DISCLOSURE STATEMENT AND THE PLAN, THE PLAN CONTROLS.**

Chapter 11 is the chapter of the Bankruptcy Code primarily used for business reorganization. The fundamental purpose of a chapter 11 case is to formulate a plan to restructure a debtor's finances so as to maximize recoveries to its creditors. With this purpose in mind, businesses sometimes use chapter 11 as a means to conduct asset sales and other forms of liquidation. Whether the aim is reorganization or liquidation, a chapter 11 plan sets forth and governs the treatment and rights to be afforded to creditors and stockholders with respect to their claims against and equity interests in a debtor's bankruptcy estate.

As an initial matter, the Plan is premised on the substantive consolidation of all of the Debtors with respect to the treatment of all Claims and Interests, except for the Other Secured Claims in Class 4. This means that the Debtors propose to satisfy the claims of all their respective Creditors from a common pool comprised of their collective assets. The Plan divides the Claims against and Interests in the Debtors into Classes. Certain Claims – in particular, Administrative Expense Claims, Statutory Fees, Professional Claims and Priority Tax Claims – remain unclassified in accordance with Section 1123(a)(1) of the Bankruptcy Code. The Plan assigns all other Claims and Interests to Classes as described below.

Class 1 consists of all Other Priority Claims. On the Effective Date or as soon thereafter as is reasonably practicable in recognition of the applicable Claims reconciliation process set forth in the Plan, each Allowed Other Priority Claim shall receive on account of the Allowed Other Priority Claim and in full satisfaction, settlement and release of and in exchange for such Allowed Other Priority Claim, (i) Cash equal to the amount of such Allowed Other Priority Claim, or (ii) such other treatment as to which the Debtors and the holder of such Allowed Other Priority Claim have agreed upon in writing, provided such treatment is on more favorable terms to the Debtors or the Liquidating Trustee, as the case may be, than the treatment set forth in subsection (i) hereof. Class 1 is Unimpaired and will be deemed to accept the Plan.

Class 2 consists of the First Lien Facility Secured Claim, any First Lien Facility Deficiency Claim and any First Lien Facility Adequate Protection Claim. On the Effective Date or as soon thereafter as is reasonably practicable in recognition of the applicable Claims reconciliation process set forth in the Plan, Bank of America, N.A., as administrative agent for the First Lien Facility Lenders (defined below) and collateral agent for the First Lien Claimholders, or any successor thereto (the "First Lien Facility Agent") shall receive, for the benefit of the First Lien Claimholders, in full satisfaction, settlement and release of and in exchange for the First Lien Facility Claims (including the First Lien Facility Secured Claim, any First Lien Facility Adequate Protection Claim and any First Lien Facility Deficiency Claim), (i) any First Lien Available Cash that is available to be distributed on the Effective Date; (ii) the Nycomed Litigation Proceeds; and (iii) beneficial interests in the Liquidating Trust entitling each First Lien Claimholder to receive its Pro Rata share of (A) any First Lien Available Cash that becomes available to be distributed after the Effective Date, (B) seventy-five percent (75%) of any Avoidance Action Proceeds and (C) one hundred percent (100%) of any other Cause of Action Proceeds, including, without limitation, 549 Avoidance Action Proceeds. Until the First



Lien Facility Claims are paid in full in Cash, the Liens securing the First Lien Facility Secured Claim and any First Lien Facility Adequate Protection Claim shall remain on the Assets (including, without limitation, the Reserve Accounts and the Cash deposited therein and the Nycomed Litigation Proceeds) other than the Other Assets, provided that, except for their obligations under the Plan, the Debtors and their Estates shall have no further liability to the First Lien Facility Agent or the lenders under the First Lien Credit Agreement (defined below) (the “First Lien Facility Lenders”). Holders of the First Lien Facility Claims shall be Beneficiaries; it being understood that distributions from the Liquidating Trust shall be exclusively governed in accordance with the terms set forth in the Plan. Class 2 is Impaired and may vote to accept or reject the Plan.

Class 3 consists of any Second Lien Facility Secured Claim and any Second Lien Facility Adequate Protection Claim. Deutsche Bank Trust Company Americas, as agent for the Second Lien Facility Lenders (defined below) under the Second Lien Credit Agreement (defined below), or any successor thereto (the “Second Lien Facility Agent”) shall receive, for the benefit of the Second Lien Facility Lenders, in full satisfaction, settlement and release of and in exchange for any Allowed Second Lien Facility Secured Claim and any Allowed Second Lien Facility Adequate Protection Claim on the Effective Date or as soon thereafter as is practicable in recognition of the applicable Claims reconciliation process set forth in the Plan, beneficial interests in the Liquidating Trust entitling each Second Lien Facility Lender to receive its Pro Rata share of (a) any Other Available Cash subject to the Liens granted to the Second Lien Facility Agent pursuant to the Second Lien Credit Agreement or the DIP Order (defined below) and (b) after payment in full in Cash of the First Lien Facility Claims, (i) any First Lien Available Cash; (ii) the Nycomed Litigation Proceeds, (iii) seventy-five percent (75%) of any Avoidance Action Proceeds; and (iv) one hundred percent (100%) of any 549 Avoidance Action Proceeds. Until the Second Lien Facility Claims are paid in full in Cash, the Liens securing any Second Lien Facility Secured Claim and any Second Lien Facility Adequate Protection Claim shall remain on the Assets, provided that, (a) except for their obligations under the Plan, the Debtors and their Estates shall have no further liability to the Second Lien Facility Agent or the Second Lien Facility Lenders and (b) such Liens shall continue to be junior and subordinate in all respects to the Liens securing the First Lien Facility Secured Claim and First Lien Adequate Protection Claim that have not been released in connection with the Committee Settlement. Any Second Lien Facility Deficiency Claim shall not constitute a Class 3 Second Lien Facility Claims and shall be treated as a Class 5 General Unsecured Claim under the Plan. Holders of the Allowed Second Lien Facility Claims shall be Beneficiaries; it being understood that distributions from the Liquidating Trust shall be exclusively governed in accordance with the terms set forth in the Plan. Class 3 is Impaired and may vote to accept or reject the Plan.

Class 4 consists of all Other Secured Claims. This Class is subdivided into subclasses designated by letters of the alphabet (Class 4A, Class 4B and so on), so that each holder of any Other Secured Claim is in a Class by itself, except to the extent that there are Other Secured Claims that are substantially similar to each other and may be included within a single Class, and except for a precautionary class of otherwise unclassified Other Secured Claims. On the Effective Date or as soon thereafter as is practicable in recognition of the applicable Claims reconciliation process set forth in the Plan, each holder of an Allowed Other Secured Claim that was not assumed by the Purchaser (defined below) in connection with the 363 Sale shall receive, in full satisfaction, settlement and release of and in exchange for such Allowed Other Secured

Claim, (i) the collateral securing any such Allowed Other Secured Claim (to the extent such collateral does not constitute collateral securing the First Lien Facility Secured Claim, any First Lien Facility Adequate Protection Claim, the Second Lien Facility Secured Claim or any Second Lien Facility Adequate Protection Claim or, if such collateral does secure any such Claim, to the extent that the Lien securing such Allowed Other Secured Claim is senior to the Lien securing the First Lien Facility Secured Claim, any First Lien Facility Adequate Protection Claim, the Second Lien Facility Secured Claim or any Second Lien Facility Adequate Protection Claim, as applicable), (ii) Cash in an amount equal to such Allowed Other Secured Claim to the extent the collateral securing such Allowed Other Secured Claim was sold and such collateral does not constitute collateral securing the First Lien Facility Secured Claim, any First Lien Facility Adequate Protection Claim, the Second Lien Facility Secured Claim or any Second Lien Facility Adequate Protection Claim or, if such collateral does secure any such Claim, to the extent that the Lien securing such Allowed Other Secured Claim is senior to the Lien securing the First Lien Facility Secured Claim, any First Lien Facility Adequate Protection Claim, the Second Lien Facility Secured Claim or any Second Lien Facility Adequate Protection Claim, as applicable, or (iii) such other treatment that leaves such Allowed Other Secured Claim Unimpaired pursuant to the Section 1124(2) of the Bankruptcy Code. The Other Secured Claim Liens shall be released and the Debtors and their Estates shall have no further liability therefor; *provided, however*, that any Deficiency Claims of holders of Class 4 Other Secured Claims shall not constitute Class 4 Other Secured Claims and shall be treated as Class 5 General Unsecured Claims under the Plan. Class 4 is Unimpaired and will be deemed to accept the Plan.

Class 5 consists of all General Unsecured Claims. On the Effective Date or as soon thereafter as is practicable in recognition of the applicable Claims reconciliation process set forth in the Plan, the holders of Allowed General Unsecured Claims shall receive, in full satisfaction, settlement and release of and in exchange for such Allowed Claims, their Pro Rata share of the Other Available Cash that is not subject to the Liens granted to the Second Lien Facility Agent pursuant to the Second Lien Credit Agreement or the DIP Order, after payment in full of all Allowed Other Secured Claims (to the extent not otherwise satisfied in accordance with the terms of the Plan), Allowed Administrative Expense Claims (other than Administrative Expense Claims that are Assumed Liabilities), Allowed Priority Tax Claims and Allowed Other Priority Claims; *provided, however*, that pursuant to and in accordance with the Mezzanine Credit Agreement (defined below), any amounts distributed on account of the Allowed Mezzanine Facility Claim (a) are subject and subordinate to payment in full in Cash of the Second Lien Facility Claims and (b) shall be distributed directly to the Second Lien Facility Agent for the benefit of the holders of Allowed Second Lien Facility Claims until the Allowed Second Lien Facility Claims are paid in full in Cash.. Holders of Allowed General Unsecured Claims shall be Beneficiaries; it being understood that distributions from the Liquidating Trust shall be exclusively governed in accordance with the terms set forth in the Plan and beneficial interests in the Liquidating Trust granted to such holders will not entitle them to any distribution of more than twenty-five percent (25%) of any Avoidance Action Proceeds or any distribution of any other Cause of Action Proceeds, including, without limitation, any 549 Avoidance Action Proceeds. Class 5 is Impaired and may vote to accept or reject the Plan.

Class 6 consists of all Intercompany Claims. As a result of substantive consolidation of the Debtors for distribution purposes under the Plan as provided in Section 7.1 of the Plan, holders of Intercompany Claims will not receive any distribution of property under

the Plan on account of their Intercompany Claims and, on the Effective Date, the Intercompany Claims will be cancelled; *provided, however*, Class 6 shall exclude any Claims of a Debtor against a non-Debtor Affiliate or a non-Debtor subsidiary. Class 6 is Impaired and will be deemed to reject the Plan.

Class 7 consists of all Interests arising from or relating to Old Equity. Holders of Old Equity Interests will not receive and will not retain any property of the Debtors under the Plan on account of such Interests and all Old Equity Interests will be cancelled as of the Effective Date. Class 7 is impaired and will be deemed to reject the Plan.

Class 8 consists of all Claims and Interests arising from or relating to Old Equity Rights. Holders of any Claim or Interest arising from or relating to Old Equity Rights will not receive and will not retain any property of the Debtors under the Plan on account of such Claim or Interest and all Old Equity Rights and any Interests or Claims arising from or relating thereto will be cancelled as of the Effective Date. Class 8 is Impaired and will be deemed to reject the Plan.

The Debtors believe that the distributions under the Plan will provide Creditors of the Debtors at least the same recovery on account of Allowed Claims as would distributions by a chapter 7 trustee. However, distributions under the Plan to Creditors of the Debtors would be made more quickly than distributions by a chapter 7 trustee and a chapter 7 trustee would charge a substantial fee, reducing the amount available for distribution on account of Allowed Claims.

**ACCORDINGLY, THE DEBTORS URGE EACH CREDITOR ENTITLED TO VOTE ON THE PLAN TO VOTE TO ACCEPT THE PLAN.**

Following are detailed, Class-by-Class summaries of the estimated Allowed Claims against the Debtors and the estimated distribution to the Creditors of the Debtors on account of such Allowed Claims.

The Debtors calculated the total asserted claims (other than Administrative Expense Claims)<sup>2</sup> based on filed and scheduled claims. To the extent a Creditor filed a proof of Claim that superseded a scheduled claim, the amount in the filed proof of Claim was utilized.

The Debtors then reviewed all of the proofs of Claims asserting First Lien Facility Claims, Second Lien Facility Claims, Other Secured Claims, Priority Tax Claims and Other Priority Claims, and a large sample size of the proofs of Claims asserting General Unsecured Claims.

The Debtors then determined a range of estimated Allowed Claims by reducing asserted claims amounts for duplicate claims, amended claims, misclassified claims, settled claims, repaid claims and claims that lack merit.

The differences between asserted claims and Allowed Claims estimated in the Plan are typical of large chapter 11 cases. See, e.g., In re GST Telecom Inc., Case No. 00-1982

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<sup>2</sup> Asserted Administrative Expense Claims are based on filed, accrued and budgeted amounts.

(GMS) (Bankr. D. Del. 2000) (over \$5 billion of claims filed and \$1.25 billion of claims scheduled, approximately \$1.18 billion of claims allowed).

**THE RECOVERY PERCENTAGES SET FORTH IN THE FOLLOWING TABLE ARE MERELY ESTIMATES. THE ACTUAL AMOUNTS DISTRIBUTED TO HOLDERS OF ALLOWED CLAIMS UNDER THE PLAN MAY BE HIGHER OR LOWER THAN ESTIMATED.**

Class	Description	Approximate Amount Asserted	Range of Estimated Allowed Amounts	Range of Estimated Recovery	Status
N/A	Administrative Expense Claims	\$4,675,015	\$11,438,000 – \$19,150,000	100%	Unclassified and not entitled to vote
N/A	Professional Claims	N/A	< \$2,189,000	100%	Unclassified and not entitled to vote
N/A	Statutory Fees	N/A	< \$50,000	100%	Unclassified and not entitled to vote
N/A	Priority Tax Claims	\$671,386	< \$694,000	100%	Unclassified and not entitled to vote
1	Other Priority Claims	\$443,380	< \$50,000	100%	Unimpaired, deemed to accept the Plan and not entitled to vote
2	First Lien Facility Claim	\$2,584,190,385	\$430,698,000 – \$432,986,000 (prior to partial satisfaction)	96.7 – 100% (including partial satisfaction)	Impaired and entitled to vote
3	Second Lien Facility Claim	\$2,183,672,889	\$356,309,000 – \$363,945,000	2.7 – 4.6%	Impaired and entitled to vote
4	Other Secured Claims	\$4,544,001	< \$350,000 (requiring cash payment)	100%	Unimpaired, deemed to accept the Plan and not entitled to vote
5	General Unsecured Claims	\$142,760,887	\$90,000,000 – \$120,000,000	0.9 – 3.3%	Impaired and entitled to vote
6	Intercompany Claims	\$1,013,757	N/A	0%	Impaired, deemed to reject the Plan and not entitled to vote
7	Old Equity	N/A	N/A	0%	Impaired, deemed to reject the Plan and not entitled to vote
8	Old Equity Rights	N/A	N/A	0%	Impaired, deemed to reject the Plan and not entitled to vote

## B. Voting Instructions

### **THE DEBTORS STRONGLY RECOMMEND THAT EACH CREDITOR ENTITLED TO VOTE ON THE PLAN VOTE TO ACCEPT THE PLAN.**

The Bankruptcy Code entitles only holders of Impaired claims or equity interests who receive some distribution under a proposed plan to vote to accept or reject that plan. Holders of claims or equity interests that are Unimpaired under a proposed plan are conclusively presumed to have accepted that plan and are not entitled to vote on it. Holders of classes of claims or equity interests that will receive no distributions under a proposed plan are conclusively presumed to reject that plan and, therefore, are also not entitled to vote on it.

The holders of Claims in Classes 1 and 4 are not Impaired under the Plan. Thus, pursuant to Section 1126(f) of the Bankruptcy Code, the claimants in Classes 1 and 4 are deemed to have accepted the Plan and are not entitled to vote.

The holders of Claims in Class 2, Class 3 and Class 5 are Impaired and thus may vote to accept or reject the Plan. The Debtors have enclosed Ballots (defined below) with this Disclosure Statement to solicit the votes of all claimants in Class 2, Class 3 and Class 5.

The holders of Claims in Class 6 and Class 8 and holders of Class 7 Interests will receive no distribution under the Plan. Thus, pursuant to Section 1126(g) of the Bankruptcy Code, the holders of Claims in Class 6 and Class 8 and holders of Class 7 Interests are deemed to have rejected the Plan.

A BALLOT FOR ACCEPTANCE OR REJECTION OF THE PLAN IS BEING PROVIDED ONLY TO HOLDERS OF CLAIMS IN CLASS 2, CLASS 3 AND CLASS 5. BEFORE VOTING, SUCH HOLDERS SHOULD READ THIS DISCLOSURE STATEMENT AND ITS EXHIBITS, INCLUDING THE PLAN AND THE PLAN DOCUMENTS, IN THEIR ENTIRETY.

You should use the ballot sent to you with this Disclosure Statement (the “Ballot”) to cast your vote for or against the Plan. You may not cast Ballots or votes orally or by facsimile. In order for your Ballot to be considered by the Bankruptcy Court, it must be received at the below address by 4:00 p.m. (prevailing Eastern time) on April 3, 2012. If you are a claimant in Class 2, Class 3 or Class 5, and you did not receive a Ballot with this Disclosure Statement, please contact:

BMC Group, Inc.  
Attn: Graceway Pharmaceuticals Solicitation Requests  
PO Box 3020  
Chanhassen, MN 55317-3020  
Telephone: 888-909-0100  
[www.bmcgroup.com/graceway](http://www.bmcgroup.com/graceway)

Only holders of Allowed Claims in Impaired Classes of Claims are entitled to vote on the Plan. Any Ballot executed by the holder of an Allowed Claim, but which does not indicate acceptance or rejection of the Plan, will be considered a vote to accept the Plan. Any

Ballot not executed by the holder of an Allowed Claim will not be counted as a vote to accept or reject the Plan.

An Impaired Class of Claims shall have accepted the Plan if (i) the holders (other than any holder designated under Section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (ii) the holders (other than any holder designated under Section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan. Whether or not a Creditor or Interest holder votes on the Plan, such Person will be bound by the terms and treatment set forth in the Plan if the Plan is accepted by the requisite majorities of the Classes of Creditors and is confirmed by the Bankruptcy Court. Pursuant to the provisions of Section 1126(e) of the Bankruptcy Code, the Bankruptcy Court may disallow any vote accepting or rejecting the Plan if such vote is not cast in good faith.

If the voting members of an Impaired Class do not vote unanimously for the Plan but, nonetheless, vote for the Plan by at least the requisite two-thirds (2/3) in amount and one-half (1/2) in number of Allowed Claims in that Class actually voted, the Plan, at a minimum, must provide that each member of such Class will receive property of a value, as of the Effective Date, that is not less than the amount such Class members would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

The Debtors or other parties in interest, including the Creditors' Committee (defined below), may dispute proofs of Claims or Interests that have been filed or that the Debtors listed as disputed in the Schedules the Debtors filed with the Bankruptcy Court. A list of all Claims that the Debtors and the Creditors' Committee have disputed as of the date hereof is attached hereto as Exhibit B. Persons whose Claims are disputed may vote on or otherwise participate in distributions under the Plan only to the extent that the Bankruptcy Court allows their Claims. The Bankruptcy Court may temporarily allow a Claim for voting purposes only. Allowance of a Claim for voting purposes or disallowance of a Claim for voting purposes does not necessarily mean that all or a portion of that Claim will be allowed or disallowed for distribution purposes. The Debtors' Schedules listing Claims and whether such Claims are disputed can be inspected at the Delaware offices of Young Conaway at Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, or at the offices of BMC, as set forth above.

### **C. Confirmation of the Plan by the Bankruptcy Court**

Once it is determined which Impaired Classes have or have not accepted the Plan, the Bankruptcy Court will determine whether the Plan may be confirmed. Class 6, Class 7 and Class 8 will receive no distributions on account of their respective Claims and Interests and are therefore deemed to have rejected the Plan. The Bankruptcy Court may confirm the Plan even if all but one of the Impaired Classes do not accept the Plan if the Bankruptcy Court finds that the remaining Impaired Class of Claims (not including any acceptances by "insiders" as defined in Section 101(31) of the Bankruptcy Code) has accepted the Plan and that certain additional conditions are met. The Debtors will therefore request that the Bankruptcy Court confirm the Plan under Section 1129(b) of the Bankruptcy Code with respect to any non-accepting Class of Claims or Interests.

Section 1129(b) of the Bankruptcy Code is generally referred to as the “cramdown” provision. Pursuant to the cramdown provision, the Bankruptcy Court may confirm the Plan over the objection of a non-accepting Class of Secured Claims if the Plan satisfies one of the alternative requirements of Section 1129(b)(2)(A) of the Bankruptcy Code. Likewise, the Bankruptcy Court may confirm the Plan over the objection of a non-accepting Class of General Unsecured Claims if the non-accepting claimants will receive the full value of their Claims, or, if the non-accepting claimants receive less than full value, if no Class of junior priority will receive anything on account of their prepetition Claims or Interests.

If the Plan does not meet the cramdown requirements as set forth above with respect to all of the Debtors, (a) in the Debtors’ sole discretion, the Plan may be revoked as to all of the Debtors, or (b) the Debtors may revoke the Plan as to any Debtor not satisfying the cramdown requirements (and any such Debtor’s Chapter 11 Case being converted to a chapter 7 liquidation, continued or dismissed in the Debtors’ sole discretion after consultation with the First Lien Facility Agent, the Second Lien Facility Agent and the Creditors’ Committee) and confirmed as to the remaining Debtors.

**THESE ARE COMPLEX STATUTORY PROVISIONS, AND THE PRECEDING PARAGRAPHS ARE NOT INTENDED TO BE A COMPLETE SUMMARY OF THE LAW. IF YOU DO NOT UNDERSTAND THESE PROVISIONS, PLEASE CONSULT WITH YOUR ATTORNEY. BECAUSE CLASSES 6, 7 AND 8 RECEIVE NO DISTRIBUTIONS ON ACCOUNT OF THEIR RESPECTIVE CLAIMS AND INTERESTS AND ARE THUS DEEMED TO HAVE REJECTED THE PLAN, THE DEBTORS INTEND TO RELY UPON THE “CRAMDOW” PROVISION OF SECTION 1129(b) OF THE BANKRUPTCY CODE.**

The Plan provides for the liquidation of substantially all of the property of the Debtors’ estates. Pursuant to Section 1141(d)(3) of the Bankruptcy Code, confirmation of the Plan will not discharge the Debtors from any of their debts which arose prior to September 29, 2011; however, Confirmation will make the Plan binding upon the Debtors, their Creditors, holders of Claims and Interests, and other parties in interest regardless of whether they have accepted the Plan.

The Plan is premised on the substantive consolidation of the Debtors with respect to the voting and treatment of all Claims and Interests other than Other Secured Claims, as provided below. The Plan does not contemplate substantive consolidation of the Debtors with respect to Other Secured Claims against the Debtors, which Claims shall apply separately with respect to each Plan proposed by each Debtor. If the Plan cannot be confirmed as to some or all of the Debtors, in the Debtors’ sole discretion after consultation with the First Lien Facility Agent, the Second Lien Facility Agent and the Creditors’ Committee, (a) the Plan may be revoked as to all of the Debtors, or (b) the Debtors may revoke the Plan as to any Debtor not satisfying the cramdown requirements of Section 1129(b)(7) of the Bankruptcy Code (and any such Debtor’s Chapter 11 Case being converted to a chapter 7 liquidation, continued or dismissed in the Debtors’ sole discretion after consultation with the First Lien Facility Agent, the Second Lien Facility Agent and the Creditors’ Committee) and confirmed as to the remaining Debtors. A list of each Debtor who is a proponent of the Plan and its corresponding Chapter 11 Case docket number is attached to the Plan as Exhibit 1. The Plan shall serve as a request by the

Debtors, in lieu of a separate motion, to the Bankruptcy Court that it grant substantive consolidation with respect to the treatment of all Claims and Interests other than Class 4 Claims.

## II. BACKGROUND OF THE DEBTORS

### A. The Debtors

The Debtors operated as a specialty pharmaceutical company focused on bringing branded prescription products to the market through acquisition, in-licensing or product development primarily in the areas of dermatology, respiratory, and women's health. Revenues were primarily derived from sales to the three largest pharmaceutical wholesalers in the United States. Sales were generated primarily by the direct marketing of the Debtors' approved products to physicians by the Debtors' sales force. The Debtors were founded in 2006 through a partnership of industry veteran Jefferson J. Gregory and GTCR Golder Rauner, LLC ("GTCR"), a leader in the private equity industry for more than 25 years.

On January 2, 2007, the Debtors announced that they had completed the acquisition of the pharmaceuticals business of 3M Company (together with its subsidiaries and affiliates, "3M") in North America, Puerto Rico, Mexico and Latin America for approximately \$875,000,000.00 consideration paid in full at closing plus amounts to be paid under a technology access and development agreement. Also, on January 2, 2007, the Debtors announced that Chester Valley Pharmaceuticals, LLC, a dermatology-focused specialty pharmaceutical company and another company sponsored by GTCR, had merged into Graceway Pharmaceuticals, LLC.

Debtor Graceway Pharma Holding Corp. is the parent company of Debtor Graceway Holdings, LLC, and Graceway Holdings, LLC is the parent company of Graceway Pharmaceuticals, LLC. Graceway Pharmaceuticals, LLC was the primary operating subsidiary of the Debtors and owns on hundred percent (100%) of the equity in Debtors Graceway Canada Holdings, Inc., Graceway International, Inc., and Chester Valley Holdings, LLC. Chester Valley Holdings, LLC is the parent company of Chester Valley Pharmaceuticals, LLC. Graceway Canada Holdings, Inc. is the parent company of non-debtor Graceway Canada Company ("Graceway Canada").

