

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

In re:

GRACEWAY PHARMACEUTICALS, LLC,
et al.,¹

Debtors.

Chapter 11

Case No. 11-13036 (PJW)

Jointly Administered

Objection Deadline: April 4, 2012 at 4:00 p.m. (ET)

Hearing Date: April 11, 2012 at 2:00 p.m. (ET)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING
THE DEBTORS TO (A) SELL CERTAIN PROPERTY OUTSIDE
THE ORDINARY COURSE OF BUSINESS TO JG RESOURCES, LLC AND
(B) ABANDON CERTAIN EXPENDABLE PROPERTY**

The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) hereby move this Court (the “**Motion**”) for entry of an order (the “**Order**”), in substantially the form attached hereto as Exhibit B, authorizing the Debtors to (a) sell certain property outside the ordinary course of business to JG Resources, LLC (the “**Purchaser**”) and (b) abandon the Expendable Property (as defined below), effective as of the date the Order is entered. In support of this Motion, the Debtors rely on the *Declaration of Thomas E. Hill in Support of the Debtors' Motion for Entry of an Order Authorizing the Debtors to (a) Sell Certain Property Outside the Ordinary Course of Business to JG Resources, LLC and (b) Abandon Certain Expendable*

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175), 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.

Property, attached hereto as Exhibit A. In further support of this Motion, the Debtors respectfully state as follows:

Jurisdiction

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are Sections 105(a), 363 and 554 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) and Rules 2002, 6004 and 6007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

Background

3. On September 29, 2011 (the “Petition Date”), each of the Debtors filed a petition with this Court under chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”). The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. On September 30, 2011, the Court entered an order consolidating these Chapter 11 Cases for procedural purposes only [Docket No. 42]. On October 11, 2011, the Office of the United States Trustee appointed an official committee of unsecured creditors pursuant to Section 1102 of the Bankruptcy Code (the “Committee”) [Docket No. 90].

4. A description of the Debtors’ business and the reasons for commencing these Chapter 11 Cases are set forth in the Declaration of Gregory C. Jones in Support of Chapter 11 Petitions and First Day Motions [Docket No. 3], filed on the Petition Date.

5. On November 22, 2011, the Court entered 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 [Docket No. 306], which authorized the sale of substantially all of the Debtors' assets to Medicis Pharmaceutical Corporation pursuant to Section 363 of the Bankruptcy Code (the "**Sale**"). The Sale was consummated on December 2, 2011 (the "**Closing Date**"). See *Notice of Closing of Sale of Substantially All of Debtors' Assets to Medicis Pharmaceutical Corporation* [Docket No. 335].

6. The Debtors ceased operations following the Closing Date and have since been pursuing an orderly wind-down of their business and liquidation of their remaining miscellaneous assets. On February 28, 2012, the Debtors filed the *First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al.* [Docket No. 551] (the "**Plan**"), and by order dated March 1, 2012 [Docket No. 572], the Court approved the Disclosure Statement for the First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al. [Docket No. 566], filed on March 1, 2012, and certain solicitation procedures.

I. **The Debtors' Property Located at the Bristol Office and the Piney Flats Property**

7. The Debtors currently lease (the "**Bristol Lease**"), on a month-to-month basis, office space located at 340 Martin Luther King Jr. Blvd, Suite 400, Bristol, TN 37620 (the "**Bristol Office**"). The lessor counterparty to the Bristol Lease is SJ Strategic Investments, LLC (the "**Landlord**"), an entity controlled by a relative (as such term is defined in the Bankruptcy Code) of the Debtors' former chief executive officer. The Landlord has informed the Debtors that the Landlord does not wish to renew the Bristol Lease beyond April 2012 nor do the Debtors have a need to extend the Bristol Lease due to the continued wind-down of the Debtors' business and the expected confirmation of the Plan.

8. Additionally, the Debtors own real property located at 881 Mountain View Road, Piney Flats, TN 37686 (the “**Piney Flats Property**”). The Debtors are currently seeking a buyer for the Piney Flats Property in connection with the continued liquidation of the Debtors’ remaining assets. The Piney Flats Property is not included in the Purchased Property (as defined below).

