

**Exhibit A**

**Revised Proposed Confirmation Order**

**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

Docket Ref. No. 551

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**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER CONFIRMING FIRST AMENDED JOINT PLAN OF LIQUIDATION  
OF GRACEWAY PHARMACEUTICALS, LLC, ET AL.**

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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.

## INTRODUCTION

The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) having proposed the *First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al.* dated February 28, 2012 [Docket No. 551], and as described herein (including all exhibits thereto, and as modified hereby, the “**Plan**”);<sup>2</sup> the Court having entered its *Order (A) Approving the Disclosure Statement, (B) Establishing the Voting Record Date, Voting Deadline and Other Dates, (C) Approving Procedures for Soliciting, Receiving and Tabulating Votes on the Plan and for Filing Objections to the Plan and (D) Approving the Manner and Forms of Notice and Other Related Documents* dated March 1, 2012 [Docket No. 572] (the “**Disclosure Statement Order**”), by which the Court, among other things, approved the Debtors’ *Disclosure Statement for the First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al.* [Docket No. 566] (the “**Disclosure Statement**”), established procedures for the solicitation and tabulation of votes to accept or reject the Plan, scheduled a hearing on confirmation of the Plan and approved related notice procedures; BMC Group, Inc. (“**BMC**”), the Debtors’ notice, claims and solicitation agent in respect of the Plan, having filed the *Certification and Declaration of Notice, Claims and Voting Agent Regarding Solicitation and Tabulation of Votes in Connection with the First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al.* [Docket No. 671] (the “**Voting Affidavit**”) on April 6, 2012; the Court having established in the Disclosure Statement Order April 11, 2012 at 2:00 p.m.

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<sup>2</sup> Unless otherwise specified, capitalized terms and phrases used herein have the meanings assigned to them in the Plan. The rules of interpretation set forth in Section I.C of the Plan shall apply to these Findings of Fact, Conclusions of Law and Order (this “**Confirmation Order**”). In addition, in accordance with Section 1.A of the Plan, any term used in the Plan or this Confirmation Order that is not defined in the Plan or this Confirmation Order, but that is used in the Bankruptcy Code or the Bankruptcy Rules (each as hereinafter defined), shall have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable. If there is any direct conflict between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order shall control. A copy of the Plan is attached hereto as Exhibit A and incorporated herein by reference.

Eastern Time as the date and time of the hearing pursuant to Section 1129 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), to consider confirmation of the Plan (the “**Confirmation Hearing**”); affidavits of service of the solicitation materials with respect to the Plan having been executed by BMC with respect to the mailing of notice of the Confirmation Hearing and solicitation materials in respect of the Plan in accordance with the Disclosure Statement Order (collectively, the “**Affidavits of Service**”) and having been filed with the Court [Docket Nos. 599, 607, 609, 619, 625, 633, 634, 636, 643, 644, 646, 647, 648 and 667]; verification of publication of the *Notice of (A) Confirmation Hearing, (B) Objection and Voting Deadlines and (C) Solicitation and Voting Procedures* (the “**Affidavit of Publication**”) in the national edition of *The Wall Street Journal* in accordance with the Disclosure Statement Order having been filed with the Court on March 13, 2012; the Court having reviewed the Plan, the Disclosure Statement, the Disclosure Statement Order, the Voting Affidavit, the Affidavits of Service, the Affidavit of Publication, and the other papers before the Court in connection with confirmation of the Plan; the Court having heard the statements of counsel in support of and in opposition to confirmation at the Confirmation Hearing, as reflected in the record at the Confirmation Hearing; the Court having considered all testimony presented and evidence admitted at the Confirmation Hearing; the Court having taken judicial notice of the papers and pleadings on file in these Chapter 11 Cases; and the Court finding that (i) notice of the Confirmation Hearing and the opportunity of any party in interest to object to Confirmation was adequate and appropriate, in accordance with Bankruptcy Rule 2002(b) and the Disclosure Statement Order, as to all parties to be affected by the Plan and the transactions contemplated thereby and (ii) the legal and factual bases set forth in the applicable papers and at the Confirmation Hearing, and as set forth in this Confirmation Order, establish just cause for the

relief granted herein; the Court hereby makes the following Findings of Fact, Conclusions of Law and Order:<sup>3</sup>

**I. FINDINGS OF FACT.**

**A. JURISDICTION AND CORE PROCEEDING.**

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Debtors were and are qualified to be debtors under Section 109 of the Bankruptcy Code.

**B. VENUE.**

On September 29, 2011 (the "**Petition Date**"), the Debtors commenced their reorganization cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Venue in the District of Delaware of the Chapter 11 Cases was proper as of the Petition Date and continues to be proper pursuant to 28 U.S.C. § 1408 and 1409.

**C. COMPLIANCE WITH THE REQUIREMENTS OF SECTION 1129 OF THE BANKRUPTCY CODE.**

**1. Section 1129(a)(1) - Compliance of the Plan with Applicable Provisions of the Bankruptcy Code.**

The Plan complies with all applicable provisions of the Bankruptcy Code, as required by Section 1129(a)(1) of the Bankruptcy Code, including Sections 1122 and 1123 of the Bankruptcy Code.

**a. Sections 1122 and 1123(a)(1)-(4) - Classification and Treatment of Claims and Interests.**

Pursuant to Sections 1122(a) and 1123(a)(1) of the Bankruptcy Code, Article 3 of the Plan designates Classes of Claims and Interests, other than for Administrative Expense

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<sup>3</sup> This Confirmation Order constitutes the Court's findings of fact and conclusions of law under Fed. R. Civ. P. 52, as made applicable herein by Bankruptcy Rules 7052 and 9014. Any finding of fact shall constitute a finding of fact even if it is stated as a conclusion of law, and any conclusion of law shall constitute a conclusion of law even if it is stated as a finding of fact.

Claims and Priority Tax Claims.<sup>4</sup> As required by Section 1122(a), each Class of Claims and Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class. The Plan contains eight Classes of Claims and Interests, designated as Classes 1 through 8. Such classification is proper under Section 1122(a) of the Bankruptcy Code, because such Class of Claims and Interests have differing rights among each other and against the Debtors' assets or differing interests in the Debtors. Pursuant to Section 1123(a)(2) of the Bankruptcy Code, Article 4 of the Plan specifies all Classes of Claims and Interests that are not Impaired under the Plan and specifies all Classes of Claims and Interests that are Impaired under the Plan. Pursuant to Section 1123(a)(3) of the Bankruptcy Code, Article 5 of the Plan specifies the treatment of all Claims and Interests under the Plan. Pursuant to Section 1123(a)(4) of the Bankruptcy Code, Article 5 of the Plan also provides the same treatment for each Claim or Interest within a particular Class, unless the holder of a Claim or Interest agrees to less favorable treatment of its Claim or Interest. The Plan therefore complies with Sections 1122 and 1123(a)(1)-(4) of the Bankruptcy Code.

**b. Section 1123(a)(5) - Adequate Means for Implementation of the Plan.**

Article 7 and various other provisions of the Plan provide adequate means for the Plan's implementation. Those provisions relate to, among other things: (i) the establishment of the Liquidating Trust; (ii) substantive consolidation of certain Claims against the Debtors for Plan purposes; (iii) the dissolution of the Debtors; and (iv) the closing of the Chapter 11 Cases. The Plan therefore complies with Section 1123(a)(5) of the Bankruptcy Code.

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<sup>4</sup> Pursuant to Section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims are not required to be classified. Sections 2.1 and 2.4 of the Plan describe the treatment under the Plan of Administrative Expense Claims and Priority Tax Claims, respectively.

**c. Section 1123(a)(6) - Prohibition Against the Issuance of Nonvoting Equity Securities and Adequate Provisions for Voting Power of Classes of Securities.**

Because the Plan contemplates (i) the transfer of all of the Debtors' assets to the Liquidating Trust, (ii) the dissolution of the Debtors' corporate existences as soon as practicable after the Effective Date, and (iii) the issuance of no new securities, the Plan does not expressly provide for the inclusion in the charters of the Debtors a provision prohibiting the issuance of nonvoting equity securities. Nonetheless, because the Plan does not provide for the issuance of any securities, the issuance of nonvoting securities is impossible. Therefore, the Plan satisfies the requirement of Section 1123(a)(6) of the Bankruptcy Code.

**d. Section 1123(a)(7) - Selection of Directors and Officers in a Manner Consistent with the Interest of Creditors and Equity Security Holders and Public Policy.**

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.

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. The Liquidating Trustee has ample liquidation experience and was selected with the support of the Debtors' key constituents. The Liquidating Trust Committee that oversees the Liquidating Trustee shall initially consist of (i) three (3) members appointed by the First Lien Facility Agent, (ii) one (1) member appointed by the Second Lien Facility Agent, and (iii) one (1) member appointed by the Creditors' Committee. Thereafter, the Liquidating Trust Committee shall comprise individuals selected in accordance with the terms of the Liquidating Trust Agreement. The Plan therefore complies with Section 1123(a)(7) of the Bankruptcy Code, as appropriate for a liquidating plan, in a manner consistent with the interests of creditors and equity security holders and public policy.

**e. Section 1123(b)(1)-(2) - Impairment of Claims and Interests and Assumption, Assumption and Assignment or Rejection of Executory Contracts and Unexpired Leases.**

In accordance with Section 1123(b)(1) of the Bankruptcy Code, Article 4 of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims and Interests. In accordance with Section 1123(b)(2) of the Bankruptcy Code, Article 6 of the Plan provides for the rejection of all executory contracts and unexpired leases of the Debtors as of the Effective Date, except for those executory contracts and unexpired leases that (a) have been assumed, assumed and assigned or rejected pursuant to previous orders of the Bankruptcy Court, or (b) are the subject of a pending motion before the Bankruptcy Court with respect to the

assumption or assumption and assignment or rejection of such executory contracts and unexpired leases. The Plan is therefore consistent with Section 1123(b)(1)-(2) of the Bankruptcy Code.

**f. Section 1123(b)(3) - Retention, Enforcement and Settlement of Claims held by the Debtors.**

Pursuant to Section 1123(b)(3) of the Bankruptcy Code, except as otherwise provided in the Plan or this 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.

Unless otherwise ordered by the Court after notice and a hearing, from and after the Effective Date of the Plan, only the Liquidating Trustee shall be entitled to object to Claims. 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 dates specified in clause (x) and

(y) above. No other deadlines by which objections to Claims must be Filed have been established in these Chapter 11 Cases. In light of the foregoing, the Plan is consistent with Section 1123(b)(3) of the Bankruptcy Code.

**g. Section 1123(b)(4) – Sale of All or Substantially All of the Property of the Estate.**

Consistent with Section 1123(b)(4) of the Bankruptcy Code, the Plan effectuates the distribution of the proceeds of the sale of all or substantially all assets of the Estates under the Plan or previous sale orders of the Court. The Plan is therefore consistent with Section 1123(b)(4) of the Bankruptcy Code.

**h. Section 1123(b)(5) - Modification of the Rights of Holders of Claims.**

Article 5 of the Plan modifies or leaves unaffected, as the case may be, the rights of holders of each Class of Claims, and therefore, the Plan is consistent with Section 1123(b)(5) of the Bankruptcy Code.

**i. Section 1123(b)(6) - Other Provisions Not Inconsistent with Applicable Provisions of the Bankruptcy Code; Substantive Consolidation.**

The Plan includes additional appropriate provisions that are not inconsistent with applicable provisions of the Bankruptcy Code, including: (i) the provisions of Article 7 of the Plan regarding the means for executing and implementing the Plan; (ii) the provisions of Article 6 of the Plan governing the treatment of executory contracts and unexpired leases; (iii) the provisions of Article 10 of the Plan governing distributions on account of Allowed Claims, particularly as to the timing and calculation of amounts to be distributed; (iv) the provisions of Section 7.1 of the Plan with respect to the substantive consolidation of the Debtors with respect to the treatment of all Claims and Interests except for Other Secured Claims in Class 4; (v) the provisions of Section 12.6 of the Plan regarding the injunction with respect to

claims and interests treated under the Plan; (vi) the provisions of Sections 12.7 and 12.8 of the Plan regarding the releases with respect to the Debtor Releasees and the Creditor Releasees; and (vii) the provisions of Article 13 of the Plan regarding retention of jurisdiction by the Court over certain matters after the Effective Date. The Plan is therefore consistent with Section 1123(b)(6) of the Bankruptcy Code.

**j. Section 1123(d) - Cure of Defaults.**

Section 6.3 of the Plan provides for the satisfaction of cure amounts associated with each Remaining Contract (defined below) to be assumed pursuant to the Plan in accordance with Section 365(b)(1) of the Bankruptcy Code. The Plan is therefore in compliance with Section 1123(d) of the Bankruptcy Code.

**2. Section 1129(a)(2) - Compliance with Applicable Provisions of the Bankruptcy Code.**

The Debtors have complied with all applicable provisions of the Bankruptcy Code, as required by Section 1129(a)(2) of the Bankruptcy Code, including Section 1125 of the Bankruptcy Code and Bankruptcy Rules 3017 and 3018. The Disclosure Statement and the procedures by which the ballots for acceptance or rejection of the Plan were solicited and tabulated were fair, properly conducted and in accordance with Sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018 and the Disclosure Statement Order. Consistent with Section 12.5 of the Plan, the Debtors and their respective members, officers, directors, shareholders, employees, representatives, advisors, attorneys, financial advisors, investment bankers, or agents, as applicable, have acted in “good faith,” within the meaning of Section 1125(e) of the Bankruptcy Code. The Plan therefore complies with Section 1129(a)(2) of the Bankruptcy Code.

**3. Section 1129(a)(3) - Proposal of the Plan in Good Faith.**

The Debtors proposed the Plan in good faith and not by any means forbidden by law. In determining that the Plan has been proposed in good faith, the Court has examined the totality of the circumstances surrounding the formulation of the Plan. Based on the Disclosure Statement and the evidence presented at the Confirmation Hearing, the Court finds and concludes that the Plan has been proposed with the legitimate and honest purpose of liquidating the Debtors' estates and maximizing the returns available to creditors of the Debtors. Moreover, the Plan itself and the arms' length negotiations among the Debtors, the Creditors' Committee, the First Lien Facility Lenders, the Second Lien Facility Lenders and the Debtors' other constituencies leading to the Plan's formulation, as well as the overwhelming support of creditors for the Plan, provide independent evidence of the Debtors' good faith in proposing the Plan.

**4. Section 1129(a)(4) - Bankruptcy Court Approval of Certain Payments as Reasonable.**

Section 2.3 of the Plan provides that, 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 (including the application of any retainer held by 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 the Overpayment Amount 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.

The Court will review the reasonableness of the final fee applications under Sections 328 and 330 of the Bankruptcy Code and any applicable case law. The Court has authorized periodic payment of the fees and expenses of Professionals incurred in connection with these Chapter 11 Cases. All such fees and expenses, however, remain subject to final review for reasonableness by the Court. Thus, the Plan complies with Section 1129(a)(4) of the Bankruptcy Code.

**5. Section 1129(a)(5) - Disclosure of Identity of Proposed Management, Compensation of Insiders and Consistency of Management Proposals with the Interests of Creditors and Public Policy.**

Section 7.2.1 of the Plan provides that, on the Effective Date, the Debtors, on their own behalf and on behalf of the Beneficiaries, shall execute the Liquidating Trust Agreement. The initial Liquidating Trustee shall be Kip Horton of RPA Advisors, LLC. The appointment of the Liquidating Trustee is consistent with the interests of holders of Claims and Interests and with public policy. The Plan therefore complies with Section 1129(a)(5) of the Bankruptcy Code.

**6. Section 1129(a)(6) - Approval of Rate Changes.**

After the Confirmation Date, the Debtors will not have any businesses involving the establishment of rates over which any regulatory commission has or will have jurisdiction. Therefore, the provisions of Section 1129(a)(6) do not apply to the Plan.

**7. Section 1129(a)(7) - Best Interests of Holders of Claims and Interests.**

With respect to each Impaired Class of Claims or Interests of the Debtors, each holder of a Claim or Interest in such Impaired Class has either (a) accepted or is deemed to have accepted the Plan, or (b) will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date, that is not less than the amount such holder would receive or retain if the Debtors were liquidated on the Effective Date under chapter 7 of the Bankruptcy Code on an individual or consolidated basis. The Plan therefore complies with Section 1129(a)(7) of the Bankruptcy Code.

**8. Section 1129(a)(8) - Acceptance of Plan by Impaired Class.**

Pursuant to Sections 1124 and 1126 of the Bankruptcy Code: (a) as indicated in Section 4.1 of the Plan, Classes 1 and 4 are not Impaired by the Plan and are deemed to have accepted the Plan; and (b) as indicated in the Voting Affidavit, the requisite number and amount

of creditors and claims in each of Class 2, Class 3 and Class 5, as required by Section 1126(c) of the Bankruptcy Code, voted to accept the Plan.

Because the holders of Claims and Interests in Classes 6, 7 and 8 will not receive or retain any property on account of such Claims or Interests, Classes 6, 7 and 8 are deemed not to have accepted the Plan pursuant to Section 1126(g) of the Bankruptcy Code. Notwithstanding the lack of compliance with Section 1129(a)(8) of the Bankruptcy Code with respect to Classes 6, 7 and 8, the Plan is confirmable because, as described in Section I.C.14 below, the Plan, as modified, satisfies the “cramdown” requirements of Section 1129(b) of the Bankruptcy Code with respect to such Classes. Therefore, although the Plan does not meet the requirements of Section 1129(a)(8) of the Bankruptcy Code with respect to such Classes, it can be confirmed under the provisions of Section 1129(b) of the Bankruptcy Code.