As of the Petition Date (defined below), the Debtors' products sold in the United States included, among others: Zyclara® (imiquimod) Cream 3.75% ("Zyclara"), Aldara® (imiquimod) Cream 5% ("Aldara"), Maxair® Autohaler® (pirbuterol acetate inhalation aerosol) ("Maxair"), Atopicalair® Nonsteroidal Cream, and Estrasorb® (estradiol topical emulsion). The Debtors collectively employed approximately 165 full-time employees, 89 of which were sales related employees.

### B. Events Leading to Chapter 11

Aldara was the Debtors' flagship or core product at the time of the acquisition from 3M. Zyclara was not approved for marketing by the Food and Drug Administration ("FDA") until March, 2010.



In May of 2007, the Debtors completed a refinancing of their debt structure that produced the credit facilities, described more fully below, held at the time of the Debtors' filing for bankruptcy under Chapter 11. In 2007, the Debtors had total net sales of approximately \$313,580,000.00. Of the total 2007 net sales, the sales of Aldara accounted for 77.02% of all sales, Maxair accounted for 10.39%, and the Debtors' other products accounted for the remaining 12.59%. The Debtors' EBITDA for 2007 was approximately \$189,800,000.00. In 2008, the Debtors had total net sales of approximately \$340,260,000.00. Of the total 2008 net sales, the sales of Aldara accounted for 80.96% of all sales, Maxair accounted for 8.91%, and the Debtors' other products accounted for the remaining 13%. The Debtors' EBITDA for 2008 was approximately \$187,290,000.00. In 2009, the Debtors had total net sales of approximately \$354,610,000.00. Of the total 2009 net sales, the sales of Aldara accounted for 84.95% of all sales, Maxair accounted for 8.04%, and the Debtors' other products accounted for the remaining 7.01%. The Debtors' EBITDA for 2009 was approximately \$214,570,000.00.

Two competitors of the Debtors, Nycomed U.S. Inc. ("Nycomed") and Perrigo Company and Perrigo Israel Pharmaceuticals, Ltd. (collectively "Perrigo"), filed Abbreviated New Drug Applications ("ANDA") seeking FDA approval to market a generic version of Aldara using oleic acid as the solubilizing agent for imiquimod – the active ingredient in Aldara. On February 2, 2010, the U.S. Patent and Trademark Office issued to 3M IPC patent number 7,655,672 (the "'672 Patent") covering imiquimod cream formulations that contain certain forms of oleic acid. At the time, there were also 27 other patent applications that were related to the same application that resulted in the '672 Patent. The Debtors held an exclusive license under the '672 Patent and the related applications, including the right to assert, defend, maintain and enforce them. Based on preliminary analyses performed, the Debtors believed that the other companies' products likely infringed the Debtors' '672 Patent.

On February 23, 2010, the Company filed a patent-infringement lawsuit against Nycomed and Perrigo in the U.S. District Court for the District of New Jersey captioned 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. The lawsuit alleged, among other things, that Nycomed and Perrigo infringed the claims of the '672 Patent. At the same time, the Company requested an opportunity to meet and confer with both Nycomed and Perrigo in advance of possible FDA approval of their ANDAs. The Company's complaint sought, among other things, judgment that the generic 5% imiquimod topical cream products infringed the '672 Patent, damages, and other relief.

On February 25, 2010, the FDA granted approval to Nycomed's generic version of Aldara, notwithstanding the fact that Nycomed's product used an oleic acid vehicle to deliver imiquimod instead of the isostearic acid vehicle included in Aldara. The practical effect of the FDA's approval was that Nycomed's product was then an approved generic for Aldara and was frequently and automatically substituted by pharmacists when a physician wrote a prescription for Aldara. That same day, Nycomed began shipping its product notwithstanding the lawsuit and the Debtors' pending request to meet and confer.

The Debtors believed Nycomed's product infringed the claims of the '672

Patent, and therefore filed for a temporary restraining order (“TRO”) to prevent Nycomed from manufacturing, selling, and shipping its product pending further legal proceedings in the short term. On March 8, 2010, the Court denied the Debtors’ motion for a TRO against Nycomed. The Debtors strongly disagreed with the court’s position in denying the TRO. The Debtors filed a motion for Preliminary Injunction (“PI”) on March 24, 2010 to prevent Nycomed from manufacturing, selling, and shipping its product pending a full trial on the merits. This PI was denied on June 10, 2010. The litigation continues.

In addition to pursuing legal action, the Debtors sought to mitigate the harm to them by entering into an agreement to allow another company to distribute an authorized generic version of Aldara. The Debtors ultimately entered into an agreement with Perrigo. As part of the agreement with Perrigo, the Debtors and Perrigo fully settled all claims in the litigation. Thus the pending patent litigation involves only Nycomed (the “Nycomed Litigation”).

In March 2010, the Debtors retained Lazard (defined below) to identify and explore strategic alternatives for them, including, but not limited options for refinancing, restructuring, or selling the Assets of the Debtors.

In 2010, the Debtors had total net sales of approximately \$219,530,000.00, consisting of product sales of \$150,890,000.00 and royalty and licensing revenues of \$68,640,000.00. Of the total net sales, net sales from Aldara accounted for 23.9%, royalty revenues of an authorized generic form of Aldara (marketed by Perrigo) accounted for 17.7%, net sales from Maxair accounted for 12.0%, net sales from Zyclara accounted for 17.8%, licensing revenues for Zyclara accounted for 13.2%, and the Debtors’ other products accounted for the remaining 15.4%. The Debtors’ EBITDA for 2010 was \$83,330,000.00

During the first two quarters of 2011, the Debtors’ net sales were \$67,540,000.00 consisting of \$58,120,000.00 of product sales and \$9,420,000.00 of royalty revenues. The Debtors had no licensing revenues for the first two quarters of 2011. The Debtors’ EBITDA for the period from January 1, 2011 through June 30, 2011 was approximately \$14,930,000.00.

The Debtors’ capital structure consists of a first lien secured credit agreement (the “First Lien Credit Agreement”), a second lien secured credit agreement (the “Second Lien Credit Agreement”) and an unsecured mezzanine credit agreement (the “Mezzanine Credit Agreement”). Despite the Debtors’ extensive efforts to reduce operating costs following the adverse rulings in the Debtors’ lawsuit against Nycomed, including, but not limited to multiple reductions in workforce, salary reductions to senior management, reduction or elimination of benefits to the workforce, and the like, the Debtors’ deteriorating financial condition failed to improve sufficiently and the Debtors were unable to avoid defaults under the Debtors’ credit agreements. As a result of such potential defaults, the Debtors commenced these Chapter 11 Cases.

### III. THE CHAPTER 11 CASES

#### A. Overview of the Chapter 11 Cases

On September 27, 2011, the Debtors and Graceway Canada (the “Sellers”) entered into a stalking horse asset purchase agreement (the “Stalking Horse Asset Purchase Agreement”) with Galderma S.A. as the Stalking Horse Bidder (defined below), pursuant to which the Sellers agreed to sell substantially all of their assets to the Stalking Horse Bidder for \$275,000,000.00 and the Stalking Horse Bidder agreed to assume certain liabilities of the Sellers. The sale was to be conducted under the provisions of Section 363 of the Bankruptcy Code and was subject to proposed bidding procedures and the receipt of a higher and better bid at auction.

On September 29, 2011 (the “Petition Date”), the Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code. The Debtors in the Chapter 11 Cases are continuing in possession of their respective properties and are operating their respective businesses, as debtors-in-possession, pursuant to Sections 1107 and 1108 of the Bankruptcy Code. The Chapter 11 Cases are pending before the Honorable Peter J. Walsh, Bankruptcy Judge for the United States Bankruptcy Court for the District of Delaware, located at the United States Bankruptcy Court, 824 North Market Street, 6th Floor, Wilmington, Delaware 19801 (the “Bankruptcy Court”).

On October 4, 2011, Graceway Canada filed an application in the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court”) pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C. 43. RSM Richter Inc. was appointed as the receiver (the “Receiver”) of Graceway Canada under the Courts of Justice Act. The Canadian Court and the Bankruptcy Court, under separate Orders, approved a cross-border protocol to assist with the holding of joint hearings and coordination of proceedings between the Canadian Court and the Bankruptcy Court.

Following a joint hearing on October 17, 2011, the Canadian Court and the Bankruptcy Court issued Orders approving Galderma S.A. as the stalking horse bidder (the “Stalking Horse Bidder”) in the sale of substantially all of the Sellers’ assets, authorizing certain protections for the Stalking Horse Bidder, including a break-up fee and expense reimbursement, and authorizing an auction in the New York offices of Latham & Watkins for the sale of all of the assets of the Sellers.

On November 17, 2011, the Sellers conducted an auction pursuant to the provisions of Section 363 of the Bankruptcy Code at which Medicis Pharmaceutical Corporation (“Medicis” or the “Purchaser”) was determined to be the highest and best offer. On November 18, 2011, the Sellers entered into an Asset Purchase Agreement (the “Asset Purchase Agreement”) with Medicis pursuant to which Medicis agreed to purchase substantially all of the assets of Sellers for \$455,000,000.00 in cash and to assume certain liabilities associated with the purchased Assets (the “Asset Sale”). The Asset Sale was approved by the Bankruptcy Court on November 22, 2011, and the Asset Sale closed on December 2, 2011.

Since the closing of the Asset Sale, the Receiver of non-debtor Graceway Canada has obtained an Order from the Canadian Court approving a claims process and is reviewing such claims to determine the amounts payable to the creditors of Graceway Canada. All claims against Graceway Canada are to be submitted by the claims bar date of January 31, 2012 (the "Canadian Bar Date"). The Receiver, with the assistance of Graceway Canada, anticipates being in a position to begin making interim distributions after the Canadian Bar Date on account of claims against Graceway Canada.

Pursuant to the Plan, on the Effective Date, (i) the Debtors' equity interests in Graceway Canada and (ii) the Debtors' Claims against Graceway Canada arising from any intercompany claims, loans, notes, transfers, or other obligations shall be transferred by the Debtors to the Liquidating Trust, and the equity interests in Graceway Canada Company shall continue to be subject to the Liens securing the First Lien Facility Secured Claim and any First Lien Facility Adequate Protection Claim as provided in Section 5.2 of the Plan and the Liens of the Second Lien Facility Agent in favor of the lenders under the Second Lien Credit Agreement (the "Second Lien Facility Lenders"); *provided, however*, that the portion of the Canadian Distribution Amount (defined below) used to fund the Estate Fund Amount (defined below) shall be free and clear of the Liens of the First Lien Facility Agent in accordance with the Committee Settlement (as defined below). The Liquidating Trust shall exercise its powers as the sole shareholder to appoint the Liquidating Trustee as the sole officer and director of Graceway Canada and shall make distributions of the Canadian Distribution Amount as provided under the Plan. The Debtors expect to receive in excess of \$10,000,000.00 on account of their claims against, and equity interests in, Graceway Canada. However, because the Canadian claims process is not complete, this estimate could be higher or lower. The actual amount received may be higher or lower than this estimate depending on the total amount of other claims ultimately allowed by the Canadian Court against Graceway Canada.

## **B. Retained Professionals**

The Bankruptcy Court authorized the Debtors to retain certain professionals to represent them and assist them in connection with the Chapter 11 Cases. Specifically, the Debtors have retained, and the Bankruptcy Court has approved the retention of, the following Professionals: (a) Latham & Watkins, as counsel for the Debtors in these Chapter 11 Cases; (b) Young Conaway as co-counsel to the Debtors; (c) Alvarez, as financial advisors to the Debtors; (d) BMC, as official noticing, claims and/or solicitation and balloting agent for the Debtors; (e) Lazard Frères & Co. LLC ("Lazard"), as investment banker; and (f) PricewaterhouseCoopers LLP, as tax consultant. In addition, the Bankruptcy Court authorized the Debtors to retain, employ, compensate and reimburse the expenses of certain Professionals, primarily attorneys, who have rendered services to the Debtors unrelated to the Chapter 11 Cases to assist with the operation of the Debtors' businesses in the ordinary course.

On October 11, 2011, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured Creditors pursuant to Section 1102 of the Bankruptcy Code (the "Creditors' Committee"). The Creditors' Committee retained Lowenstein Sandler, PC, as counsel for the Creditors' Committee, Elliot Greenleaf, as co-counsel for the Creditors' Committee and FTI Consulting, Inc. as its financial

advisors. The Bankruptcy Court has approved the Creditors' Committee's retention of all of these professional firms.

Since its formation, the Debtors have consulted with the Creditors' Committee concerning the administration of the Chapter 11 Cases. The Debtors have kept the Creditors' Committee informed about their operations and have sought the concurrence of the Creditors' Committee for actions and transactions taken outside of the ordinary course of the Debtors' business. The Creditors' Committee has participated actively, together with the Debtors' management and Professionals, in connection with negotiation of the Plan. The Creditors' Committee initially consisted of the following members: Value Recovery Fund LLC, Metaphor Inc., and 3M Company. As of the date hereof, the Creditors' Committee consists of Value Recovery Fund LLC, 3M Company, and McKesson Specialty Arizona, Inc.

### **C. First Day Orders**

On the Petition Date, the Debtors filed a number of motions seeking approval of certain so-called "first day orders." The first day orders facilitated the transition between the Debtors' prepetition and postpetition business operations by authorizing the Debtors to continue with certain regular business practices that may not be specifically authorized under the Bankruptcy Code, or for which the Bankruptcy Code requires prior court approval. The first day orders in these Chapter 11 Cases, the majority of which were signed at a hearing held on September 30, 2011, authorized, among other things, the following:

#### **1. Motion for Joint Administration of the Chapter 11 Cases**

The Bankruptcy Court authorized the joint administration of the Debtors' Chapter 11 Cases for procedural purposes only.

#### **2. Motion to Continue Using Existing Cash Management Systems**

The Bankruptcy Court authorized the Debtors to continue to utilize their existing centralized cash management systems, to continue to use their existing bank accounts and business forms, and to continue employing third-party benefits administrators to prepare and issue payroll and benefits checks on their behalf.

#### **3. Motion for Authority to Pay Prepetition Importing and Shipping Claims**

The Bankruptcy Court authorized the Debtors to pay or otherwise honor the prepetition claims in an amount not to exceed \$35,000 on account of prepetition shipping and importing expenses, including customs duties, general order penalties, ocean freight, air freight, trucking charges, brokerage fees, detention and demurrage fees, surety bond premiums, consolidation and deconsolidation charges, and the like.

#### **4. Motion for Authority to Pay Prepetition Employee Wages, Salaries, Benefits, Miscellaneous Employee Expenses and Independent Contractor Fees and Expenses**

The Bankruptcy Court initially entered an interim Order and subsequently entered a final Order authorizing the Debtors to pay or otherwise honor the prepetition wages and

salaries in the approximate amount of \$840,000, reimbursable employee and executive expenses, independent contractor fees and expenses in the approximate amount of \$100,000, and prepetition benefits obligations, including severance obligations, in the approximate amount of \$2,616,007. The Bankruptcy Court further authorized the Debtors to continue forwarding deductions from employee paychecks to appropriate third parties and to continue paying any and all accrued and unpaid payroll tax obligations.

**5. Motion Prohibiting Utilities From Altering, Refusing or Discontinuing Services, Deeming Utility Providers Adequately Assured of Future Performance and Establishing Procedures for Determining Requests for Additional Adequate Assurance**

The Bankruptcy Court initially entered an interim Order and subsequently entered a final Order prohibiting the Debtors' utility service providers from altering, refusing or discontinuing services on account of prepetition invoices, deeming the utility providers adequately assured of future performance and establishing procedures for determining requests for additional adequate assurance.

**6. Motion For Authority to Pay Taxes and Fees**

The Bankruptcy Court authorized the Debtors to (a) pay and remit prepetition sales, use, income, franchise, personal property, real property, business and other taxes in operating their business to the appropriate taxing authorities and (b) authorized the Debtors to pay and remit fees including, but not limited to, permitting fees, license fees, regulatory fees, user fees and other similar charges and assessments, collectively in an aggregate amount not to exceed \$700,000 with respect to all amounts accrued or arising prior to the Petition Date.

**7. Motion for Authority to Pay Prepetition Amounts Relating to Customer, Marketing and Medical Affairs Programs and to Continue Such Customer, Marketing and Medical Affairs Programs Postpetition**

The Bankruptcy Court authorized the Debtors to honor and perform their obligations with respect to their customer programs in their discretion and in the ordinary course of business, consistent with past practices. The Bankruptcy Court also authorized the Debtors to pay certain prepetition obligations, subject to the aggregate dollar amounts of: (a) \$1,200,000.00 for prepetition obligations under chargeback agreements or pricing and purchase agreements; (b) \$1,300,000.00 for prepetition obligations under channel management agreements; (c) \$10,000,000.00 for prepetition obligations on account of product returns; and (d) \$2,900,000.00 for obligations under certain "co-pay coupons" administered by a division of McKesson Corporation; provided that the Debtors were authorized to make payments on account of such prepetition obligations only to wholesale drug distributors who executed a "Wholesaler Support Agreement" in substantially the form attached to the motion as Exhibit C. As of the date hereof, the Debtors have not entered into any Wholesaler Support Agreements and have thus not made any payments on account of these prepetition obligations.

**D. Cash Collateral and Debtor-In-Possession Financing**

The Debtors' obligations to its First Lien Facility Lenders and Second Lien Facility Lenders (collectively, the "Prepetition Secured Lenders") are secured, respectively, by

perfected first and second priority liens upon and security interests in substantially all of the assets of the Debtors (the “Prepetition Collateral”). As of the Petition Date, the Prepetition Collateral included substantially all of the Debtors’ cash and cash equivalents. As a result, the Debtors did not have any unencumbered cash with which to operate their businesses. Moreover, the Prepetition Secured Lenders were unwilling to lend additional funds to the Debtors in excess of the amounts outstanding under such agreements.

In order to permit the Debtors to fund day-to-day activities pending the sale of the Debtors’ assets, the First Lien Facility Agent and certain First Lien Facility Lenders (the “Majority First Lien Facility Lenders”) agreed to (a) permit the Debtors to use the cash in which the Prepetition Secured Lenders had a security interest (the “Cash Collateral”) and (b) to obtain senior secured debtor-in-possession financing in a principal amount of up to \$6,000,000 from the Debtors’ non-debtor subsidiary Graceway Canada. This agreement, as well as, among other things, the support of the First Lien Facility Lenders for the sale of substantially all of the Debtors’ Assets, was set forth in that certain Sale Support Agreement, dated as of September 28, 2011, by and among the Debtors, Graceway Canada and the Majority First Lien Facility Lenders, and attached as an exhibit to each of the Debtors’ petitions.

On the Petition Date, the Debtors sought the entry of an agreed Order (the “DIP Order”) between the Debtors and the First Lien Facility Agent authorizing the Debtors to obtain debtor-in-possession financing and use Cash Collateral pursuant to certain terms and conditions described in the agreed Order, including, but not limited to:

(i) authorizing the Debtors to enter into certain intercompany term loans (the “Intercompany Notes”) and related agreements with Graceway Canada and to perform its obligations thereunder;

(ii) authorizing the Debtors to borrow and use up to \$6,000,000 in principal amount pursuant to the Intercompany Notes;

(iii) granting Graceway Canada first priority liens on the Debtors’ assets securing the Debtors’ obligations under the Intercompany Notes and super-priority administrative claims with respect to such amounts;

(iv) granting certain adequate protection to the Prepetition Secured Lenders;

(v) the Debtors’ agreement to certain factual stipulations regarding the First Lien Credit Agreement and the Second Lien Credit Agreement (the “Debtors’ Stipulations”);

(vii) the granting by the Debtors of certain releases vis-à-vis the First Lien Facility Agent, the First Lien Facility Lenders, the Second Lien Facility Agent and the Second Lien Facility Lenders;

(viii) approval of a budget for the use of Cash Collateral, including various covenants relating thereto;

(ix) the establishment of a “carve-out” for (a) unpaid fees required to be paid to the clerk of the Bankruptcy Court and the office of the U.S. Trustee and (b) certain professional

fees and expenses allowed by the Bankruptcy Court under Sections 105(a), 330 and 331 of the Bankruptcy Code (the “Carve-Out”);

(x) the establishment of a period during which the Creditors’ Committee could investigate and challenge the Debtors’ Stipulations, which were otherwise binding on all parties in interest; and

(xi) certain other terms and conditions typically found in Orders granting similar relief.

The DIP Order was entered on an interim basis on September 30, 2011, and was approved on a final basis on November 7 pursuant to 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. In connection with the Closing, the Debtors and the First Lien Facility Lenders, negotiated and agreed upon an amended budget (the “Revised Budget”) reflecting the revised timeline for the wind down of the Debtors’ estates following the Closing Date (defined below). The agreed upon Revised Budget was attached as Exhibit A to that certain Amendment No. 1 dated as of December 2, 2011 and filed with the Court on December 2, 2011. The Revised Budget was subsequently amended pursuant to that certain Amendment No. 2 dated as of January 5, 2012 and filed with the Court on January 6, 2012.

#### **E. Sale of Assets**

In March 2010, the Debtors retained Lazard as their investment banker to assist the Debtors in addressing their financial situation and exploring potential financing and restructuring alternatives. After exploring the strategic alternatives available to them, the Debtors, after consulting with Lazard, 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

As noted above, on September 27, 2011, the Sellers entered into the Stalking Horse Asset Purchase Agreement with the Stalking Horse Bidder pursuant to which the Sellers agreed to sell substantially all of their assets to the Stalking Horse Bidder and the Stalking Horse Bidder agreed to assume certain liabilities of the Sellers. On the Petition Date the Debtors filed the 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 (the “Sale Motion”).

On October 17, 2011, the Bankruptcy 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) the Form and Manner of Notice of the Sale Hearing, and (D) Related Relief (the “Bid Procedures Order”). Pursuant to the Bid Procedures Order, the assets of the Debtors and Graceway Canada were offered for sale at an auction. The auction was scheduled for November 17, 2011 (the “Auction”) and November 22, 2009 was set as the date of the sale hearing (the “Sale Hearing”).

On November 17, 2011, the Debtors conducted and completed the Auction at which an offer submitted by Medicis was determined to be the highest and best offer. On November 18, 2011, the Debtors and Graceway Canada entered into the Asset Purchase Agreement with Medicis pursuant to which Medicis agreed to purchase the Acquired Assets for \$455,000,000.00 in cash (the “Sale Proceeds”) and to assume certain liabilities associated with the purchased Assets. The Asset Sale was approved by the Bankruptcy Court at the Sale Hearing on November 22, 2011 pursuant to the 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 (the “Sale Order”). The Asset Sale was consummated on December 2, 2011 (the “Closing Date”).

Pursuant to the Sale Order, on the Closing Date the following transactions took place:

(a) \$15,123,36.14 was funded into a segregated account to pay the Debtors’ cure costs under the Asset Purchase Agreement;

(b) \$4,253,828.76 was distributed directly to the Receiver on account of the value allocated to the assets of Graceway Canada;

(c) \$6,049,191.78 was distributed to Graceway Canada as payment in full in cash of the Debtors’ obligations under the Intercompany Notes;

(d) \$2,481,250 was funded into a segregated account to pay the transaction fee (the “Success Fee”) due and owing to Lazard upon allowance of the Bankruptcy Court;

(e) \$4,410,193.60 was funded into a segregated account for purposes of funding any shortfall with respect to (X) the establishment of the Carve-Out (less the amount of the Success Fee) and (Y) solely to the extent a written notice by First Lien Facility Agent following the occurrence and during the continuation of any event of default under the DIP Order, expressly stating that the Carve-Out is invoked, 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 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 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, 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 Majority First Lien Facility Lenders 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;

(f) \$4,213,125.55 was funded into a segregated account to be maintained at, and at all times under the control of, the First Lien Facility Agent (the “1.0% Holdback Account”);

(g) \$2,593,647.29 was funded into a segregated account for purposes of funding the Debtors’ severance and COBRA liabilities budgeted for under the DIP Order;

(h) \$17,684,000 was funded into a segregated account for purposes of paying liabilities on account of chargebacks, channel management agreements, product returns and 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;

(i) \$8,250,000 was distributed to Galderma S.A. on account of the break-up fee and expense reimbursement authorized by the Bid Procedures Order; and

(j) \$389,941,456.88 was transferred to the First Lien Facility Agent for distribution to the First Lien Facility Lenders.

As set forth in the Sale Order, liens, claims, interests and encumbrances attached to Sale Proceeds in the same order and priority as they existed prior to the completion of the Asset Sale.

#### **F. The Committee Settlement**

On October 17, 2011, the Debtors filed the 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 and on October 25, 2011 the Debtors filed the Supplement to the 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 (collectively, the “Sale Allocation Motion”), pursuant to which the Debtors sought approval of the allocation of \$4,404,683.65 of the Sale Proceeds to the assets owned by non-Debtor Graceway Canada and allocation of the remainder of the Sale Proceeds to the assets owned by the Debtors. On November 14, 2011, the Creditors’ Committee objected to both the Sale Allocation Motion and the Sale Motion pursuant to the (x) Limited Objection of the Official Committee of Unsecured Creditors To Debtors’ Motion for Order (I) 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) 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 and (y) Objection of the Official Committee of Unsecured Creditors 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 (together the "Committee Objections").