9. As of the date hereof, certain personal property of the Debtors remains at the Bristol Office and the Piney Flats Property, consisting primarily of miscellaneous office furniture and equipment (including, but not limited to, all office furniture, pallet racking systems, televisions, printers, phone systems, file cabinets, shrinkwrapping machinery, paper shredders, conveyers, copiers, fork lifts, servers, server racks, computers and related IT equipment, designated office supplies, other miscellaneous personal property, company books and records and all fixtures, including, but not limited to, the firetrol water pump system, plumbing and related fixtures, located at the Piney Flats Property) (collectively, the “**Personal Property**”).

10. The Debtors will no longer be leasing the Bristol Office after April 2012, are seeking to sell the Piney Flats Property and are ceasing business operations as of the confirmation of the Plan. Accordingly, the Debtors no longer have a use or need for the Personal Property. Further storage of the Personal Property would be a continuing expense for the Debtors without creating value for the Debtors’ estates. As a result, the Debtors have determined in their business judgment that the Personal Property should be sold.

II. The Purchase Agreement

11. For approximately six (6) weeks, the Debtors marketed the Personal Property to multiple parties, including several parties in the business of acquiring and liquidating property similar to the Personal Property. The Debtors inquired as to whether these parties were

interested in purchasing the Personal Property outright or holding an auction of the Personal Property in an effort to obtain the highest and best offer for some or all of the Personal Property. This marketing process resulted in four offers: (I) an individual offered to conduct an auction to sell certain Personal Property, estimating the value of the Personal Property in the range of \$130,000 to \$260,000 before costs of the auction, the individual's fees, and any administrative costs to the Debtors; (II) a liquidation firm offered to purchase the Personal Property for \$140,000 as well as share 50% of any recovery from a re-sale of the Personal Property exceeding \$210,000 subject to certain indemnification obligations in the event the sale of the Personal Property was not approved by this Court; (III) a liquidation firm offered to purchase certain Personal Property for \$18,015 and (IV) the Purchaser offered to purchase the Personal Property for \$139,750 and pay all costs and expenses associated with moving and/or re-sale of the Personal Property.

12. After consulting with their advisors, the representatives of the Debtors' prepetition secured lenders, and the representatives of the Committee, and consideration of these multiple bids, the Debtors determined in their business judgment that the Purchaser offered the highest and best bid for the Personal Property because the Purchaser offered the highest guaranteed purchase price for the Personal Property. The Debtors believe that the Purchaser's offered purchase price accurately represents the fair market value of the Personal Property and do not believe that a significantly higher price could be obtained through further marketing of the Personal Property or through an auction of the Personal Property conducted by the Debtors. Moreover, the Debtors would be required to pay the administrative expenses and fees to continue marketing and running such auctions regardless of the value attained through the auction process without any certainty that such a process would result in a higher or better price for the Personal

Property and, more importantly, without any certainty that such a process would result in a purchaser able to commit to removing the Personal Property from the Bristol Office prior to the expiration of the Bristol Lease. Therefore, the Purchaser's offered purchase price, guaranteed and free of fees, is the highest and best bid for the Personal Property.

13. Following the conclusion of the marketing process and subject to this Court's approval, the Debtors and the Purchaser entered into an agreement for the purchase of certain Personal Property (the "**Purchased Property**") on March 21, 2012 (the "**Purchase Agreement**"). The Purchase Agreement is attached hereto as Exhibit C and its terms are incorporated herein by reference. The Purchased Property is further defined in the Purchase Agreement. The Purchaser is not an insider, as that term is defined in the Bankruptcy Code, and is not affiliated with the Debtors in any way.

14. Pursuant to the Purchase Agreement and as further described therein, the Debtors will transfer the Purchased Property to the Purchaser, and in exchange for such transfer, the Purchaser will pay the Debtors a total purchase price of \$139,750 (the "**Purchase Price**"), with thirty percent (30%) of the Purchase Price paid to the Debtors upon this Court's approval of the sale of the Purchased Property to the Purchaser and the remaining seventy percent (70%) of the Purchase Price paid to the Debtors upon the earlier of (a) the date that is five (5) days following the completion of Purchaser's resale of the Purchased Property and (b) May 2, 2012.

Relief Requested

15. By this Motion and pursuant to Section 363 of the Bankruptcy Code, the Debtors seek authority to sell to the Purchaser, free and clear of any liens, claims or encumbrances the Purchased Property, as set forth in the Purchase Agreement.