**9. Section 1129(a)(9) - Treatment of Claims Entitled to Priority Pursuant to Section 507(a) of the Bankruptcy Code.**

a. Article 2 of the Plan provides for treatment of Administrative Expense Claims and Priority Tax Claims, subject to certain bar date provisions consistent with Bankruptcy Rules 3002 and 3003, in the manner required by Section 1129(a)(9) of the Bankruptcy Code.

b. Pursuant to Section 2.1 of 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, (i) Cash equal to the unpaid portion of such Allowed Administrative Expense Claim, or (ii) 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 (i) hereof; *provided, however*, that (a) 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 (b) Professional Claims shall be paid in accordance with Section 2.3 of the Plan.

c. Under Section 2.4 of the Plan, each holder of an Allowed Priority Tax Claim, at the sole option of the Debtors or, if after the Effective Date, the Liquidating Trustee, 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.

d. Pursuant to Section 2.5.2 of the Plan, all Tax Claims must be Filed on or before the later of: (i) thirty (30) days following the Effective Date; or (ii) to the extent applicable, sixty (60) days following the filing of a tax return for such Taxes (if such Taxes are assessed based on a tax return) for such tax year or period with the applicable Governmental Unit. Objections to any Tax Claims must be Filed within thirty (30) days after the later of the Administrative Expense Claims Bar Date or sixty (60) days following the filing of a tax return for such Taxes, which objection dates may be extended by application to the Bankruptcy Court.

Any holder of a Tax Claim that is required to File a request for payment of such Tax Claim and other amounts due related to such Taxes and which does not File such a Claim by the applicable bar date shall be forever barred from asserting any such Claim against any of the Debtors or any non-Debtor member of the Debtors' consolidated tax group, the Debtors' Estates, the Liquidating Trust or any other Entity, or their respective property, whether any such Claim is deemed to arise prior to, on, or subsequent to the Effective Date, and shall receive no distribution under the Plan or otherwise on account of such Claim.

e. Pursuant to Section 5.1 of the Plan, 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 holder of an Allowed Other Priority Claim will 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.

f. In light of the foregoing, the Plan complies with Section 1129(a)(9) of the Bankruptcy Code.

**10. Section 1129(a)(10) - Acceptance by at Least One Impaired Non-Insider Class.**

As indicated in the Voting Affidavit and as reflected in the record of the Confirmation Hearing, at least one non-insider Class of Claims or Interests that is Impaired under the Plan has voted to accept the Plan. Each of Class 2, Class 3 and Class 5 is Impaired and

has voted to accept the Plan. The Plan therefore complies with Section 1129(a)(10) of the Bankruptcy Code.

**11. Section 1129(a)(11) Feasibility of the Plan.**

Based on the testimony at the Confirmation Hearing regarding the value of the Debtors' Assets, including, without limitation, the Other Assets, the Plan sets forth means of payment of the Debtors' obligations under the Plan in accordance with the Bankruptcy Code and the Bankruptcy Rules and is feasible. Because the Plan and the Liquidating Trust Agreement provide for the liquidation of all of the Debtors' remaining assets, confirmation cannot be followed by any liquidation in addition to that prescribed by the Plan or the Liquidating Trust Agreement, nor would confirmation be followed by the need for further financial reorganization. The Plan therefore complies with Section 1129(a)(11) of the Bankruptcy Code.

**12. Section 1129(a)(12) - Payment of Bankruptcy Fees.**

Notwithstanding anything in the Plan to the contrary, on or before the Effective Date, all fees due and payable pursuant to 28 U.S.C. § 1930, shall be paid in full, in Cash. The Plan therefore complies with Section 1129(a)(12) of the Bankruptcy Code.

**13. Section 1129(a)(13) - Retiree Benefits.**

The Debtors are not obligated to pay retiree benefits (as defined in Section 1114(a) of the Bankruptcy Code) and thus are in compliance with Section 1129(a)(13) of the Bankruptcy Code.

**14. Section 1129(b) - Confirmation of the Plan Over the Non-Acceptance of Impaired Classes.**

Pursuant to Section 1129(b)(1) of the Bankruptcy Code, the Plan may be confirmed notwithstanding that Claims and Interests in Classes 6, 7 and 8 are Impaired and are deemed not to have accepted the Plan pursuant to Section 1126(g) of the Bankruptcy Code.

Nonetheless, the Plan meets the “cramdown” requirements for confirmation under Section 1129(b) of the Bankruptcy Code. Other than the requirement in Section 1129(a)(8) of the Bankruptcy Code with respect to Classes 6, 7 and 8, all of the requirements of Section 1129(a) of the Bankruptcy Code have been met. The Plan does not discriminate unfairly and is fair and equitable with respect to Classes 6, 7 and 8. No holders of Claims and Interests junior to the Claims and Interests in Classes 6, 7 and 8 will receive or retain any property on account of their Claims and Interests, and no holders of Claims or Interests senior to the Claims and Interests in Classes 6, 7 and 8 are receiving more than full payment on account of the Claims and Interests in such Classes. The Plan therefore is fair and equitable and does not discriminate unfairly with respect to any of these Classes, and complies with Section 1129(b) of the Bankruptcy Code.

**15. Section 1129(d) - Purpose of Plan.**

The primary purpose of the Plan is not avoidance of taxes or avoidance of the requirements of Section 5 of the Securities Act of 1933, 15 U.S.C. § 77e, and there has been no objection filed by any governmental unit asserting such avoidance. The Plan therefore complies with Section 1129(d) of the Bankruptcy Code.

**16. Modifications to the Plan.**

To the extent the terms of this Confirmation Order may be construed to constitute modifications to the Plan (the “Plan Modifications”), such Plan Modifications do not materially or adversely affect or change the treatment of any Claim against or Interest in any Debtor. Accordingly, pursuant to Bankruptcy Rule 3019, the Plan Modifications do not require additional disclosure under Section 1125 of the Bankruptcy Code or the solicitation of acceptances or rejections under Section 1126 of the Bankruptcy Code. Disclosure of the Plan Modifications on the record at the Confirmation Hearing constitutes due and sufficient notice thereof under the

circumstances of these Chapter 11 Cases. All references to the Plan in this Confirmation Order shall be to the Plan as so modified.

**17. Good Faith Participation.**

Based upon the record before the Court, the Debtors, the First Lien Facility Lenders, the First Lien Facility Agent, the Second Lien Facility Lenders, the Second Lien Facility Agent, the Creditors' Committee and their respective members, officers, directors, shareholders, employees, representatives, advisors, attorneys, financial advisors, investment bankers and agents have acted in good faith within the meaning of Section 1125(e) of the Bankruptcy Code in compliance with the provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all their respective activities relating to the Chapter 11 Cases, and the negotiation and pursuit of confirmation of the Plan. Therefore, they are entitled to the protections afforded by Section 1125(e) of the Bankruptcy Code and, to the extent set forth in Section III.G of this Confirmation Order, the exculpatory and injunctive provisions set forth in Article 12 of the Plan.

**II. CONCLUSIONS OF LAW.**

**A. JURISDICTION AND VENUE.**

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Debtors were and are qualified to be debtors under Section 109 of the Bankruptcy Code. Venue of the Chapter 11 Cases in the United States District Court for the District of Delaware was proper as of the Petition Date, pursuant to 28 U.S.C. § 1408, and continues to be proper.

**B. COMPLIANCE WITH SECTION 1129 OF THE BANKRUPTCY CODE.**

As set forth in Section I.C above, the Plan complies in all respects with the applicable requirements of Section 1129 of the Bankruptcy Code.

**C. APPROVAL OF COMPROMISES, EXCULPATION AND RELEASES PROVIDED UNDER THE PLAN.**

1. The Plan evidences a compromise that is the result of lengthy negotiations among the First Lien Facility Agent, the Second Lien Facility Agent and the Creditors' Committee. The settlements and compromises set forth in the Plan, as amended herein, including, without limitation, the Committee Settlement, (a) are approved as integral parts of the Plan; (b) are fair, equitable, reasonable and in the best interests of the Debtors and their respective Estates and the holders of Claims and Interests; (c) are approved as fair, equitable and reasonable, pursuant to, among other authorities, Section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019(a), to the extent applicable; and (d) are effective and binding in accordance with their terms.

2. Except as specifically set forth in Section III.G below, those exculpations, releases, waivers, and injunctions that are specifically set forth in the Plan, including in Article 12 of the Plan, as amended herein, (a) are approved as integral parts of the Plan; (b) are fair, equitable, reasonable and in the best interests of the Debtors and their respective Estates and the holders of Claims and Interests; (c) are approved as fair, equitable and reasonable; and (d) are effective and binding in accordance with their terms.

3. In approving the exculpations, releases and injunctions as described above, the Court has considered, among other things, the various factors set forth in In re Zenith Elecs. Corp., 241 B.R. 92, 110 (Bankr. D. Del. 1999).

**D. AGREEMENTS AND OTHER DOCUMENTS.**

The Debtors have disclosed all material facts relating to the various contracts, instruments, releases, indentures and other agreements or documents to be entered into, executed and delivered, adopted or amended by them in connection with the Plan, including, without

limitation, the Liquidating Trust Agreement (collectively, the “**Plan Documents**”). Pursuant to section 303 of the General Corporation Law of the State of Delaware and any comparable provision of the business corporation laws of any other state (collectively, the “**State Reorganization Effectuation Statutes**”), as applicable, no action of the Debtors’ Boards of Directors or the Liquidating Trustee will be required to authorize the Debtors to enter into, execute and deliver, adopt or amend, as the case may be, the Plan Documents, and following the Effective Date, each of the Plan Documents will be a legal, valid and binding obligation of the Debtors, enforceable against the Debtors in accordance with the respective terms thereof. Each of the Plan Documents is hereby approved and also shall be enforceable against the Liquidating Trust and the Liquidating Trustee from and after the Effective Date.

**E. ASSUMPTIONS, ASSUMPTIONS AND ASSIGNMENTS AND REJECTIONS OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES.**

Each pre- or post-Confirmation assumption, assumption and assignment or rejection of an executory contract or unexpired lease pursuant to Article 6 of the Plan, including any pre- or post-Confirmation assumption, assumption and assignment or rejection effectuated as a result of any amendment to Article 6 to the Plan, shall be legal, valid and binding upon the applicable Debtor and all non-debtor parties to such executory contract or unexpired lease, all to the same extent as if such assumption, assumption and assignment or rejection had been effectuated pursuant to an appropriate authorizing order of the Court entered prior to the Confirmation Date under Section 365 of the Bankruptcy Code.

### **III. ORDER.**

ACCORDINGLY, THE COURT HEREBY ORDERS THAT:

#### **A. CONFIRMATION OF THE PLAN.**

The Plan, a copy of which is attached hereto as Exhibit A, along with each of its provisions (whether or not specifically approved herein) and all operative exhibits and schedules thereto, is confirmed in each and every respect pursuant to Section 1129 of the Bankruptcy Code. The terms of the Plan and the exhibits and schedules thereto are incorporated by reference into this Confirmation Order, and the provisions of the Plan and this Confirmation Order are non-severable and mutually dependent. Notwithstanding the foregoing, if there is any direct conflict between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order shall control. All objections and other responses to, and statements and comments regarding, the Plan, other than those withdrawn with prejudice in their entirety prior to, or on the record at, the Confirmation Hearing are either (a) resolved or sustained on the terms set forth herein or (b) overruled.

The failure specifically to identify or refer to any particular provision of the Plan, the Liquidating Trust Agreement or any other agreement approved by this Confirmation Order in this Confirmation Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Plan, the Liquidating Trust Agreement and all other agreements approved by this Confirmation Order are approved in their entirety.

#### **B. EFFECTS OF CONFIRMATION.**

##### **1. Binding Nature of Plan Terms.**

Notwithstanding any otherwise applicable law, from and after the entry of this Confirmation Order, the terms of the Plan and this Confirmation Order shall be deemed binding upon (i) the Debtors, (ii) any and all holders of Claims or Interests (irrespective of whether such

Claims or Interests are Impaired under the Plan or whether the holders of such Claims or Interests accepted, rejected or are deemed to have accepted or rejected the Plan), (iii) any and all non-debtor parties to executory contracts and unexpired leases with any of the Debtors, and the compromises, releases, waivers, discharges and injunctions described in Section II.C above, and (iv) the respective heirs, executors, administrators, successors or assigns, if any, of any of the foregoing.

**2. Dissolution of Debtors.**

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.

**3. The Liquidating Trust.**

a. On the Effective Date, the Debtors, on their own behalf and on behalf of the Beneficiaries, shall execute the Liquidating Trust Agreement and take all steps necessary to establish the Liquidating Trust.

b. On the Effective Date, each of the Debtors shall transfer and assign all of its respective Assets (other than the Nycomed Litigation Proceeds) to the Liquidating Trust, and such Assets shall vest in 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 (i) the First Lien Facility Secured Claim and any First Lien Facility Adequate Protection Claim as provided in Section 5.2 of the Plan and (ii) the Second Lien Facility Secured Claim and any Second Lien Facility Adequate Protection Claim as provided in Section 5.3 of the Plan).

c. For all purposes under the Plan and the Plan Documents, and subject to the terms of the Liquidating Trust Agreement, the Liquidating Trust shall act through the Liquidating Trustee.

d. Any amounts received before, on or after the Effective Date by the First Lien Facility Agent and used to fund the Liquidating Trustee Fee Amount or Liquidating Trust First Lien Fees in accordance with the terms of the Plan shall not decrease the amount of the outstanding First Lien Facility Claims.

**4. Transfer of Equity Interests in Graceway Canada.**

On the Effective Date, (i) the Debtors' equity interests in Graceway Canada Company and (ii) the Debtors' Claims against Graceway Canada Company 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 Second Lien Facility Lenders as provided in Section 5.3 of the Plan; *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 Company and shall make distributions of the Canadian Distribution Amount as provided under the Plan.

**5. Approval of Executory Contract and Unexpired Lease Provisions and Related Procedures.**

The executory contract and unexpired lease provisions of Article 6 of the Plan are specifically approved. Any executory contracts and unexpired leases of the Debtors not assumed and assigned to the Purchaser or rejected prior to the Effective Date or with respect to which the Debtors have not Filed a Notice of Assumption and Assignment prior to the Effective Date (the “**Remaining Contracts**”) shall be rejected pursuant to Section 6.5 of the Plan.

Except as otherwise expressly set forth herein, all objections, if any, relating to the assumption, assumption and assignment, or rejection of Remaining Contracts, including but not limited to objections as to adequate assurance of future performance and/or cure amounts, are overruled. Notice of the time fixed for filing objections to such assumption, assumption and assignment, or rejection was adequate, pursuant to the terms of the Disclosure Statement Order and in accordance with the precepts of due process.

Except for those executory contracts and unexpired leases that (i) have been previously assumed, assumed and assigned or rejected pursuant to previous orders of the Court,

irrespective of whether such assumption or rejection has yet to occur on the Effective Date, or (ii) are the subject of a pending motion before the Court with respect to the assumption or 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 nothing 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.

**6. Prosecution of Causes of Action by the Liquidating Trust.**

On the Confirmation Date, the Creditors' Committee shall be dissolved and the members of, and Professionals retained by, the Creditors' Committee shall have no further duties or obligations after the Confirmation Date. The Liquidating Trustee, as the legal representative of the Liquidating Trust, shall be authorized without further order to pursue and liquidate all Causes of Action and, in connection therewith he shall be deemed substituted as the plaintiff and a party in interest in the place and stead of the Creditors' Committee or the Debtors pursuant to Fed. R. Civ. P. 25 and Bankruptcy Rules 7025 and 9014, in any and all actions, proceedings, contested matters, applications and motions.

**C. CLAIMS, BAR DATES AND OTHER CLAIMS MATTERS.**

**1. Bar Dates for Administrative Expense Claims Other Than Tax Claims.**

Other than with respect to (i) Administrative Expense Claims for which the Bankruptcy Court previously has established a Bar Date, and (ii) Tax Claims addressed in Section III.C.2 below, any and all requests for payment or proofs of Administrative Expense Claims, including Claims of all Professionals or other Entities requesting compensation or

reimbursement of expenses pursuant to Bankruptcy Code Sections 327, 328, 330, 331, 503(b) or 1103 for services rendered on or before the Effective Date (including any compensation requested by any Professional or any other Entity for making a substantial contribution in the Chapter 11 Cases), must be Filed and served on the Liquidating Trustee and its counsel no later than the Administrative Expense Claims Bar Date. Objections to any such Administrative Expense Claims must be Filed and served on the claimant no later than sixty (60) days after the Administrative Expense Claims Bar Date, which date may be extended by application to the Bankruptcy Court. The Liquidating Trustee shall use reasonable efforts to promptly and diligently pursue resolution of any and all Disputed Administrative Expense Claims.

Holders of Administrative Expense Claims, including all Professionals or other Entities requesting compensation or reimbursement of expenses pursuant to Bankruptcy Code Sections 327, 328, 330, 331, 503(b) or 1103 for services rendered on or before the Effective Date (including any compensation requested by any Professional or any other Entity for making a substantial contribution in the Chapter 11 Cases), that are required to File a request for payment or proof of such Claims and that do not File such requests or proofs of Claim on or before the Administrative Expense Claims Bar Date shall be forever barred from asserting such Claims against any of the Debtors, their Estates, or the Liquidating Trust.