Prior to the Sale Hearing, the Debtors, the Creditors' Committee and the First Lien Facility Agent negotiated and reached a settlement (the "Committee Settlement") of the Committee Objections. The terms of the Committee Settlement were set forth on the record at the Sale Hearing. Pursuant to the Committee Settlement, the First Lien Facility Agent released its Liens and Claims on:

(a) an amount equal to \$10,000,000 (the "Estate Fund Amount") to be funded as follows: (a) first, from the first \$10,000,000 of the Cash, if any, distributed by Graceway Canada to the Debtors on account of the Debtors' equity interests in Graceway Canada after payment in full of all creditors of Graceway Canada (the "Canadian Distribution Amount"); (b) second, solely to the extent the Canadian Distribution Amount is less than \$10,000,000, from the 1.0% Holdback Account; and (c) finally, solely to the extent the sum of the Canadian Distribution Amount and the funds in the 1.0% Holdback Account is less than \$10,000,000, from the Sale Proceeds distributed to the First Lien Facility Agent pursuant to the Sale Order;

(b) \$150,000, which shall be funded into the Trust Administrative Fund (defined below) by the First Lien Facility Agent from Sale Proceeds; and

(c) 25% of all proceeds, whether obtained through litigations, settlement or otherwise, of any avoidance or equitable subordination or recovery actions under Bankruptcy Code Sections 105, 502(d), 510, 542, 543, 544, 545, 546, 547, 548, 550, 551, and 553.

In exchange for this release, under the Committee Settlement the First Lien Facility Agent (for the benefit of the First Lien Claimholders) received:

(i) any Canadian Distribution Amount in excess of the Estate Fund Amount;

(ii) 100% of all proceeds, whether obtained through litigations, settlement or otherwise, of any avoidance or equitable subordination or recovery actions under Bankruptcy Code Section 549; and

(iii) 75% of all proceeds, whether obtained through litigations, settlement or otherwise, of any avoidance or equitable subordination or recovery actions under Bankruptcy Code Sections 105, 502(d), 510, 542, 543, 544, 545, 546, 547, 548, 550, 551, and 553.

The Committee Settlement is the cornerstone of the Plan. To the extent the Committee Settlement is not already deemed approved by the Sale Order, pursuant to Section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan relating to and effectuating the Committee Settlement will constitute a good faith compromise. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Committee Settlement, as well as a finding by the Bankruptcy Court that the Committee Settlement is in the

best interests of the Debtors, their Estates and holders of Claims and Interests and is fair, equitable and reasonable.

#### **G. The Debtors' Current Management**

In connection with the consummation of the Asset Sale, substantially all of the Debtors' employees were terminated on the Closing Date. Certain of the Debtors' employees, including certain of the Debtors' officers, continued to perform in limited roles following the Closing Date. After Closing, George Sperzel and John Bellamy joined Kenneth Dunn and Xavier Yon as directors of Graceway Pharma Holding Corp., Graceway Holdings, LLC, Graceway Pharmaceuticals, LLC, Chester Valley Holdings, LLC, and Chester Valley Pharmaceuticals, LLC. All other directors of the Debtors resigned, namely Jefferson Gregory, Dean Mihas, Ned Jannotta, Ed Fiorentino and Bob Moccia. John Bellamy is acting as the sole director of Graceway International, Inc. and Graceway Canada Holdings, Inc. For all Debtor and non-Debtor entities, John Bellamy is serving as the President and Tariq Zaidi is serving as the Secretary. All of the Debtors' remaining employees will be terminated upon the Effective Date.

#### **H. The Claims Process**

The Bankruptcy Code provides a procedure for each person who believes he has a claim against a debtor to assert such claim, so that such claimant can receive distributions from the debtor's bankruptcy estate. The bankruptcy court establishes a "bar date" – a date by which Creditors must file their claims, or else such claims will not participate in the bankruptcy case or any distribution. After the filing of all claims, the debtor evaluates such claims and can, along with other parties in interest, raise objections to them. These claims objections allow the debtor to minimize claims against it, and thereby maximize the recovery to creditors with Allowed Claims.

By Order dated October 17, 2011, the Bankruptcy Court established December 30, 2011 (the "Bar Date") as the deadline for filing proofs of Claims relating to prepetition Claims against the Debtors, other than Claims of Governmental Units and Administrative Expense Claims. The Bankruptcy Court established March 27, 2012 as the date as the deadline for filing proofs of Claims by Governmental Units relating to prepetition Claims against the Debtors (the "Governmental Claims Bar Date").

Pursuant to the Plan, all unpaid Administrative Expense Claims must be filed on or before the Administrative Expense Claims Bar Date. The Administrative Expense Claims Bar Date is the first Business Day that is at least thirty-five (35) days following the Effective Date.

The Debtors have been reviewing, analyzing and resolving Claims on an ongoing basis as part of the claims reconciliation process. To date approximately 206 proofs of Claim have been asserted in the Chapter 11 Cases. Over the last several months, the Debtors have only preliminarily begun to reconcile the amount and classification of outstanding claims and to assert and prosecute objections to claims. The Debtors have also identified Claims for future resolution, as well as other existing or potential claims disputes. Nonetheless, a significant number of Claims have not yet been resolved to date, and the actual ultimate aggregate amount of Allowed Claims may differ significantly from the amounts used for the purposes of the

Debtors' estimates. Additionally, the Debtors are in the process of reviewing their Schedules filed with the Bankruptcy Court and, upon the completion of such review, will likely amend such Schedules to account for certain Claims that have been satisfied or settled. Accordingly, the amount of the Pro Rata share that will ultimately be received by any particular holder of an Allowed Claim may be adversely affected by the outcome of the claims resolution process

## **I. Substantive Consolidation of the Debtors**

As set forth in more detail in Section IV, the Plan provides for the substantive consolidation of the Debtors with respect to the voting and treatment of all Claims and Interests except Other Secured Claims. Section 105(a) of the Bankruptcy Code empowers a bankruptcy court to authorize substantive consolidation. The United States Court of Appeals for the Third Circuit has adopted a standard for granting a request for substantive consolidation similar to the standards adopted by other Circuits authorizing substantive consolidation. See In re Owens Corning, 419 F.3d 195, 211 (3d Cir. 2005); Reider v. F.D.I.C. (In re Reider), 31 F.3d 1102, 1107-1108 (11th Cir. 1994); Woburn Assoc. v. Kahn (In re Hemingway Transport Inc.), 954 F.2d 1, 11-12 (1st Cir. 1992); First Nat'l Bank of El Dorado v. Giller (In re Giller), 962 F.2d 796, 798-99 (8th Cir. 1992); Union Sav. Bank v. Augie/Restivo Baking Co. (In re Augie/Restivo Baking Co.) 860 F.2d 515, 518 (2d Cir. 1988); Drabkin v. Midland-Ross Corp. (In re Auto-Train Corp.), 810 F.2d 270, 276 (D.C. Cir. 1987).

In the Third Circuit, debtors seeking substantive consolidation must show either “(i) prepetition they disregarded separateness so significantly their creditors relied on the breakdown of entity borders and treated them as one legal entity, or (ii) postpetition their assets and liabilities are so scrambled that separating them is prohibitive and hurts all creditors.” Owens Corning, 419 F.3d at 211 (emphasis added). “A prima facie case for [the first rationale] typically exists when, based on the parties’ prepetition dealings, a proponent proves corporate disregard creating contractual expectations of creditors that they were dealing with debtors as one indistinguishable entity.” Id. at 212. The facts of these Chapter 11 Cases necessitate substantive consolidation, and substantive consolidation is warranted under the aforementioned tests.

There is ample evidence that prior to the Petition Date Creditors of the Debtors treated them as one legal entity. The Debtors prepared and disseminated consolidated financial reports to the public, including customers, suppliers, landlords, lenders, and credit rating agencies. Because the Debtors disseminated financial information to the public on a consolidated basis, it is highly unlikely that Creditors relied on the separate identity of any Debtor in extending credit to such Debtor.

Because financial information disseminated to customers, suppliers, landlords, lenders, and credit rating agencies, has been prepared and presented on a consolidated basis, it is clear that creditors treated the Debtors as one legal entity when deciding whether to extend credit. Substantive consolidation would ensure that all of the Debtors’ creditors, having relied on the creditworthiness of the Debtors as a unit, receive the benefit of a distribution in satisfaction of their claims from the single pool of assets. Thus, substantive consolidation is warranted in this case under the test set forth by the Third Circuit.

Several courts within the Third Circuit have acknowledged the existence and application of substantive consolidation of separate bankruptcy estates in appropriate circumstances. See In re Molnar Bros., 200 B.R. 555 (Bankr. D.N.J. 1996) (recognizing the application of substantive consolidation of two or more bankruptcy estates); In re PWS Holding Corp., Case No. 98-212-223 (SLR) (D. Del. 1998) (approving substantive consolidation of debtors pursuant to a plan of reorganization); Bracaglia v. Manzo (In re United Stairs Corp.), 176 B.R. 359, 368 (Bankr. D.N.J. 1995) (stating that it is “well established that in the appropriate circumstances the court may substantively consolidate corporate entities”); In re Buckhead Am. Corp., 1992 Bankr. LEXIS 2506 (Bankr. D. Del. Aug. 13, 1992) (substantively consolidating debtors); In re Cooper, 147 B.R. 678, 682 (Bankr. D.N.J. 1992).

For the reasons set forth above, the Debtors believe that the requirements for substantive consolidation of the Debtors with respect to voting and treatment of all Claims and Interests except for Class 4 Claims are satisfied.

The Plan and Disclosure Statement do not seek substantive consolidation with respect to Other Secured Claims. Thus, any pledge by any of the Debtors of any of its respective Assets, including, without limitation, any stock in any of its subsidiaries, is unaffected by the limited substantive consolidation proposed in the Plan.

#### IV. CHAPTER 11 PLAN

**THE FOLLOWING IS A BRIEF SUMMARY OF CERTAIN OF THE MORE SIGNIFICANT MATTERS CONTEMPLATED BY OR IN CONNECTION WITH THE CONFIRMATION OF THE PLAN. THUS, THE FOLLOWING SUMMARY IS QUALIFIED IN ITS ENTIRETY BY THE PLAN, WHICH IS ATTACHED TO THIS DISCLOSURE STATEMENT AS EXHIBIT A. THIS SUMMARY ONLY HIGHLIGHTS CERTAIN SUBSTANTIVE PROVISIONS OF THE PLAN. CONSIDERATION OF THIS SUMMARY WILL NOT, NOR IS IT INTENDED TO, YIELD A THOROUGH UNDERSTANDING OF THE PLAN. SUCH CONSIDERATION IS NOT A SUBSTITUTE FOR A FULL AND COMPLETE READING OF THE PLAN. ALL HOLDERS OF CLAIMS AND INTERESTS ARE URGED TO REVIEW THE PLAN CAREFULLY. THE PLAN, IF CONFIRMED, WILL BE BINDING ON EACH OF THE DEBTORS AND ALL HOLDERS OF CLAIMS AND INTERESTS.**

##### A. Plan Overview

The Plan contains four types of unclassified Claims: Administrative Expense Claims, Professional Claims, Statutory Fees and Priority Tax Claims. In addition, the Plan classifies Claims and Interests as follows: Class 1 Other Priority Claims, Class 2 First Lien Facility Claims, Class 3 Second Lien Facility Claims, Class 4 Other Secured Claims, Class 5 General Unsecured Claims, Class 6 Intercompany Claims, Class 7 Old Equity and Class 8 Old Equity Rights. Classes 1 and 4 are Unimpaired and Classes 2, 3, 5, 6, 7 and 8 are Impaired.

## B. Plan Summary

The Plan is premised on the substantive consolidation of all of the Debtors with respect to the treatment of all Claims and Interests, except for the Other Secured Claims in Class 4. The Plan does not contemplate substantive consolidation of the Debtors with respect to the Class 4 Claims, which shall be deemed to apply separately with respect to the Plan proposed by each Debtor. The Plan shall serve as a request by the Debtors, in lieu of a separate motion, to the Bankruptcy Court that it grant substantive consolidation with respect to the treatment of all Claims and Interests: on the Effective Date, (a) all Class 6 Intercompany Claims will be eliminated (except to the extent such Claims are by a Debtor against a non-Debtor Affiliate); (b) no distributions shall be made under the Plan on account of any equity interest held by a Debtor in any other Debtor; (c) all Assets and liabilities of the Debtors will be merged or treated as though they were merged; (d) all guarantees of the Debtors of the obligations of any other Debtor and any joint or several liability of any of the Debtors shall be eliminated; and (e) each and every Claim or Interest against any Debtor shall be deemed Filed against the consolidated Debtors and all Claims Filed against more than one Debtor for the same liability shall be deemed one Claim against any obligation of the consolidated Debtors. In the event the Bankruptcy Court determines that such substantive consolidation of the Debtors is not appropriate, the Debtors may request that the Bankruptcy Court otherwise confirm the Plan and the treatment of the different Classes under the Plan on a Debtor by Debtor basis.

## C. Unclassified and/or Unimpaired Claims

The Unclassified and/or Unimpaired Claims consist of Administrative Expense Claims, Professional Claims, Statutory Fees and Priority Tax Claims. These Claims shall be treated as follows:

**Administrative Expense Claims.** Subject to the allowance procedures and deadlines provided in the Plan, on the Effective Date or as soon thereafter as is practicable in recognition of the applicable Claims resolution process set forth in the Plan, the holder of an Allowed Administrative Expense Claim (other than an Administrative Expense Claim that is an Assumed Liability or a Professional Claim) shall receive on account of such Allowed Administrative Expense Claim and in full satisfaction, settlement and release of and in exchange for such Allowed Administrative Expense Claim, (a) Cash equal to the unpaid portion of such Allowed Administrative Expense Claim, or (b) such other treatment as to which the Debtors, or, if after the Effective Date, the Liquidating Trustee, and the holder of such Allowed Administrative Expense Claim have agreed upon in writing provided such treatment is on more favorable terms to the Debtors or the Liquidating Trustee, as the case may be, than the treatment set forth in subsection (a) hereof; *provided, however*, that (i) notwithstanding any other provision of the Plan, Administrative Expense Claims that are Assumed Liabilities have been Assumed and shall be satisfied in accordance with the Asset Purchase Agreement and shall not receive distributions pursuant to the Plan and (ii) Professional Claims shall be paid in accordance with Section 2.3 of the Plan.

**Statutory Fees.** On or before the Effective Date, all fees due and payable pursuant to 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid in full, in Cash.

**Professional Claims.** Immediately prior to the Effective Date, the Debtors shall pay from the Designated Account all amounts owing to the Professionals other than Lazard and from the Lazard Account all amounts owing to Lazard for all outstanding Professional Claims relating to prior periods and for the period ending on the Effective Date; *provided, however*, that the amount paid to each Professional immediately prior to the Effective Date shall not exceed the lesser of (a) the excess, if any, of (i) the amount provided for in the Budget for such Professional over (ii) the sum of the aggregate amount of all payments already made to such Professional for services rendered since the Petition Date and the amount of any retainers currently held by such Professional and (b) the sum of (i) the amount billed and unpaid for such Professional and (ii) the amount estimated by such Professional as necessary to cover unbilled periods through the Effective Date, which estimated amount shall be provided to the Debtors and the First Lien Facility Agent by each Professional on or prior to the Effective Date. The Professionals shall estimate Professional Claims due for periods that have not been billed as of the Effective Date. On or prior to the Administrative Expense Claims Bar Date, each Professional shall File with the Bankruptcy Court its final fee application seeking final approval of all fees and expenses from the Petition Date through the Effective Date. Within ten (10) days after entry of a Final Order with respect to its final fee application, each Professional shall remit any overpayment to the Liquidating Trustee to be deposited in the Designated Account or the Liquidating Trustee shall pay any outstanding amounts owed to the Professional, but in no event shall any Professional receive more than the amount provided in the Budget for such Professional from the Designated Account. Payment of Allowed Professional Claims asserted by any Professional shall be funded from Other Assets (other than the Liquidating Trustee Fee Amount) to the extent that the aggregate amount of such Allowed Professional Claims of such Professional since the Petition Date exceeds the amount provided for in the Budget for such Professional.

**Priority Tax Claims.** Subject to the allowance procedures and deadlines provided in the Plan, on the Effective Date or as soon thereafter as is practicable in recognition of the applicable Claims resolution process set forth in the Plan, with respect to each Allowed Priority Tax Claim, at the sole option of the Debtors or, if after the Effective Date, the Liquidating Trustee, the holder of an Allowed Priority Tax Claim shall be entitled to receive on account of such Allowed Priority Tax Claim, in full satisfaction, settlement and release of and in exchange for such Allowed Priority Tax Claim, (i) Cash in an amount equal to the unpaid portions of such Allowed Priority Tax Claims; or (ii) such other treatment agreed to in writing by the holder of such Allowed Priority Tax Claim and the Debtors or, if after the Effective Date, the Liquidating Trustee, provided such treatment is on more favorable terms to the Debtors or the Liquidating Trustee, as the case may be, than the treatment set forth in subsection (i) hereof.

In accordance with the Bankruptcy Code, Administrative Expense Claims, Professional Claims, Statutory Fees and Priority Tax Claims are not classified. Therefore, the claimants holding the aforementioned Claims may not vote on the Plan.

#### **D. Treatment of Claims and Interests**

The treatment of and consideration to be received by holders of Allowed Claims and the treatment of Interests pursuant to Article 4 and 5 of the Plan will be in full satisfaction, settlement, release, extinguishment and discharge of their respective Allowed Claims against, or



Interests in, the Debtors and the Debtors' Estates, except as otherwise expressly provided in the Plan or the Confirmation Order.

**1. Class 1 – Other Priority Claims**

**a. Definition of Class 1 – Other Priority Claims**

Other Priority Claims include any Claim, other than an Administrative Expense Claim or a Priority Tax Claim, of a Creditor to the extent such Claim is entitled to priority pursuant to Bankruptcy Code Section 507(a).

**b. Treatment of Class 1 – Other Priority Claims**

On the Effective Date or as soon thereafter as is reasonably practicable in recognition of the applicable Claims reconciliation process set forth in the Plan, the holder of an Allowed Other Priority Claim shall receive on account of the Allowed Other Priority Claim and in full satisfaction, settlement and release of and in exchange for such Allowed Other Priority Claim, (a) Cash equal to the amount of such Allowed Other Priority Claim, or (b) such other treatment as to which the Debtors and the holder of such Allowed Other Priority Claim have agreed upon in writing, provided such treatment is on more favorable terms to the Debtors or the Liquidating Trustee, as the case may be, than the treatment set forth in subsection (a) hereof.

**c. Voting Status of Class 1 – Other Priority Claims**

Class 1 is not Impaired and is deemed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code. Thus, the claimants in Class 1 may not vote on the Plan.

**2. Class 2 – First Lien Facility Claims**

**a. Definition of Class 2 – First Lien Facility Claims**

The First Lien Facility Claims include the First Lien Facility Secured Claim, any First Lien Facility Deficiency Claim and any First Lien Facility Adequate Protection Claim.

**b. Treatment of Class 2 – First Lien Facility Claims**

On the Effective Date or as soon thereafter as is reasonably practicable in recognition of the applicable Claims reconciliation process set forth in the Plan, the First Lien Facility Agent shall receive, for the benefit of the First Lien Claimholders, in full satisfaction, settlement and release of and in exchange for the First Lien Facility Claims (including the First Lien Facility Secured Claim, any First Lien Facility Adequate Protection Claim and any First Lien Facility Deficiency Claim), (i) any First Lien Available Cash that is available to be distributed on the Effective Date; (ii) the Nycomed Litigation Proceeds; and (iii) beneficial interests in the Liquidating Trust entitling each First Lien Claimholder to receive its Pro Rata share of (A) any First Lien Available Cash that becomes available to be distributed after the Effective Date, (B) seventy-five percent (75%) of any Avoidance Action Proceeds and (C) one hundred percent (100%) of any other Cause of Action Proceeds, including, without limitation,

549 Avoidance Action Proceeds. Until the First Lien Facility Claims are paid in full in Cash, the Liens securing the First Lien Facility Secured Claim and any First Lien Facility Adequate Protection Claim shall remain on the Assets (including, without limitation, the Reserve Accounts and the Cash deposited therein and the Nycomed Litigation Proceeds) other than the Other Assets, provided that, except for their obligations under the Plan, the Debtors and their Estates shall have no further liability to the First Lien Facility Agent or the First Lien Facility Lenders. Holders of the First Lien Facility Claims shall be Beneficiaries; it being understood that distributions from the Liquidating Trust shall be exclusively governed in accordance with the terms set forth in the Plan.

c. Voting Status of Class 2 – First Lien Facility Claims

Class 2 is Impaired and may vote on the Plan.

3. **Class 3 – Second Lien Facility Claims**

a. Definition of Class 3 – Second Lien Facility Claims

Second Lien Facility Claims include any Second Lien Facility Secured Claim and any Second Lien Facility Adequate Protection Claim.

b. Treatment of Class 3 – Second Lien Facility Claims

The Second Lien Facility Agent shall receive, for the benefit of the Second Lien Facility Lenders, in full satisfaction, settlement and release of and in exchange for any Allowed Second Lien Facility Secured Claim and any Allowed Second Lien Facility Adequate Protection Claim on the Effective Date or as soon thereafter as is practicable in recognition of the applicable Claims reconciliation process set forth in the Plan, beneficial interests in the Liquidating Trust entitling each Second Lien Facility Lender to receive its Pro Rata share of (a) any Other Available Cash subject to the Liens granted to the Second Lien Facility Agent pursuant to the Second Lien Credit Agreement or the DIP Order and (b) after payment in full in Cash of the First Lien Facility Claims, (i) any First Lien Available Cash; (ii) the Nycomed Litigation Proceeds, (iii) seventy-five percent (75%) of any Avoidance Action Proceeds; and (iv) one hundred percent (100%) of any 549 Avoidance Action Proceeds. Until the Second Lien Facility Claims are paid in full in Cash, the Liens securing any Second Lien Facility Secured Claim and any Second Lien Facility Adequate Protection Claim shall remain on the Assets, provided that, (a) except for their obligations under the Plan, the Debtors and their Estates shall have no further liability to the Second Lien Facility Agent or the Second Lien Facility Lenders and (b) such Liens shall continue to be junior and subordinate in all respects to the Liens securing the First Lien Facility Secured Claim and First Lien Adequate Protection Claim that have not been released in connection with the Committee Settlement. Any Second Lien Facility Deficiency Claim shall not constitute a Class 3 Second Lien Facility Claim and shall be treated as a Class 5 General Unsecured Claim under the Plan. Holders of the Allowed Second Lien Facility Claims shall be Beneficiaries; it being understood that distributions from the Liquidating Trust shall be exclusively governed in accordance with the terms set forth in the Plan. Class 3 is Impaired and may vote to accept or reject the Plan.

c. Voting Status of Class 3 – Second Lien Facility Claims

Class 3 is Impaired and may vote on the Plan.

4. **Class 4 – Other Secured Claims**

a. Definition of Class 4 – Other Secured Claims

Other Secured Claims are all Secured Claims against the Debtors other than the First Lien Facility Secured Claim and the Second Lien Facility Secured Claim; *provided, however*, that any Secured Claim that is an Assumed Liability has been assumed and shall be satisfied in accordance with the Asset Purchase Agreement and shall not receive distributions pursuant to the Plan.

This Other Secured Claims Class is subdivided into subclasses designated by letters of the alphabet (Class 4A, Class 4B and so on), so that each holder of any Other Secured Claim is in a Class by itself, except to the extent that there are Other Secured Claims that are substantially similar to each other and may be included within a single Class, and except for a precautionary class of otherwise unclassified Other Secured Claims.

b. Treatment of Class 4 – Other Secured Claims

On the Effective Date or as soon thereafter as is practicable in recognition of the applicable Claims reconciliation process set forth in the Plan, each holder of an Allowed Other Secured Claim that was not assumed by the Purchaser in connection with the 363 Sale shall receive, in full satisfaction, settlement and release of and in exchange for such Allowed Other Secured Claim, (i) the collateral securing any such Allowed Other Secured Claim (to the extent such collateral does not constitute collateral securing the First Lien Facility Secured Claim, any First Lien Facility Adequate Protection Claim, the Second Lien Facility Secured Claim or any Second Lien Facility Adequate Protection Claim or, if such collateral does secure any such Claim, to the extent that the Lien securing such Allowed Other Secured Claim is senior to the Lien securing the First Lien Facility Secured Claim, any First Lien Facility Adequate Protection Claim, the Second Lien Facility Secured Claim or any Second Lien Facility Adequate Protection Claim, as applicable), (ii) Cash in an amount equal to such Allowed Other Secured Claim to the extent the collateral securing such Allowed Other Secured Claim was sold and such collateral does not constitute collateral securing the First Lien Facility Secured Claim, any First Lien Facility Adequate Protection Claim, the Second Lien Facility Secured Claim or any Second Lien Facility Adequate Protection Claim or, if such collateral does secure any such Claim, to the extent that the Lien securing such Allowed Other Secured Claim is senior to the Lien securing the First Lien Facility Secured Claim, any First Lien Facility Adequate Protection Claim, the Second Lien Facility Secured Claim or any Second Lien Facility Adequate Protection Claim, as applicable, or (iii) such other treatment that leaves such Allowed Other Secured Claim Unimpaired pursuant to the Section 1124(2) of the Bankruptcy Code. The Other Secured Claim Liens shall be released and the Debtors and their Estates shall have no further liability therefor; *provided, however*, that any Deficiency Claims of holders of Class 4 Other Secured Claims shall not constitute Class 4 Other Secured Claims and shall be treated as Class 5 General Unsecured Claims under the Plan.

c. Voting Status of Class 4 – Other Secured Claims

Class 4 is not Impaired and is deemed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code. Thus, the claimants in Class 4 may not vote on the Plan.