16. The Debtors have determined in their business judgment that the Personal Property remaining at the Bristol Office as of April 30, 2012 will have little or no value and that

the preservation thereof will be burdensome to the Debtors' estates compared with the expense of removing, storing or otherwise disposing of such property (the "**Expendable Property**"). Accordingly, the Debtors request authority pursuant to Section 554(a) of the Bankruptcy Code and Bankruptcy Rule 6007 to abandon the Expendable Property to the Landlord, as is, where is, effective as of the date the Order is entered.

Basis for Relief

I. The Court Should Authorize the Sale of the Purchased Property to the Purchaser

17. The Debtors request authority pursuant to Section 363 of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004 to sell the Purchased Property to the Purchaser outside the ordinary course of business to the Purchaser. The Third Circuit allows a debtor in possession to sell its assets outside the ordinary course of business where there exists: (a) a sound business reason for the sale; (b) adequate and reasonable notice of the sale; and (c) a fair and reasonable price or good faith negotiations with the purchaser. In re Abbotts Dairies, 788 F.2d 143, 147-50 (3d Cir. 1986); Travelers Cas. & Sur. Co. v. Future Claimants Representative, 2008 U.S. Dist. LEXIS 23496 (D.N.J. 2008); In re Decora Indus., 2002 U.S. Dist. LEXIS 27031 (D. Del. 2002); In re Del. & Hudson Ry. Co., 124 B.R. 169, 176 (D. Del. 1991); In re Indus. Valley Refrigeration, 77 B.R. 15, 21 (E.D. Pa. 1987). Pursuant to Bankruptcy Rule 6004(f)(1), the sale of the Purchased Property "may be by private sale or public auction."

18. In accordance with Section 363(f) of the Bankruptcy Code, the Debtor may sell property under Section 363(b) "free and clear of any interest in such property of an entity other than the estate" only if one of the following conditions is satisfied:

- a. applicable nonbankruptcy law permits [the] sale of such property free and clear of such interest;
- b. such entity consents;

- c. such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- d. such interest is in bona fide dispute; or
- e. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

19. 11 U.S.C. § 363(f). To the extent necessary, the Debtors will be able to establish one or more of such conditions at the hearing to be conducted by the Court to approve the sale of the Purchased Property. The Debtors believe that the lenders under the Debtors' prepetition first lien credit facility, the lenders under the Debtors' prepetition second lien credit facility and the Committee will not object to the sale of the Purchased Property to the Purchaser, and the Debtors consulted with the representatives of each of such parties prior to the filing of this Motion. Further, the Debtors have consulted with the proposed Liquidating Trustee (as defined in the Plan) and confirmed that the Liquidating Trustee will not require the Purchased Property after confirmation of the Plan and otherwise agrees with the sale of the Purchased Property to the Purchaser.

20. The Debtors submit that they have a sound business reason for the sale of the Purchased Property to the Purchaser. Because the Debtors are discontinuing the Bristol Lease and ceasing their operations at the Bristol Office and the Piney Flats Property, the Purchased Property is of no use to the Debtors' estates. However, the Debtors will generate value for their estates by selling the Purchased Property to the Purchaser. Further, because the Purchaser will remove the Purchased Property from the Bristol Office prior to the expiration of the Bristol Lease, the Debtors will avoid administrative fees related to the removal and storage of the Purchased Property.

21. The Debtors believe that the Purchase Price accurately represents the fair market value of the Purchased Property and is the best possible price for the Purchased Property under the present circumstances. The Debtors approached multiple parties, including several parties in the business of acquiring and liquidating property similar to the Personal Property, regarding the purchase and/or auction of certain Personal Property. After consideration of multiple bids during multiple rounds of bidding among those parties that submitted offers, the Debtors determined in their business judgment that the Purchaser offered the highest and best bid for the Purchased Property. The Debtors do not believe it would be beneficial to the Debtors' estates to establish a detailed court-monitored sale process for the Personal Property as was undertaken with respect to the Sale because conducting more rigorous sale procedures would only cause the Debtors to incur additional administrative expenses to reach a sale price that likely would not exceed the Purchase Price.

22. Further, the Debtors do not believe it would be beneficial to the Debtors' estates to conduct a separate marketing and sale process for the Personal Property at the Bristol Office and the Personal Property at the Piney Flats Property because conducting two sale processes would only cause the Debtors to incur additional administrative expenses to reach two sale prices that, collectively, likely would not exceed the Purchase Price. Accordingly, the proposed sale of the Purchased Property pursuant to the Purchase Agreement is in the best interests of the Debtors, their estate and their creditors.