## **2. Bar Dates for Tax Claims.**

All Tax Claims must be Filed on or before the later of: (i) thirty (30) days following the Effective Date; or (ii) to the extent applicable, sixty (60) days following the filing of a tax return for such Taxes (if such Taxes are assessed based on a tax return) for such tax year or period with the applicable Governmental Unit. Objections to any Tax Claims must be Filed within thirty (30) days after the later of the Administrative Expense Claims Bar Date or sixty

(60) days following the filing of a tax return for such Taxes, which objection dates may be extended by application to the Bankruptcy Court.

Any holder of a Tax Claim that is required to File a request for payment of such Tax Claim and other amounts due related to such Taxes and which does not File such a Claim by the applicable bar date shall be forever barred from asserting any such Claim against any of the Debtors or any non-Debtor member of the Debtors' consolidated tax group, the Debtors' Estates, the Liquidating Trust or any other Entity, or their respective property, whether any such Claim is deemed to arise prior to, on, or subsequent to the Effective Date, and shall receive no distribution under the Plan or otherwise on account of such Claim.

**3. Bar Date for Rejection Damages Claims and Related Procedures.**

If the rejection of an executory contract or unexpired lease pursuant to Section 6.5 of the Plan gives rise to a Claim for damages by the other party or parties to the executory contract or unexpired lease, such Claim 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.

**D. ACTIONS IN FURTHERANCE OF THE PLAN.**

The approvals and authorizations specifically set forth in this Confirmation Order are nonexclusive and are not intended to limit the authority of the Debtors prior to the Effective Date and the Liquidating Trustee on and after the Effective Date to take any and all actions necessary or appropriate to implement, effectuate and consummate, among other things, the Plan, the Liquidating Trust Agreement, this Confirmation Order or the transactions contemplated thereby or hereby. In addition to the authority to execute and deliver, adopt or amend, as the case may be, the contracts, instruments, releases and other agreements specifically granted and approved in this Confirmation Order, the Debtors prior to the Effective Date and the Liquidating

Trustee on and after the Effective Date are authorized and empowered, without further action in the Court, to take any and all such actions as they may determine are necessary or appropriate to implement, effectuate and consummate, among other things, the Plan, the Liquidating Trust Agreement, this Confirmation Order or the transactions contemplated thereby or hereby. Pursuant to Section 1142 of the Bankruptcy Code, and the State Reorganization Effectuation Statutes, no action of the Debtors' Boards of Directors or the Liquidating Trustee shall be required for any Debtor to enter into, execute and deliver, adopt or amend, as the case may be, any of the contracts, instruments, releases and other agreements or documents and plans to be entered into, executed and delivered, adopted or amended in connection with the Plan and, following the Effective Date, each of such contracts, instruments, releases and other agreements shall be a legal, valid and binding obligation of the applicable Debtor, enforceable against such Debtor and its successors (including the Liquidating Trust) in accordance with its terms subject only to bankruptcy, insolvency and other similar laws affecting creditors' rights generally and to general equitable principles. The Debtors prior to the Effective Date and the Liquidating Trustee on and after the Effective Date are authorized to execute, deliver, File or record such contracts, instruments, financing statements, releases mortgages, deeds, assignments, leases, applications, registration statements, reports or other agreements or documents and take such other actions as they may determine are necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan, this Confirmation Order and the transactions contemplated thereby or hereby, all without further application to or order of the Court and whether or not such actions or documents are specifically referred to in the Plan, the Disclosure Statement, the Disclosure Statement Order, this Confirmation Order or the exhibits to any of the foregoing. The signature of any officer of any Debtor prior to or on the Effective Date and the Liquidating Trustee or his

designee after the Effective Date on a document executed in accordance with this Section III.D shall be conclusive evidence of such Person's determination that such document and any related actions are necessary and appropriate to effectuate and/or further evidence the terms and conditions of the Plan, this Confirmation Order or the transactions contemplated thereby or hereby. Any officer of any Debtor prior to the Effective Date and the Liquidating Trustee or his designee on or after the Effective Date are authorized to certify or attest to any of the foregoing actions. Pursuant to Section 1142 of the Bankruptcy Code, to the extent that, under applicable nonbankruptcy law, any of the foregoing actions would otherwise require the consent or approval of the stockholders or directors of any of the Debtors, this Confirmation Order shall constitute such consent or approval, and such actions are deemed to have been taken by unanimous action of the directors and stockholders of the appropriate Debtor.

**E. INDEMNIFICATION.**

The exculpations, injunctions and releases contained in Article 12 of the Plan (as amended and restated by this Confirmation Order) are approved, are incorporated herein to the extent approved, are so ordered and shall be immediately effective on the Effective Date of the Plan without further act or order.

**F. RESOLUTION OF CERTAIN FORMAL AND INFORMAL OBJECTIONS TO CONFIRMATION.**

Formal and informal objections to Confirmation are hereby resolved on the terms and subject to the conditions set forth below. The compromises and settlements contemplated by the resolution of such objections are fair, equitable and reasonable, are in the best interests of the Debtors, their respective Estates and Creditors and are expressly approved pursuant to Bankruptcy Rule 9019.

1. Nothing in this Order or the Plan releases, nullifies, precludes, or enjoins the enforcement of any liability to a governmental unit under environmental statutes or regulations that any entity would be subject to as the owner or operator of real property after the date of entry of this Order or, solely with respect to the Purchaser and its affiliates, after the date of entry of the Sale Order.

2. Section 1.41 of the Plan shall be amended to state as follows:

**1.41 Contingency Fee Counsel Fees and Expenses** means the fees and expenses incurred by counsel retained by the Liquidating Trust in pursuing the Causes of Action, which, as to fees, shall be in an amount that does not exceed fifteen percent (15%) of any Causes of Action Proceeds and on such other terms and provisions (including a percentage of the applicable Causes of Action Proceeds greater than fifteen percent (15%)) acceptable to the Liquidating Trustee after consultation with the Liquidating Trust Committee.

3. Notwithstanding Section 9.3 of the Plan, the United States may amend its proofs of Claim after Confirmation of the Plan without court order. All rights of the United States under Section 502 of Bankruptcy Code with respect to a claim or amended claim of the United States are preserved.

4. Notwithstanding any provision to the contrary in the Plan, the Order confirming the Plan, and any implementing Plan documents, nothing shall: (1) affect the rights of the United States to assert setoff and recoupment and such rights are expressly preserved; (2) require the Internal Revenue Service (“**IRS**”) to seek Bankruptcy Court approval prior to amending any of its claims and all rights of the IRS under Sections 502 and 503 of the Bankruptcy Code with respect to a claim or an amended claim of the IRS are preserved; or (3) require the IRS to file an administrative claim in order to receive payment for any liability described in Sections 503(b)(1)(B) and (C) in accordance with Section 503(b)(1)(D) of the Bankruptcy Code.

5. Nothing in the Plan shall be deemed to waive, release or limit the setoff or recoupment rights, if any, of any Creditor.

6. Payment of the United States Trustee Quarterly Fees. All fees due and payable pursuant to Section 1930 of Title 28 of the United States Code prior to the Effective Date shall be paid by the Debtors on the Effective Date. On and after the Effective Date, the Liquidating Trustee shall pay any and all such fees when due and payable, and shall file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the United States Trustee; provided, however, that nothing contained in this sentence shall obligate the Liquidating Trustee to prepare or file any reports other than those reports required by Section 7.12 of the Plan. Notwithstanding the substantive consolidation of the Debtors provided for by the Plan, each and every one of the Debtors shall remain obligated to pay quarterly fees to the Office of the United States Trustee until the earliest of that particular Debtor's case being closed, dismissed or converted to a case under Chapter 7 of the Bankruptcy Code.

7. Section 1.46 of the Plan is hereby amended and restated as follows:

**1.46 Debtor Releasees** means (i) the officers, directors, shareholders, members and/or enrollees and employees of the Debtors (including their estates and beneficiaries), in each case as of the Petition Date or that have become officers and/or directors thereafter, including GTCR,; (ii) the First Lien Facility Agent and its agents, attorneys and other professionals; (iii) the First Lien Facility Lenders in their capacity as such; (iv) the Second Lien Facility Agent and its agents, attorneys and other professionals; (v) the Second Lien Facility Lenders in their capacity as such; and (vi) the Debtors' Affiliates and their officers and directors, including GTCR.

8. Section 12.5 of the Plan is hereby amended and restated as follows:

**12.5 Exculpation.** None of the Debtors, the Liquidating Trustee (solely with respect to the Liquidating Trustee's actions prior to and including the Effective Date), 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 (with respect to the Debtors, as to officers as of the Petition Date or that have become officers thereafter), directors (with respect to the Debtors, as to directors as of the Petition Date or that have become directors thereafter), advisors, attorneys, financial advisors, investment bankers or agents, or any of such parties' successors and assigns, shall have or incur any obligation 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, advisors, attorneys, financial advisors, investment bankers, agents or related professionals, 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 postpetition activities leading to the promulgation and Confirmation of the Plan except fraud, willful misconduct or gross negligence as determined by a Final Order. Nothing in Section 12.5 of the Plan, as amended by the Confirmation Order, shall:

(i) be construed as a release of any entity's fraud, gross negligence or willful misconduct with respect to matters set forth in Section 12.5 of the Plan, as amended by the Confirmation Order, 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, 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, the Liquidating Trustee (solely with respect to the Liquidating Trustee's actions prior to and including the Effective Date), 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 (with respect to the Debtors, as to officers as of the Petition Date or that have become officers thereafter), directors (with respect to the Debtors, as to directors as of the Petition Date or that have become directors thereafter), advisors, attorneys, financial advisors, investment bankers, related professionals or agents, 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 postpetition activities leading to the promulgation and Confirmation of the Plan except fraud, willful misconduct or gross negligence as determined by a Final Order.

9. Section 12.8 of the Plan is hereby amended and restated as follows:

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 who voted in favor of the Plan 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' or the Liquidating Trustee's 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 any Creditor Releasee, except fraud, willful misconduct or gross negligence as determined by a Final Order.

10. Section 12.9 of the Plan is hereby deleted.

11. Notwithstanding any provision to the contrary in the Plan, the Debtors shall serve the Notice of Effective Date, as set forth in Section 11.5 of the Plan, on the taxing authorities set forth on Exhibit C of the *Motion of the Debtors for the Entry of an Order (a) Authorizing, but not Directing, the Debtors to Remit and Pay Certain Taxes and Fees and (b) Authorizing and Directing Banks and Other Financial Institutions to Honor Related Checks and Electronic Payment Requests* [Docket No. 8].

**G. EXCULPATION, INJUNCTION AND CONSOLIDATION OF UNSECURED CLAIMS.**

**1. Exculpation.**

None of the Debtors, the Liquidating Trustee (solely with respect to the Liquidating Trustee's actions prior to and including the Effective Date), 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 (with respect to the Debtors, as to officers as of the Petition Date or that have become officers thereafter), directors (with respect to the Debtors, as to directors as of the Petition Date or that have become directors thereafter), advisors, attorneys, financial advisors, investment bankers or agents, or any of such parties' successors and assigns, shall have or incur any obligation 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, advisors, attorneys, financial advisors, investment bankers, agents or related professionals, 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 postpetition activities leading to the promulgation and Confirmation of the Plan except fraud, willful misconduct or gross negligence as determined by a Final Order. Nothing in Section 12.5 of the Plan, as amended herein, shall: (i) be construed as a release of any entity's fraud, gross negligence or willful misconduct with respect to matters set forth in Section 12.5 of the Plan, as amended herein, 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, 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, the Liquidating Trustee (solely with respect to the Liquidating Trustee's actions prior to and including the Effective Date), 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 (with respect to the Debtors, as to officers as of the Petition Date or that have become officers thereafter), directors (with respect to the Debtors, as to directors as of the Petition Date or that have become directors thereafter), advisors, attorneys, financial advisors, investment bankers, related professionals or agents, 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 postpetition activities leading to the promulgation and Confirmation of the Plan except fraud, willful misconduct or gross negligence as determined by a Final Order.

## **2. Injunction.**

Except as otherwise specifically provided in the Plan or this 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 by the Plan.

**3. Releases.**

The releases set forth in Sections 12.7 and 12.8 of the Plan are hereby approved as modified herein.

**4. Substantive Consolidation of Claims against Debtors.**

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. Substantive consolidation is hereby ordered with respect to the treatment of all Claims and Interests other than Class 4 Claims: on the Effective Date, (i) all Class 6 Intercompany Claims will be eliminated (except to the extent such Claims are by a Debtor against a non-Debtor Affiliate); (ii) no distributions shall be made under the Plan on account of any equity interest held by a Debtor in any other Debtor; (iii) all Assets and liabilities of the Debtors will be merged or treated as though they were merged; (iv) 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 (v) 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.

Effective upon and after the Effective Date, the Court hereby orders the substantive consolidation of the Debtors to the extent set forth in Article 7 of the Plan and this Confirmation Order.

**H. SUBSTANTIAL CONSUMMATION.**

The substantial consummation of the Plan, within the meaning of Section 1127 of the Bankruptcy Code, is deemed to occur on the first date distributions are made in accordance with the terms of the Plan to holders of any Allowed Claims.

**I. RETENTION OF JURISDICTION.**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date and the transfer of Assets to the Liquidating Trust, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases after the Effective Date as is legally permissible, including jurisdiction to:

a) 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;

b) 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;

c) 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;

d) 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;

e) Enter Orders approving the Liquidating Trustee's post-Confirmation sale or other disposition of Assets of the Liquidating Trust;

f) Ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan and the Liquidating Trust Agreement;

g) 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;

h) Hear and determine matters concerning state, local or federal taxes in accordance with Sections 346, 505 or 1146 of the Bankruptcy Code;

i) 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;

j) Hear and determine any matters concerning the enforcement of the provisions of Article 12 of the Plan and any other exculpations or injunctions contemplated by the Plan;

k) 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;

l) 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;

m) 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;

n) Enforce any injunctions entered in connection with or relating to the Plan or the Confirmation Order;

o) 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;

p) 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;

q) Enter any Orders in aid of prior Orders of the Bankruptcy Court; and

r) Enter a final decree closing the Debtors' Chapter 11 Cases.

**J. CONTINUATION OF 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.

**K. EXEMPTION FROM CERTAIN TRANSFER TAXES.**

Pursuant to Section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of any Security or the making or delivery of any instrument of transfer under the Plan may not be taxed under any law imposing a stamp tax, use tax, sales tax or similar tax. Any sale of any Asset of the Debtors or the Liquidating Trust occurring after or upon the Effective Date shall be deemed to be in furtherance of the Plan.

**L. REVERSAL.**

If any or all of the provisions of this Confirmation Order are hereafter reversed, modified or vacated by subsequent order of this Court or any other court, such reversal, modification or vacatur shall not affect the validity or enforceability of the acts or obligations incurred or undertaken under or in connection with the Plan prior to the Debtors' receipt of written notice of such order. Notwithstanding any such reversal, modification or vacatur of this Confirmation Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on, this Confirmation Order prior to the effective date of such reversal, modification or vacatur shall be governed in all respects by the provisions of this Confirmation Order and the Plan and all related documents or any amendments or modifications thereto.

**M. NOTICE OF ENTRY OF CONFIRMATION ORDER.**

1. The Debtors are directed to serve a notice of the entry of this Confirmation Order and the establishment of bar dates for certain Claims hereunder, substantially in the form of Exhibit B attached hereto and incorporated herein by reference (the “**Confirmation Notice**”), on all parties that received notice of the Confirmation Hearing, no later than 15 Business Days after the Confirmation Date and such service shall be deemed to comply with the requirements of Bankruptcy Rules 2002(a)(7), 2002(f)(3) and (f)(7), 2002(l), 3002(c)(4) and 3020(c)(2).

2. Pursuant to Bankruptcy Rule 9008, the Debtors are directed to publish the Confirmation Notice once in the national edition of *The Wall Street Journal* no later than 15 Business Days after the Confirmation Date.

Dated: \_\_\_\_\_, 2012  
Wilmington, Delaware

---

Peter J. Walsh  
United States Bankruptcy Judge

**EXHIBIT A**

**Plan**

**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

**FIRST AMENDED JOINT PLAN OF LIQUIDATION OF GRACEWAY  
PHARMACEUTICALS, LLC, et al.**

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Attorneys for the Debtors and  
Debtors-in-Possession

Dated: February 28, 2012

---

<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**

- 1.** List of Debtors
- 2.** Liquidating Trust Agreement
- 3.** Assumption Schedule

## INTRODUCTION

Graceway Pharmaceuticals, LLC (“Graceway”), a Delaware limited liability company, and its Affiliates and Subsidiaries listed on Exhibit 1 hereto (collectively with Graceway, the “Debtors”) propose the First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al. (the “Plan”) for the resolution and satisfaction of all Claims against and Interests in the Debtors. The Debtors are the proponents of this Plan within the meaning of Section 1129 of the Bankruptcy Code. All capitalized terms not defined in this introduction have the meanings ascribed to them in Article I of this Plan. Reference is made to the Disclosure Statement, distributed contemporaneously herewith, for a discussion of the Debtors’ history, businesses, resolution of material disputes, significant asset sales, financial projections for the liquidation and distribution of the Debtors’ remaining Assets and a summary and analysis of the Plan and certain related matters.

This is a liquidating Plan pursuant to which substantially all of the Debtors’ Assets are to be transferred to a liquidating trust (subject to existing Liens and encumbrances, to the extent specified in the Plan) that will liquidate such Assets and make distributions to holders of Allowed Claims, whose Claims against the Debtors will be exchanged for a beneficial interest in the Liquidating Trust.

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 hereto as Exhibit 1.