5. **Class 5 – General Unsecured Claims**

a. Definition of Class 5 – General Unsecured Claims

General Unsecured Claims are means all Unsecured Claims against the Debtors, including, without limitation, the Mezzanine Facility Claim and any Second Lien Facility Deficiency Claim, but excluding any First Lien Facility Deficiency Claim, the Intercompany Claims and the Old Equity Rights.

b. Treatment of Class 5 – General Unsecured Claims

On the Effective Date or as soon thereafter as is practicable in recognition of the applicable Claims reconciliation process set forth in the Plan, the holders of Allowed General Unsecured Claims shall receive, in full satisfaction, settlement and release of and in exchange for such Allowed Claims, their Pro Rata share of the Other Available Cash that is not subject to the Liens granted to the Second Lien Facility Agent pursuant to the Second Lien Credit Agreement or the DIP Order, after payment in full of all Allowed Other Secured Claims (to the extent not otherwise satisfied in accordance with the terms of the Plan), Allowed Administrative Expense Claims (other than Administrative Expense Claims that are Assumed Liabilities), Allowed Priority Tax Claims and Allowed Other Priority Claims; *provided, however*, that pursuant to and in accordance with the Mezzanine Credit Agreement, any amounts distributed on account of the Allowed Mezzanine Facility Claim (a) are subject and subordinate to payment in full in Cash of the Second Lien Facility Claims and (b) shall be distributed directly to the Second Lien Facility Agent for the benefit of the holders of Allowed Second Lien Facility Claims until the Allowed Second Lien Facility Claims are paid in full in Cash. Holders of Allowed General Unsecured Claims shall be Beneficiaries; it being understood that distributions from the Liquidating Trust shall be exclusively governed in accordance with the terms set forth in the Plan and beneficial interests in the Liquidating Trust granted to such holders will not entitle them to any distribution of more than twenty-five percent (25%) of any Avoidance Action Proceeds or any distribution of any other Cause of Action Proceeds, including, without limitation, any 549 Avoidance Action Proceeds. In addition, the holders of Allowed General Unsecured Claims shall be entitled to share Pro Rata in any amount remaining in or released from the Disputed Claims Reserve (defined below) after resolution of all Disputed Unsecured Claims.

c. Voting Status of Class 5 – General Unsecured Claims

Class 5 is Impaired and may vote on the Plan.

**6. Class 6 – Intercompany Claims**

**a. Definition of Class 6– Intercompany Claims**

Intercompany Claims are the Claims of a Debtor against any other Debtor, and shall exclude any Claims of a Debtor against a non-Debtor Affiliate.

**b. Treatment of Class 6– Intercompany Claims**

As a result of substantive consolidation of the Debtors for distribution purposes under the Plan as provided in Section 7.1 of the Plan, holders of Intercompany Claims will not receive any distribution of property under the Plan on account of their Intercompany Claims and, on the Effective Date, the Intercompany Claims will be cancelled; *provided, however*, Class 6 shall exclude any Claims of a Debtor against a non-Debtor Affiliate or a non-Debtor subsidiary.

**c. Voting Status of Class 6 – Intercompany Claims**

Class 6 is Impaired. Because the holders of Claims in Class 6 will receive no distribution under the Plan, they are deemed to have rejected the Plan pursuant to Section 1126(g) of the Bankruptcy Code. Consequently, holders of Claims in Class 6 may not vote on the Plan.

**7. Class 7 – Old Equity**

**a. Definition of Class 7 – Old Equity**

Old Equity means any outstanding or retired ownership Interests in any of the Debtors, including Interests evidenced by stock, membership Interests or their equivalents, but excluding the Old Equity Rights

**b. Treatment of Class 7 – Old Equity**

Holders of Old Equity Interests will not receive and will not retain any property of the Debtors under the Plan on account of such Interests and all Old Equity Interests will be cancelled as of the Effective Date.

**c. Voting Status of Class 7 – Old Equity**

Class 7 is Impaired. Because the holders of Interests in Class 7 will receive no distribution under the Plan, they are deemed to have rejected the Plan pursuant to Section 1126(g) of the Bankruptcy Code. Consequently, holders of Interests in Class 7 may not vote on the Plan.

**8. Class 8 – Old Equity Rights**

**a. Definition of Class 8 – Old Equity Rights**

Old Equity Rights are any calls, rights, puts, awards, commitments, repurchase rights, unvested or unexercised options, warrants, unvested common, preferred or other Interests

or any other agreement of any character related to Old Equity, obligating any of the Debtors to issue, transfer, purchase, redeem, or sell any common, preferred or other Interests or securities, any rights under any equity incentive plans, voting agreements, investor agreements and registration rights agreements regarding common, preferred or other Interests or equity securities of any of the Debtors, any Claims arising from the rescission of a purchase, sale or other acquisition of any outstanding common, preferred, membership or other Interests or equity securities (or any right, Claim, or Interest in and to any common, preferred, membership or other interests or equity securities) of any of the Debtors, any Claims for the payment of any distributions with respect to any common, preferred, membership or other Interests or equity securities of any of the Debtors, and any Claims for damages or any other relief arising from the purchase, sale, or other acquisition of the outstanding common, preferred, membership or other Interests or equity securities of any of the Debtors.

b. Treatment of Class 8 – Old Equity Rights

Holders of any Claim or Interest arising from or relating to Old Equity Rights will not receive and will not retain any property of the Debtors under the Plan on account of such Claim or Interest and all Old Equity Rights and any Interests or Claims arising from or relating thereto will be cancelled as of the Effective Date.

c. Voting Status of Class 8 – Old Equity Rights

Class 8 is Impaired. Because the holders of Interests in Class 8 will receive no distribution under the Plan, they are deemed to have rejected the Plan pursuant to Section 1126(g) of the Bankruptcy Code. Consequently, holders of Interests in Class 8 may not vote on the Plan.

**E. Post-Confirmation Operations of the Debtors**

Pursuant to Section 7.2 of the Plan and the Confirmation Order, and effective as of the Effective Date of the Plan, the Beneficiaries and the Debtors, under the Liquidating Trust Agreement, will create the Liquidating Trust, to be formally known as the “Graceway Liquidating Trust,” for the benefit of the Beneficiaries. A summary of certain significant terms of the Liquidating Trust Agreement are set forth below. The Liquidating Trust Agreement is attached to the Plan as Exhibit 2 and the Plan is attached hereto as Exhibit A.

The Liquidating Trust is created and organized for the sole purposes of collecting, holding, liquidating, and distributing the Trust Estate and administering, compromising, settling, withdrawing, objecting to, or litigating any and all Causes of Action and objections to the Claims under the Plan, with no objective to engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. In accordance with such express and limited purposes, as of the Effective Date, the Liquidating Trust is authorized and directed: (i) to take any and all steps necessary to maintain the Liquidating Trust (except with respect to the Disputed Claims Reserve) as one or more liquidating trusts for federal income tax purposes in accordance with Treasury Regulation § 301.7701-4(d) and as one or more “grantor trusts” subject to the provisions of Subchapter J, Subpart E of the IRC unless otherwise required; (ii) to take all reasonable and necessary actions

to conserve and protect the Trust Estate; (iii) to administer, compromise, settle, and litigate any and all Causes of Action and any other Claims or causes of action belonging to the Liquidating Trust; (iv) to the extent necessary and appropriate, object to any Claims asserted against the Debtors' Estates and the Liquidating Trust; and (v) to maintain, operate or lease (for purposes of holding for sale), or sell or otherwise liquidate or dispose of the Trust Estate, in accordance with the terms of the Liquidating Trust Agreement, the Plan and the Confirmation Order, and to distribute the net proceeds of such disposition to the Beneficiaries, in as prompt, efficient and orderly a fashion as possible in accordance with the provisions of Section 5 of the Liquidating Trust Agreement.

On the Effective Date of the Plan, each of the Debtors shall transfer and assign all of its respective Assets (other than the Nycomed Litigation Proceeds) to the Liquidating Trust free and clear of all Liens, Claims, interests and encumbrances (except that the Assets other than the Other Assets shall remain subject to the Liens securing the First Lien Facility Secured Claim and any First Lien Facility Adequate Protection Claim as provided in Section 5.2 of the Plan).

As soon as possible after the Effective Date, but in no event later than ninety (90) days thereafter, the Liquidating Trustee, based upon his good faith determination after consultation with his counsel, shall inform the Beneficiaries in writing solely as to his estimate of the value of the Assets transferred to the Liquidating Trust. The valuation shall be used consistently by all parties (including, without limitation, the Debtors, the Liquidating Trustee, and the Beneficiaries) for all federal income tax purposes, and the parties shall file tax returns consistent with such valuation; *provided, however*, that such valuation shall not be binding on the Liquidating Trustee or any other party for any other purposes, including, without limitation, in regard to the liquidation of the Trust Assets, whether by disposition, liquidation, litigation, settlement, or otherwise.

For U.S. federal income tax purposes, the Debtors, the Liquidating Trustee and the Beneficiaries will treat the transfer of Assets to the Liquidating Trust as a transfer by the Debtors of the Debtors' Assets (net of any applicable liabilities) to the Beneficiaries (to the extent of the value of their respective interests in the applicable Trust Assets), followed by a transfer of such Assets (net of any applicable liabilities) by the Beneficiaries to the Liquidating Trust (to the extent of the value of their respective interests in the applicable Trust Assets). For U.S. federal income tax purposes, the Liquidating Trust (except with respect to the Disputed Claims Reserve) will be treated as one or more grantor trusts, and the Beneficiaries will be treated as the grantors and deemed owners of the Liquidating Trust.

In furtherance of the implementation of the Plan, except as otherwise provided in the Plan, all injunctions or stays provided for in the Chapter 11 Cases pursuant to Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect and apply to all Beneficiaries and Creditors holding Claims against the Debtors, the Estates, the Assets, the Liquidating Trustee, the Liquidating Trust and the Trust Assets until the Final Distribution Date (defined below).

Except as otherwise provided by the Plan or the Liquidating Trust Agreement, upon the Effective Date, title to the Trust Assets shall pass to the Liquidating Trust free and clear of all Claims and Interests, in accordance with Section 1141 of the Bankruptcy Code. The

Liquidating Trustee shall not be permitted to receive or retain Cash or Cash equivalents in excess of a reasonable amount to meet distributions as provided in the Liquidating Trust Agreement and the Plan or to maintain the value of the Trust Assets during liquidation.

On the Effective Date, (i) the Debtors' equity interests in Graceway Canada and (ii) the Debtors' Claims against Graceway Canada arising from any intercompany claims, loans, notes, transfers or other obligations shall be transferred by the Debtors to the Liquidating Trustee, and the equity interests in Graceway Canada shall continue to be subject to the Liens securing the First Lien Facility Secured Claim and any First Lien Adequate Protection Claim as provided in Section 5.2 of the Plan and the Liens of the Second Lien Facility Agent in favor of the Second Lien Facility Lenders; *provided, however*, that the portion of the Canadian Distribution Amount used to fund the Estate Fund Amount shall be free and clear of the Liens of the First Lien Facility Agent in accordance with the Committee Settlement. The Liquidating Trust shall exercise its powers as the sole shareholder to appoint the Liquidating Trustee as the sole officer and director of Graceway Canada and shall make distributions of the Canadian Distribution Amount as provided under the Plan.

Following Confirmation and prior to the occurrence of the Effective Date, the then-current officers and directors of each of the Debtors shall continue in their respective capacities and the Debtors shall execute such documents and take such other action as is necessary to effectuate the transactions provided for in the Plan. On and after the Effective Date, all such officers and directors shall be deemed to have resigned.

Payment of Allowed Other Secured Claims (to the extent not otherwise satisfied in accordance with the terms of the Plan), Allowed Administrative Expense Claims, Allowed Priority Tax Claims and Allowed Other Priority Claims shall be made from the Reserve Accounts to the extent permitted by the Budget and/or the Sale Support Agreement. To the extent any of such Allowed Claims are not satisfied from the Reserve Accounts (and, with respect to Allowed Other Secured Claims, are not otherwise satisfied in accordance with the terms of the Plan), such Allowed Claims shall be paid from the Other Available Cash. The Debtors anticipate that the Cash in the Reserve Accounts and the Other Available Cash shall be sufficient to pay all Allowed Other Secured Claims (to the extent not otherwise satisfied in accordance with the terms of the Plan), Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims and cure costs for executory contracts or unexpired leases on the Assumption Schedule, if any, in full in Cash on the Effective Date or once such Claims become Allowed Claims. Other Allowed Claims shall be satisfied as set forth in Article IV.D above. Notwithstanding anything contained in the Plan or otherwise, (i) Cash in the CCR Account shall be available, to the extent permitted by the Budget and/or the Sale Support Agreement, only to pay Claims on account of chargebacks, channel management agreements, product returns and rebates constituting (a) Allowed Claims authorized to be paid by the Bankruptcy Court pursuant to the Order approving the Prepetition Claims Motions or (b) Allowed Administrative Expense Claims, (ii) Cash in the Employee Account shall be available only to pay Claims on account of employee severance and benefits approved in the Orders approving the Prepetition Claims Motion and permitted by the Budget and/or Sale Support Agreement, (iii) Cash in the Lazard Account shall be available only to pay Allowed Professional Fees of Lazard, and (iv) Cash in the Designated Account shall be available only to pay Allowed Administrative Expense Claims, Allowed Other Secured Claims (to the extent not



otherwise satisfied in accordance with the terms of the Plan), Allowed Priority Tax Claims and Allowed Other Priority Claims to the extent permitted by the Budget and/or Sale Support Agreement, other than any such Claims on account of (A) chargebacks, channel management agreements, product returns and rebates or (B) employee severance and benefits payable from the Employee Account.

From time to time as agreed between the First Lien Facility Agent and the Liquidating Trustee, the First Lien Facility Agent shall fund amounts into the First Lien Trust Administrative Fund (defined below) to pay the Liquidating Trustee First Lien Fees, incurred from the Effective Date through and including the date all First Lien Facility Claims are paid in full in Cash, in connection with (a) the collection of accounts receivable, (b) the pursuit of Causes of Action (including 549 Avoidance Actions but excluding for the avoidance of doubt Avoidance Actions), and (c) the objection to, and settlement of, Other Secured Claims (including Possessory Lienholder Claims), Administrative Expense Claims, Priority Tax Claims and Other Priority Claims from Sale Proceeds to which the First Lien Facility Agent or First Lien Claimholders would otherwise be entitled. On the Effective Date, the Liquidating Trustee Fee Amount shall be funded into the Trust Administrative Fund by the First Lien Facility Agent from Sale Proceeds to which the First Lien Facility Agent or First Lien Claimholders would otherwise be entitled free and clear of all Liens and Claims of the First Lien Facility Agent and the First Lien Claimholders, including the First Lien Facility Secured Claim, any First Lien Facility Adequate Protection Claim and any First Lien Facility Deficiency Claim for the sole purpose of paying the Liquidating Trustee Fees. Any additional amount the Liquidating Trustee deems necessary to fund post-Effective Date operations other than fees and expenses incurred from the Effective Date through and including the date all First Lien Facility Claims are paid in full in Cash in connection with (a) the collection of accounts receivable, (b) the pursuit of Causes of Action (including 549 Avoidance Actions but excluding for the avoidance of doubt Avoidance Actions), and (c) the objection to, and settlement of, Other Secured Claims (including Possessory Lienholder Claims), Administrative Expense Claims, Priority Tax Claims and Other Priority Claims, shall be funded into the Trust Administrative Fund from the Other Assets.

As soon as practicable after the Effective Date, each of the Debtors will be dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Debtors or payments to be made in connection therewith; *provided, however*, that pursuant to Section 1142(b) of the Bankruptcy Code, the Liquidating Trustee shall file each Debtor's final tax returns, and shall be authorized, but not directed, to file with the official public office for keeping corporate records in each Debtor's state of incorporation a certificate of dissolution or equivalent document. Such a certificate of dissolution may be executed by the Liquidating Trustee without need for any action or approval by the shareholders or Board of Directors of any Debtor. From and after the Effective Date, the Debtors (i) for all purposes shall be deemed to have withdrawn their business operations from any state in which they were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum or take any other action in order to effectuate such withdrawal, (ii) shall be deemed to have cancelled pursuant to the Plan all Interests and all Intercompany Claims, and (iii) shall not be liable in any manner to any taxing authority for franchise, business, license or similar taxes accruing on or after the Effective Date.

Notwithstanding anything to the contrary in the Bankruptcy Rules providing for earlier closure of the Debtors' Chapter 11 Cases, when all Assets contributed to the Liquidating Trust have been liquidated and converted into Cash (other than those Assets abandoned by the Liquidating Trust), and such Cash has been distributed in accordance with the Liquidating Trust Agreement and the Plan, the Liquidating Trustee shall seek authority from the Bankruptcy Court to close the Debtors' Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules; *provided, however*, that, in light of the substantive consolidation of the Debtors' estates for distribution purposes, the Liquidating Trustee may, in the Liquidating Trustee's sole discretion, seek authority from the Bankruptcy Court to close all of the Debtors' Chapter 11 Cases except for the Graceway Chapter 11 Case immediately upon satisfaction of all Other Secured Claims.

Subject to Section 7.11 of the Plan, on and after the Effective Date, the Liquidating Trustee shall have the exclusive authority to settle or abandon Causes of Action owned by the Liquidating Trust. On and after the Effective Date and until such time as the First Lien Facility Claims are paid in full in Cash, in order to settle or abandon Causes of Action owned by the Liquidating Trust, the Liquidating Trustee shall be required to obtain (a) the prior written consent of the Approving Majority First Lien Facility Lenders or (b) an Order of the Bankruptcy Court approving such settlement or abandonment after notice and a hearing. After the First Lien Facility Claims are paid in full in Cash, except as otherwise set forth in the Plan, the Confirmation Order or the Liquidating Trust Agreement, the Liquidating Trustee shall not be required to obtain approval of the Approving Majority First Lien Facility Lenders or the Bankruptcy Court to settle or abandon Causes of Action owned by the Liquidating Trust.

Once each quarter, the Liquidating Trustee shall File with the Bankruptcy Court and serve on the U.S. Trustee a report setting forth the amounts and timing of all distributions made by the Liquidating Trustee under the Plan in each applicable reporting period and the recipients thereof. Each quarterly report shall also state the Liquidating Trust's Cash balances as of the beginning and ending of each such period. Quarterly reports shall be provided no later than the fifteenth (15<sup>th</sup>) day of each January, April, July and October until all Final Distributions under the Plan have been made.

On the Effective Date, any document, agreement, or instrument evidencing any Claim or Interest against or in the Debtors (including, but not limited to, the First Lien Credit Agreement and the Second Lien Credit Agreement) that has not been Assumed by the Purchaser shall be deemed cancelled without further act or action under any applicable agreement, law, regulation, Order, or rule and the Debtors shall have no further obligations under such documents, agreements or instruments; *provided, however*, that, although the Debtors shall have no further obligations or liability under Section 10.04 of the Credit Agreement or the Fee Letter (as defined in the First Lien Credit Agreement), as among the First Lien Claimholders and other parties other than the Debtors, Section 10.04 of the First Lien Credit Agreement and the Fee Letter shall remain in full force and effect. Notwithstanding anything to the contrary set forth in the Plan, the Liens on the Assets (including the Reserve Accounts and the Cash deposited therein and the Nycomed Litigation Proceeds, but excluding the Other Assets) securing the First Lien Facility Secured Claim, any First Lien Facility Adequate Protection Claim, the Second Lien Facility Secured Claim and any Second Lien Facility Adequate Protection Claim shall remain valid and perfected Liens thereon.

On the Confirmation Date, the Creditors' Committee shall automatically be dissolved and the members of, and Professionals retained by, the Creditors' Committee shall have no further duties or obligations after the Confirmation Date.

On the Effective Date, the Debtors shall assign and transfer the Nycomed Litigation Proceeds to the First Lien Facility Agent subject to any Liens thereon, which Liens shall remain valid and perfected to the same extent as on the Petition Date on and after the Effective Date. Upon receipt of any Nycomed Litigation Proceeds, the First Lien Facility Agent shall hold such Nycomed Litigation Proceeds in trust for the holders of any Liens thereon and shall distribute the Nycomed Litigation Proceeds to the holders of Liens thereon in the order of priority determined by the Bankruptcy Court or as set forth in any written intercreditor agreement. In the event that the First Lien Facility Agent receives any Nycomed Litigation Proceeds, the First Lien Facility Agent shall provide written notice of the receipt thereof to the Second Lien Facility Agent. In the event that the First Lien Facility Claims are paid in full in Cash, the First Lien Facility Agent shall assign and transfer the Nycomed Litigation Proceeds to the Second Lien Facility Agent subject to any Liens thereon, which Liens shall remain valid and perfected to the same extent as on the Petition Date on and after the Effective Date. Upon receipt of any Nycomed Litigation Proceeds, the Second Lien Facility Agent shall hold such Nycomed Litigation Proceeds in trust for the holders of any Liens thereon and shall distribute the Nycomed Litigation Proceeds to the holders of Liens thereon in the order of priority determined by the Bankruptcy Court or as set forth in any written intercreditor agreement.

Pursuant to Section 1123(b)(3) of the Bankruptcy Code, except as otherwise provided in the Plan or the Confirmation Order, after transfer of the Assets (other than the Nycomed Litigation Proceeds) to the Liquidating Trust pursuant to Section 7.2.3 of the Plan, the Liquidating Trustee (and to the extent retained by the Liquidating Trust to perform such work, any other Person) will have the exclusive right and standing in any court of competent jurisdiction to enforce any and all Causes of Action against any Entity and rights of the Debtors that arose before or after the Petition Date, including, but not limited to, the rights and powers of a trustee and debtor-in-possession, against any Entity whatsoever, including, but not limited to, all Avoidance Actions and 549 Avoidance Actions but excluding Released Claims.

No Entity may rely on the absence of a specific reference in the Plan or this Disclosure Statement to any Causes of Action against them as any indication that the Debtors or Liquidating Trust, as applicable, will not pursue any and all available Causes of Action against them. Except with respect to Causes of Action as to which the Debtors or Liquidating Trust have released any Person or Entity on or before the Effective Date (including pursuant to the Releases by the Debtors in the Plan or otherwise), the Debtors or Liquidating Trust, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan. Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or a Bankruptcy Court Order, the Liquidating Trust expressly reserves all Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to such Causes of Action upon, after or as a consequence of the Confirmation.

Subject to Section 8.2 of the Plan, on and after the Effective Date, Liquidating Trustee shall have the exclusive authority to abandon Causes of Action or other Assets owned by the Liquidating Trust. On and after the Effective Date and until such time as the First Lien Facility Claims are paid in full in Cash, in order to abandon Causes of Action or other Assets owned by the Liquidating Trust, the Liquidating Trustee shall be required to obtain (i) the prior written consent of the Approving Majority First Lien Lenders or (ii) an Order of the Bankruptcy Court approving such abandonment after notice and a hearing. After the First Lien Facility Claims are paid in full in Cash, except as otherwise set forth in the Plan, the Confirmation Order or the Liquidating Trust Agreement, the Liquidating Trustee shall not be required to obtain approval of the Approving Majority First Lien Lenders or the Bankruptcy Court to abandon Causes of Action or other Assets owned by the Liquidating Trust.

#### **F. Liquidating Trust Agreement**

Pursuant to Section 7.2 of the Plan and the Confirmation Order, and effective as of the Effective Date of the Plan, the Beneficiaries and the Debtors, under the Liquidating Trust Agreement, will create the Liquidating Trust for the benefit of the Beneficiaries. A summary of certain significant terms of the Liquidating Trust Agreement are set forth below. The Liquidating Trust Agreement is attached to the Plan as Exhibit 2 and the Plan is attached hereto as Exhibit A. The initial Liquidating Trustee shall be Kip Horton of RPA Advisors, LLC. Mr. Horton's curriculum vitae is attached hereto as Exhibit C.

##### **1. Purpose of Liquidating Trust.**

The Liquidating Trust is created and organized for the sole purposes of collecting, holding, liquidating, and distributing the Trust Estate and administering, compromising, settling, withdrawing, objecting to, or litigating any and all Causes of Action and objections to the Claims under the Plan, with no objective to engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. In accordance with such express and limited purposes, as of the Effective Date, the Liquidating Trust is authorized and directed: (i) to take any and all steps necessary to maintain the Liquidating Trust (except with respect to the Disputed Claims Reserve) as one or more liquidating trusts for federal income tax purposes in accordance with Treasury Regulation § 301.7701-4(d) and as one or more "grantor trusts" subject to the provisions of Subchapter J, Subpart E of the IRC unless otherwise required; (ii) to take all reasonable and necessary actions to conserve and protect the Trust Estate; (iii) to administer, compromise, settle, and litigate any and all Causes of Action and any other claims or Causes of Action belonging to the Liquidating Trust; (iv) to the extent necessary and appropriate, object to any Claims asserted against the Debtors' Estates and the Liquidating Trust; and (v) to maintain, operate or lease (for purposes of holding for sale), or sell or otherwise liquidate or dispose of the Trust Estate, in accordance with the terms of the Liquidating Trust Agreement, the Plan and the Confirmation Order, and to distribute the net proceeds of such disposition to the Beneficiaries, in as prompt, efficient and orderly a fashion as possible in accordance with the provisions of Section 5 of the Liquidating Trust Agreement.

2. **Contribution of the Debtors' Assets to the Liquidating Trust.**

On the Effective Date of the Plan, each of the Debtors shall transfer and assign all of its respective Assets (other than the Nycomed Litigation Proceeds) to the Liquidating Trust free and clear of all Liens, Claims, interests and encumbrances (except that the Assets other than the Other Assets shall remain subject to the Liens securing the First Lien Facility Secured Claim and any First Lien Facility Adequate Protection Claim, as provided in Section 5.2 of the Plan).

3. **Valuation of Trust Assets.**

As soon as possible after the Effective Date, but in no event later than ninety (90) days thereafter, the Liquidating Trustee, based upon his good faith determination after consultation with his counsel, shall inform the Beneficiaries in writing solely as to his estimate of the value of the Assets transferred to the Liquidating Trust. The valuation shall be used consistently by all parties (including, without limitation, the Debtors, the Liquidating Trustee, and the Beneficiaries) for all federal income tax purposes, and the parties shall file tax returns consistent with such valuation; *provided, however*, that such valuation shall not be binding on the Liquidating Trustee or any other party for any other purposes, including, without limitation, in regard to the liquidation of the Trust Assets, whether by disposition, liquidation, litigation, settlement, or otherwise.