II. The Court Should Authorize the Abandonment of the Expendable Property

23. The Debtors request authority to abandon the Expendable Property, effective as of the date the Order is entered. Section 554(a) of the Bankruptcy Code provides that a debtor in possession may abandon, subject to Court approval, "property of the estate that . . . is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a). See In re Am. Home

Mortgage Holdings, Inc., Case No. 07-11047 (Bankr. D. Del. Oct. 1, 2007) (CSS); In re New Century TRS Holdings, Case No. 07-10416 (Bankr. D. Del. Apr. 24, 2007) (KJC). The Debtors submit that the standard set forth in Section 554(a) of the Bankruptcy Code is satisfied.

24. The Debtors have determined that the Expendable Property will have minimal value and that it will not be cost effective to transport and store the Expendable Property. The Debtors have further determined, after reviewing their overall operations and in the exercise of their sound business judgment, that the Expendable Property will be burdensome to the Debtors' estates and that it is in the best interest of the Debtors, their estates and their creditors to abandon the Expendable Property to the Landlord as is, where is, effective as of the date the Order is entered.

25. The Debtors believe that the lenders under the Debtors' prepetition first lien credit facility, the lenders under the Debtors' prepetition second lien credit facility and the Committee will not object to the abandonment of the Expendable Property and, as noted above, the Debtors consulted with the representatives of each of such parties prior to the filing of this Motion. Further, the Debtors have consulted with the proposed Liquidating Trustee (as defined in the Plan) and confirmed that the Liquidating Trustee will not require the Expendable Property after confirmation of the Plan.

III. The Court should waive the stay under Bankruptcy Rule 6004

26. The Debtors request that in the event the Court approves the sale of the Purchased Property, the Order be effective immediately by providing that the fourteen (14) day stay under Bankruptcy Rule 6004(h) is waived. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property ... is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise."

27. The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before an order can be implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(h). Although Bankruptcy Rule 6004(h) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the fourteen (14) day stay period, Collier on Bankruptcy suggests that the fourteen (14) day stay period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” 10 Collier on Bankruptcy 15th Ed. Rev., § 6064.09 (1988). Furthermore, Collier’s provides that if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. Id. The Debtors anticipate that there will be no objections to this Motion. Moreover, immediate finality with respect to the sale of the Purchased Property is necessary given the short amount of time between the hearing on this Motion and the termination of the Bristol Lease. As a result, the Debtors hereby request that the Court waive the fourteen (14) day stay period under Bankruptcy Rule 6004(h).

Notice

28. The Debtors have provided notice of this Motion to: (a) the United States Trustee for the District of Delaware; (b) financing counsel to the administrative agent for the lenders under the Debtors’ prepetition first lien credit facility; (c) special restructuring and bankruptcy counsel to the administrative agent for the lenders under the Debtors’ prepetition first lien credit facility; (d) counsel to the administrative agent for the lenders under the Debtors’ prepetition second lien credit facility; (e) the administrative agent for the lenders under the Debtors’ prepetition unsecured mezzanine credit facility; (f) the Committee; (g) the creditors listed on the Debtors’ consolidated list of 30 largest unsecured creditors, as filed with the Debtors’ chapter 11 petitions; (h) the Food and Drug Administration; (i) the Internal Revenue Service; (j) the

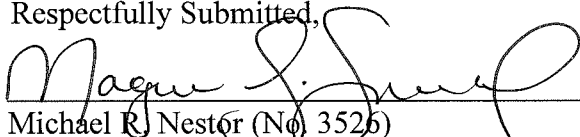
Landlord; (k) all parties with an interest in the Purchased Property or the Expendable Property; (l) the proposed Liquidating Trustee; and (m) all parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no further notice is required or needed under the circumstances.

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

WHEREFORE, the Debtors respectfully request that this Court enter the Order, substantially in the form attached hereto as Exhibit B, authorizing the Debtors to (a) sell the Purchased Property free and clear of any and all liens, claims and encumbrances outside the ordinary course of business to the Purchaser; (b) abandon the Expendable Property, effective as of the date the Order is entered and (c) granting such other and further relief as this Court deems appropriate.

Dated: March 21, 2012
Wilmington, Delaware

Respectfully Submitted,



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