Under Section 1125(b) of the Bankruptcy Code, a vote to accept or reject the Plan cannot be solicited from holders of Claims and/or Interests until such time as the Disclosure Statement has been approved by the Bankruptcy Court. The Debtors urge all holders of Claims entitled to vote on the Plan to read the Plan and the Disclosure Statement in their entirety before voting to accept or reject the Plan. To the extent, if any, that the Disclosure Statement is inconsistent with the Plan, the Plan will govern. No solicitation materials other than the Disclosure Statement and any schedules and exhibits attached thereto or referenced therein, or otherwise enclosed with the Disclosure Statement served by the Debtors on interested parties, have been authorized by the Debtors or the Bankruptcy Court for use in soliciting acceptances of the Plan. Subject to certain restrictions and requirements set forth in Section 1127 of the Bankruptcy Code and Federal Bankruptcy Rule 3019, the Debtors expressly reserve the right, after consultation with the First Lien Facility Agent, the Second Lien Facility Agent and the Creditors' Committee, to alter, amend, modify, revoke, or withdraw this Plan prior to its substantial consummation.

**ARTICLE 1**  
**DEFINITIONS, INTERPRETATION AND RULES OF CONSTRUCTION**

**A. Scope of Definitions.** For the purposes of this Plan, except as expressly provided or unless the context otherwise requires, all capitalized terms not otherwise defined shall have the meanings ascribed to them in Article 1 of this Plan. Any term used in this Plan that is not defined herein, but is defined in the Bankruptcy Code or the Federal Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Federal Bankruptcy Rules, respectively. Whenever the context requires, capitalized terms shall include the plural as well as the singular number, the masculine gender shall include the feminine, and the feminine gender shall include the masculine.

**B. Definitions.** In addition to such other terms as are defined in other Sections of the Plan, the following terms (which appear in the Plan as capitalized terms) shall have the meanings ascribed to them in this Article 1 of the Plan.

**1.1 1.0% Holdback Account** means the account into which \$4,213,125.55 of the Sale Proceeds was deposited on December 2, 2011 pursuant to paragraph 30(vi) of the Sale Order.

**1.2 363 Sale** means the sale approved under the Sale Order and consummated on December 2, 2011.

**1.3 549 Avoidance Action** means any avoidance or equitable subordination or recovery actions under Bankruptcy Code Section 549, but excluding Released Claims.

**1.4 549 Avoidance Action Proceeds** means the proceeds of any 549 Avoidance Actions actually received by the Debtors' Estates or the Liquidating Trust, whether obtained through litigation, settlement or otherwise, net of the fees and expenses incurred in obtaining such proceeds (including Contingency Fee Counsel Fees and Expenses, if applicable).

**1.5 Acquired Assets** means “Acquired Assets,” as defined in the Asset Purchase Agreement.

**1.6 Administrative Expense Claim** means any right to payment for any cost or expense of administration of the Debtors’ Chapter 11 Cases asserted or arising under Sections 503, 507(a)(2), or 507(b) of the Bankruptcy Code, including, any (i) actual and necessary cost or expense of preserving the Debtors’ Estates or operating the business of the Debtors arising on or after the Petition Date, (ii) payment to be made under this Plan to cure a default on an executory contract or unexpired lease that has been assumed on or after the Petition Date (and prior to the occurrence of such default) pursuant to Section 365 of the Bankruptcy Code, (iii) cost, indebtedness or contractual obligation duly and validly incurred or assumed by the Debtors in the ordinary course of business arising on or after the Petition Date, (iv) compensation or reimbursement of expenses of Professionals arising on or after the Petition Date, to the extent allowed by the Bankruptcy Court under Section 330(a) or Section 331 of the Bankruptcy Code, including, without limitation, all Allowed Professional Claims, and (v) fees or charges assessed against the Debtors’ Estates under Section 1930 of title 28 of the United States Code.

**1.7 Administrative Expense Claims Bar Date** means the first Business Day that is at least thirty-five (35) days following the Effective Date or such other date ordered by the Bankruptcy Court.

**1.8 Affiliate** shall have the meaning set forth in Section 101(2) of the Bankruptcy Code.

**1.9 Allowed Claim or Allowed Interest** means a Claim against or Interest in any of the Debtors or any portion thereof (i) that has been allowed by a Final Order, (ii) as to which, on or by the Effective Date, (a) no proof of Claim or Interest has been Filed with the

Bankruptcy Court and (b) the liquidated and noncontingent amount of which is Scheduled, other than a Claim or Interest that is Scheduled at zero, in an unknown amount, or as disputed, (iii) for which a proof of Claim or Interest in a liquidated amount has been timely Filed with the Bankruptcy Court pursuant to the Bankruptcy Code and as to which either (a) no objection to its allowance has been Filed within the applicable periods of limitation fixed by the Plan, the Bankruptcy Code, or by any Order of the Bankruptcy Court sought pursuant to Section 9.1 of the Plan or otherwise entered by the Bankruptcy Court or (b) any objection to its allowance has been settled or withdrawn, or has been denied by a Final Order, or (iv) that is expressly allowed in the Plan.

**1.10 Allowed [ ] Claim or Allowed [ ] Interest** means an Allowed Claim or Allowed Interest in the particular category or Class identified.

**1.11 Approving Majority First Lien Lenders** means at least two First Lien Facility Lenders holding in aggregate a majority of the then outstanding First Lien Facility Claims held by the Consenting First Lien Lenders.

**1.12 Asset Purchase Agreement** means the Asset Purchase Agreement dated as of November 18, 2011, between the Debtors, Purchaser and Graceway Canada, as amended, and all other documentation related thereto or contemplated thereby.

**1.13 Assets** means all legal or equitable prepetition and post-petition interests of the Debtors or, to the extent transferred and assigned by the Debtors to the Liquidating Trust pursuant to Section 7.2.3 below on the Effective Date, all legal or equitable interests of the Liquidating Trust, in any and all real or personal property of any nature, including any real estate, buildings, structures, improvements, privileges, rights, easements, leases, subleases, licenses, goods, materials, supplies, furniture, fixtures, equipment, work in process, accounts,

chattel paper, tax refunds, net operating losses, Cash, deposit accounts, reserves, deposits, equity interests, contractual rights, intellectual property rights, Claims, Causes of Action (including, without limitation, Avoidance Actions), assumed executory contracts and unexpired leases, other general intangibles, and the proceeds, products, offspring, rents or profits thereof.

**1.14 Assumed** (including the term “Assumption” and any variants and derivatives thereof) means assumed by the Purchaser pursuant to the Asset Purchase Agreement.

**1.15 Assumed Liabilities** means “Assumed Liabilities,” as defined in the Asset Purchase Agreement.

**1.16 Assumption Schedule** has the meaning given to such term in Section 6.2 of the Plan.

**1.17 Avoidance Action** means 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 and any other avoidance or similar action under the Bankruptcy Code or similar law of any state or foreign jurisdiction, but excluding Released Claims and 549 Avoidance Actions.

**1.18 Avoidance Action Proceeds** means the proceeds of any Avoidance Actions actually received by the Debtors’ Estates or the Liquidating Trust, whether obtained through litigation, settlement or otherwise, net of the fees and expenses incurred in obtaining such proceeds (including Contingency Fee Counsel Fees and Expenses, if applicable).

**1.19 Bankruptcy Code** means title 11 of the United States Code, as in effect on the Petition Date and as thereafter amended, as applicable in the Chapter 11 Cases.

**1.20 Bankruptcy Court** means the United States Bankruptcy Court for the District of Delaware or any other court of the United States having jurisdiction over the Chapter 11 Cases.

**1.21 Bankruptcy Rules** means the Federal Bankruptcy Rules and the Local Bankruptcy Rules for the District of Delaware, as in effect on the Petition Date and as thereafter amended, as applicable from time to time in the Chapter 11 Cases.

**1.22 Bar Date** means December 30, 2011, which was established by the Bankruptcy Court as the deadline for filing proofs of Claims relating to prepetition Claims against the Debtors.

**1.23 Beneficiaries** means the holders of Allowed Claims as may be determined from time to time in accordance with the Plan and the Liquidating Trust Agreement, each of whom shall receive beneficial interests in the Liquidating Trust.

**1.24 Bid Procedures Order** means 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 [Docket No. 119].

**1.25 Budget** means the “Approved Budget” as defined in the DIP Order, as amended from time to time.

**1.26 Business Day** means any day other than a Saturday, Sunday or a “legal holiday” (as such term is defined in Federal Bankruptcy Rule 9006(a)(6)).

**1.27 Canadian Distribution Amount** means the aggregate amount of 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.

**1.28 Cash** means legal tender accepted in the United States of America for the payment of public and private debts, currently denominated in United States Dollars.

**1.29 Causes of Action** means, without limitation, any and all actions, causes of action, Avoidance Actions, 549 Avoidance Actions, controversies, liabilities, obligations, rights, suits, damages, judgments, Claims and demands whatsoever owned by any of the Debtors, whether known or unknown, reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, secured or unsecured, whether assertable directly, indirectly, derivatively or in any representative or other capacity, existing or hereafter arising, in law, equity, or otherwise, based in whole or in part upon any act, failure to act, error, omission, transaction, occurrence or other event arising or occurring prior to the Petition Date or during the course of the Chapter 11 Cases, through and including the Effective Date, including, without limitation, the Debtors' rights under the Asset Purchase Agreement to the Nycomed Litigation Proceeds, but excluding Released Claims.

**1.30 Causes of Action Proceeds** means the proceeds of any Causes of Action actually received by the Debtors' Estates or the Liquidating Trust, whether obtained through litigation, settlement or otherwise.

**1.31 CCR Account** means the "CCR Account," as defined in the Sale Order, into which \$17,684,000 was deposited on December 2, 2011 and in which approximately \$17,289,344.44 remains as of the date hereof for the sole purpose of paying liabilities permitted by the Budget and/or the Sale Support Agreement 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 Orders approving the Prepetition Claims Motions or (b) Allowed Administrative Expense Claims.

**1.32 Chapter 11 Cases** means the chapter 11 cases of the Debtors pending before the Bankruptcy Court as set forth in Exhibit I hereto and as being jointly administered with one another under Case No. 11-13036 (PJW), and as to any Debtor individually, a Chapter 11 Case.

**1.33 Claim** has the meaning ascribed to such term in Section 101(5) of the Bankruptcy Code, as construed by Section 102(2) of the Bankruptcy Code.

**1.34 Class** means a group of Claims or Interests as classified in a particular class under the Plan pursuant to Section 1122 of the Bankruptcy Code.

**1.35 Committee Settlement** means the settlement of the objections of the Creditors' Committee to the Sale Motion and the Sale Allocation Motion set forth on the record at the hearing on the Sale Motion and the Sale Allocation Motion on November 22, 2011, pursuant to which (a) the First Lien Facility Agent and certain First Lien Facility Lenders agreed, subject to confirmation of a joint plan of liquidation incorporating the terms of such settlement, to release their respective Liens and Claims, including the First Lien Facility Secured Claim, any First Lien Facility Adequate Protection Claim and any First Lien Facility Deficiency Claim, on the Estate Fund Amount, the Liquidating Trustee Fee Amount and 25% of all Avoidance Action Proceeds other than 549 Avoidance Action Proceeds, and the First Lien Facility Agent (for the benefit of the First Lien Claimholders) received in exchange therefor any Canadian Distribution Amount in excess of the Estate Fund Amount, 75% of all Avoidance Action Proceeds and 100% of all 549 Avoidance Action Proceeds, all in accordance with the terms of this Plan; and (b) the Creditors' Committee agreed not to assert any Claim or Cause of Action against the First Lien Facility Agent or the First Lien Facility Lenders.

**1.36 Confirmation** means entry of the Confirmation Order by the Bankruptcy Court.

**1.37 Confirmation Date** means the date on which the Bankruptcy Court enters the Confirmation Order on its docket, within the meaning of Federal Bankruptcy Rules 5003 and 9021.

**1.38 Confirmation Hearing** means the duly noticed hearing held by the Bankruptcy Court to consider Confirmation of the Plan pursuant to Bankruptcy Code Section 1128, including any continuances thereof.

**1.39 Confirmation Order** means the Order of the Bankruptcy Court confirming the Plan pursuant to Section 1129 of the Bankruptcy Code in form and substance reasonably acceptable to the Debtors and the First Lien Facility Agent.

**1.40 Consenting First Lien Lenders** means each of the First Lien Facility Lenders party to the Sale Support Agreement.

**1.41 Contingency Fee Counsel Fees and Expenses** means the fees and expenses incurred by counsel retained by the Liquidating Trust in pursuing the Causes of Action, which, as to fees, shall be in an amount that does not exceed fifteen percent (15%) of any Causes of Action Proceeds and on such other terms and provisions acceptable to the Liquidating Trustee after consultation with the Liquidating Trust Committee.

**1.42 Creditor** means any Entity who holds a Claim against any of the Debtors.

**1.43 Creditor Releasees** means (i) the officers, directors, shareholders, members and/or enrollees, employees, representatives, advisors, attorneys, financial advisors, investment bankers, or agents of the Debtors (including their estates and beneficiaries), in each case as of the Petition Date or that have become officers and/or directors thereafter, including

GTCR; (ii) the 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, and its agents, attorneys and other professionals acting in conjunction with the Chapter 11 Cases, and the Creditors' Committee's agents, attorneys and other professionals; (iii) the Liquidating Trustee; (iv) the First Lien Facility Agent and its agents, attorneys and other professionals; (v) the First Lien Facility Lenders in their capacity as such; (vi) the Second Lien Facility Agent and its agents, attorneys and other professionals; (vii) the Second Lien Facility Lenders in their capacity as such; and (viii) the Debtors' Affiliates and their officers and directors, including GTCR.

**1.44 Creditors' Committee** means the statutory committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to Bankruptcy Code Section 1102.

**1.45 Debtor(s)** means, individually, Graceway Pharmaceuticals, LLC and each other Debtor listed on Exhibit 1 hereto and, collectively, all of them, including in their capacity as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

**1.46 Debtor Releasees** means (i) the officers, directors, shareholders, members and/or enrollees, employees, representatives, advisors, attorneys, financial advisors, investment bankers, or agents of the Debtors (including their estates and beneficiaries), in each case as of the Petition Date or that have become officers and/or directors thereafter, including GTCR; (ii) the 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, and its agents, attorneys and other professionals acting in conjunction with the Chapter 11 Cases, and the Creditors' Committee's agents, attorneys and other professionals; (iii) the Liquidating Trustee; (iv) the First Lien Facility

Agent and its agents, attorneys and other professionals; (v) the First Lien Facility Lenders in their capacity as such; (vi) the Second Lien Facility Agent and its agents, attorneys and other professionals; (vii) the Second Lien Facility Lenders in their capacity as such; and (viii) the Debtors' Affiliates and their officers and directors, including GTCR.

**1.47 Deficiency Claims** means with respect to any Claim secured by a Lien in any property of any Debtor having a value of less than the amount of such Claim (after taking into account other Liens of higher priority in such property), the portion of such Claim equal to the difference between (a) the allowed amount of the Claim and (b) the allowed amount of the secured portion of such Claim (which allowed secured amount may be set pursuant to this Plan).

**1.48 Designated Account** means the "Designated Account," as defined in the Sale Order, into which approximately \$4,410,193.60 was deposited on December 2, 2011 and in which an aggregate of approximately \$18,002,063.72 remains as of the date hereof.

**1.49 DIP Order** means the Final Order (i) Authorizing Debtors to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (ii) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364; and (iii) Authorizing Debtors to Obtain Postpetition Financing Pursuant to 11 U.S.C. § 364, as supplemented or amended from time to time [Docket No. 219].

**1.50 Disclosure Statement** means that certain written disclosure statement that relates to this Plan as Filed in the Chapter 11 Cases by the Debtors, including the schedules and exhibits attached thereto, as may be amended, modified or supplemented from time to time, as approved by the Bankruptcy Court pursuant to Section 1125 of the Bankruptcy Code.

**1.51 Disputed Claim or Disputed Interest** means a Claim or Interest, respectively, that is not an Allowed Claim or Allowed Interest, as applicable, and that either (i)

the Debtors have Scheduled as “disputed,” “contingent” or “unliquidated,” or (ii) as to which a proof of Claim or Interest has been Filed or deemed Filed as contingent and as to which an objection has been or may be timely Filed by the Debtors, the Liquidating Trustee or any other party in interest entitled to do so, which objection, if timely Filed, has not been withdrawn and has not been overruled or denied by a Final Order. For purposes of this definition, Disputed Claims shall include any actual or estimated Administrative Expense Claims, Professional Claims, Priority Tax Claims or Other Priority Claims that have not been paid in full in Cash as of the Effective Date and any actual or estimated Other Secured Claims that have not been treated in accordance with Section 5.4 of this Plan as of the Effective Date.

**1.52 Disputed [ ] Claim or Disputed [ ] Interest** means a Disputed Claim or Disputed Interest in the particular category or Class identified

**1.53 Disputed Claims Reserve** has the meaning given to such term in Section 10.9 of the Plan.

**1.54 Effective Date** means the date that is the first Business Day following occurrence of the Confirmation Date on which all conditions to the Effective Date set forth in Article 11 of the Plan have been satisfied or, if waivable, waived pursuant to Section 11.4 of the Plan.

**1.55 Employee Account** means the “Employee Account,” as defined in the Sale Order, into which \$2,593,647.29 was deposited on December 2, 2011 and in which approximately \$965,687.11 remains as of the date hereof for purposes of funding the Debtors’ employee severance and benefits liabilities to the extent approved by the Orders approving the Prepetition Claims Motions and permitted by the Budget and/or the Sale Support Agreement.