4. **Certain Federal Income Tax Matters.**

For U.S. federal income tax purposes, the Debtors, the Liquidating Trustee and the Beneficiaries will treat the transfer of Assets to the Liquidating Trust as a transfer by the Debtors of the Debtors' Assets (net of any applicable liabilities) to the Beneficiaries (to the extent of the value of their respective interests in the applicable Trust Assets), followed by a transfer of such Assets (net of any applicable liabilities) by the Beneficiaries to the Liquidating Trust (to the extent of the value of their respective interests in the applicable Trust Assets). For U.S. federal income tax purposes, the Liquidating Trust (except with respect to the Disputed Claims Reserve) will be treated as one or more grantor trusts, and the Beneficiaries will be treated as the grantors and deemed owners of the Liquidating Trust.

5. **Continuation of the Automatic Stay.**

In furtherance of the implementation of the Plan, except as otherwise provided in the Plan, all injunctions or stays provided for in the Chapter 11 Cases pursuant to Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect and apply to all Beneficiaries and creditors holding Claims against the Debtors, the Estates, the Assets, the Liquidating Trustee, the Liquidating Trust and the Trust Assets until the Final Distribution Date.

6. **Transfer of Trust Assets.**

Except as otherwise provided by the Plan or the Liquidating Trust Agreement, upon the Effective Date, title to the Trust Assets shall pass to the Liquidating Trust free and clear of all Claims and Interests, in accordance with Section 1141 of the Bankruptcy Code. The Liquidating Trustee shall not be permitted to receive or retain Cash or Cash equivalents in excess

of a reasonable amount to meet distributions as provided in the Liquidating Trust Agreement and the Plan or to maintain the value of the Trust Assets during liquidation.

On the Effective Date, (i) the Debtors' equity interests in Graceway Canada and (ii) the Debtors' Claims against Graceway Canada arising from any intercompany claims, loans, notes, transfers or other obligations shall be transferred by the Debtors to the Liquidating Trustee, and the equity interests in Graceway Canada shall continue to be subject to the Liens securing the First Lien Facility Secured Claim and any First Lien Adequate Protection Claim as provided in Section 5.2 of the Plan and the Liens of the Second Lien Facility Agent in favor of the Second Lien Facility Lenders; *provided, however*, that the portion of the Canadian Distribution Amount used to fund the Estate Fund Amount shall be free and clear of the Liens of the First Lien Facility Agent in accordance with the Committee Settlement. The Liquidating Trust shall exercise its powers as the sole shareholder to appoint the Liquidating Trustee as the sole officer and director of Graceway Canada and shall make distributions of the Canadian Distribution Amount as provided under the Plan.

#### **7. Trust Administrative Fund.**

The Liquidating Trustee shall establish a reserve fund (the "Trust Administrative Fund") for the payment by the Liquidating Trustee of all liquidation expenses, including, without limitation, the compensation of the Liquidating Trustee, any attorney, accountant, advisor or other professional retained by the Liquidating Trustee, and the payment of all other reasonable and reasonably anticipated expenses, debts, charges, liabilities and obligations relating to the Trust Estate and its administration including the fees of the Indenture Trustee in connection with Plan distributions. On the Effective Date, the Liquidating Trustee Fee Amount shall be funded into the Trust Administrative Fund by the First Lien Facility Agent from Sale Proceeds to which the First Lien Facility Agent would otherwise be entitled free and clear of all Liens and Claims of the First Lien Facility Agent, including the First Lien Facility Secured Claim, any First Lien Facility Adequate Protection Claim and any First Lien Facility Deficiency Claim, for the sole purpose of paying the Liquidating Trustee Fees. Any additional amount the Liquidating Trustee deems reasonable and necessary to fund post-Effective Date operations other than fees and expenses incurred from the Effective Date through and including the date all First Lien Facility Claims are paid in full in Cash in connection with (a) the collection of accounts receivable, (b) the pursuit of Causes of Action (including 549 Avoidance Actions but excluding for the avoidance of doubt Avoidance Actions), and (c) the objection to, and settlement of, Other Secured Claims (including Possessory Lienholder Claims), Administrative Expense Claims, Priority Tax Claims and Other Priority Claims, shall be funded into the Trust Administrative Fund from the Other Assets. Any balance remaining in the Trust Administrative Fund after the payment of all expenses, debts, charges, liabilities and obligations intended to be paid therefrom shall be treated as Other Assets and distributed to Beneficiaries as provided in Section 5 of the Liquidating Trust Agreement. Any monies deposited in the Trust Administrative Fund pursuant to the terms of the Liquidating Trust Agreement shall be invested in interest-bearing deposits or investments specified in Section 4.6b of the Liquidating Trust Agreement, and the interest earned thereon shall be credited thereto. Any unspent Cash remaining in the Trust Administrative Fund immediately prior to the Final Distribution Date shall be distributed to the Beneficiaries as if such Cash were Other Assets.

8. **First Lien Trust Administrative Fund.**

The Liquidating Trustee shall establish a reserve fund (the “First Lien Trust Administrative Fund”), to be funded from time to time as agreed between the First Lien Facility Agent and the Liquidating Trustee, for the payment by the Liquidating Trustee of all reasonable fees and out-of-pocket expenses for services performed by the Liquidating Trustee, and any attorneys or other professionals hired by the Liquidating Trustee, incurred from the Effective Date through and including the date all First Lien Facility Claims are paid in full in Cash, in connection with (a) the collection of accounts receivable, (b) the pursuit of Causes of Action (including 549 Avoidance Actions but excluding for the avoidance of doubt Avoidance Actions), and (c) the objection to, and settlement of, Other Secured Claims (including Possessory Lienholder Claims), Administrative Expense Claims, Priority Tax Claims and Other Priority Claims from Sale Proceeds to which the First Lien Facility Agent or First Lien Claimholders would otherwise be entitled. Any balance remaining in the First Lien Trust Administrative Fund after the payment of all Liquidating Trustee First Lien Fees intended to be paid therefrom shall be treated as First Lien Available Cash and distributed to the First Lien Facility Agent for the benefit of the First Lien Claimholders. To the extent that the amount of funds in the First Lien Trust Administrative Fund is at any time insufficient after a request by the Liquidating Trustee to the First Lien Facility Agent to make a deposit into the First Lien Trust Administrative Fund, the Liquidating Trustee may, in the Liquidating Trustee’s sole discretion, pay from any of the Reserve Accounts all reasonable expenses, charges, liabilities and obligations of the Liquidating Trust incurred from the Effective Date through and including the date all First Lien Facility Claims are paid in full in Cash in connection with (a) the collection of accounts receivable, (b) the pursuit of Causes of Action (including 549 Avoidance Actions but excluding for the avoidance of doubt Avoidance Actions), and (c) the objection to, and settlement of, Other Secured Claims (including Possessory Lienholder Claims), Administrative Expense Claims, Priority Tax Claims and Other Priority Claims. Any monies deposited in the First Lien Trust Administrative Fund pursuant to the terms of the Liquidating Trust Agreement shall be invested in interest-bearing deposits or investments specified in Section 4.6b of the Liquidating Trust Agreement, and the interest earned thereon shall be credited thereto.

9. **Disputed Claims Reserve.**

On the Effective Date, the Liquidating Trustee shall establish a reserve fund solely from the Other Assets other than the Liquidating Trustee Fee Amount (the “Disputed Claims Reserve”) for the payment by the Liquidating Trustee of all Disputed Claims other than First Lien Facility Claims if and when Allowed; *provided, however*, that funds shall be added to the Disputed Claims Reserve for Administrative Expense Claims, Priority Tax Claims, Other Priority Claims and Other Secured Claims that are Disputed Claims only to the extent the amounts deposited in the applicable Reserve Account for the payment of such Claims are insufficient to pay the Face Amount (defined below) of such Claims. With respect to any unliquidated Disputed Claim, the Disputed Claims Reserve shall be funded upon entry of and in accordance with an Order(s) of the Bankruptcy Court estimating the amount (the “Estimated Amount”) of such unliquidated Disputed Claim. Upon ultimate determination that any Disputed Claim is not an Allowed Claim, the Liquidating Trustee shall immediately release the portion of the Disputed Claim Reserve on account of such Claim and distribute such portion in accordance with the Plan. Each time a distribution of Other Available Cash is made to any Class of Claims,

the Liquidating Trustee shall deposit into the Disputed Claims Reserve an amount equal to the distribution each holder of a Disputed Claim in such Class would have received were the Face Amount of its Disputed Claim in such Class an Allowed Claim solely from proceeds of Other Assets. Any Person whose Disputed Claim is so estimated shall be entitled to an Allowed Claim only up to an amount not to exceed the Estimated Amount even if such Person's Disputed Claim, as finally allowed, would have exceeded the maximum Estimated Amount thereof. At the time a Person's Disputed Claim becomes an Allowed Claim, such Person shall receive from the Disputed Claims Reserve a distribution equal to the distributions such Person would have received on account of its Allowed Claim had it been an Allowed Claim at the time of such prior distributions, with any surplus Cash held in the Disputed Claims Reserve on account of such Disputed Claim becoming generally available for use by the Liquidating Trustee as Other Available Cash in accordance with the Plan.

10. **Administrative Powers of the Liquidating Trustee.**

During the Liquidating Trustee's administration of the Liquidating Trust, and subject to (i) all the other provisions of the Liquidating Trust Agreement (including, but not limited to, Sections 4.6 and 4.7) and (ii) the Plan, the Liquidating Trustee may exercise the power:

- To receive and hold all of the Trust Assets and to have exclusive possession and control thereof as permissible under applicable law;
- To manage, sell and convert all or any portion of the Trust Assets to Cash and distribute the net distributable proceeds as specified in the Plan and the Liquidating Trust Agreement;
- To incur indebtedness;
- To enter into, perform and exercise rights under contracts binding upon the Liquidating Trust (but not upon the Liquidating Trustee in his respective individual or corporate capacity) which are reasonably incident to the administration of the Liquidating Trust and which the Liquidating Trustee, in the exercise of his best business judgment, reasonably believes to be in the best interests of the Liquidating Trust;
- To delegate his authority under the Liquidating Trust to other persons, provided that such delegation must be made pursuant to a written agreement that either has been approved by the Bankruptcy Court in conjunction with the Confirmation of the Plan or is approved by the Liquidating Trust Committee (defined below);
- To establish and maintain accounts at banks and other financial institutions, in a clearly specified fiduciary capacity, into which the Trust Administrative Fund, First Lien Trust Administrative Fund, Disputed Claims Reserve or other Cash and property of the Liquidating Trust may be deposited, and draw checks or make withdrawals from such accounts,



and to pay or distribute such amounts of the Trust Estate as permitted or required under the Plan and the Liquidating Trust Agreement;

- To employ attorneys, accountants, appraisers, expert witnesses, insurance adjusters or other persons whose services may be reasonably necessary or advisable, in the sole judgment of the Liquidating Trustee after consultation with the Liquidating Trust Committee, to advise or assist him in the discharge of his duties as Liquidating Trustee or otherwise in the exercise of any powers vested in the Liquidating Trustee, and to pay from the Trust Administrative Fund or First Lien Trust Administrative Fund, as applicable, reasonable compensation to such attorneys, accountants, appraisers, expert witnesses, insurance adjusters or other persons;
- To pay any and all reasonable and necessary expenses attributable or relating to the management, maintenance, operation, preservation or liquidation of the Trust Estate;
- To investigate, file, compromise, settle, withdraw or litigate in the Bankruptcy Court or on appeal (or pursuant to a withdrawal of the reference of jurisdiction) objections to Claims filed against the Debtors' Estates, the Trust Estate or the Liquidating Trust; *provided, however*, that on and after the Effective Date and until such time as the First Lien Facility Claims are paid in full in Cash, in order to compromise, settle, otherwise resolve, or withdraw any objections to Disputed Claims, the Liquidating Trustee shall be required to obtain (i) the prior written consent of the Approving Majority First Lien Lenders or (ii) an Order of the Bankruptcy Court approving such compromise, settlement, other resolution, or withdrawal of any objections to Disputed Claims;
- To investigate, analyze, compromise, adjust, arbitrate, sue on or defend, pursue, prosecute, abandon, or otherwise deal with and settle, in accordance with the terms set forth in the Liquidating Trust Agreement, any and all Causes of Action and claims in favor of or against the Liquidating Trust as the Liquidating Trustee shall deem advisable; *provided, however*, that on and after the Effective Date and until such time as the First Lien Facility Claims are paid in full in Cash, in order to settle or abandon Causes of Action, the Liquidating Trustee shall be required to obtain (i) the prior written consent of the Approving Majority First Lien Lenders or (ii) an Order of the Bankruptcy Court approving such settlement or abandonment after notice and a hearing;
- To avoid and recover transfers of the Debtors' property as may be permitted by the Bankruptcy Code or applicable state law, including, without limitation, those transfers identified in the Disclosure Statement;

- To take all appropriate action with respect to the Trust Estate, including, without limitation, the filing, prosecution, settlement or other resolution of Claims and Litigation Claims;
- To sue or be sued in connection with any matter arising from or related to the Plan or the Liquidating Trust Agreement that affects in any way the rights or obligations of the Liquidating Trust, the Liquidating Trustee or the Beneficiaries;
- To represent the interests of the Beneficiaries with respect to any matters relating to the Plan, the Liquidating Trust Agreement, or the Liquidating Trust affecting the rights of such Beneficiaries;
- If the Liquidating Trust shall become subject to federal or state income tax, the Liquidating Trustee shall have the power, exercisable at his reasonable discretion, to take any action reasonably necessary to minimize any adverse federal or state income tax consequences to the Beneficiaries resulting from any distribution made by the Liquidating Trust to such Beneficiaries;
- In general, without in any manner limiting any of the foregoing or the following, to deal with the Trust Assets or any part or parts thereof in all other ways as would be lawful for any person owning the same to deal therewith; *provided, however*, that the investment powers of the Liquidating Trustee, other than those reasonably necessary to maintain the value of the Trust Assets of the Liquidating Trust and to further the liquidating purpose of the Liquidating Trust, are limited by the terms thereof;
- To do any and all other things not in violation of any other terms of the Plan, the Confirmation Order and the Liquidating Trust Agreement that, in the reasonable business judgment of the Liquidating Trustee, are necessary or appropriate for the proper liquidation, management, investment and distribution of the Trust Assets in accordance with the provisions of the Liquidating Trust Agreement and the Plan;
- To file final tax returns for each of the Debtors; and
- At the appropriate time, to request that the Bankruptcy Court enter a final decree closing each of the Debtors' Chapter 11 Cases; *provided, however*, that, in light of the substantive consolidation of the Debtors' estates for distribution purposes, the Liquidating Trustee may, in the Liquidating Trustee's sole discretion, seek authority from the Bankruptcy Court to close all of the Debtors' Chapter 11 Cases except for the Graceway Chapter 11 Case immediately upon satisfaction of all Other Secured Claims.

11. **Limitations on Liquidating Trustee.**

The Liquidating Trustee shall carry out the purposes of the Liquidating Trust and the directions contained therein and shall not at any time cause the Liquidating Trust to enter into or engage in any trade or business (except as may be consistent with the limited purposes of the Liquidating Trust), including, without limitation, the purchase of any assets or property (other than such assets or property as are reasonably necessary to carry out the purposes of the Liquidating Trust Agreement, on behalf of the Liquidating Trust or the Beneficiaries). The Liquidating Trustee is directed to take all reasonable and necessary actions to dispose of the Trust Estate in as prompt, efficient and orderly a fashion as possible, to make timely distributions of the proceeds of the Trust Estate, and to otherwise not unduly prolong the duration of the Liquidating Trust.

The Liquidating Trustee shall invest any monies held at any time as part of the Trust Estate, including, without limitation, in the Trust Administrative Fund, First Lien Trust Administrative Fund and every other reserve or escrow fund established pursuant to the terms of the Liquidating Trust Agreement, only in interest-bearing deposits or certificates of deposit issued by any federally insured banking institution or short-term investments, including short-term obligations of, or unconditionally guaranteed as to payment by, the United States of America and its agencies or instrumentalities, pending the need for the disbursement thereof in payment of costs, expenses, and liabilities of the Liquidating Trust or in making distributions pursuant to Section 5 of the Liquidating Trust Agreement. The Liquidating Trustee shall be restricted to the collection and holding of such monies and any income earned on such monies and to the payment and distribution thereof (at least annually if such monies are not necessary to maintain the value of the Trust Estate or to satisfy Claims against the Trust Estate) for the purposes set forth in the Plan and the Liquidating Trust Agreement, and to the conservation and protection of the Trust Estate in accordance with the provisions of the Liquidating Trust Agreement.

The Liquidating Trustee shall be obligated to consult with the Liquidating Trust Committee regarding all matters affecting the Trust Estate involving \$1,000,000 or more, including, but not limited to, Claims objections, litigation, and contested matters. Notwithstanding anything contained in the Liquidating Trust Agreement, a member of the Liquidating Trust Committee must recuse itself from the Liquidating Trust Committee regarding any contested matter, objection to Claim, or other Litigation Claim to which it is a party or otherwise has a conflict of interest.

Subject to Sections 7.11 and 8.2 of the Plan, on and after the Effective Date, the Liquidating Trustee is authorized to compromise or settle an action without any notice or consent, if the Liquidating Trustee reasonably believes such settlement or compromise to be in the best interests of the Liquidating Trust, and shall be held harmless by the Beneficiaries in taking such action.

Notwithstanding anything in the Liquidating Trust Agreement to the contrary, the Liquidating Trustee shall be authorized to pay the reasonable fees and expenses incurred by Professionals after the Effective Date without providing notice to or obtaining the approval of

any party; *provided, however*, that such payments may be made only from the Trust Administrative Fund or First Lien Trust Administrative Fund, as applicable.

12. **Compensation of Liquidating Trustee.**

The Liquidating Trustee Fees will be compensated from the Liquidating Trustee Fee Amount and the Other Assets and the Liquidating Trustee First Lien Fees will be compensated from the Sale Proceeds to which the First Lien Facility Agent or First Lien Claimholders would otherwise be entitled, in each case, according to the terms of Schedule 4.11 of the Liquidation Trust Agreement. As set forth on Schedule 4.11 of the Liquidating Trust Agreement, the Liquidating Trustee will receive a fee of \$640 per hour.

13. **Reports.**

The Liquidating Trustee shall:

Prepare and file unaudited interim financial reports as may be required by regulatory authorities, applicable laws, rules or regulations or as the Liquidating Trustee deems advisable during the fiscal year;

Prepare, file and mail, within the time required by applicable law or regulation, necessary income tax information, tax returns or reports to the Beneficiaries and applicable taxing authorities, including, on an annual basis, the manner and calculation of the Liquidating Trust's taxable gain or loss which the Liquidating Trust would recognize if it were a separate taxable entity. In this connection, the Liquidating Trustee shall file returns for the Liquidating Trust, except with respect to the Disputed Claims Reserve, as one or more grantor trusts pursuant to Treasury Regulation Section 1.671-4(a); and

Once each quarter, the Liquidating Trustee shall File with the Bankruptcy Court and serve on the U.S. Trustee, the Liquidating Trust Committee, and any Beneficiary who requests copies of such quarterly report after the Confirmation Date, an unaudited written report and account showing:

- the Assets and liabilities of the Liquidating Trust as of the beginning and end of each calendar quarter;
- the timing and amount of all distributions made and expenses paid pursuant to the Plan and the Liquidating Trust Agreement during that calendar quarter, and the recipients thereof;
- any changes in the Trust Assets that have not been previously reported; and,
- any material action taken by the Liquidating Trustee in the performance of his or her duties under the Liquidating Trust Agreement that has not been previously reported.

Quarterly reports shall be provided no later than the fifteenth (15th) day of each January, April, July and October until all Final Distributions under the Plan have been made

14. **Liquidating Trust Committee.**

An administrative trust committee (the "Liquidating Trust Committee"), consisting of no more than five (5) members, shall consult from time to time on various matters as set forth in the Liquidating Trust Agreement. The Liquidating Trust Committee initially shall consist of (i) the Liquidating Trustee, (ii) two (2) members appointed by the First Lien Facility Agent, (iii) one (1) member appointed by the Second Lien Facility Agent, and (iv) one (1) member appointed by the Creditors' Committee. Other than the Liquidating Trustee, each member of the Liquidating Trust Committee shall serve for a term of three (3) years. Upon the conclusion of a member's term, or in the event that a member resigns prior to the expiration of his term or is otherwise unable to serve out his term (other than due to the payment in full of the First Lien Facility Claims as discussed below), he shall appoint a successor to serve on the Liquidating Trust Committee. If, for any reason, such member is unable to appoint a successor member, the Liquidating Trustee shall appoint such member. Within ten (10) Business Days following payment in full of the First Lien Facility Claims, the two (2) members appointed by the First Lien Facility Agent (or its successors) shall resign from the Liquidating Trust Committee. Thereafter, the member appointed by the Second Lien Facility Agent (or his successor) shall appoint one (1) additional member and the member appointed by the Creditors' Committee (or his successor) shall appoint (1) additional member. Unless otherwise specified in the Liquidating Trust Agreement, approval of a majority of the members of such Liquidating Trust Committee shall be required for the Liquidating Trust Committee to act. The Liquidating Trust Committee shall have the rights and powers set forth in the Liquidating Trust Agreement. In the event that a Liquidating Trust Committee shall not be formed and continuing to exist under the Liquidating Trust Agreement, all references therein to required approval or other action of such Liquidating Trust Committee shall be of no force or effect. In performance of their duties thereunder, members of the Liquidating Trust Committee shall be entitled to receive reimbursement of reasonable costs, expenses and obligations as set forth in Section 7.6e(iii) of the Liquidating Trust Agreement.

15. **Removal of the Liquidating Trustee.**

The Liquidating Trust Committee shall be authorized, by unanimous vote of the members other than the Liquidating Trustee, to remove the Liquidating Trustee for reasonable cause and to select a replacement or successor liquidating trustee in accordance with the provisions of the Liquidating Trust Agreement.

16. **Indemnification.**

Pursuant to the Liquidating Trust Agreement, the Liquidating Trust agrees to indemnify to the full extent of the Trust Estate any person or entity who was or is a party, or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative by reason of the fact that such person or entity is or was a Liquidating Trustee or an employee, attorney or agent of the Liquidating Trust or Liquidating Trustee, from and against any and all expenses (including

attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person or entity in connection with such action, suit or proceeding, including appeals thereof, if such person or entity acted without gross negligence and willful misconduct in the exercise and performance of any power or duties of such person or entity in accordance with the Liquidating Trust Agreement.

17. **Termination Date.**

The Liquidating Trust shall terminate on the date when (a) a final decree has been entered closing all of the Chapter 11 Cases, (b) all the Trust Assets have been distributed and (c) all Claims have been pursued or abandoned pursuant to, and in accordance with, the Plan and the Liquidating Trust Agreement. However, the term of the Liquidating Trust shall not exceed five (5) years from the Effective Date; provided that, upon a finding that an extension is necessary to the liquidating purpose of the Liquidating Trust and upon approval by the Bankruptcy Court, the term may be extended for a finite term based on the particular facts and circumstances. Each such extension must be approved by the Bankruptcy Court within six (6) months of the beginning of the extended term. The Liquidating Trustee shall be released of all liabilities and discharged from his or her obligations under the Plan or the Liquidating Trust Agreement once the Liquidating Trust has terminated pursuant to the terms of the Liquidating Trust Agreement.

18. **Limitation on Liability.**

No provision of the Liquidating Trust Agreement shall be construed to impart any liability upon the Liquidating Trustee unless it shall be proven in a court of competent jurisdiction that the Liquidating Trustee's actions or omissions constituted gross negligence or willful misconduct in the exercise of or failure to exercise any right or power vested in the Liquidating Trustee under the Liquidating Trust Agreement.

19. **Costs and Expenses of Liquidating Trustee.**

The Liquidating Trustee shall pay out of the Trust Administrative Fund or First Lien Trust Administrative Fund, as applicable, all reasonable costs, expenses and obligations incurred by the Liquidating Trustee in carrying out his duties under the Liquidating Trust Agreement or in any manner connected, incidental or related to the administration of the Liquidating Trust without application to the Bankruptcy Court, including, without limitation:

- Any reasonable, documented fees and out-of-pocket expenses of attorneys, accountants, investment advisors, expert witnesses, insurance adjusters, professionals or other persons whom the Liquidating Trustee may reasonably deem advisable to employ in connection with the Liquidating Trust, or on his own behalf in accordance with the terms of the Liquidating Trust Agreement;
- Any taxes, charges and assessments which may be owed by, or levied or assessed against, the Trust Estate or any property held in trust under the Liquidation Trust Agreement; and

- Any reasonable, documented costs, and out-of-pocket expenses incurred by the Liquidating Trust Committee in carrying out its duties under the Plan.

20. **Resignation and Removal.**

The Liquidating Trustee may resign and be discharged from any future obligations and liabilities under the Liquidating Trust Agreement by giving written notice thereof to the Bankruptcy Court and the Liquidating Trust Committee at least thirty (30) days prior to the effective date of such resignation. Subject to the expiration of such notice period, such resignation shall become effective on the day specified in such notice.

The Liquidating Trustee may be removed with cause at any time by Order of the Bankruptcy Court upon motion by any party in interest or in accordance with Section 4.16 of the Liquidating Trust Agreement. Upon any such removal, such removed Liquidating Trustee shall be entitled to any reimbursement and indemnification set forth in the Liquidating Trust Agreement that remain due and owing to such Liquidating Trustee at the time of such removal.