**1.56 Entity** means an entity as defined in Section 101(15) of the Bankruptcy Code.

**1.57 Estate** means, with regard to each Debtor, the estate that was created by the commencement by such Debtor of its Chapter 11 Case pursuant to Section 541 of the Bankruptcy Code, and shall be deemed to include, without limitation, any and all rights, powers, and privileges of such Debtor and any and all Assets and Interests in property, whether real, personal or mixed, rights, Causes of Action, avoidance powers or extensions of time that such Debtor or such estate shall have had as of the Petition Date, or which such Estate acquired after the commencement of the Chapter 11 Case, whether by virtue of Sections 541, 544, 545, 546, 547, 548, 549 or 550 of the Bankruptcy Code, or otherwise. "Estates" has a correlative meaning.

**1.58 Estate Fund Amount** means an amount equal to \$10,000,000 to be available to the Debtors' estates free and clear of all Liens and Claims of the First Lien Facility Agent, including First Lien Facility Secured Claim, any First Lien Facility Adequate Protection Claim and any First Lien Facility Deficiency Claim. The Estate Fund Amount shall be funded as follows: (i) first, from the first \$10,000,000 of the Canadian Distribution Amount received by the Debtors; (ii) second, solely to the extent the Canadian Distribution Amount is less than \$10,000,000, from the 1.0% Holdback Account; and (iii) 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.

**1.59 Face Amount** has the meaning given to such term in Section 10.6 of the Plan.

**1.60 Federal Bankruptcy Rule(s)** means, collectively, the Federal Rules of Bankruptcy Procedure, as in effect on the Petition Date and as thereafter amended, as applicable in the Chapter 11 Cases, and individually, a particular Federal Rule of Bankruptcy Procedure.

**1.61 File or Filed** means file or filed with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

**1.62 Final Distribution** has the meaning given to such term in Section 10.8.3 of the Plan.

**1.63 Final Distribution Date** has the meaning given to such term in Section 10.8.3 of the Plan.

**1.64 Final Order** means an Order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in any Chapter 11 Case or the docket of any other court of competent jurisdiction, (i) that has not been reversed, stayed, modified or amended, (ii) as to which the time to appeal or seek certiorari or move for a new trial, reargument or rehearing has expired, and no appeal or petition for certiorari or other proceedings for a new trial, reargument or rehearing has been timely taken, or (iii) as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the Order or judgment was appealed or from which certiorari was sought or the new trial, reargument or rehearing has been denied or resulted in no modification of such Order; *provided, however*, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or applicable state court rules of civil procedure, may be Filed with respect to such Order, shall not cause such Order not to be a Final Order.

**1.65 First Lien Available Cash** means (i) any Canadian Distribution Amount remaining after the Estate Fund Amount is fully funded, (ii) any Cash in the 1.0% Holdback Account after the Estate Fund Amount is fully funded, (iii) any Cash in the CCR Account after payment, to the extent permitted by the Budget and/or the Sale Support Agreement, of all liabilities 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 Orders approving the Prepetition Claims Motions or (b) Allowed Administrative Expense Claims, (iv) any Cash in the Employee Account after payment of severance and benefits approved in the Orders approving the Prepetition Claims Motion and permitted by the Budget and/or Sale Support Agreement, (v) any Cash in the Lazard Account after paying the Allowed Professional Fees of Lazard, (vi) any other Cash of the Debtors (whether deposited in the Designated Account or otherwise and including the Overpayment Amount) in excess of the amounts required to be set aside for payment of all Allowed Administrative Expense Claims, Allowed Other Secured Claims (to the extent not otherwise satisfied in accordance with the terms of this Plan), Allowed Priority Tax Claims, Allowed Other Priority Claims and any cure costs for executory contracts or unexpired leases on the Assumption Schedule, in each case, pursuant to the Budget and/or the 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, and (vii) any other Cash of the Debtors described in clause (vi) of this definition remaining after payment in full of the Allowed Claims and cure costs described in such clause. For the avoidance of doubt, First Lien Available Cash shall exclude the Other Assets.

**1.66 First Lien Claimholders** means the “First Lien Claimholders” as defined in the DIP Order.

**1.67 First Lien Credit Agreement** means that certain \$680,000,000 First Lien Credit Agreement dated as of May 3, 2007, among, *inter alia*, Graceway Pharmaceuticals, LLC, as borrower, Graceway Holdings, LLC, the First Lien Facility Lenders, and the First Lien Facility Agent.

**1.68 First Lien Facility Adequate Protection Claim** means the Claims of the First Lien Claimholders under Section 507(b) of the Bankruptcy Code and Section 4(b) of the DIP Order, if any, including, without limitation, any adequate protection Claim arising from the payment of the fees and expenses of the Professionals and the expenses of the members of the Creditors’ Committee, in each case, in connection with the Chapter 11 Cases.

**1.69 First Lien Facility Agent** means Bank of America, N.A., as administrative agent for the First Lien Facility Lenders and collateral agent for the First Lien Claimholders, or any successor thereto.

**1.70 First Lien Facility Claim** means the First Lien Facility Secured Claim, any First Lien Facility Deficiency Claim and any First Lien Facility Adequate Protection Claim.

**1.71 First Lien Facility Deficiency Claim** means any Deficiency Claim with respect to the First Lien Facility Secured Claim.

**1.72 First Lien Facility Lenders** means the “Lenders” as defined in the First Lien Credit Agreement.

**1.73 First Lien Facility Secured Claim** means the Secured Claims of the First Lien Claimholders under the First Lien Credit Agreement and the DIP Order. For the avoidance of doubt, to the extent the value of the Assets that secure the First Lien Facility Secured Claim

exceed the amount of the First Lien Facility Secured Claim before taking into account post-petition interest and fees, the First Lien Facility Secured Claim shall include post-petition interest and fees.

**1.74 First Lien Trust Administrative Fund** shall have the meaning specified in Section 4.1 of the Liquidating Trust Agreement and shall be funded solely in accordance with Section 7.8 below.

**1.75 General Unsecured Claims** 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.

**1.76 Graceway Canada** means Graceway Canada Company, a non-Debtor Affiliate of the Debtors, which 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 on October 4, 2011.

**1.77 Governmental Claims Bar Date** means March 27, 2012, which was established by the Bankruptcy Court as the deadline for filing proofs of Claims relating to prepetition Claims against the Debtors.

**1.78 Governmental Unit** shall have the meaning ascribed to it in Section 101(27) of the Bankruptcy Code.

**1.79 GTCR** means GTCR Partners VIII, L.P., GTCR Golder Rauner II, L.L.C., GTCR Fund VIII, L.P., Fund VIII/B Graceway Splitter, L.P., GTCR Co-Invest II, L.P., GTCR Fund IX/A, L.P., Fund IX/B Graceway Splitter, L.P., GTCR Co-Invest III, L.P., and any affiliates of the foregoing.

**1.80 Impaired** shall have the meaning ascribed to it in Section 1124 of the Bankruptcy Code when used with reference to a Claim or an Interest.

**1.81 Indemnification Claims** means the obligations of the Debtors, or any one of them, pursuant to their certificates of incorporation or other charter documents, bylaws, applicable law, any employment agreement or other express agreement operational as of the Petition Date to indemnify any of their current and former officers and directors, on the terms and subject to the limitations described therein.

**1.82 Intercreditor Agreement** means the Intercreditor Agreement dated as of May 3, 2007, among Graceway Holdings, LLC, Graceway Pharmaceuticals, LLC, the First Lien Facility Agent, the Second Lien Facility Agent and Goldman Sachs Credit Partners, L.P. as Control Agent.

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

**1.84 Interest** means the legal, equitable, contractual and other rights of the holders of Old Equity and Old Equity Rights.

**1.85 Lazard** means Lazard Frères & Co. LLC.

**1.86 Lazard Account** means the "Lazard Account," as defined in the Sale Order, into which \$2,481,250.00 was deposited on December 2, 2011 for the payment of the sale transaction fee due and owing to Lazard pursuant to the terms of that certain engagement letter, dated March 12, 2010, between Lazard and Graceway Pharmaceuticals, LLC in connection with the 363 Sale.

**1.87 Lien** means with respect to any Asset, any mortgage, deed of trust, deed to secure debt, lien (statutory or otherwise), pledge, hypothecation, encumbrance, collateral assignments, charge or security interest in, on or of such Asset.

**1.88 Liquidating Trust** means the liquidating trust established pursuant to the Liquidating Trust Agreement further described in Section 7.2 hereof, which shall act through the Liquidating Trustee.

**1.89 Liquidating Trust Agreement** means the Liquidating Trust Agreement dated as of the Effective Date among the Debtors and the Liquidating Trustee, a copy of which is attached hereto as Exhibit 2 and incorporated herein by reference, and all supplements and amendments thereto.

**1.90 Liquidating Trust Committee** shall have the meaning ascribed to it in the Liquidating Trust Agreement.

**1.91 Liquidating Trustee** means the Person appointed and serving from time to time as Liquidating Trustee under the Liquidating Trust Agreement, acting in his capacity as such on behalf of the Liquidating Trust. The initial Liquidating Trustee shall be Kip Horton of RPA Advisors, LLC.

**1.92 Liquidating Trustee Fee Amount** means \$150,000, which 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 and shall be free and clear of all Liens and Claims of the First Lien Facility Agent or 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.

**1.93 Liquidating Trustee Fees** means the reasonable fees and out-of-pocket expenses of the Liquidating Trustee and any attorneys or other professionals hired by the Liquidating Trustee other than Liquidating Trustee First Lien Fees and Contingency Fee Counsel Fees and Expenses, in each case, payable in accordance with the terms and conditions of the Liquidating Trust Agreement solely from the Liquidating Trustee Fee Amount and the Other Assets.

**1.94 Liquidating Trustee First Lien Fees** means the reasonable fees and out-of-pocket expenses of the Liquidating Trustee and any attorneys or other professionals hired by the Liquidating Trustee other than Contingency Fee Counsel Fees and Expenses, in each case, payable in accordance with the terms and conditions of the Liquidating Trust Agreement, 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, which shall be funded into the First Lien 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.

**1.95 Mezzanine Credit Agreement** means that certain \$70,000,000 Mezzanine Credit Agreement dated as of May 3, 2007, among, *inter alia*, Graceway Pharmaceuticals, LLC, Graceway Holdings, LLC, the Mezzanine Facility Lenders, Goldman Sachs Credit Partners L.P., as administrative agent, joint lead arranger, joint lead book manager and syndication agent, Deutsche Bank Trust Company Americas, as joint lead arranger, and

Deutsche Bank Securities Inc. and Banc of America Securities LLC, as joint lead book managers.

**1.96 Mezzanine Facility Agent** means Goldman Sachs Credit Partners L.P., as administrative agent for the Mezzanine Facility Lenders, or any successor thereto.

**1.97 Mezzanine Facility Claim** means the Claim of the Mezzanine Facility Agent on behalf of the Mezzanine Facility Lenders under the Mezzanine Credit Agreement.

**1.98 Mezzanine Facility Lenders** means the “Lenders” as defined in the Mezzanine Credit Agreement.

**1.99 Net Causes of Action Proceeds** means the Causes of Action Proceeds, net of the fees and expenses incurred in obtaining such proceeds (including Contingency Fee Counsel Fees and Expenses, if applicable).

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

**1.101 Nycomed Litigation Proceeds** means the portion of the proceeds of the Nycomed Litigation to which the Debtors are entitled pursuant to the Asset Purchase Agreement.

**1.102 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.

**1.103 Old Equity Rights** means 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.

**1.104 Order** means an order of judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in any Chapter 11 Case or the docket of any other court of competent jurisdiction.

**1.105 Other Assets** means the following Assets, which Assets shall be provided to the Debtors' Estates free and clear of the 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:

- (i) the Estate Fund Amount;
- (ii) the Liquidating Trustee Fee Amount;
- (iii) 25% of Avoidance Action Proceeds; and

(iv) after payment in full of any First Lien Facility Adequate Protection Claim and any Second Lien Facility Adequate Protection Claim, any other Assets upon which there are no Liens.

**1.106 Other Available Cash** means the Other Assets, less the amount of Other Assets deposited in the Trust Administrative Fund and the Disputed Claims Reserve.

**1.107 Other Priority Claim** means 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).

**1.108 Other Secured Claim Liens** means the valid, perfected and enforceable Liens relating to the Allowed Other Secured Claims.

**1.109 Other Secured Claims** means 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 this Plan.

**1.110 Overpayment Amount** has the meaning given to such term in Section 2.3 of the Plan.

**1.111 Person** means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a joint venture, an unincorporated organization, or a Governmental Unit.

**1.112 Petition Date** means September 29, 2011.

**1.113 Plan** means this first amended joint plan of liquidation of the Debtors and all exhibits annexed hereto or referenced herein, as may be amended, modified or supplemented

from time to time in accordance with the provisions of the Plan or the Bankruptcy Code and Bankruptcy Rules.

**1.114 Possessory Lienholder Claims** means all Claims held by Persons to the extent such Claims are deemed to be secured, through a possessory Lien, in property in which any Estate has an interest, but only to the extent of the value of the possessory lienholders' interest in the Estate's interest in such property as of the Effective Date.

**1.115 Prepetition Claims Motions** means those certain documents, motions and pleadings, filed by the Debtors with the Bankruptcy Court on the Petition Date, pursuant to which the Debtors sought authorization to pay the prepetition obligations specifically described therein or any motions filed by the Debtors after the Petition Date consented to by the Approving Majority First Lien Lenders that seek authorization to pay the prepetition obligations specifically described therein.

**1.116 Priority Tax Claim** means any Claim entitled to priority pursuant to Bankruptcy Code Section 507(a)(8).

**1.117 Pro Rata** means proportionately so that the ratio of the amount of consideration distributed on account of a particular Allowed Claim to the amount of the Allowed Claim is the same as the ratio of the amount of consideration distributed on account of all Allowed Claims of the Class in which the particular Allowed Claim is included to the amount of all Allowed Claims of that Class, but in any event the amount of consideration distributed on account of an Allowed Claim shall not exceed 100% of the amount of the Allowed Claim.

**1.118 Professional** means a Person employed in the Debtors' Chapter 11 Cases pursuant to a Final Order in accordance with Sections 327 and 1103 of the Bankruptcy Code and

to be compensated for services rendered prior to the Effective Date, pursuant to Sections 327, 328, 329, 330, 331 and 363 of the Bankruptcy Code.

**1.119 Professional Claim** means a Claim of a Professional retained in the Debtors' Chapter 11 Cases by the Debtors or the Creditors' Committee pursuant to a Final Order in accordance with Sections 327 or 1103 of the Bankruptcy Code or otherwise, for compensation or reimbursement of actual and necessary costs and expenses relating to services incurred after the Petition Date and prior to and including the Effective Date pursuant to Sections 327, 328, 329, 330, 331 and 363 of the Bankruptcy Code.

**1.120 Purchaser** means the purchaser of all or substantially all of the Debtors' Assets pursuant to the Sale Order.

**1.121 Released Claims** means any Claims, rights or Causes of Action of any of the Debtors or their Estates released pursuant to the DIP Order, the Asset Purchase Agreement, the Sale Order, the Plan or the Confirmation Order.

**1.122 Remaining Contracts** has the meaning given to such term in Section 6.1 of the Plan.

**1.123 Reserve Accounts** means the CCR Account, the Designated Account, the Employee Account, and the Lazard Account.

**1.124 Sale Allocation Motion** means 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 [Docket No. 134] dated October 17, 2011 and 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 [Docket No. 153] dated October 25, 2011, 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. For the avoidance of doubt, after adjustments, \$4,253,828.76 of the Sale Proceeds were ultimately allocated to the assets owned by non-Debtor Graceway Canada.

**1.125 Sale Motion** means 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 [Docket No. 12] dated September 29, 2011, pursuant to which the Debtors sought approval of the 363 Sale.

**1.126 Sale Order** means 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] dated November 22, 2011.

**1.127 Sale Proceeds** means the aggregate Cash proceeds of the 363 Sale.

**1.128 Sale Support Agreement** means the Sale Support Agreement, dated as of September 28, 2011, entered by and among the Debtors, Graceway Canada and the First Lien Facility Lenders from time to time party thereto, as it may be amended, supplemented or otherwise modified from time to time.

**1.129 Scheduled** means as set forth on the Schedules.

**1.130 Schedules** means the Schedules of Assets and Liabilities filed by the Debtors in accordance with Bankruptcy Code Section 521 and Federal Bankruptcy Rule 1007, as the same may be amended from time to time prior to the Effective Date in accordance with Federal Bankruptcy Rule 1009.

**1.131 Second Lien Credit Agreement** means that certain \$330,000,000 Second Lien Credit Agreement dated as of May 3, 2007, among, *inter alia*, Graceway Pharmaceuticals, LLC, as borrower, Graceway Holdings, LLC, the Second Lien Facility Lenders, and the Second Lien Facility Agent, as amended.

**1.132 Second Lien Facility Adequate Protection Claim** means the Claims of the Second Lien Facility Agent and the Second Lien Facility Lenders under Section 507(b) of the Bankruptcy Code and Section 4(b) of the DIP Order, if any.

**1.133 Second Lien Facility Agent** means Deutsche Bank Trust Company Americas, as agent for the Second Lien Facility Lenders under the Second Lien Credit Agreement, or any successor thereto.

**1.134 Second Lien Facility Claim** means any Second Lien Facility Secured Claim and any Second Lien Facility Adequate Protection Claim.

**1.135 Second Lien Facility Deficiency Claim** means any Deficiency Claim with respect to the Second Lien Facility Secured Claim.

**1.136 Second Lien Facility Lenders** means the "Lenders" as defined in the Second Lien Credit Agreement.

**1.137 Second Lien Facility Secured Claim** means the Secured Claim of the Second Lien Facility Agent on behalf of the Second Lien Facility Lenders under the Second Lien Credit Agreement and the DIP Order, if any.