If, at any time, the Liquidating Trustee shall give notice of his intent to resign pursuant to Section 7.8 of the Liquidating Trust Agreement or be removed or become incapable of acting, counsel to the Liquidating Trustee shall provide notice thereof to the Bankruptcy Court and the Liquidating Trust Committee shall designate a successor Liquidating Trustee to act under the Liquidating Trust Agreement.

Any successor Liquidating Trustee appointed under the Liquidating Trust Agreement shall execute an instrument accepting such appointment thereunder and shall deliver counterparts thereof to the Bankruptcy Court. Thereupon, such successor Liquidating Trustee shall, without any further act, become vested with all of the estates, properties, rights, powers, trusts and duties of his predecessor in the Liquidating Trust with like effect as if originally named in the Liquidating Trust Agreement.

The death, resignation, incompetency or removal of the Liquidating Trustee shall operate neither to terminate the Liquidating Trust created by the Liquidating Trust Agreement nor to revoke any existing agency created pursuant to the terms of the Liquidating Trust Agreement or invalidate any action theretofore taken by such Liquidating Trustee. In the event of the resignation or removal of the Liquidating Trustee, such Liquidating Trustee shall (i) promptly execute and deliver any such documents, instruments, and other writing as may be necessary to effect the termination of such Liquidating Trustee's capacity under the Liquidating Trust Agreement and the conveyance of the Trust Estate then held by such Liquidating Trustee to the temporary or successor trustee; (ii) deliver to the temporary or successor trustee all documents, instruments, records, and other writings relating to the Liquidating Trust or Trust Estate as may be in the possession of such Liquidating Trustee; and (iii) otherwise assist and cooperate in effecting the transfer and assumption of his obligations and functions by the temporary or successor trustee.

#### **G. Procedures for Treatment of Disputed Claims**

Following the Effective Date, only the Liquidating Trustee shall be entitled to object to Claims. No objection shall be required with respect to a proof of Claim filed after the Bar Date, the Governmental Claims Bar Date or the Administrative Expense Claims Bar Date (as applicable), and any and all such Claims shall be deemed disallowed unless otherwise ordered by the Bankruptcy Court after notice and a hearing. Any objections to Administrative Expense Claims shall be filed and served on the claimant no later than the later of (x) sixty (60) days after the Administrative Expense Claims Bar Date, and (y) such later date as may be fixed by the Bankruptcy Court, after notice and a hearing, which later date may be fixed before or after the date specified in clause (x) above. Any objections to any Claim other than an Administrative Expense Claim shall be Filed and served on the claimant no later than the later of (x) sixty (60) days after the date the Claim is Filed, (y) sixty (60) days after the Effective Date or such other date as may be ordered from time to time by the Bankruptcy Court and (z) such later date as may be fixed by the Bankruptcy Court, after notice and a hearing, which later date may be fixed before or after the date specified in clause (x) above.

Subject to Section 9.2 of the Plan, after the Effective Date, the Liquidating Trustee shall have the exclusive authority to compromise, settle, otherwise resolve, or withdraw any objections to Disputed Claims. On and after the Effective Date and until such time as the First Lien Facility Claims are paid in full in Cash, in order to compromise, settle, otherwise resolve, or withdraw any objections to Disputed Claims, the Liquidating Trustee shall be required to obtain (i) the prior written consent of the Approving Majority First Lien Lenders or (ii) an Order of the Bankruptcy Court approving such compromise, settlement, other resolution, or withdrawal of any objections to Disputed Claims. After the First Lien Facility Claims are paid in full in Cash, except as otherwise set forth in the Plan, the Confirmation Order or the Liquidating Trust Agreement, the Liquidating Trustee shall not be required to obtain approval of the Approving Majority First Lien Lenders or the Bankruptcy Court to compromise, settle, otherwise resolve, or withdraw any objections to Disputed Claims.

After the Confirmation Date, a proof of Claim for any Claim other than an Administrative Expense Claim may not be amended without the authorization of the Bankruptcy Court. After the Administrative Expense Claims Bar Date, a proof of Claim for an Administrative Expense Claim may not be amended without the authorization of the Bankruptcy Court. Any amendments to proofs of Claim or proofs of Claim for an Administrative Expense Claim Filed after the Confirmation Date or the Administrative Expense Claims Bar Date (as applicable) shall be deemed disallowed in full and expunged without any action by the Debtors or the Liquidating Trustee, unless the holder of the Claim or Administrative Expense Claim has obtained prior Bankruptcy Court authorization to File the amendment.

Notwithstanding any other provision in the Plan, if any portion of a Claim or Administrative Expense Claim is Disputed, no payment or distribution provided in the Plan shall be required to be made on account of such Claim or Administrative Expense Claim unless and until such Disputed Claim or Disputed Administrative Expense Claim becomes an Allowed Claim in its entirety.



## H. **Distributions Under the Plan**

In accordance with Section 7.1 of the Plan and unless otherwise expressly provided in the Plan, to the extent more than one Debtor is liable for any Claim, such Claim shall be considered a single Claim and entitled only to the payment provided therefor under the applicable provisions of the Plan and the Liquidating Trust Agreement.

Distributions to holders of Allowed Claims shall be made: (a) at the addresses set forth in the proofs of Claim Filed by such holders; (b) at the addresses set forth in any written notices of address change filed with the Bankruptcy Court or delivered to the Liquidating Trustee after the date on which any related proof of Claim was Filed; or (c) at the addresses reflected in the Schedules relating to the applicable Allowed Claim if no proof of Claim has been Filed and the Liquidating Trustee has not received a written notice of a change of address.

Except as otherwise provided in the Confirmation Order, Cash payments to be made pursuant to the Plan shall be made by checks drawn on a domestic bank or by wire transfer from a domestic bank, at the option of the Debtors (with respect to Cash payments made on the Effective Date) and Liquidating Trustee (with respect to Cash payment made after the Effective Date).

Except as otherwise set forth in the Plan or as required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date a final distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim. To the extent that any Allowed Claim entitled to a distribution under the Plan is composed of indebtedness and accrued but unpaid interest thereon, such distribution shall, to the extent permitted by applicable law, be allocated for federal income tax purposes to the principal amount of the Allowed Claim first and then, to the extent the consideration exceeds the principal amount of the Allowed Claim, to the portion of such Allowed Claim representing accrued but unpaid interest.

No payment of Cash in an amount of less than \$100.00 shall be required to be made on account of any Allowed Claim. Such undistributed amount may instead be made part of the Other Available Cash for use in accordance with the Plan and the Liquidating Trust Agreement. If the Other Available Cash for the Final Distribution is less than \$10,000, and the Liquidating Trustee, in his sole discretion, determines that it would cost more than \$5,000 to distribute such funds, the Liquidating Trustee may donate such funds to the charity of his choice.

Unless otherwise expressly set forth in the Plan with respect to a specific Claim or Class of Claims, for the purpose of the provisions of Article 10 of the Plan, the "Face Amount" of a Disputed Claim means the amount set forth on the proof of Claim unless the Disputed Claim has been estimated for distribution purposes, in which case the Face Amount shall be the Estimated Amount, or, in the alternative, if no proof of Claim has been timely Filed or deemed Filed, zero.

If the distribution check to any holder of an Allowed Claim is not cashed within 90 days after issuance by the Debtors or Liquidating Trustee, after consultation with the Liquidating Trust Committee, the Liquidating Trustee may give a stop payment order with respect to the check and no further distributions shall be made to such holder on account of such Allowed Claim. Such Allowed Claim shall be discharged and the holder of such Allowed Claim shall be forever barred from asserting such Claim against the Liquidating Trust, the Liquidating Trustee, the Debtors, their Estates or their respective property. In such cases, any Cash held for distribution on account of such Claim shall (i) become the property of the Liquidating Trust and (ii) be distributed to other Creditors in accordance with the terms of the Plan and the Liquidating Trust Agreement.

On the Effective Date, or as soon thereafter as practicable in accordance with the claims resolution processed described in the Plan, the Liquidating Trustee shall distribute to the holders of Allowed Administrative Expense Claims (other than Administrative Expense Claims that are Assumed Liabilities), Allowed Priority Tax Claims, Allowed Class 1 Claims and Allowed Class 4 Claims (to the extent not otherwise satisfied in accordance with the terms of the Plan) the distributions for each respective Class as set forth in the Plan.

On the Effective Date, after payment in full in Cash of all severance and benefits approved in the Orders approving the Prepetition Claims Motions, any Cash remaining in the Employee Account shall be First Lien Available Cash and shall be promptly distributed to the First Lien Facility Agent or, to the extent the First Lien Facility Claims have been paid in full in Cash, as otherwise set forth in the Plan. Promptly after the Estate Fund Amount is fully funded (or, if the Estate Fund Amount is fully funded prior to the Effective Date, on the Effective Date), any Canadian Distribution Amount remaining and any Cash in the 1.0% Holdback Account remaining shall be First Lien Available Cash and shall be promptly distributed to the First Lien Facility Agent or, to the extent the First Lien Facility Claims have been paid in full in Cash, as otherwise set forth in the Plan. Promptly after the Allowed Professional Fees of Lazard are paid in full in Cash (or, if the Allowed Professional Fees of Lazard are paid in full in Cash prior to the Effective Date, on the Effective Date), any Cash remaining in the Lazard Account shall be First Lien Available Cash and shall be promptly distributed to the First Lien Facility Agent or, to the extent the First Lien Facility Claims have been paid in full in Cash, as otherwise set forth in the Plan. Promptly after the Administrative Expense Claims Bar Date, any amounts in the CCR Account in excess of the aggregate Face Amounts of Claims Filed asserting liabilities related to chargebacks, channel management agreements, product returns and/or rebates shall be First Lien Available Cash and shall be promptly distributed to the First Lien Facility Agent or, to the extent the First Lien Facility Claims have been paid in full in Cash, as otherwise set forth in the Plan. In addition, upon the ultimate determination that any Disputed Claim to be funded from the CCR Account is not Allowed, the portion of the CCR Account held on account of such Claim shall be First Lien Available Cash and shall be promptly distributed to the First Lien Facility Agent or, to the extent the First Lien Facility Claims have been paid in full in Cash, as otherwise set forth in the Plan. On the Effective Date, any amounts in the Designated Account in excess of the aggregate amount set forth in the Budget for all expenses to be paid from the Designated Account shall be First Lien Available Cash and shall be promptly distributed to the First Lien Facility Agent or, to the extent the First Lien Facility Claims have been paid in full in Cash, as otherwise set forth in the Plan. Promptly after the Administrative Expense Claims Bar Date, any amounts in the Designated Account in excess of the aggregate Face Amounts of the Claims Filed

that are to be funded from the Designated Account shall be First Lien Available Cash and shall be promptly distributed to the First Lien Facility Agent or, to the extent the First Lien Facility Claims have been paid in full in Cash, as otherwise set forth in the Plan. In addition, upon the ultimate determination that any Disputed Claim to be funded from the Designated Account is not Allowed, the portion of the Designated Account held on account of such Claim shall be First Lien Available Cash and shall be promptly distributed to the First Lien Facility Agent or, to the extent the First Lien Facility Claims have been paid in full in Cash, as otherwise set forth in the Plan.

From time to time, but in no event less than once every three (3) months, the Liquidating Trustee shall distribute all Other Available Cash and any First Lien Available Cash not already distributed pursuant to Section 10.8.2 of the Plan as set forth in the Plan. After (a) the distribution of the payments described in Section 10.8.1 of the Plan, (b) the liquidation into Cash of all Assets owned by the Liquidating Trust (other than those Assets abandoned by the Liquidating Trustee), (c) the collection of other sums due or otherwise remitted or returned to the Estates, and (d) the resolution of all Disputed Claims and (e) the payment in full in Cash of all Liquidating Trustee Fees and Liquidating Trustee First Lien Fees, the Liquidating Trustee shall distribute the remaining Assets owned by the Liquidating Trust in accordance with the Plan (the "Final Distribution"). The date of the Final Distribution shall be the "Final Distribution Date." The Liquidating Trustee shall make the Final Distribution in accordance with Section 5.6 of the Liquidating Trust Agreement.

On the Effective Date, the Liquidating Trustee shall establish the Disputed Claims Reserve for the payment of Disputed Claims in accordance with the terms of the Liquidating Trust Agreement. Upon ultimate determination that any Disputed Claim is not an Allowed Claim, the Liquidating Trustee shall immediately release the portion of the Disputed Claim Reserve on account of such Claim and distribute such portion in accordance with the Plan and Section IV.F.8 herein.

In connection with the Plan and the distributions made in accordance therewith, to the extent applicable, the Debtors and the Liquidating Trust shall comply with all tax withholding and reporting requirements imposed by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. The Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements.

#### **I. Conditions to Confirmation**

The following are each conditions to entry of the Confirmation Order:

a) The Bankruptcy Court shall have approved the Disclosure Statement with respect to the Plan in form and substance that is reasonably acceptable to the Debtors and the First Lien Facility Agent; and

b) The Confirmation Order shall be in form and substance reasonably satisfactory to the Debtors and the First Lien Facility Agent

**J. Conditions to the Effective Date**

The Plan shall not become effective and the Effective Date shall not occur unless and until:

a) The Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably satisfactory to the Debtors and the First Lien Facility Agent and no stay of the Confirmation Order shall be in effect at the time the other conditions set forth in Section 11.2 of the Plan, describing the conditions to the Effective Date, are satisfied, or, if permitted, waived;

b) The Confirmation Order shall not have been amended or modified without the consent of the Debtors and the First Lien Facility Agent;

c) All documents, instruments and agreements, in form and substance reasonably satisfactory to the Debtors and the First Lien Facility Agent provided for under the Plan or necessary to implement the Plan, including, without limitation, the Liquidating Trust Agreement, shall have been executed and delivered by the parties thereto, unless such execution or delivery has been waived by the parties benefited thereby;

d) The Debtors shall have reasonably determined that the Cash in the Reserve Accounts and the Other Available Cash is sufficient to pay in full in Cash on the Effective Date all estimated Allowed Other Secured Claims (to the extent not otherwise satisfied in accordance with the terms of the Plan), Allowed Administrative Expense Claims (other than Administrative Expense Claims that are Assumed Liabilities), Allowed Other Priority Claims and Allowed Priority Tax Claims; and

e) The Confirmation Order shall have become a Final Order.

**K. Termination of Plan for Failure To Become Effective.**

If the Effective Date shall not have occurred on or prior to the date that is forty-five (45) days after the Confirmation Date, then the Plan shall terminate and be of no further force or effect unless the provisions of Section 11.3 of the Plan, describing the termination of the Plan for failure to become effective, are waived in writing by the Debtors and First Lien Facility Agent.

**L. Waiver of Conditions**

The Debtors may waive any or all of the conditions set forth in Sections 11.1, describing the conditions to Confirmation, and/or 11.2, describing the conditions to the Effective Date, (other than the conditions set forth in Sections 11.1.1 (as described in Section IV.I(a) above), 11.2.1 (as described in Section IV.J(a) above) and 11.2.4 (as described in Section IV.J(d) above) of the Plan subject to the consent of the First Lien Facility Agent.

**M. Modification of the Plan**

Subject to the restrictions on Plan modifications set forth in Section 1127 of the Bankruptcy Code, the Debtors reserve the right, after consultation with the First Lien Facility

Agent, the Second Lien Facility Agent and the Creditors' Committee, to alter, amend or modify the Plan before its substantial consummation.

**N. Effect of Confirmation**

Pursuant to Sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Debtors' Chapter 11 Cases and the Plan to the fullest extent permitted by law.

Except as otherwise provided in Section 1141(d) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of the Plan shall bind (i) any holder of a Claim against or Interest in the Debtors and its respective successors and assigns (including the Liquidating Trust), whether or not the Claim or Interest of such holder is Impaired under the Plan and whether or not such holder has accepted the Plan and (ii) the Liquidating Trustee.

Unless otherwise provided in a separate Order from the Bankruptcy Court, all injunctions or stays arising under or entered during the Debtors' Chapter 11 Cases in accordance with Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect and apply to all Beneficiaries and Creditors holding Claims against the Debtors, their Estates, the Debtors' Assets, the Liquidating Trustee and the Liquidating Trust until the Final Distribution Date or, if different, the date indicated in such applicable Order.

Upon the entry of the Confirmation Order, all holders of Claims and Interests and other parties in interest, along with their respective present or former Affiliates, employees, agents, officers, directors, principals or advisors, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

**O. Exculpation, Injunction, and Limitation of Liability**

*Except as otherwise specifically provided in the Plan, none of the Purchaser (in its capacity as a purchaser under the Asset Purchase Agreement), the Debtors, the Liquidating Trustee, the First Lien Facility Agent, the First Lien Facility Lenders in their capacity as such, the Second Lien Facility Agent, the Second Lien Facility Lenders in their capacity as such, the Creditors' Committee (solely with respect to its conduct as a committee and not with respect to the actions of its members as individual Creditors), nor any of such parties' respective present members (with respect to members of the Creditors' Committee, solely with respect to each member's conduct in furtherance of its, his, or her duties as a member of the Creditors' Committee, and not with respect to the actions of such members as individual Creditors), officers, directors, shareholders, employees, representatives, advisors, attorneys, financial advisors, investment bankers, agents or Affiliates, or any of such parties' successors and assigns, shall have or incur, and each such Person is thereby released from, any Claim, obligation, Causes of Action in any form whatsoever or liability to one another or to any holder of a Claim or an Interest, or any other party in interest, or any of their respective officers, directors, shareholders, members and/or enrollees, employees, representatives, advisors, attorneys, financial advisors, investment bankers, agents, related professionals or Affiliates, or any of their*

*successors or assigns, for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the negotiation and execution of the Plan, the Disclosure Statement, the Asset Purchase Agreement and the 363 Sale, the solicitation of votes for and the pursuit of Confirmation of the Plan, the consummation of the Plan, or the administration of the Plan, the Asset Purchase Agreement, the 363 Sale and the property to be distributed under the Plan, including all documents ancillary thereto, all decisions, actions, inactions and alleged negligence or misconduct relating thereto and all prepetition activities leading to the promulgation and Confirmation of the Plan except willful misconduct or gross negligence as determined by a Final Order. Nothing in Section 12.5 of the Plan shall: (i) be construed as a release of any entity's gross negligence or willful misconduct with respect to matters set forth in Section 12.5 of the Plan or (ii) limit or abrogate the obligations of the Debtors or the Purchaser and any of their respective affiliates to one another under the Asset Purchase Agreement. Any of the foregoing parties in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities (if any) under the Plan.*

*Notwithstanding any other provision of the Plan, neither any holder of a Claim or Interest, nor other party in interest, nor any of their respective officers, directors, shareholders, members and/or enrollees, employees, representatives, advisors, attorneys, financial advisors, investment bankers, related professionals, agents or Affiliates, and no successors or assigns of the foregoing, shall have any right of action against any Debtor or the Purchaser (in its capacity as a purchaser under the Asset Purchase Agreement), the Liquidating Trustee, the First Lien Facility Agent, the First Lien Facility Lenders (in their capacity as such), the Second Lien Facility Agent, the Second Lien Facility Lenders (in their capacity as such), the Creditors' Committee (solely with respect to its conduct as a committee and not with respect to the actions of its members as individual Creditors), or any of such parties' respective present members (with respect to members of the Creditors' Committee, solely with respect to each member's conduct in furtherance of its, his, or her duties as a member of the Creditors' Committee, and not with respect to the actions of such members as individual Creditors), officers, directors, shareholders, employees, representatives, advisors, attorneys, financial advisors, investment bankers, related professionals, agents or Affiliates, or any of such parties' successors and assigns, for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the negotiation and execution of the Plan, the Disclosure Statement, the Asset Purchase Agreement and the 363 Sale, the solicitation of votes for and the pursuit of Confirmation of the Plan, the consummation of the Plan, or the administration of the Plan, the Asset Purchase Agreement, the 363 Sale and the property to be distributed under the Plan, including all documents ancillary thereto, all decisions, actions, inactions and alleged negligence or misconduct relating thereto and all prepetition activities leading to the promulgation and Confirmation of the Plan except willful misconduct or gross negligence as determined by a Final Order.*

*Except as otherwise specifically provided in the Plan or the Confirmation Order, all Entities or Persons who have held, hold or may hold Claims, rights, Causes of Action, liabilities or any equity interests based upon any act or omission, transaction or other activity of any kind or nature related to the Debtors, the Liquidating Trust or the Chapter 11 Cases that occurred prior to the Effective Date, other than as expressly provided in the Plan or the Confirmation Order, regardless of the filing, lack of filing, allowance or disallowance of such a Claim or Interest and regardless of whether such Entity has voted to accept the Plan, and any successors, assigns or representatives of such Entities shall be precluded and permanently*

*enjoined on and after the Effective Date from (a) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or Order with respect to any Claim, Interest or any other right or Claim against the Debtors, the Liquidating Trustee, the Liquidating Trust or any Assets of the Debtors or the Liquidating Trust which such Entities possessed or may possess prior to the Effective Date, (b) the creation, perfection or enforcement of any encumbrance of any kind with respect to any Claim, Interest or any other right or Claim against the Debtors, the Liquidating Trustee, the Liquidating Trust or any assets of the Debtors or the Liquidating Trust which they possessed or may possess prior to the Effective Date, and (c) the assertion of any Claims that are released thereby.*

*Except as expressly provided in the Plan, upon the Effective Date, each of the Debtors thereby (i) remises, acquits, waives, releases and forever discharges each of the Debtor Releasees, and (ii) covenants and agrees never to institute or cause to be instituted any suit or other form of action or proceeding of any kind or nature whatsoever against any of the Debtor Releasees based upon any Claims, demands, indebtedness, agreements, promises, Causes of Action, obligations, damages or liabilities of any nature whatsoever (other than rights to enforce obligations of the Debtor Releasees under any Order of the Bankruptcy Court, the Plan and all contracts, instruments, releases and other agreements delivered in connection therewith), in law or in equity, whether or not known, suspected or claimed, that the Debtors or the Estates ever had, claimed to have, has, or may have or Claim to have against the Debtor Releasees, or any of them, by reason of any matter, cause, thing, act or omission of the Debtor Releasees, or any of them, in each case related to the Debtors, the Chapter 11 Cases, the 363 Sale or the Plan.*

*As of the Effective Date, to the fullest extent permitted under applicable law, in consideration for the obligations under the Plan and the Cash, securities, contracts, instruments, releases and other agreements or documents to be delivered in connection with the Plan, and the benefits provided by the Creditor Releasees in the Plan and in the Chapter 11 Cases, each present and former holder of a Claim or Interest will be deemed to release forever, waive and discharge any and all Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities (other than the rights to enforce the Debtors' obligations under any Order of the Bankruptcy Court, the Asset Purchase Agreement, the Plan and the securities, contracts, instruments, releases and other agreements and documents delivered thereunder), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, the 363 Sale, or the Plan against Creditor Releasees.*

*Except as expressly set forth in the Plan or the Asset Purchase Agreement, following the Effective Date, none of the Debtors, the Liquidating Trust, the Liquidating Trustee, the Creditors' Committee, the First Lien Facility Agent, the First Lien Facility Lenders (in their capacity as such), the Second Lien Facility Agent, the Second Lien Facility Lenders (in their capacity as such), or any of their respective members, officers, directors, employees, advisors, attorneys, professionals, agents or Affiliates shall have or incur any liability to any holder of a Claim or Interest for any act or omission in connection with, related to, or arising out of, the Chapter 11 Cases, the 363 Sale, the negotiation and pursuit of Confirmation of the Plan, the consummation of the Plan or any contract, instrument, release or other agreement or document*

*created in connection with the 363 Sale, the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for gross negligence or willful misconduct.*

**P. Retention of Jurisdiction**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court may retain jurisdiction over the Debtors' Chapter 11 Cases after the Effective Date to the fullest extent legally permissible, including jurisdiction to, among other things:

- Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of (x) any request for payment of any Administrative Expense Claim, (y) any Disputed Claims or Interests and (z) any and all objections to the allowance or priority of any Claim or Interest;
- To the extent not inconsistent with the Bankruptcy Code, hear and determine any and all Causes of Action against any Person and rights of the Debtors that arose before or after the Petition Date, including, but not limited to, the rights and powers of a trustee and debtor-in-possession, against any Person whatsoever, including, but not limited to, all avoidance powers granted to the Debtors under the Bankruptcy Code and all Causes of Action and remedies granted pursuant to Sections 502, 506, 510, 541, 542, 543, 544, 545, 547 through 551 and 553 of the Bankruptcy Code;
- Grant or deny any applications for allowance of compensation for Professionals authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date;
- Resolve any matters relating to the assumption, assumption and assignment or rejection of any executory contract or unexpired lease to which any Debtor is a party or with respect to which any of the Debtors may be liable, including, without limitation, the determination of whether such contract is executory for the purposes of Section 365 of the Bankruptcy Code, and hear, determine and, if necessary, liquidate any Claims arising therefrom;
- Enter Orders approving the Liquidating Trustee's post-Confirmation sale or other disposition of Assets of the Liquidating Trust;
- Ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan and the Liquidating Trust Agreement;
- Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving any Debtor or the Liquidating Trust that may be pending in the Debtors' Chapter 11 Cases on the Effective Date;



- Hear and determine matters concerning state, local or federal taxes in accordance with Sections 346, 505 or 1146 of the Bankruptcy Code;
- Enter such Orders as may be necessary or appropriate to implement or consummate the provisions of the Liquidating Trust Agreement, the Plan and the Confirmation Order;
- Hear and determine any matters concerning the enforcement of the provisions of Article 12 of the Plan and any other exculpations, limitations of liability or injunctions contemplated by the Plan;
- Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Liquidating Trust Agreement, the Plan or the Confirmation Order;
- Permit the Debtors, to the extent authorized pursuant to Section 1127 of the Bankruptcy Code, to modify the Plan or any agreement or document created in connection with the Plan, or remedy any defect or omission or reconcile any inconsistency in the Plan or any agreement or document created in connection with the Plan;
- Issue injunctions, enter and implement other Orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with consummation, implementation or enforcement of the Liquidating Trust Agreement, the Plan or the Confirmation Order;
- Enforce any injunctions entered in connection with or relating to the Plan or the Confirmation Order;
- Enter and enforce such Orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated, or distributions pursuant to the Plan are enjoined or stayed;
- Determine any other matters that may arise in connection with or relating to the Plan, the 363 Sale, the Asset Purchase Agreement or the Confirmation Order;
- Enter any Orders in aid of prior Orders of the Bankruptcy Court; and
- Enter a final decree closing all of the Debtors' Chapter 11 Cases.

**Q. Treatment of Executory Contracts and Unexpired Leases**

Pursuant to the Bid Procedures Order and the Sale Order, the Bankruptcy Court established deadlines and procedures for the assumption and rejection of executory contracts and unexpired leases by the Debtors at the direction of the Purchaser and allocated responsibility for payment of cure amounts between the Debtors and the Purchaser. Any executory contracts and unexpired leases of the Debtors, including executory contracts and unexpired leases entered into

after the Petition Date, not assumed and assigned to the Purchaser or rejected prior to the Effective Date (the “Remaining Contracts”) shall be rejected pursuant to Section 6.5 of the Plan unless assumed or assumed and assigned pursuant to Section 6.2 of the Plan.

As of the Effective Date, the Debtors shall assume and assign to the Liquidating Trust, pursuant to Bankruptcy Code Section 365, each of the Remaining Contracts that are identified in Exhibit 3 to the Plan (the “Assumption Schedule”) that have not expired under their own terms prior to the Effective Date; provided that the Assumption Schedule to the Plan shall be acceptable to the Liquidating Trustee (or the proposed Liquidating Trustee) in his or her sole discretion. The Debtors reserve the right to amend the Assumption Schedule not later than twenty-eight (28) days prior to the Confirmation Hearing either to: (a) delete any executory contract or lease listed therein and provide for its rejection pursuant to Section 6.5 of the Plan; or (b) add any executory contract or lease to the Assumption Schedule, thus providing for its assumption and assignment pursuant to Section 6.2 of the Plan; *provided, however*, that any amendments to the Assumption Schedule shall be acceptable to the Liquidating Trustee (or the proposed Liquidating Trustee) in his or her sole discretion. The Debtors shall provide notice of any such amendment to the Assumption Schedule to the parties to the executory contract or lease affected thereby not later than twenty-eight (28) days prior to the Confirmation Hearing. The Confirmation Order shall constitute an Order of the Bankruptcy Court pursuant to Bankruptcy Code Section 365 approving all assumptions and assignments described in Section 6.2 of the Plan and the Assumption Schedule, as of the Effective Date.

Any monetary defaults under each Remaining Contract to be assumed and assigned under the Plan shall be satisfied, pursuant to Bankruptcy Code Section 365(b)(1) by payment of the cure amount in Cash in full on the Effective Date by the Debtors from the Designated Account to the extent permitted by the Budget and/or the Sale Support Agreement and from the Other Assets to the extent not permitted by the Budget and/or the Sale Support Agreement. In the event of a dispute regarding (i) the amount or timing of any cure payments, (ii) the ability of the Debtors, the Liquidating Trustee, or an assignee thereof to provide adequate assurance of future performance under the Remaining Contracts to be assumed or assumed and assigned, as applicable, or (iii) any other matter pertaining to assumption or assumption and assignment of the Remaining Contracts to be assumed, the Liquidating Trustee shall pay all required cure amounts promptly following the entry of a Final Order resolving the dispute from the Designated Account to the extent permitted by the Budget and/or the Sale Support Agreement and from the Other Assets to the extent not permitted by the Budget and/or the Sale Support Agreement.

To the extent that any party to a Remaining Contract identified for assumption and assignment asserts arrearages or damages pursuant to Bankruptcy Code Section 365(b)(1), or has any other objection with respect to any proposed assumption, cure or assignment on the terms and conditions provided in the Plan, all such arrearages, damages and objections must be Filed and served no later than the earlier of (i) twenty-one (21) days after such party is served with notice of such assumption and assignment and (ii) one (1) day prior to the Confirmation Hearing.

Failure to assert such arrearages, damages or objections in the manner described above shall constitute consent to the proposed assumption, cure or assignment on the terms and

conditions provided in the Plan, including an acknowledgement that the proposed assumption and/or assignment provides adequate assurance of future performance and that the amount identified for “cure” in the Assumption Schedule is the amount necessary to cover any and all outstanding defaults under the Remaining Contract to be assumed, as well as an acknowledgement and agreement that no other defaults exist under such Remaining Contract.

If any assumption of a Remaining Contract proposed in the Plan for any reason is not approved by the Bankruptcy Court, then the Debtors shall be entitled, in their sole discretion, upon written notice to the applicable non-Debtor party to such Remaining Contract, to deem such Remaining Contract to have been rejected pursuant to the provisions of Section 6.5 of the Plan.

Except for those executory contracts and unexpired leases that (a) are assumed and assigned pursuant to the Plan, (b) have been previously assumed and assigned or rejected pursuant to previous Orders of the Bankruptcy Court, or (c) are the subject of a pending motion before the Bankruptcy Court with respect to the assumption and assignment of such executory contracts and unexpired leases, as of the Effective Date, all executory contracts and unexpired leases of the Debtors shall be rejected pursuant to Section 365 of the Bankruptcy Code; *provided, however*, that neither the inclusion by the Debtors of a contract or lease on the Assumption Schedule nor anything contained in Article 6 of the Plan shall constitute an admission by any Debtor that such contract or lease is an executory contract or unexpired lease or that any Debtor or its successors and assigns, including, but not limited to, the Liquidating Trust, has any liability thereunder.

The Confirmation Order shall constitute an Order of the Bankruptcy Court approving the rejection of executory contracts and unexpired leases under Section 6.5 of the Plan pursuant to Bankruptcy Code Section 365 as of the Effective Date. Any Claim for damages arising from any such rejection must be Filed within thirty (30) days after the mailing of notice of the entry of the Confirmation Order, or such Claim shall receive no distribution under the Plan or otherwise on account of such Claim. All Allowed Claims arising from the rejection of the Debtors’ executory contracts or unexpired leases shall be classified as General Unsecured Claims and shall be treated in accordance with Section 5.5 of the Plan.

#### **R. No Admissions**

If Confirmation or the Effective Date does not occur, nothing contained in the Plan or Disclosure Statement shall be deemed as an admission by the Debtors with respect to any matter set forth herein or therein including, without limitation, liability on any Claim or the propriety of any Claims classification.

#### **S. Preservation of Rights of Setoffs**

The Debtors or, if after the Effective Date, the Liquidating Trustee, may, but shall not be required to, set off against any Claim, and the payments or other distributions to be made pursuant to the Plan in respect of such Claim, Claims of any nature whatsoever that the Debtors or, if after the Effective Date, the Liquidating Trustee, may have against the holder of such Claims; but neither the failure to do so nor the allowance of any Claim under the Plan shall

constitute a waiver or release by the Debtors or the Liquidating Trustee of any such Claim that the Debtors or, if after the Effective Date, the Liquidating Trustee, may have against such holder.

**T. Defenses with Respect to Unimpaired Claims**

Except as otherwise provided in the Plan, nothing shall affect the rights and legal and equitable defenses of the Debtors or, if after the Effective Date, the Liquidating Trustee, with respect to any Unimpaired Claim, including all rights in respect of legal and equitable defenses to setoffs or recoupments against Unimpaired Claims.

**U. Dissolution of Creditors' Committee**

The Creditors' Committee shall be dissolved on the Effective Date, without need for a further Order of the Bankruptcy Court.

**V.  
CONFIRMATION OF THE PLAN**

**A. Confirmation Hearing**

The Bankruptcy Court has scheduled the Confirmation Hearing for Confirmation of the Plan for April 11, 2012 at 2:00 p.m. (prevailing Eastern time) before the Honorable Peter J. Walsh, Judge for the United States Bankruptcy Court for the District of Delaware, located at the United States Bankruptcy Court, 824 Market Street, Wilmington, Delaware 19801. The Confirmation Hearing may be adjourned from time to time without notice except as given at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing. The Bankruptcy Court has directed that objections, if any, to the Confirmation of the Plan be served on or before April 3, 2012 at 4:00 p.m. (prevailing Eastern time) in the manner described in the Notice accompanying this Disclosure Statement.

**B. Confirmation Standards**

For a plan to be confirmed, the Bankruptcy Code requires, among other things, that a plan be proposed in good faith and comply with the applicable provisions of chapter 11 of the Bankruptcy Code. Section 1129 of the Bankruptcy Code also imposes requirements that at least one Class of Impaired Claims accept a plan, that Confirmation of a plan is not likely to be followed by the need for further financial reorganization, that a plan be in the best interest of Creditors, and that a plan be fair and equitable with respect to each Class of Claims or Interests which is Impaired under the Plan.

The Bankruptcy Court will confirm a plan only if it finds that all of the requirements enumerated in Section 1129 of the Bankruptcy Code have been met. The Debtors and the Creditors' Committee believe that the Plan satisfies all of the requirements for Confirmation.

## **VI. FUNDING AND FEASIBILITY OF THE PLAN**

### **A. Funding of the Plan**

Payment of Allowed Other Secured Claims (to the extent not otherwise satisfied in accordance with the terms of the Plan), Allowed Administrative Expense Claims, Allowed Priority Tax Claims and Allowed Other Priority Claims shall be made from the Reserve Accounts to the extent permitted by the Budget and/or the Sale Support Agreement. To the extent any of such Allowed Claims are not satisfied from the Reserve Accounts (and, with respect to Allowed Other Secured Claims, are not otherwise satisfied in accordance with the terms of the Plan), such Allowed Claims shall be paid from the Other Available Cash. The Debtors anticipate that the Cash in the Reserve Accounts and the Other Available Cash shall be sufficient to pay all Allowed Other Secured Claims (to the extent not otherwise satisfied in accordance with the terms of the Plan), Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims and cure costs for executory contracts or unexpired leases on the Assumption Schedule, if any, in full in Cash on the Effective Date or once such Claims become Allowed Claims. Other Allowed Claims shall be satisfied as set forth in Article 5 of the Plan. Notwithstanding anything contained in the Plan or otherwise, (i) Cash in the CCR Account shall be available, to the extent permitted by the Budget and/or the Sale Support Agreement, only to pay Claims on account of chargebacks, channel management agreements, product returns and rebates constituting (a) Allowed Claims authorized to be paid by the Bankruptcy Court pursuant to the Order approving the Prepetition Claims Motions or (b) Allowed Administrative Expense Claims, (ii) Cash in the Employee Account shall be available only to pay Claims on account of employee severance and benefits approved in the Orders approving the Prepetition Claims Motion and permitted by the Budget and/or Sale Support Agreement, (iii) Cash in the Lazard Account shall be available only to pay Allowed Professional Fees of Lazard, and (iv) Cash in the Designated Account shall be available only to pay Allowed Administrative Expense Claims, Allowed Other Secured Claims (to the extent not otherwise satisfied in accordance with the terms of the Plan), Allowed Priority Tax Claims and Allowed Other Priority Claims to the extent permitted by the Budget and/or Sale Support Agreement, other than any such Claims on account of (A) chargebacks, channel management agreements, product returns and rebates or (B) employee severance and benefits payable from the Employee Account.

### **B. Best Interests Test**

Notwithstanding acceptance of the Plan by each Impaired Class, in order to confirm the Plan, the Bankruptcy Court must determine that the Plan is in the best interests of each holder of a Claim or Interest in any such Impaired Class who has not voted to accept the Plan. Accordingly, if an Impaired Class does not unanimously accept the Plan, the best interests test requires the Bankruptcy Court to find that the Plan provides to each member of such Impaired Class a recovery on account of the Class member's Claim or Interest that has a value, as of the Effective Date, at least equal to the value of the distribution that each such Class member would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

To estimate what members of each Impaired Class of unsecured Creditors and equity security holders would receive if the Debtors were liquidated under chapter 7, the Bankruptcy Court must first determine the aggregate dollar amount that would be generated from the Debtors' assets if the Chapter 11 Cases were converted to a chapter 7 case under the Bankruptcy Code and the assets were liquidated by a trustee in bankruptcy (the "Liquidation Value" of such assets). The Liquidation Value would consist of the net proceeds from the disposition of the Debtors' Assets and would be augmented by any Cash held by the Debtors.

As detailed in the Liquidation Analysis, a copy of which is attached hereto as Exhibit D, the Liquidation Value of the Debtors' Assets available to general Creditors would be reduced by the costs and expenses of the liquidation, as well as other administrative expenses of the chapter 7 cases. The Debtors' costs of liquidation under chapter 7 would include the compensation of a trustee or trustees, as well as counsel and other professionals retained by the trustee(s), disposition expenses, all unpaid expenses incurred by the Debtors during their chapter 11 proceedings (such as compensation for attorneys and accountants) which are allowed in the chapter 7 proceedings, and litigation costs and Claims against the Debtors arising from their business operations during the pendency of their Chapter 11 Cases and chapter 7 liquidation proceedings. These costs, expenses and Claims would be paid in full out of the Debtors' liquidation proceeds before the balance would be made available to pay general Creditors.

Once the percentage recoveries in liquidation of secured claimants, priority claimants, general unsecured creditors and equity security holders are ascertained, the value of the distribution available out of the Liquidation Value is compared with the value of the property offered to each of the Classes of Claims and Interests under the Plan to determine whether the Plan is in the best interests of each Class. The Debtors believe that the Plan satisfies this best interest test because the Debtors' assets will be liquidated under the terms of the Plan. If the Plan is not confirmed and, instead, the Chapter 11 Cases are converted to chapter 7, the value of the Debtors' estates would diminish because (i) the estates would need to pay fees to any chapter 7 trustee and (ii) the estates would incur increased professional fee costs associated with supporting the Chapter 7 proceedings and associated litigation costs and Claims. Comparing the Claims in Section I hereof with the Liquidation Analysis attached hereto as Exhibit D, the Debtors believe that distributions under the Plan will provide at least the same recovery to holders of Allowed Claims against each of the Debtors on account of such Allowed Claims as would distributions by a chapter 7 trustee. Conversion would also likely delay the liquidation process and the ultimate distributions to Creditors.

### **C. Avoidance Action Analysis**

Avoidance Actions were not sold to the Purchaser under the Asset Purchase Agreement. As discussed in Section III.F above, pursuant to the Committee Settlement the First Lien Facility Agent (for the benefit of the First Lien Claimholders) will receive (a) 100% of all proceeds, whether obtained through litigations, settlement or otherwise, of any avoidance or equitable subordination or recovery actions under Bankruptcy Code Section 549 and (b) 75% of all proceeds, whether obtained through litigations, settlement or otherwise, of any avoidance or equitable subordination or recovery actions under Bankruptcy Code Sections 105, 502(d), 510, 542, 543, 544, 545, 546, 547, 548, 550, 551, and 553. The First Lien Facility Agent will release all Liens and Claims on the remaining 25% of all proceeds, whether obtained through litigations,

settlement or otherwise, of any avoidance or equitable subordination or recovery actions under Bankruptcy Code Sections 105, 502(d), 510, 542, 543, 544, 545, 546, 547, 548, 550, 551, and 553.

The Debtors transferred \$34,519,689.39 to approximately 469 Creditors other than insiders during the 90 days prior to the Petition Date. A list of such transfers is attached hereto as Exhibit E. In addition, the Debtors transferred \$4,557,352.48 to 38 Creditors who are insiders, not including intercompany transfers between Debtors, during the approximately one year prior to the Petition Date. A list of such transfers is attached hereto as Exhibit F. The Debtors define “insiders” pursuant to Section 101(31) of the Bankruptcy Code as (a) directors; (b) officers; (c) shareholders holding in excess of 5% of the voting shares; (d) relatives of directors, officers or shareholders of the Debtors (to the extent known by the Debtors); and (e) Debtor/non-Debtor affiliates. The Debtors do not believe that the employees of the Debtors with the title “vice president,” including “senior vice president,” constitute “insiders” pursuant to Section 101(31). However, out of an abundance of caution, the Debtors have included on Exhibit F—solely with respect to disclosures relating to bonuses and any non-ordinary course payments—all employees with a title of vice president. The Debtors define “directors” as members of the board of directors of the Debtors. The Debtors have not performed a detailed review of the transfers to determine whether legal actions for recovery of any or all such transfers as preferences under Bankruptcy Code Section 547 are warranted. However, based on the Debtors’ preliminary review, it appears that many of the recipients of transfers have valid defenses to any preference action under Bankruptcy Code Section 547. The Liquidating Trustee will perform a detailed analysis of such transfers to determine whether legal actions for recovery of any or all such transfers as preferences under Bankruptcy Code Section 547 are warranted. **ALTHOUGH ALL RIGHTS OF THE LIQUIDATING TRUST ARE RESERVED, SUBJECT TO THE PLAN’S RELEASES, THE DEBTORS WOULD CAUTION CREDITORS AGAINST ANY EXPECTATION OF MATERIAL PREFERENCE RECOVERIES ON ACCOUNT OF SUCH TRANSFERS.**

Given the lack of a detailed investigation, the speculative nature of such recoveries and the potential defenses of many of recipients of transfers, the Liquidation Analysis attached hereto as Exhibit D does not assume any potential recoveries from the pursuit of preference actions. In any event, the recoveries on preference actions would be substantially the same whether pursued by a Chapter 7 Trustee in a Chapter 7 liquidation or by the Liquidating Trustee under the Plan.

Except to the extent any such Causes of Action are released under the Plan, the Debtors and the Liquidating Trustee reserve their right to conduct a further review of the transfers made within 90 days of the Petition Date and to seek recovery of such transfers under the provisions of the Bankruptcy Code before or after the Confirmation Date.

Additionally, on or about March 18, 2010, the Debtors transferred approximately \$9,127,166 to approximately 17 Creditors who are insiders on account of certain tax liabilities of such insiders resulting from the Debtors’ status as a limited liability company. A list of such transfers is attached hereto as Exhibit G. The Debtors may have been insolvent when such transfers were made and may not have received reasonably equivalent value for such transfers. Accordingly, the Debtors may have been able to bring a legal action against these Creditors to

have the transfers returned as fraudulent conveyances under Sections 544 and/or 548 of the Bankruptcy Code. One of the transferees and the Debtors have agreed in principal to a settlement of such Claims for \$6,000,000 in exchange for full releases of all transferees from any Claims, rights or Causes of Action by the Debtors. As a result of the settlement and the transferees' material contribution to the success of the Debtors' Chapter 11 Cases, the Plan provides releases to the transferees.

#### **D. Nycomed Litigation**

The Nycomed Litigation was sold to the Purchaser pursuant to the Asset Purchase Agreement and the Sale Order. However, pursuant to Section 8.10 of the Asset Purchase Agreement, if the Purchaser 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 \$3,000,000.00 shall be transferred to the Debtors in cash by wire transfer of immediately available funds;

(b) second, the Purchaser shall retain any additional proceeds up to the amount of reasonable, documented out-of-pocket costs, fees and expenses incurred by the Purchaser and its affiliates in connection with the Nycomed Litigation;

(c) third, the Purchaser shall transfer any additional proceeds to the Debtors, in cash by wire transfer of immediately available funds, up to an amount, when taken together with the \$3,000,000.00 of proceeds transferred to the Debtors pursuant to subsection (a) above, that equals the amount of reasonable, documented out-of-pocket costs, fees and expenses incurred by the Debtors prior to the Closing in connection with the Nycomed Litigation (which shall in no event exceed \$9,000,000); and

(d) fourth, the Purchaser shall (i) retain 50% of any additional proceeds and (ii) transfer the remaining 50% of such proceeds to the Debtors in cash by wire transfer of immediately available funds.

Pursuant to the Asset Purchase Agreement, within ten (10) Business Days after indefeasible receipt by the Purchaser of any funds constituting the Debtors' portion of the Nycomed Award Amount, the Purchaser will pay to the Debtors in cash by wire transfer of immediately available funds an amount equal to the amount apportioned to the Debtors as described above (or the applicable portion thereof). To the extent all or any portion of the Nycomed Award Amount may be payable to the Purchaser in future increments, the Purchaser and the Debtors agreed pursuant to the Asset Purchase Agreement to negotiate in good faith appropriate arrangements for the payment to the Debtors of the Debtors' portion of such delayed



payments either (x) over time as such amounts are received by the Purchaser or (y) as a single lump sum of the agreed net present value of such payment streams. For the avoidance of doubt, Purchaser retains full control over the defense of the Nycomed Litigation and any decisions related thereto, including any potential settlements, and the Debtors are obligated to cooperate with the Purchaser in connection with such defense under the Asset Purchase Agreement. The Purchaser is obligated under the Asset Purchase Agreement to keep the Debtors informed of any material developments in the Nycomed Litigation including any settlement offers and acceptances. The Purchaser is further obligated to provide the Debtors 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 the Purchaser is required to allow the Debtors reasonable access to employees and outside counsel of the Purchaser to resolve any questions or ambiguities related to such information.

The Nycomed Litigation is included in the Prepetition Collateral and is subject to the Liens of the Debtors' Prepetition Secured Lenders. As a result, any recovery on account of the Nycomed Award Amount would similarly be included in the Prepetition Collateral and be subject to the Liens of the Debtors' Prepetition Secured Lenders. Additionally, the Nycomed Award Amount would also be subject to the Allowed First Lien Facility Adequate Protection Claim and the Allowed Second Lien Facility Adequate Protection Claim, if any.

Whether the Debtors will be entitled to any recovery on account of the Nycomed Award Amount is uncertain and speculative to value. ALTHOUGH ALL RIGHTS TO THE NYCOMED AWARD AMOUNT, IF ANY, ARE TRANSFERRED TO THE LIQUIDATING TRUST PURSUANT TO THE PLAN, THE DEBTORS WOULD CAUTION CREDITORS AGAINST ANY EXPECTATION OF MATERIAL RECOVERIES ON ACCOUNT OF THE NYCOMED AWARD AMOUNT. MATERIAL RECOVERIES ON ACCOUNT OF THE NYCOMED AWARD AMOUNT ARE NOT GUARANTEED AND CREDITORS SHOULD NOT RELY ON ANY EXPECTATION OF RECOVERIES ON ACCOUNT OF THE NYCOMED AWARD AMOUNT.

#### **E. The Debtors' Remaining Property**

Certain of the Debtors' property was not included in the assets sold to the Purchaser in the Asset Sale (the "Acquired Assets"). The assets sold to the Purchaser pursuant to the Asset Purchase Agreement did not include, among other things (collectively, the "Excluded Assets"):

(a) 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 the Debtors and all bank accounts and securities accounts, including any cash collateral that is collateralizing any letters of credit;

(b) any refunds, rebates or credits of the Debtors on account of 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 Internal Revenue Code of 1986, as amended), 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 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;

(c) except to the extent relating to the Acquired Assets (which included the Nycomed Litigation), the Debtors' rights in (i) all Claims, Causes of Action, choses in action, rights of recovery and rights of set-off of whatever kind or description and (ii) 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 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;

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

(e) 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 those related to the Acquired Assets;

(f) 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 the Debtors ("Equipment") other than Equipment physically located at the location of a party that is neither a Debtor nor an affiliate of a Debtor and that manufactures products, formulations and compounds previously owned by the Debtors, or to which the Debtors had any rights;

(g) all trade accounts receivable and other rights to payment from customers of the Debtors to the extent arising out of the Debtors' business;

(h) all real property owned by the Debtors and all unexpired leases or other occupancy agreements for real property under which the Debtors are a lessee (or the equivalent); and

(i) any assets, properties and rights of any of the Debtors other than the Acquired Assets.

The Debtors have liquidated certain of the Excluded Assets since the Closing Date. The Debtors believe that the remaining unliquidated Excluded Assets have a value

between approximately \$26,300,000.00 and \$42,200,000.00. Certain of the Excluded Assets are included in the Prepetition Collateral and are subject to the Liens of the Debtors' Prepetition Secured Lenders. As a result, the proceeds received in a liquidation of such Excluded Assets would similarly be included in the Prepetition Collateral and be subject to the Liens of the Debtors' Prepetition Secured Lenders. Additionally, all of the Excluded Assets are also subject to the Allowed First Lien Facility Adequate Protection Claim and the Allowed Second Lien Facility Adequate Protection Claim, if any.

#### **F. Feasibility**

Section 1129(a)(11) of the Bankruptcy Code requires that the Debtors be able to perform their obligations under the Plan. For purposes of determining whether the Plan meets this requirement, the Debtors analyzed their ability to meet their obligations under the Plan. The Debtors believe that they have adequate funding to be able to meet their obligations under the Plan.

The Debtors believe that the funds held in the Reserve Accounts will be sufficient to pay fees and expenses of Professionals retained by the Debtors and the Creditors' Committee. The Debtors also believe that the funds held in the Reserve Accounts, as well as the Other Assets, will be sufficient to pay all administrative expenses and to otherwise provide the distributions to Creditors contemplated by the Plan.

Moreover, as set forth in the Liquidation Analysis attached hereto as Exhibit D and described in Article VI.B. above, the Debtors believe that the recovery for all of the Debtors' creditors, including Class 5 General Unsecured Creditors, will be the same or better under the Plan than it would be pursuant to a liquidation under chapter 7 of the Bankruptcy Code.

#### **G. Risk Factors Associated with the Plan**

Holders of Claims against the Debtors should read and consider carefully the information set forth below, as well as the other information set forth in this Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference), prior to voting to accept or reject the Plan. This information, however, should not be regarded as the only risks involved in connection with the Plan and its implementation.