**1.138 Second Lien Obligations** means all "Second Lien Obligations" as defined in the Second Lien Credit Agreement (including, without limitation, interest accruing after the Petition Date).

**1.139 Secured Claim** means any Claim of a Creditor, including for principal, interest and any other amounts, that is secured by a valid, perfected, and enforceable Lien that is not subject to avoidance under applicable bankruptcy or non-bankruptcy law, against property of any of the Debtors' Estates (or the proceeds of such property), that is a Possessory Lienholder Claim or that is otherwise subject to setoff under Bankruptcy Code Section 553, to the extent of the value of such Creditor's interest in that Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to Bankruptcy Code Section 506(a).

**1.140 Security** means any instrument issued by, or interest in, any of the Debtors of the type described in Bankruptcy Code Section 101(49).

**1.141 Tax Claims** has the meaning given to such term in Section 2.5.2 of the Plan.

**1.142 Taxes** means all income, franchise, excise, sales, use, employment, withholding, property, payroll or other taxes, assessments, or governmental charges, together with any interest, penalties, additions to tax, fines, and similar amounts relating thereto, imposed or collected by any federal, state, local or foreign governmental authority on or from any of the Debtors.

**1.143 Trust Administrative Fund** shall have the meaning specified in Section 4.1 of the Liquidating Trust Agreement and shall be funded solely in accordance with Section 7.8 below.

**1.144 Trust Estate or Trust Assets** means the Assets (other than the Nycomed Litigation Proceeds), including, without limitation, the Other Assets, all of which shall be irrevocably assigned, transferred and conveyed to the Liquidating Trust as of the Effective Date of the Plan, plus any and all net income earned on the foregoing.

**1.145 Unimpaired** means any Claim that is not Impaired.

**1.146 United States Trustee** means the United States Trustee appointed under Section 581(a)(3) of title 28 of the United States Code to serve in the District of Delaware.

**1.147 Unsecured Claim** means any Claim against the Debtors, excluding Administrative Expense Claims, Priority Tax Claims, Other Priority Claims, the First Lien Facility Secured Claim, any First Lien Facility Adequate Protection Claim, the Second Lien Facility Secured Claim, any Second Lien Facility Adequate Protection Claim and Other Secured Claims. Unsecured Claims shall include (i) any Indemnification Claims arising from or attributable to actions prior to the Petition Date but only to the extent not covered by applicable directors' and/or officers' insurance coverage and (ii) all Deficiency Claims. Any 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 this Plan.

**C. Rules of Interpretation**

1. In the event of an inconsistency, (a) the provisions of the Plan shall control over the contents of the Disclosure Statement and Liquidating Trust Agreement and (b) the provisions of the Confirmation Order shall control over the contents of the Plan.

2. For the purposes of the Plan:

(a) any reference in the Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; *provided, however*, that any change to such form, terms or conditions that is material to a party to such document shall not be modified without such party's consent unless such document expressly provides otherwise;

(b) any reference in the Plan to an existing document, exhibit or schedule Filed or to be Filed means such document, exhibit or Plan schedule, as it may have been or may be amended, modified or supplemented as of the Effective Date;

(c) unless otherwise specified, all references in the Plan to "Sections," "Articles," "Exhibits" and "Plan Schedules" are references to Sections, Articles, Exhibits and Plan Schedules of or to the Plan;

(d) the words "herein," "hereof," "hereto," "hereunder" and others of similar import refer to the Plan in its entirety rather than to only a particular portion of the Plan;

(e) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be part of or to affect interpretations of the Plan; and

(f) the word “including” means “including without limitation.”

3. Whenever a distribution of property is required to be made on a particular date, the distribution shall be made on such date or as soon as reasonably practicable thereafter.

4. Whenever a reference is made in Article II hereof to a limitation on payment of Allowed Claims by an “amount provided for in the Budget” or words to that effect, it shall be understood that such amounts provided for in the Budget for any specific category of Claims shall be augmented, as to all categories of Claims other than Claims payable from the CCR Account (regardless whether such Claims are actually paid from the CCR Account), Claims payable from the Employee Account (regardless whether such Claims are actually paid from the Employee Account) and Professional Claims, by the remaining amount provided for in the Budget for “Post-Closing Other Miscellaneous,” which, as of the date hereof, is \$1,250,000.00.

5. All Exhibits to the Plan are incorporated into the Plan and shall be deemed to be included in the Plan, regardless of when they are Filed.

6. Subject to the provisions of any contract, certificate, bylaws, instrument, release or other agreement or document entered into in connection with the Plan, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and Bankruptcy Rules.

7. This Plan is the product of extensive discussions and negotiations between and among, *inter alia*, the Debtors, the First Lien Facility Agent, the Second Lien Facility Agent, the Creditors’ Committee and certain other creditors and constituencies. Each of the foregoing was represented by counsel who either (a) participated in the formulation and documentation of or (b) was afforded the opportunity to review and provide comments on, the Plan, the Disclosure Statement, and the documents ancillary thereto. Accordingly, unless explicitly indicated

otherwise, the general rule of contract construction known as “*contra proferentum*” shall not apply to the construction or interpretation of any provision of this Plan, the Disclosure Statement, any of the Plan Exhibits, or any contract, instrument, release, indenture, or other agreement or document generated in connection herewith.

**D. Computation of Time.** In computing any period of time prescribed or allowed by the Plan, unless otherwise expressly provided, the provisions of Federal Bankruptcy Rule 9006(a) shall apply.

## **ARTICLE 2**

### **TREATMENT OF UNCLASSIFIED CLAIMS**

**2.1 Administrative Expense Claims.** Subject to the allowance procedures and deadlines provided herein, on the Effective Date or as soon thereafter as is practicable in recognition of the applicable Claims resolution process set forth herein, 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, (i) Cash equal to the unpaid portion of such Allowed Administrative Expense Claim, or (ii) 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 (i) hereof; *provided, however*, that (a) notwithstanding any other provision of this 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 this Plan and (b) Professional Claims shall be paid in accordance with Section 2.3.

**2.2 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.

**2.3 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 (including the application of any retainer held by 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 (the "Overpayment Amount") 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.

**2.4 Priority Tax Claims.** Subject to the allowance procedures and deadlines provided herein, on the Effective Date or as soon thereafter as is practicable in recognition of the applicable Claims resolution process set forth herein, 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.

**2.5 Deadline for Filing Administrative Expense Claims.**

**2.5.1 Administrative Expense Claims Other Than Tax Claims.**

Other than with respect to (i) Administrative Expense Claims for which the Bankruptcy Court previously has established a Bar Date, and (ii) Tax Claims addressed in Section 2.5.2 below, any and all requests for payment or proofs of Administrative Expense Claims, including Claims of all Professionals or other Entities requesting compensation or reimbursement of expenses pursuant

to Bankruptcy Code Sections 327, 328, 330, 331, 503(b) or 1103 for services rendered on or before the Effective Date (including any compensation requested by any Professional or any other Entity for making a substantial contribution in the Chapter 11 Cases), must be Filed and served on the Liquidating Trustee and its counsel no later than the Administrative Expense Claims Bar Date. Objections to any such Administrative Expense Claims must be Filed and served on the claimant no later than sixty (60) days after the Administrative Expense Claims Bar Date, which date may be extended by application to the Bankruptcy Court. The Liquidating Trustee shall use reasonable efforts to promptly and diligently pursue resolution of any and all Disputed Administrative Expense Claims.  **Holders of Administrative Expense Claims, including all Professionals or other Entities requesting compensation or reimbursement of expenses pursuant to Bankruptcy Code Sections 327, 328, 330, 331, 503(b) or 1103 for services rendered on or before the Effective Date (including any compensation requested by any Professional or any other Entity for making a substantial contribution in the Chapter 11 Cases), that are required to File a request for payment or proof of such Claims and that do not File such requests or proofs of Claim on or before the Administrative Expense Claims Bar Date shall be forever barred from asserting such Claims against the any of the Debtors, their Estates, or the Liquidating Trust.**

**2.5.2 Tax Claims.** All requests for payment of Claims pursuant to Section 503 of the Bankruptcy Code by a Governmental Unit for Taxes (and for interest and/or penalties or other amounts related to such Taxes) for any tax year or period, all or any portion of which occurs or falls within the period from and including the Petition Date through and including the Effective Date, and for which no bar date has otherwise been previously established ("Tax Claims"), must be Filed on or before the later of: (i) thirty (30) days following

the Effective Date; or (ii) to the extent applicable, sixty (60) days following the filing of a tax return for such Taxes (if such Taxes are assessed based on a tax return) for such tax year or period with the applicable Governmental Unit. Objections to any Tax Claims must be Filed within thirty (30) days after the later of the Administrative Expense Claims Bar Date or sixty (60) days following the filing of a tax return for such Taxes, which objection dates may be extended by application to the Bankruptcy Court. **Any holder of a Tax Claim that is required to File a request for payment of such Tax Claim and other amounts due related to such Taxes and which does not File such a Claim by the applicable bar date shall be forever barred from asserting any such Claim against any of the Debtors or any non-Debtor member of the Debtors' consolidated tax group, the Debtors' Estates, the Liquidating Trust or any other Entity, or their respective property, whether any such Claim is deemed to arise prior to, on, or subsequent to the Effective Date, and shall receive no distribution under the Plan or otherwise on account of such Claim.**

### ARTICLE 3

#### CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS

A. **General.** Pursuant to Section 1122 of the Bankruptcy Code, set forth below is a designation of the Classes of Claims against and Interests in the Debtors. A Claim or Interest is placed in a particular Class only to the extent that such Claim or Interest falls within the description of that Class. A Claim or Interest is also placed in a particular Class for purposes of receiving a distribution under the Plan, but only to the extent such Claim or Interest is an Allowed Claim or Interest and has not been paid, released, or otherwise settled prior to the Effective Date. Except as otherwise expressly set forth in this Plan, a Claim or Interest which is not an Allowed Claim or Allowed Interest shall not receive any payments, rights or distributions under this Plan. In accordance with Section 1123(a)(1) of the Bankruptcy Code, Administrative

Expense Claims of the kinds specified in Section 507(a)(2) and (3) and Priority Tax Claims of the kinds specified in Section 507(a)(8) of the Bankruptcy Code have not been classified and are treated as set forth in Article 2 above.

**B. Classification.** As stated above, the Plan is premised on the substantive consolidation of the Debtors with respect to the voting of all Claims and Interests and the treatment of all Claims and Interests other than Other Secured Claims, as provided below. The following summary is for the convenience of all interested parties and is superseded for all purposes by the classification, description and treatment of Claims and Interests in Articles 4 and 5 of the Plan.

**3.1 Class 1: Other Priority Claims.** Class 1 consists of all Other Priority Claims.

**3.2 Class 2: First Lien Facility Claims.** Class 2 consists of the First Lien Facility Secured Claim, any First Lien Facility Deficiency Claim and any First Lien Facility Adequate Protection Claim.

**3.3 Class 3: Second Lien Facility Claims.** Class 3 consists of any Second Lien Facility Secured Claim and any Second Lien Facility Adequate Protection Claim.

**3.4 Class 4: Other Secured Claims.** Class 4 consists of all Other Secured Claims.

**3.5 Class 5: General Unsecured Claims.** Class 5 consists of all General Unsecured Claims.

**3.6 Class 6: Intercompany Claims.** Class 6 consists of all Intercompany Claims.

**3.7 Class 7: Old Equity.** Class 7 consists of all Interests arising from or relating to Old Equity.

**3.8 Class 8: Old Equity Rights.** Class 8 consists of all Claims and Interests arising from or relating to Old Equity Rights.

**ARTICLE 4**  
**IDENTIFICATION OF CLASSES OF CLAIMS AND INTERESTS IMPAIRED AND NOT IMPAIRED BY THE PLAN**

**4.1 Unimpaired Classes of Claims and Interests.** Class 1 Other Priority Claims and Class 4 Other Secured Claims are not Impaired by the Plan.

**4.2 Impaired Classes of Claims and Interests.** Class 2 First Lien Facility Claim, Class 3 Second Lien Facility Claim, Class 5 General Unsecured Claims, Class 6 Intercompany Claims, Class 7 Old Equity, and Class 8 Old Equity Rights are Impaired by the Plan.

**ARTICLE 5**  
**PROVISIONS FOR THE TREATMENT OF CLAIMS AND INTERESTS**

**5.1 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 herein, 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, (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.

**5.2 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 herein, 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, (C) one hundred percent (100%) of any other Net Causes of Action Proceeds, including, without limitation, 549 Avoidance Action Proceeds, and (D) all Cash from the collection of accounts receivable. 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 this Plan, the Debtors and their Estates shall have no further liability to the First Lien Facility Agent or the First Lien Facility Lenders. Notwithstanding the full satisfaction, settlement and release of the First Lien Facility Claims hereunder, the aggregate amount of the beneficial interests in the Liquidating Trust the First Lien Claimholders receive under this Section 5.2 in exchange for such Claims shall increase from time to time by an amount equal to the interest accrual on, and the fees incurred on account of, such Claims to and including the applicable date of determination (calculated at the rate provided for under the First Lien Credit Agreement and in accordance with the terms thereof and of the Intercreditor Agreement) as if such Claims had not been satisfied, settled and released

hereunder; it being understood that distributions on account of such interest accrual and incurred fees shall only be permitted in the event the First Lien Facility Secured Claim (had it not been satisfied, settled and released hereunder) is oversecured. 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 this Plan.

**5.3 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 herein, beneficial interests in the Liquidating Trust entitling each Second Lien Facility Lender to receive its Pro Rata share of (i) 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 (ii) after payment in full in Cash of the First Lien Facility Claim, (a) any First Lien Available Cash; (b) the Nycomed Litigation Proceeds, (c) seventy-five percent (75%) of any Avoidance Action Proceeds; (d) one hundred percent (100%) of any other Net Causes of Action Proceeds, including, without limitation, any 549 Avoidance Action Proceeds; and (e) all Cash from the collection of accounts receivable. 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, (i) except for their obligations under this Plan, the Debtors and their Estates shall have no further liability to the Second Lien Facility Agent or the Second Lien Facility Lenders and (ii) 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 until such Claims are paid in full in Cash. Any Second Lien Facility Deficiency Claim shall not constitute Class 3 Second Lien Facility Claims and shall be treated as a Class 5 General Unsecured Claim hereunder. 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 this Plan.

**5.4 Class 4 et seq. (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 herein, 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 hereunder.

**5.5 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 herein, 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 this 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 Obligations 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 Second Lien Obligations are paid in full in Cash; *provided further, however*, that upon notice to the Liquidating Trustee from the Second Lien Facility Agent that the Second Lien Facility Agent has received \$10,000,000.00 in Cash from the Other Available Cash for distribution to holders of Allowed Second Lien Facility Claims in excess of any legal, trustee or other fees and expenses that constitute Second Lien Obligations, the Liquidating Trustee shall cease any distributions to the Second Lien Facility Agent solely on account of the Allowed Mezzanine Facility Claim until the Liquidating Trustee has distributed \$250,000.00 on account of the Allowed Mezzanine Facility Claim (which shall be paid out as if no subordination were in place), after which time the Liquidating Trustee shall resume any distributions to the Second Lien Facility Agent on account of the Allowed Mezzanine Facility Claim until the Second Lien Obligations are paid in full in Cash. Subject to the foregoing proviso, in the event any distribution on account of the Allowed Mezzanine Facility Claim is made other than to the Second Lien Facility Agent, such distribution shall be held in trust for the benefit of, and paid over and delivered to, the Second Lien Facility Agent for the benefit of the Second Lien Facility Lenders. 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 this 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 Causes 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 after resolution of all Disputed Unsecured Claims.

**5.6 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 hereof, 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.

**5.7 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.

**5.8 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.

## **ARTICLE 6**

### **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**6.1 Assumption, Assignment and Rejection Pursuant to the Sale Order.** 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 this Plan unless assumed or assumed and assigned pursuant to Section 6.2 of this Plan.

**6.2 Assumption and Assignment of Remaining Contracts.** 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 this Plan (the "Assumption Schedule") that have not expired under their own terms prior to the Effective Date; provided that the Assumption Schedule to this 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: (i) delete any executory contract or lease listed therein and provide for its rejection pursuant to Section 6.5 hereof; or (ii) add any executory contract or lease to the Assumption Schedule, thus providing for its assumption and assignment pursuant to this Section 6.2; 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 this Section 6.2 and the Assumption Schedule, as of the Effective Date.

**6.3 Cure Payments; Assurance of Performance.** 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.

**6.4 Objections To Assumption of Remaining Contracts.** 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 herein, 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 herein, 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 herein 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 below.

**6.5 Rejection.** Except for those executory contracts and unexpired leases that (i) are assumed and assigned pursuant to this Plan, (ii) have been previously assumed and assigned or rejected pursuant to previous Orders of the Bankruptcy Court, or (iii) 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 this Article 6 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.

**6.6 Approval of Rejection; Rejection Damages Claims Bar Date.** The Confirmation Order shall constitute an Order of the Bankruptcy Court approving the rejection of executory contracts and unexpired leases under Section 6.5 above 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.

**ARTICLE 7**  
**MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN**

**7.1 Substantive Consolidation of Claims against Debtors for Plan Purposes Only.** 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. This 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, (i) all Class 6 Intercompany Claims will be eliminated (except to the extent such Claims are by a Debtor against a non-Debtor Affiliate); (ii) no distributions shall be made under the Plan on account of any equity interest held by a Debtor in any other Debtor; (iii) all Assets and liabilities of the Debtors will be merged or treated as though they were merged; (iv) 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 (v) 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.