The Class 5 General Unsecured Claims are subject to the risk of dilution if the total amount of Claims is higher than the Debtors' estimate. A number of Disputed Claims are material and the total amount of all Claims, including Disputed Claims, is materially in excess of the total amount of Allowed Claims assumed in calculating the estimated distributions set forth in Section I above. Accordingly, the amount of any distribution that will ultimately be received by any particular holder of a Class 5 General Unsecured Claim may be adversely affected by the aggregate amount of all Allowed Claims. Consequently, distributions to holders of Class 5 General Unsecured Claims will be made on an incremental basis until all Disputed Claims have been resolved.

A substantial amount of time may elapse between the Effective Date and the receipt of distributions, including, but not limited to, a Final Distribution, under the Plan for certain holders of Claims because of the time required to achieve recovery of certain assets. To

the extent that distributions under the Plan are derived, in whole or in part, from recoveries on the Causes of Action prosecuted by the Liquidating Trustee, there can be no assurance that any such Causes of Action will produce recoveries that will provide sufficient funds for such distributions to be made by the Liquidating Trust.

If the Bankruptcy Court were not to grant the Debtors' request for substantive consolidation of the Debtors with respect to the voting and treatment of all Claims and Interests other than Other Secured Claims, Confirmation and consummation of the Plan, if still possible, could be substantially more burdensome, time consuming, and costly to the Debtors' Estates. As stated above, the Debtors believe that substantive consolidation of the Debtors' Estates for purposes of the voting and treatment of all Claims and Interests other than Other Secured Claims will facilitate implementation of the Plan and foster similarity and fairness of treatment among holders of Claims. There can be no assurance, however, that the Bankruptcy Court will reach the same conclusion.

Even if all Classes entitled to vote accept the Plan, the Plan might not be confirmed by the Bankruptcy Court. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things, that the confirmation of a plan of reorganization is not likely to be followed by the liquidation or the need for further financial reorganization unless, as here, such liquidation or reorganization is proposed in the Plan, and that the value of distributions to dissenting Creditors and equity security holders not be less than the value of distributions such Creditors and equity security holders would receive if the debtor was liquidated under chapter 7 of the Bankruptcy Code. The Debtors believe that the Plan satisfies all the requirements for confirmation of a plan of reorganization under the Bankruptcy Code. There can be no assurance, however, that the Bankruptcy Court will also conclude that the requirements for Confirmation of the Plan have been satisfied.

One of the requirements for confirmation of a plan under Section 1129 of the Bankruptcy Code is that all Allowed Administrative Expense Claims be paid in full in Cash. The Debtors believe that the CCR Account contains sufficient Cash to pay any and all Allowed Administrative Expense Claims relating to chargebacks, channel management agreements, product returns and rebates. However, because Claims for product returns are contingent and may be substantial, the Debtors ultimately may not have sufficient Cash to pay any and all Allowed Administrative Expense Claims relating to chargebacks, channel management agreements, product returns and rebates.

Additionally, successful Confirmation of the Plan is subject to satisfaction or waiver of the conditions to Plan effectiveness, which are discussed in detail above. Not all of these conditions are within the control of the Debtors. **THUS, THERE CAN BE NO ASSURANCE THAT ALL OF THE VARIOUS CONDITIONS TO EFFECTIVENESS OF THE PLAN WILL BE TIMELY SATISFIED OR WAIVED.**

## VII. ALTERNATIVES TO THE PLAN

Although this Disclosure Statement is intended to provide information to assist a Claim or Interest holder in determining whether to vote for or against the Plan, a summary of the alternatives to Confirmation of the Plan may be helpful.

If the Plan is not confirmed with respect to any of the Debtors, the following alternatives are available: (a) confirmation of another chapter 11 plan; (b) conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code; or (c) dismissal of the Chapter 11 Cases leaving Creditors and Interest holders to pursue available non-bankruptcy remedies. These alternatives to the Plan are very limited and not likely to benefit Creditors. Although the Debtors could theoretically file a new plan, the most likely result if the Plan is not confirmed is that the Chapter 11 Cases will be converted to cases under chapter 7 of the Bankruptcy Code. The Debtors believe that conversion of the Chapter 11 Cases to chapter 7 cases would result in (i) significant delay in distributions to all Creditors who would have received a distribution under the Plan and (ii) diminished recoveries for certain Classes of Creditors. If the Chapter 11 Cases are dismissed, Creditors would be free to pursue non-bankruptcy remedies in their attempts to satisfy Claims against the Debtors. However, in that event, Creditors would be faced with the costs and difficulties of attempting, each on its own, to collect Claims from a non-operating entity. In particular, there is no guarantee that Administrative Expense Claims could be paid in such a scenario because there may be substantial contingent return Claims.

## VIII. CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS

### A. In General

The following discussion summarizes certain material U.S. federal income tax consequences expected to result from the consummation of the Plan. This discussion is based on current provisions of the Internal Revenue Code of 1986, as amended (the “IRC”), applicable Treasury Regulations, judicial authority and current administrative rulings and pronouncements of the Internal Revenue Service (the “Service”). There can be no assurance that the Service will not take a contrary view or that such a contrary view would not be sustained by a court, no ruling from the Service has been or will be sought nor will any counsel provide a legal opinion as to any of the expected tax consequences set forth below.

Legislative, judicial or administrative changes or interpretations may be forthcoming that could alter or modify the statements and conclusions set forth herein. Any such changes or interpretations may or may not be retroactive and could affect the tax consequences to the beneficial owners of Claims (each a “Holder” and collectively, the “Holders”), the Liquidating Trust, the Debtors or any entity the ownership of which is transferred to the Liquidating Trust. It cannot be predicted at this time whether any tax legislation will be enacted or, if enacted, whether any tax law changes contained therein would affect the tax consequences described herein.

The following summary is for general information only. The tax treatment of a Holder may vary depending upon such Holder's particular situation. This summary does not address all of the tax consequences that may be relevant to a Holder, including any alternative minimum tax consequences, and does not address the tax consequences to a Holder that has made an agreement to resolve its Claim in a manner not explicitly provided for in the Plan. This summary also does not address the U.S. federal income tax consequences to persons not entitled to vote on the Plan or Holders subject to special treatment under the U.S. federal income tax laws, such as brokers or dealers in securities or currencies, certain securities traders, tax-exempt entities, financial institutions, insurance companies, foreign persons, partnerships and other pass-through entities, Holders that hold Claims as a position in a "straddle" or as part of a "synthetic security," "hedging," "conversion" or other integrated transaction, Holders that have a "functional currency" other than the United States dollar and Holders that have acquired Claims in connection with the performance of services. The following summary assumes that the Claims are held by Holders as "capital assets" within the meaning of Section 1221 of the IRC and that all Claims denominated as indebtedness are properly treated as debt for U.S. federal income tax purposes.

The tax treatment of Holders and the character, amount and timing of income, gain or loss recognized as a consequence of the Plan and the distributions provided for by the Plan may vary, depending upon, among other things: (i) whether the Claim (or portion thereof) constitutes a Claim for principal or interest; (ii) the type of consideration received by the Holder in exchange for the Claim and whether the Holder receives distributions under the Plan in more than one taxable year; (iii) whether the Holder is a citizen or resident of the United States for tax purposes, is otherwise subject to U.S. federal income tax on a net basis, or falls into any special class of taxpayers, such as those that are excluded from this discussion as noted above; (iv) the manner in which the Holder acquired the Claim; (v) the length of time that the Claim has been held; (vi) whether the Claim was acquired at a discount; (vii) whether the Holder has taken a bad debt deduction with respect to the Claim (or any portion thereof) in the current or prior years; (viii) whether the Holder has previously included in income accrued but unpaid interest with respect to the Claim; (ix) the method of tax accounting of the Holder; (x) whether the Claim is an installment obligation for U.S. federal income tax purposes; and (xi) whether the "market discount" rules are applicable to the Holder. Therefore, each Holder should consult its tax advisor for information that may be relevant to its particular situation and circumstances, and the particular tax consequences to such Holder of the transactions contemplated by the Plan.

**THE FOLLOWING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. FEDERAL TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FOLLOWING DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, EACH HOLDER IS STRONGLY URGED TO CONSULT ITS TAX ADVISOR REGARDING THE U.S. FEDERAL, STATE, LOCAL, AND APPLICABLE NON-U.S. INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.**

**TO COMPLY WITH INTERNAL REVENUE SERVICE CIRCULAR 230, TAXPAYERS ARE HEREBY NOTIFIED THAT (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON A TAXPAYER UNDER THE INTERNAL REVENUE CODE, (B) ANY SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN, AND (C) TAXPAYERS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

**B. U.S. Federal Income Tax Consequences to the Debtors**

Because Graceway Holdings, LLC, Graceway Pharmaceuticals, LLC, Chester Valley Holdings, LLC and Chester Valley Pharmaceuticals, LLC are disregarded for federal income tax purposes, their assets and liabilities are treated as assets and liabilities of Graceway Pharma Holding Corp. (“GPHC”) for federal income tax purposes. In addition, Graceway Canada Company is disregarded for federal income tax purposes and thus its assets and liabilities are treated as assets and liabilities of Graceway Canada Holdings, Inc. (“GCHI”). GPHC, GCHI and Graceway International Inc. are the members of a federal consolidated tax group (the “Graceway U.S. Tax Group”) and file a consolidated federal income tax return. In this discussion, references to the Debtors and/or a Debtor generally means the Graceway U.S. Tax Group and/or a member of such Group, respectively.

If there is a discharge of a debt obligation by a debtor (in the case of indebtedness with multiple obligors, indebtedness that is allocable to such debtor) for an amount less than the adjusted issue price (in most cases, the amount the debtor received on incurring the obligation, with certain adjustments), such discharge generally would give rise to cancellation of debt (“COD”) income, which may have to be included in the debtor’s income. However, the Debtors should be able to utilize special tax provisions which exclude from income debts discharged in a chapter 11 case or debts discharged when a debtor is insolvent, with the insolvency exception only applying to the extent of the debtor’s insolvency (the “COD Exceptions”).

Under Section 108(b) of the IRC and Treasury Regulations that apply to members of a consolidated group, each Debtor that excludes COD income from gross income under the COD Exceptions will be required to reduce certain tax attributes, including consolidated attributes, such as consolidated net operating losses and net operating loss carryforwards (“NOLs”) and certain other losses, credits and carryforwards, if any, attributable to such Debtor, attributes that arose in separate return limitation years of such Debtor (if any), and the Debtor’s tax basis in its assets (but not below the amount of its liabilities remaining immediately after the discharge of indebtedness), in an amount generally equal to the amount of such Debtor’s COD income excluded from income under the COD Exceptions. A “look-through rule” applies when asset basis reduction reduces the basis of stock of another member of the consolidated group and requires corresponding adjustments to be made to the attributes attributable to the lower-tier member.

As a result of the required attribute reduction resulting from the discharge of indebtedness, the Debtors believe that a significant portion of NOLs (and alternative minimum tax NOLs) of the Debtors will be eliminated after consummation of the Plan. Because the Debtors are liquidating rather than continuing to operate in reorganized form, and because substantially all of the Debtors' Assets will be transferred to the Liquidating Trust, any remaining NOLs allocable to the Debtors are not expected to have material value.

The 363 Sale, the transfer of the Debtors' assets to the Liquidating Trust and the liquidation of the Debtors may trigger income or gain recognition by the Debtors. However, the Debtors' existing NOLs and capital losses (prior to being reduced as a result of any attribute reduction) should generally first be available to offset any such income or gain (with any capital losses available to only offset capital gains). The Debtors currently do not anticipate owing any material amount of regular U.S. federal income taxes with respect to taxable years ending after the Petition Date. If, however, the Service were to prevail in assessing U.S. federal income tax for any of these years or for tax years ending prior to the Petition Date, payments of such taxes could reduce the amounts otherwise available for distribution under the Plan.

A corporation or a consolidated group of corporations may incur alternative minimum tax ("AMT") liability even where a NOL is generated for regular corporate income tax purposes or where NOL carryovers and certain other tax attributes are sufficient to eliminate taxable income as computed under the regular corporate income tax. In general, the AMT is imposed on a corporation's alternative minimum taxable income at a twenty percent (20%) rate to the extent such tax exceeds the corporation's regular U.S. federal income tax. For purposes of computing taxable income for AMT purposes, certain tax deductions and other beneficial allowances allowed in computing a corporation's regular U.S. federal income tax are modified or eliminated. In particular, even though a corporation otherwise might be able to offset all of its taxable income for regular tax purposes by available NOL carryforwards, a portion of a corporation's taxable income for AMT purposes may not be offset by available NOL carryforwards (as computed for AMT purposes). Although it is possible that the Debtors could be liable for the AMT, at this time the Debtors do not expect to incur a material amount of AMT.

### **C. U.S. Federal Income Tax Treatment of the Liquidating Trust**

Except with respect to the Disputed Claims Reserve, it is intended that the Liquidating Trust will be treated as one or more "grantor trusts" for U.S. federal income tax purposes. In general, a grantor trust is not a separate taxable entity. The Service, in Revenue Procedure 94-45, 1994-2 C.B. 684, set forth the general criteria for obtaining an advanced ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. Consistent with the requirements of Revenue Procedure 94-45, the Liquidation Trust Agreement requires all relevant parties to treat, for federal income tax purposes, the transfer of the Debtors' assets to the Liquidating Trust as (i) a transfer of such assets (net of any applicable liabilities) to the Beneficiaries of the Liquidating Trust (to the extent of the value of their respective interests in the applicable Liquidating Trust Assets) followed by (ii) a transfer of such assets (net of any applicable liabilities) by such Beneficiaries to the Liquidating Trust (to the extent of the value of their respective interests in the applicable Liquidating Trust Assets), with the Beneficiaries being treated as the grantors and owners of the Liquidating Trust. Each Beneficiary of the Liquidating Trust will generally recognize gain (or loss) in its taxable year that includes the Effective Date in



an amount equal to the difference between the amount realized in respect of its Claim and its adjusted tax basis in such Claim. The amount realized for this purpose should generally equal the amount of cash and the fair market value of any other assets (net of any applicable liabilities) received or deemed received for U.S. federal income tax purposes under the Plan in respect of such Holder's Claim. A Holder that is deemed to receive for U.S. federal income tax purposes a non-cash asset under the Plan in respect of its Claim should generally have a tax basis in such asset in an amount equal to the fair market value of such asset on the date of its deemed receipt.

The Plan and the Liquidating Trust Agreement generally provide that the Beneficiaries of the Liquidating Trust must value the assets of the Liquidating Trust consistently with the values determined by the Liquidating Trustee for all U.S. federal, state, local and foreign income tax purposes. As soon as possible after the Effective Date, but in no event later than ninety (90) days thereafter, the Liquidating Trustee, based upon his good faith determination after consultation with his counsel, shall inform the Beneficiaries in writing as to his estimate of the value of the Assets transferred to the Liquidating Trust and the value of such assets allocable to each Class of Beneficiaries.

Consistent with the treatment of the Liquidating Trust (except with respect to the Disputed Claims Reserve) as one or more grantor trusts, the Liquidating Trust Agreement will require each Holder to report on its U.S. federal income tax return its allocable share of the Liquidating Trust's income. Therefore, a Holder may incur a U.S. federal income tax liability with respect to its allocable share of the income of the Liquidating Trust whether or not the Liquidating Trust has made any distributions to such Holder. The character of items of income, gain, deduction, and credit to any Holder and the ability of such Holder to benefit from any deduction or losses will depend on the particular situation of such Holder.

A distribution of underlying assets from the Liquidating Trust to a Beneficiary (other than in respect of distributions attributable to a reduction in the Disputed Claims Reserve) will generally not be taxable to such Holder because such Holders are already regarded for U.S. federal income tax purposes as owning such assets. Holders are urged to consult their tax advisors regarding the appropriate U.S. federal income tax treatment of distributions from the Liquidating Trust.

Except with respect to the Disputed Claims Reserve, the Liquidating Trustee will file with the Service tax returns for the Liquidating Trust as one or more grantor trusts pursuant to Treasury Regulation Section 1.671-4(a) and will also send to each Holder a separate statement setting forth such Holder's share of items of Trust income, gain, loss, deduction, or credit. Each such Holder will be required to report such items on its U.S. federal income tax return. The Liquidating Trustee shall determine for tax reporting purposes whether to treat the Beneficiaries as grantors in a single grantor trust or as grantors in two distinct grantor trusts. It is anticipated that such reporting will not have a material effect on the income, gain and loss recognition, for federal income tax purposes, of the Beneficiaries.

The discussion above assumes that, except with respect to the Disputed Claims Reserve, the Liquidating Trust will be respected as one or more grantor trusts for U.S. federal income tax purposes. If the Service were to challenge successfully such classification, the U.S. federal income tax consequences to the Liquidating Trust and the Beneficiaries could differ

materially from those discussed herein (including the potential for an entity level tax to be imposed on all income of the Liquidating Trust).

#### **D. Disputed Claims Reserve**

Until such time as all of the beneficial interests in the Liquidating Trust can be distributed to the Holders in accordance with the terms of the Plan, the Disputed Claims Reserve will be treated as owning a portion of the assets in the Liquidating Trust. Distributions from the Disputed Claims Reserve will be made to Holders of Disputed Claims after such Claims are subsequently Allowed and to other Beneficiaries when Disputed Claims are subsequently disallowed. The Liquidating Trust shall file all income tax returns with respect to any income attributable to the Disputed Claims Reserve and shall pay the federal, state and local income taxes attributable to the Disputed Claims Reserve, based on the items of income, deduction, credit or loss allocable thereto.

Holders should note the tax treatment of the Disputed Claims Reserve is unclear and should consult their tax advisors as to the tax consequences to them of the establishment of, the income on, and distributions from, the Disputed Claims Reserve

#### **E. U.S. Federal Income Tax Consequences to Holders of Claims**

##### **1. Holders of Allowed Claims in Classes 2, 3 and 5.**

Although not free from doubt, Holders of Allowed Claims in Class 2, Class 3 and Class 5 as of the Effective Date should be treated as receiving from the Debtors their respective shares of the applicable assets (net of any applicable liabilities) of the Liquidating Trust remaining (other than any assets allocated to the Disputed Claims Reserve) after distributions to Administrative Expense Claims, Priority Tax Claims, Class 1 Claims and Class 4 Claims in satisfaction of their Allowed Claims, and simultaneously transferring such assets (net of any applicable liabilities) to the Liquidating Trust. Accordingly, a Holder of such Claim should generally recognize gain or loss in an amount equal to the amount deemed realized on the Effective Date (as described above) less its adjusted tax basis of its Claim. Additionally, such Holders should generally recognize their allocable share of income, gain, loss and deductions recognized by the Liquidating Trust on an annual basis.

Because a Holder's ultimate share of the assets of the Liquidating Trust based on its Allowed Class 2 Claim, Allowed Class 3 Claim or Allowed Class 5 Claim will not be determinable on the Effective Date due to, among other things, the existence of Disputed Claims and the value of the assets at the time of actual receipt not being ascertainable on the Effective Date, such Holder should recognize additional or offsetting gain or loss if, and to the extent that, the aggregate amount of cash and fair market value of the assets of the Liquidating Trust ultimately received by such Holder is greater than or less than the amount used in initially determining gain or loss in accordance with the procedures described in the preceding paragraph. It is unclear when a Holder of an Allowed Class 2 Claim, an Allowed Class 3 Claim or an Allowed Class 5 Claim should recognize, as an additional amount received for purposes of computing gain or loss, an amount attributable to the disallowance of a Disputed Claim.

The character of any gain or loss as capital gain or loss or ordinary income or loss and, in the case of capital gain or loss, as short-term or long-term, will depend on a number of factors, including: (i) the nature and origin of the Claim; (ii) the tax status of the Holder of the Claim; (iii) whether the Claim has been held for more than one year; (iv) the extent to which the Holder previously claimed a loss or bad debt deduction with respect to the Claim; and (v) whether the Claim was acquired at a market discount. A Holder that purchased its Claim from a prior Holder at a market discount may be subject to the market discount rules of the IRC. Under those rules (subject to a *de minimis* exception), assuming that such Holder has made no election to accrue the market discount and include it in income on a current basis, any gain recognized on the exchange of such Claim generally would be characterized as ordinary income to the extent of the accrued market discount on such Claim as of the date of the exchange.

It is possible that the Service may assert that any loss should not be recognizable until the Liquidating Trustee makes its final distribution of the assets of the Liquidating Trust. Holders should consult their tax advisors regarding the possibility that the recognition of gain or loss may be deferred until the final distribution of the assets of the Liquidating Trust.

## 2. Holders of Disputed Claims.

Although not free from doubt, Holders of Disputed Claims should generally recognize gain or loss in an amount equal to the amount deemed realized on the date such Claim becomes an Allowed Claim less the adjusted tax basis of its Claim. Additionally, after such Claims become Allowed Claims, such Holders should generally recognize their allocable share of income, gain, loss and deductions recognized by the Liquidating Trust on an annual basis. However, it is possible that such Holders may be required to recognize the fair market value of such Holder's allocable share of the Liquidating Trust's assets, as an amount received for purposes of computing gain or loss on the Effective Date.

## 3. Interest Income with respect to Allowed Claims.

Holders of Allowed Claims will be treated as receiving a payment of interest (includible in income in accordance with the Holder's method of accounting for tax purposes) to the extent that any cash or other property received (or deemed received) pursuant to the Plan is attributable to accrued but unpaid interest, if any, on such Allowed Claims. The extent to which the receipt of cash or other property should be attributable to accrued but unpaid interest is unclear. The Debtors and the Liquidating Trust intend to take the position, and the Plan provides, that such cash or property distributed pursuant to the Plan will first be allocable to the principal amount of an Allowed Claim and then, to the extent necessary, to any accrued but unpaid interest thereon. Each Holder should consult its tax advisor regarding the determination of the amount of consideration received under the Plan that is attributable to interest (if any). A Holder generally will be entitled to recognize a loss to the extent any accrued interest was previously included in its gross income and is not paid in full.

## F. **Backup Withholding and Information Reporting**

A Holder of an Allowed Claim may be subject to backup withholding with respect to any "reportable" payments received pursuant to the Plan unless (i) such Holder comes

within certain exempt categories and, when required, demonstrates this fact or (ii) provides a correct taxpayer identification number, certifies as to no loss of exemption from backup withholding and complies with applicable requirements of the backup withholding rules. A Holder who does not provide a correct taxpayer identification number may be subject to penalties imposed by the Service. Amounts withheld under the backup withholding rules may be credited against a Holder's tax liability, and a Holder may obtain a refund of any excess amounts withheld under the backup holding rules by timely filing the appropriate Claim for refund with the Service.

The Liquidating Trustee will report annually to each Holder of an Allowed Class 2 Claim, an Allowed Class 3 Claim and an Allowed Class 5 Claim, and to the Service the Holder's share of any income, gains and losses of the Liquidating Trust during the calendar year to the extent required by law.

Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including certain transactions that result in the taxpayer recognizing a loss in excess of specified thresholds. Each Holder should consult its tax advisor regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations.

**THE FOREGOING DISCUSSION OF CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS IS FOR GENERAL INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. ACCORDINGLY, EACH HOLDER SHOULD CONSULT ITS TAX ADVISOR WITH RESPECT TO THE TAX CONSEQUENCES OF THE PLAN DESCRIBED HEREIN AND THE APPLICATION OF FEDERAL, STATE, LOCAL AND FOREIGN TAX LAWS. NEITHER THE DEBTORS, THE CREDITORS' COMMITTEE NOR EITHER OF THEIR PROFESSIONALS SHALL HAVE ANY LIABILITY TO ANY PERSON OR HOLDER ARISING FROM OR RELATED TO THE U.S. FEDERAL, STATE, LOCAL OR FOREIGN TAX CONSEQUENCES OF THE PLAN OR THE FOREGOING DISCUSSION.**

## CONCLUSION

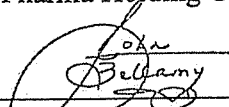
For all of the reasons set forth in this Disclosure Statement, the Debtors believe that Confirmation of the Plan is preferable to all other alternatives. Consequently, the Debtors recommend all holders of Class 2 Claims, Class 3 Claims and Class 5 Claims to vote to **ACCEPT** the Plan, and to complete and return their Ballots so that they will be **RECEIVED** by BMC on or before 4 p.m. (prevailing Eastern time) on April 3, 2012.

Dated: January 25, 2012

Dated: January 25, 2012

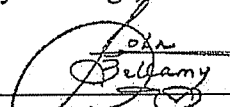
Graceway Pharma Holding Corp.

By:

  
Name: JOHN AA BELLAMY  
Title: EVP/SECRETARY

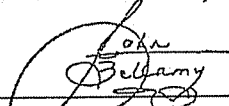
Graceway Holdings, LLC

By:

  
Name: JOHN AA BELLAMY  
Title: EVP/SECRETARY

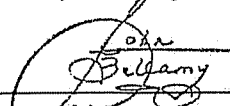
Graceway Pharmaceuticals, LLC

By:

  
Name: JOHN AA BELLAMY  
Title: EVP/SECRETARY

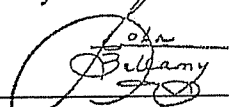
Chester Valley Holdings, LLC

By:

  
Name: JOHN AA BELLAMY  
Title: EVP/SECRETARY

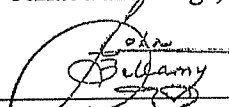
Chester Valley Pharmaceuticals, LLC

By:

  
Name: JOHN AA BELLAMY  
Title: EVP/SECRETARY

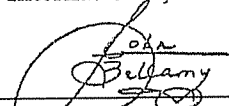
Graceway Canada Holdings, Inc.

By:

  
Name: JOHN AA BELLAMY  
Title: EVP/SECRETARY

Graceway International, Inc.

By:

  
Name: JOHN AA BELLAMY  
Title: EVP/SECRETARY