## **7.2 The Liquidating Trust.**

**7.2.1 Establishment of the Liquidating Trust.** On the Effective Date, the Debtors, on their own behalf and on behalf of the Beneficiaries, shall execute the Liquidating Trust Agreement and take all steps necessary to establish the Liquidating Trust. The initial Liquidating Trustee shall be Kip Horton of RPA Advisors, LLC.

**7.2.2 Purpose of Liquidating Trust.** The Liquidating Trust is being established for the sole purpose of liquidating the Debtors' Assets (other than the Nycomed Litigation Proceeds) and distributing the proceeds thereof to certain holders of Allowed Claims, in each case, as identified in and prescribed by this Plan. The Liquidating Trust shall not continue or engage in any trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. Unless otherwise required by law, all parties shall treat the Liquidating Trust as a liquidating trust for all federal income tax purposes.

**7.2.3 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 (i) the First Lien Facility Secured Claim and any First Lien Facility Adequate Protection Claim as provided in Section 5.2 of the Plan and (ii) the Second Lien Facility Secured Claim and any Second Lien Facility Adequate Protection Claim as provided in Section 5.3 of the Plan).

**7.2.4 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.

**7.2.5 Certain Federal Income Tax Matters.** For U.S. federal income tax purposes: (i) 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); (ii) 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 Trust Assets; and (iii) the income of the Liquidating Trust will be treated as subject to tax on a current basis.

**7.3 Continuation of the Automatic Stay.** In furtherance of the implementation of the Plan, except as otherwise provided herein, 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.

**7.4 Transfer of Equity Interests in Graceway Canada.** On the Effective Date, (i) the Debtors' equity interests in Graceway Canada Company and (ii) the Debtors' Claims against Graceway Canada Company 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 Second Lien Facility Lenders as provided in Section 5.3 of the Plan; *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 Company and shall make distributions of the Canadian Distribution Amount as provided under the Plan.

**7.5 Committee Settlement.** 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 shall 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.

**7.6 Post-Confirmation Operations.** 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 actions as are necessary to effectuate the transactions provided for in this Plan. On and after the Effective Date, all such officers and directors shall be deemed to have resigned.

**7.7 Post-Confirmation Funding of Plan.** Payment of Allowed Other Secured Claims (to the extent not otherwise satisfied in accordance with the terms of this 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 this 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 this 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. Notwithstanding anything contained herein 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 Orders 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 this 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.

**7.8 Post-Effective Date Funding of Operations.** 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 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.

**7.9 Dissolution of the Debtors.** 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 this 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.

**7.10 Closing of the Debtors' Chapter 11 Cases.** 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 this 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.

**7.11 Post-Effective Date Cause of Action Settlements.** Subject to this Section 7.11, on and after the Effective Date, the Liquidating Trustee shall have the exclusive authority to settle 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 Causes of Action 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 settlement after notice and a hearing. After the First Lien Facility Claims are paid in full in Cash and until such time as the Second Lien Facility Claims are paid in full in Cash, in order to settle Causes of Action owned by the Liquidating Trust, the Liquidating Trustee shall be required to obtain (i) the prior written consent of the Second Lien Facility Agent or (ii) an Order of the Bankruptcy Court approving such settlement after notice and a hearing. After the Second Lien Facility Claims are paid in full in Cash, except as otherwise set forth in this 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, the Second Lien Facility Agent or the Bankruptcy Court to settle Causes of Action owned by the Liquidating Trust.

**7.12 Post-Effective Date Reporting.** Once each quarter, the Liquidating Trustee shall File with the Bankruptcy Court and serve on the United States Trustee an unaudited written report setting forth the amounts and timing of all distributions made and expenses paid by the Liquidating Trustee under the Plan in each applicable reporting period and the recipients thereof. In addition, the Liquidating Trustee shall file with the Bankruptcy Court and serve on the United States Trustee quarterly reports summarizing the Cash receipts of the Liquidating Trust for the immediately preceding three-month period. 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 this Plan have been made.

**7.13 Cancellation of Existing Securities and Agreements.** 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, the Fee Letter (as defined in the First Lien Credit Agreement), the Intercreditor Agreement or Article XI of the Mezzanine Credit Agreement, as among parties other than the Debtors, Section 10.04 of the First Lien Credit Agreement, the Fee Letter, the Intercreditor Agreement and Article XI of the Mezzanine Credit Agreement shall remain in full force and effect as though the obligations of the Debtors continue to exist. Notwithstanding anything to the contrary set forth herein, 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.

**7.14 Dissolution of Creditors' Committee.** 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.

**7.15 Nycomed Litigation Proceeds.** On the Effective Date, the Debtors shall assign and transfer all of their rights to and interests in Nycomed Litigation Proceeds to the First

Lien Facility Agent subject to any Liens thereon, which Liens shall remain valid, binding 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 will escrow an amount thereof sufficient to cover each Other Secured Claim asserted to be secured by Liens on the Nycomed Litigation Proceeds that are senior in priority to those held by the First Lien Facility Agent for the benefit of the First Lien Claimholders and the First Lien Facility Agent will distribute from such escrow funds sufficient to pay any such Other Secured Claim in full if and when any such Other Secured Claim is determined by an Order of the Bankruptcy Court to be an Allowed Other Secured Claim. 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 prior to the First Lien Facility Agent's receipt of any Nycomed Litigation Proceeds, the First Lien Facility Agent shall assign and transfer all of its rights to and interests in 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 will escrow an amount thereof sufficient to cover any Other Secured Claims asserted to be secured by Liens on the Nycomed Litigation Proceeds that are senior in priority to those held by the Second Lien Facility Agent for the benefit of the Second Lien Facility Lenders and the Second Lien Facility Agent will distribute from such escrow funds sufficient to pay any such Other Secured Claim in full if and when any such Other Secured Claim is determined by an Order of the Bankruptcy Court to be an Allowed Other Secured Claim.

**ARTICLE 8**  
**POST-CONFIRMATION LITIGATION**

**8.1 Transfer and Enforcement of Causes of Action.** Pursuant to Section 1123(b)(3) of the Bankruptcy Code, except as otherwise provided in this 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 hereof, 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.

**8.2 Abandonment of Causes of Action and Other Assets of the Debtors.** Subject to this Section 8.2, 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 and until such time as the Second 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 Second Lien Facility Agent or (ii) an Order of the Bankruptcy Court approving such abandonment after notice and a hearing.

After the Second Lien Facility Claims are paid in full in Cash, except as otherwise set forth in this 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, the Second Lien Facility Agent or the Bankruptcy Court to abandon Causes of Action or other Assets owned by the Liquidating Trust.

**ARTICLE 9**  
**PROCEDURES FOR TREATMENT OF DISPUTED CLAIMS**

**9.1 Objections to Claims.** Following the Effective Date, only the Liquidating Trustee shall be entitled to object to Claims. 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.

**9.2 Resolution of Disputed Claims.** Subject to this Section 9.2, 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 until such time as the Second Lien Facility Claims are paid in full in Cash, the Liquidating Trustee shall be required to obtain (i) the prior written consent of the Second Lien Facility Agent or (ii) an Order of the Bankruptcy Court approving such compromise, settlement, other resolution, or withdrawal of any objections to Disputed Claims. After the Second Lien Facility Claims are paid in full in Cash, except as otherwise set forth in this 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, the Second Lien Facility Agent or the Bankruptcy Court to compromise, settle, otherwise resolve, or withdraw any objections to Disputed Claims.

**9.3 Amendments to 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 such 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.

**9.4 No Distributions Pending Allowance.** Notwithstanding any other provision hereof, if any portion of a Claim or Administrative Expense Claim is Disputed, no

payment or distribution provided hereunder 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.

## **ARTICLE 10** **DISTRIBUTIONS**

**10.1 No Duplicate Distributions.** In accordance with Section 7.1 of the Plan and unless otherwise expressly provided herein, 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.

**10.2 Delivery of Distributions in General.** Distributions to holders of Allowed Claims shall be made: (i) at the addresses set forth in the proofs of Claim Filed by such holders; (ii) 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 (iii) 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.

**10.3 Cash Payments.** 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).

**10.4 Interest on Claims.** Except as otherwise set forth herein 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.

**10.5 No De Minimis Distributions.** 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 this Plan. 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.

**10.6 Face Amount.** Unless otherwise expressly set forth herein with respect to a specific Claim or Class of Claims, for the purpose of the provisions of this Article, 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 Filed or deemed Filed, zero.

**10.7 Undeliverable Distributions.** If the distribution check to any holder of an Allowed Claim is not cashed within 90 days after issuance by the Liquidating Trustee, 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 Trustee, the Debtors, or the Liquidating Trust. 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 this Plan.

**10.8 Timing of Distributions.**

**10.8.1** On the Effective Date, or as soon thereafter as practicable in accordance with the Claims resolution process described herein, 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 this Plan) the distributions for each respective Class as set forth in the Plan.

**10.8.2** 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 (or, if estimated for distribution purposes, the Estimated 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 and payment of any Liquidating Trustee First Lien Fees associated with such determination, 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 (or, if estimated for distribution purposes, the Estimated 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 and payment of any Liquidating Trustee First Lien Fees associated with such determination, 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.

**10.8.3** 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 as set forth in this Plan.

**10.8.4** Not later than five (5) Business Days after receipt thereof, after the liquidation into Cash of Causes of Action (other than those Causes of Action abandoned by the Liquidating Trustee in accordance with the terms hereof), the Liquidating Trustee shall distribute Net Causes of Action Proceeds to the holders of Allowed Claims in accordance with Sections 5.2, 5.3 and 5.4 of this Plan.

**10.8.5** From and after the Effective Date, the Liquidating Trustee shall distribute on a bi-weekly basis all collections in respect of accounts receivable received during each such two-week period in accordance with Sections 5.2 and 5.3 of this Plan.

**10.8.6** After (i) the distribution of the payments described in Section 10.8.1 hereof, (ii) the liquidation into Cash of all Assets owned by the Liquidating Trust (other than those Assets abandoned by the Liquidating Trustee in accordance with the terms hereof), (iii) the collection of other sums due or otherwise remitted or returned to the Estates, (iv) the

resolution of all Disputed Claims and (v) 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 this Plan (the "Final Distribution"). The date of the Final Distribution shall be the "Final Distribution Date."

**10.9 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 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 (to the extent not otherwise to be satisfied in accordance with the terms of this Plan) 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 (or, if estimated for distribution purposes, the Estimated Amount) 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 Allowed, the Liquidating Trustee shall immediately release the portion of the Disputed Claim Reserve or Reserve Account, as applicable, 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 (or, if estimated for distribution purposes, the Estimated 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 applicable Reserve Account and/or 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 and the Liquidating Trust Agreement and any surplus Cash held in any Reserve Account becoming available for distribution by the Liquidating Trustee as First Lien Available Cash in accordance with the Plan. For the avoidance of doubt, no payment shall be made from the Disputed Claims Reserve on account of the First Lien Facility Claims.

**10.10 Compliance with Tax Requirements.** In connection with the Plan and the distributions made in accordance therewith, to the extent applicable, the Liquidating Trustee 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.

**ARTICLE 11**  
**CONDITIONS PRECEDENT**

**11.1 Conditions to Confirmation.** The following are each conditions to entry of the Confirmation Order:

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

**11.1.2** The Confirmation Order shall be in form and substance reasonably satisfactory to the Debtors and the First Lien Facility Agent.

**11.2 Conditions to the Effective Date.** The Plan shall not become effective and the Effective Date shall not occur unless and until:

**11.2.1** The Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably satisfactory to the Debtors and the First Lien Facility Agent;

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

**11.2.3** All documents, instruments and agreements, in form and substance reasonably satisfactory to the Debtors and the First Lien Facility Agent provided for under this Plan or necessary to implement this 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;

**11.2.4** 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 this Plan), Allowed Administrative Expense Claims (other than

Administrative Expense Claims that are Assumed Liabilities), Allowed Other Priority Claims and Allowed Priority Tax Claims; and

**11.2.5** The Confirmation Order shall have become a Final Order.

**11.3 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 this Plan shall terminate and be of no further force or effect unless the provisions of this Section 11.3 are waived in writing by the Debtors and the First Lien Facility Agent.

**11.4 Waiver of Conditions.** The Debtors may waive any or all of the conditions set forth in Sections 11.1 and/or 11.2 (other than the conditions set forth in Sections 11.1.1, 11.2.1, and 11.2.4) of this Plan subject to the consent of the First Lien Facility Agent.

**11.5 Notice of Effective Date.** On the Effective Date, or as soon thereafter as is reasonably practicable, the Debtors shall File with the Bankruptcy Court a "Notice of Effective Date" in a form reasonably acceptable to the Debtors in their sole discretion, which notice shall constitute appropriate and adequate notice that this Plan has become effective; *provided, however,* that the Debtors shall have no obligation to notify any Person of such fact. The Plan shall be deemed to be effective as of 12:01 a.m., prevailing Eastern time, on the Effective Date specified in such filing. A courtesy copy of the Notice of Effective Date may be sent by United States mail, postage prepaid (or at the Debtors' option, by courier or facsimile) to those Persons who have Filed with the Bankruptcy Court requests for notices pursuant to Federal Bankruptcy Rule 2002 and the Master Service List established in the Chapter 11 Cases.

**ARTICLE 12**  
**EFFECT OF CONFIRMATION**

**12.1 Jurisdiction of Court.** 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.

**12.2 Binding Effect.** Except as otherwise provided in Section 1141(d) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of this 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 this Plan and whether or not such holder has accepted the Plan and (ii) the Liquidating Trustee.

**12.3 Term of Pre-Confirmation Injunctions or Stays.** 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.

**12.4 Injunction Against Interference with Plan.** 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 this Plan.

**12.5 Exculpation.** *Except as otherwise specifically provided in this 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 Claimholders 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 hereby released from, any Claim, obligation, cause 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 this Plan, the Disclosure Statement, the Asset Purchase Agreement and the 363 Sale, the solicitation of votes for and the pursuit of Confirmation of this Plan, the consummation of this Plan, or the administration of this Plan, the Asset Purchase Agreement, the 363 Sale and the property to be distributed under this*

*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 this Plan except fraud, willful misconduct or gross negligence as determined by a Final Order. Nothing in this Section 12.5 shall: (i) be construed as a release of any entity's fraud, gross negligence or willful misconduct with respect to matters set forth in this Section 12.5 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 this Plan.*

*Notwithstanding any other provision of this 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 Claimholders (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 this Plan, the Disclosure Statement, the Asset Purchase Agreement and the 363 Sale, the solicitation of votes for and the pursuit of Confirmation of this Plan, the consummation of this Plan, or the administration of this Plan, the Asset Purchase Agreement, the 363 Sale and the property to be distributed under this 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 this Plan except fraud, willful misconduct or gross negligence as determined by a Final Order.*

**12.6 Injunction.** *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 this 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 hereby.

**12.7 Releases by Debtors.** *Except as expressly provided in this Plan, upon the Effective Date, each of the Debtors hereby (i) remises, acquits, waives, releases and forever discharges each of the Debtor Releasees from, 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, except fraud, willful misconduct or gross negligence as determined by a Final Order.*

**12.8 Releases by Holders of Claims and Interests.** *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 any Creditor Releasee, except fraud, willful misconduct or gross negligence as determined by a Final Order.*

**12.9 Limitation of Liability.** *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 Claimholders (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, this Plan, or the administration of the Plan or the property to be distributed under the Plan, except for fraud, gross negligence or willful misconduct as determined by a Final Order.*

**ARTICLE 13**  
**RETENTION OF JURISDICTION**

**13.1 Scope of Bankruptcy Court 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:

(a) 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;

(b) 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;

(c) 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;

(d) 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;

(e) Enter Orders approving the Liquidating Trustee's post-Confirmation sale or other disposition of Assets of the Liquidating Trust;

(f) Ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan and the Liquidating Trust Agreement;

(g) 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;

(h) Hear and determine matters concerning state, local or federal taxes in accordance with Sections 346, 505 or 1146 of the Bankruptcy Code;

(i) 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;

(j) Hear and determine any matters concerning the enforcement of the provisions of Article 12 of this Plan and any other exculpations, limitations of liability or injunctions contemplated by this Plan;

(k) 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;

(l) 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;

(m) 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;

(n) Enforce any injunctions entered in connection with or relating to the Plan or the Confirmation Order;

(o) 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;

(p) 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;

(q) Enter any Orders in aid of prior Orders of the Bankruptcy Court; and

(r) Enter a final decree closing the Debtors' Chapter 11 Cases.

#### **ARTICLE 14** **ACCEPTANCE OR REJECTION OF THE PLAN**

**14.1 Persons Entitled to Vote.** Class 1 and Class 4 are not Impaired, and holders of Class 1 Claims and Class 4 Claims are deemed pursuant to Section 1126(f) of the Bankruptcy Code to have accepted the Plan. Votes from holders of Class 1 Claims and Class 4 Claims will not be solicited. Class 2, Class 3, and Class 5 are Impaired and are expected to receive a distribution under the Plan. Votes from holders of the Class 2 Claims, the Class 3 Claims, and the Class 5 Claims will be solicited. Class 6 Claims, Class 7 Interests, and Class 8 Claims and Interests are Impaired, are not expected to receive any distributions pursuant to the

Plan, and are therefore deemed, pursuant to Section 1126(g) of the Bankruptcy Code, to have rejected the Plan. Votes from holders of Class 6 Claims, Class 7 Interests and Class 8 Claims and Interests will not be solicited.

**14.2 Acceptance by Impaired Classes.** 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.

**14.3 Request for Non-Consensual Confirmation.** Class 6, Class 7, and Class 8 are not expected to receive any distribution on account of their Claims and Interests and are therefore deemed to have rejected the Plan. The Debtors therefore request that the Court confirm the Plan under the cramdown provisions of Section 1129(b) of the Bankruptcy Code with respect to Class 6, Class 7, and Class 8 and any Class that does not vote in favor of the Plan.

## **ARTICLE 15**

### **MISCELLANEOUS PROVISIONS**

**15.1 Effectuating Documents and Further Transactions.** Each of the Debtors and the Liquidating Trustee is authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and any Securities issued pursuant to this Plan.

**15.2 Corporate Action.** On the Effective Date, all matters provided for under this Plan that would otherwise require approval of the stockholders, directors, members, managers or partners of one or more of the Debtors shall be deemed to have occurred and shall

be in effect from and after the Effective Date pursuant to Section 303 of the Delaware General Corporation Law or other applicable law of the states in which the Debtors are organized, without any requirement of further action by the stockholders, directors, members, managers, or partners of the Debtors.

**15.3 Payment of Statutory Fees.** After the Effective Date, the Liquidating Trustee shall pay all fees payable pursuant to section 1930 of chapter 123 of title 28 of the United States Code through the entry of a final decree closing the Debtors' cases.

**15.4 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.

**15.5 Revocation of the Plan.** The Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtors revoke or withdraw the Plan, or if Confirmation does not occur or if the Plan does not become effective, then the Plan shall be null and void, and nothing contained in the Plan or Disclosure Statement shall: (a) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtors; (b) constitute an admission of any fact or legal conclusion by the Debtors or any other Entity; or (c) prejudice in any manner the rights of the Debtors in any further proceedings involving the Debtors.

**15.6 Governing Law.** Unless a rule of law or procedure is supplied by (i) federal law (including the Bankruptcy Code and Bankruptcy Rules), or (ii) an express choice of law provision in any agreement, contract, instrument or document provided for, or executed in connection with, the Plan, the rights and obligations arising under the Plan and any agreements, contracts, documents and instruments executed in connection with the Plan shall be governed by,

and construed and enforced in accordance with, the laws of the State of New York without giving effect to the principles of conflict of laws thereof.

**15.7 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.

**15.8 Severability of Plan Provisions.** If prior to Confirmation, any term or provision of the Plan that does not govern the treatment of Claims or Interests is held by the Bankruptcy Court to be invalid, void or unenforceable, at the request of the Debtors the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**15.9 Successors and Assigns.** The rights, benefits and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Entity.

**15.10 Exemption from Certain Transfer Taxes.** Pursuant to Section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of any Security or the making or

delivery of any instrument of transfer under this Plan may not be taxed under any law imposing a stamp tax, use tax, sales tax or similar tax. Any sale of any Asset of the Debtors or the Liquidating Trust occurring after or upon the Effective Date shall be deemed to be in furtherance of this Plan.

**15.11 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 this 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 hereunder 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.

**15.12 Defenses with Respect to Unimpaired Claims.** Except as otherwise provided in this 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.

**15.13 No Injunctive Relief.** Except as otherwise provided in the Plan or Confirmation Order, no Claim or Interest shall under any circumstances be entitled to specific performance or other injunctive, equitable, or other prospective relief.

**15.14 Saturday, Sunday or Legal Holiday.** If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of

such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

**15.15 Entire Agreement.** This Plan (together with the Liquidating Trust Agreement) sets forth the entire agreement and undertaking relating to the subject matter hereof and supersedes all prior discussions and documents. The Debtors' Estates shall not be bound by any terms, conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof, other than as expressly provided for herein.

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

**15.17 Notices.** Any notice required or permitted to be provided under this Plan shall be in writing and served by either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery, or (c) reputable overnight delivery service, freight prepaid, to be addressed as follows:

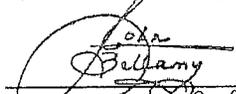
Debtors	Counsel to Debtors
<p>Graceway Pharmaceuticals, LLC            340 Martin Luther King Jr. Blvd.            Suite 400            Bristol, TN 37620            Fax: 422-274-5520            Attn: John Bellamy            (john.bellamy@gracewaypharma.com)</p>	<p>Latham &amp; Watkins LLP            233 South Wacker Drive            Chicago, IL 60606            Fax: 312-993-9767            Attn: Josef S. Athanas, Esq. and            Matthew L. Warren, Esq. (josef.athanas@lw.com and            matthew.warren@lw.com)</p> <p>Young Conaway Stargatt &amp; Taylor, LLP            Rodney Square            1000 North King Street            Wilmington, DE 19801            Fax: 302-576-3472            Attn: Michael R. Nestor, Esq. and            Kara Hammond Coyle, Esq. (mnestor@ycst.com and            kcoyle@ycst.com)</p>

<b>Special Bankruptcy and Restructuring Counsel to the Agent for the First Lien Facility Lenders</b>	<b>United States Trustee</b>
<p>Wachtell, Lipton, Rosen &amp; Katz  51 West 52<sup>nd</sup> Street  New York, NY 10019  Fax: 212-403-2158  Attn: Scott K. Charles, Esq. and  Michael S. Benn, Esq. (SKCharles@wlrk.com and  MSBenn@wlrk.com)</p> <p>DLA Piper LLP  919 North Market Street, 15<sup>th</sup> Floor  Suite 1500  Wilmington, DE 19801  Fax: 302-778-7913  Attn: Stuart M. Brown, Esq.  (stuart.brown@dlapiper.com)</p>	<p>Office of the United States Trustee  for the District of Delaware  844 King Street  J. Caleb Boggs Federal Building  Room 2207, Lockbox 35  Wilmington, DE 19801  Fax: 302-573-6497  Attn: Juliet Sarkessian, Esq.  (Juliet.M.Sarkessian@usdoj.gov)</p>
<b>Financing Counsel to the Agent for the First Lien Facility Lenders</b>	<b>Counsel to the Creditors' Committee</b>
<p>Morgan Lewis  225 Franklin Street, 16<sup>th</sup> Floor  Boston, MA 02110  Fax: 617-341-7701  Attn: Sula Fiszman, Esq.  (sfiszman@morganlewis.com)</p>	<p>Lowenstein Sandler PC  65 Livingston Avenue  Roseland, NJ 07068  Fax: 973-597-2347  Attn: S. Jason Teele, Esq. (steale@lowenstein.com)</p> <p>Elliott Greenleaf  1105 Market Street, Suite 1700  Wilmington, DE 19801  Fax: 302-384-9399  Attn: Rafael X. Zahralddin-Aravena  (rxza@elliottgreenleaf.com)</p>
<b>Counsel to the Agent for the Second Lien Facility Lenders</b>	<b>Agent for the Mezzanine Lenders</b>
<p>Sidley Austin LLP  One South Dearborn,  Chicago, IL 60603  Fax: 213-896-6600  Attn: Larry Nyhan, Esq. (lnyhan@sidley.com)  Jeffrey E. Bjork, Esq. (jbjork@sidley.com)</p>	<p>Goldman Sachs Credit Partners L.P.  30 Hudson Street, 5<sup>th</sup> Floor  Jersey City, NJ 07302  Fax: 212-357-4597  Attn: Michelle Latzoni (gsd.link@gs.com)</p>
<b>Receiver for Graceway Canada Company</b>	<b>Counsel to the Receiver for Graceway Canada Company</b>
<p>Duff &amp; Phelps Canada Restructuring Inc.  200 King Street West, Suite 1002  Toronto, ON M5H 3T4  Fax: 647-497-9490  Attn: Robert Kofman and David Sieradzki  (bobby.kofman@duffandphelps.com and  david.sieradzki@duffandphelps.com)</p>	<p>Davies Ward Phillips &amp; Vineberg LLP  1 First Canadian Place, Suite 4400  P.O. Box 63  Toronto, ON M5X 1B1  Fax: 416-863-0871  Attn: Jay Swartz (jswartz@dwvp.com)</p>

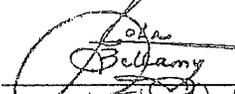
Liquidating Trustee	Counsel to Graceway Canada Company
<p data-bbox="293 352 743 527">Kip Horton RPA Advisors, LLC 45 Eisenhower Drive Paramus, NJ 07652 Fax: 201-527-6620 Attn: Kip Horton (khorton@rpaadvisors.com)</p>	<p data-bbox="829 352 1360 573">Goodmans LLP Bay Adelaide Centre 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7 Fax: 416-979-1234 Attn: Fred Myers, Joe Latham, and Caroline Descours (fmyers@goodmans.ca, jlatham@goodmans.ca, and cdescours@goodmans.ca)</p>

Dated: February 28, 2012

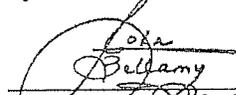
Graceway Pharma Holding Corp.

By:   
Name: John A.A. Bellamy  
Title: EVP

Graceway Holdings, LLC

By:   
Name: John A.A. Bellamy  
Title: EVP

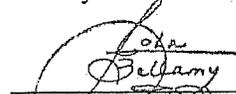
Graceway Pharmaceuticals, LLC

By:   
Name: John A.A. Bellamy  
Title: EVP

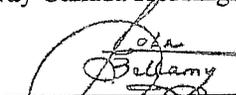
Chester Valley Holdings, LLC

By:   
Name: John A.A. Bellamy  
Title: EVP

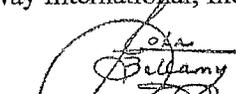
Chester Valley Pharmaceuticals, LLC

By:   
Name: John A.A. Bellamy  
Title: EVP

Graceway Canada Holdings, Inc.

By:   
Name: John A.A. Bellamy  
Title: EVP

Graceway International, Inc.

By:   
Name: John A.A. Bellamy  
Title: EVP

**Exhibit 1**

List of Debtors

The Debtors, along with the last four digits of each Debtor's federal tax identification number and each Debtor's Chapter 11 Case Number, include:

1. Graceway Pharma Holding Corp. (9175): Case No. 11-13037 (PJW)
2. Graceway Holdings, LLC (2502): Case No. 11-13038 (PJW)
3. Graceway Pharmaceuticals, LLC (5385): Case No. 11-13036 (PJW)
4. Chester Valley Holdings, LLC (9457): Case No. 11-13039 (PJW)
5. Chester Valley Pharmaceuticals, LLC (3713): Case No. 11-13041 (PJW)
6. Graceway Canada Holdings, Inc. (6663): Case No. 11-13042 (PJW)
7. Graceway International, Inc. (2399): Case No. 11-13043 (PJW)

**Exhibit 2**

Liquidating Trust Agreement

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**LIQUIDATING TRUST AGREEMENT**

**for the**

**Graceway Liquidating Trust**

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## LIQUIDATING TRUST AGREEMENT

This Liquidating Trust Agreement (the "Liquidating Trust Agreement"), dated as of [\_\_\_\_], 2012, by and among Graceway Pharmaceuticals, LLC ("Graceway") and each of the other debtors listed on the signature pages hereto (collectively with Graceway, the "Debtors") and Kip Horton, as Liquidating Trustee ("Liquidating Trustee"), is made and executed in connection with the First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al. under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), dated February 28, 2012, (the "Plan"), filed by the Debtors in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), which Plan was confirmed by Order of the Bankruptcy Court dated [\_\_\_\_], 2012. The Plan provides for the establishment of the liquidating trust evidenced hereby (which liquidating trust shall formally be known as the "Graceway Liquidating Trust") to liquidate certain assets and property of the Debtors in accordance with the terms and conditions of the Plan and to resolve and realize upon certain of the Debtors' rights, claims and causes of action through enforcement by the Liquidating Trustee.

### RECITALS

**WHEREAS**, on September 29, 2011 (the "Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code; and,

**WHEREAS**, the Debtors, thereafter, continued in the operation of their businesses and the management of their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code; and,

**WHEREAS**, on [\_\_\_\_], 2012, the Debtors filed their Plan with the Bankruptcy Court; and,

**WHEREAS**, the Bankruptcy Court entered its Order confirming the Plan (the "Confirmation Order") on [\_\_\_\_], 2012; and,

**WHEREAS**, the Plan provides for, among other things, (a) liquidation of the Trust Assets, and (b) distributions from the Reserve Accounts and, to the extent necessary, the Other Available Cash, to the holders of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims and Allowed Other Secured Claims to pay such Allowed Claims in full in accordance with the terms of the Plan, (c) distribution of the First Lien Available Cash to the holder of the Allowed First Lien Facility Claims as provided herein and in the Plan, and (d) distribution of the Other Available Cash to the holder of any Allowed Second Lien Facility Claims and to the holders of Allowed General Unsecured Claims as provided herein and in the Plan; and,

**WHEREAS**, the Plan provides for the creation of a liquidating trust to hold the Trust Assets in trust for the benefit of all Beneficiaries pursuant to the terms of this Liquidating Trust Agreement and the Plan; and,

**WHEREAS**, this Liquidating Trust Agreement is executed to establish the Liquidating Trust (as defined in Section 2 hereof) and to facilitate implementation of the Plan; and,

**WHEREAS**, the primary purpose of the Liquidating Trust is to liquidate the Trust Assets for the benefit of the Beneficiaries in accordance with Treasury Regulation Section 301.7701-4(d) and the Liquidating Trust will not be operated with the objective of continuing or engaging 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; and,

**WHEREAS**, except with respect to the Disputed Claims Reserve (defined below), the Liquidating Trust is intended to qualify as one or more liquidating trusts that are treated as “grantor trusts” for federal income tax purposes and the Liquidating Trustee shall operate and maintain the Liquidating Trust in compliance with Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, and Treasury Regulation Sections 1.671-4(a) and 301.7701-4(d) and all subsequent guidelines regarding liquidating trusts issued by the Internal Revenue Service; and,

**WHEREAS**, as contemplated by the Plan, the Beneficiaries hereby exchange their Allowed Claims under the Plan for Beneficial Interests (as hereinafter defined) in the Liquidating Trust;

## **A G R E E M E N T S**

**NOW THEREFORE**, for and in consideration of the premises, and the mutual promises and agreements contained herein and in the Plan, the receipt and sufficiency of which are hereby expressly acknowledged, the Debtors and Liquidating Trustee hereby agree as follows:

### **SECTION I DEFINITIONS**

#### **1.1. Terms Defined Above.**

As used in this Liquidating Trust Agreement, each of the terms “Liquidating Trust Agreement,” “Graceway,” “Debtors,” “Liquidating Trustee,” “Bankruptcy Code,” “Plan,” “Bankruptcy Court,” “Petition Date,” and “Confirmation Order” shall have the meanings hereinabove set forth.

#### **1.2. Terms Defined in the Plan.**

Capitalized terms used in this Liquidating Trust Agreement without definition shall have the meanings assigned to them in the Plan. Terms defined in the Bankruptcy Code and not otherwise specifically defined in the Plan or herein shall, when used herein, have the meanings attributed to them in the Bankruptcy Code.

## **SECTION II AUTHORITY OF AND CERTAIN DIRECTIONS TO LIQUIDATING TRUSTEE: DECLARATION OF TRUST**

### **2.1. Creation of Liquidating Trust.**

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 hereby create the Liquidating Trust, to be formally be known as the Graceway Liquidating Trust, for the benefit of the Beneficiaries. Pursuant to the terms of the Plan, the Debtors execute this Liquidating Trust Agreement and, subject to the provisions of Section 2.3 hereof, absolutely and irrevocably transfer, absolutely assign, convey, set over, and deliver to the Liquidating Trust, and its successors and assigns, all right, title and interest of the Debtors in and to the Trust Estate, in trust, to and for the benefit of the Beneficiaries for the uses and purposes stated herein and in the Plan, except as may otherwise be specifically provided by the Plan. The Debtors shall execute and deliver such other instruments of sale, transfer, conveyance, assignment and confirmation, and will cooperate and take such other actions as the Liquidating Trustee may deem reasonably necessary or desirable in order to more effectively transfer, convey and assign all rights, title and interests in and to the Trust Estate to the Liquidating Trust.

### **2.2. Purpose of Liquidating Trust.**

This 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 hereby authorized and directed: (a) 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; (b) to take all reasonable and necessary actions to conserve and protect the Trust Estate; (c) 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; (d) to the extent necessary and appropriate, object to any Claims asserted against the Debtors’ Estates and the Liquidating Trust; and (e) 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 this 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 hereof.

### **2.3. Title to Assets of the Debtors.**

Upon the transfer of the Trust Assets to the Liquidating Trust, the Liquidating Trustee shall succeed to all of the Debtors’ right, title and interest in the Trust Assets and the

Debtors will have no further interest in or with respect to the Trust Assets or the Liquidating Trust.

#### 2.4. Segregated Funds.

a. On the Effective Date, the Liquidating Trustee shall establish a segregated deposit account to be used solely for the purpose of funding of the Trust Administrative Fund (defined below). The Liquidating Trustee Fee Amount shall be funded into the account by the First Lien Facility Agent from Sale Proceeds to which the First Lien Facility Agent or First Lien Claimholders would otherwise be entitled and shall be free and clear of all Liens and Claims of the First Lien Facility Agent or 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. In addition, the Liquidating Trustee shall fund into the account 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 (i) the collection of accounts receivable, (ii) the pursuit of Causes of Action (including 549 Avoidance Actions but excluding for the avoidance of doubt Avoidance Actions), and (iii) the objection to, and settlement of, Other Secured Claims (including Possessory Lienholder Claims), Administrative Expense Claims, Priority Tax Claims and Other Priority Claims, from the Other Assets. 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.

b. The Liquidating Trustee shall establish a segregated deposit account to be used solely for the purpose of funding the First Lien Trust Administrative Fund (defined below). 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 account 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 (i) the collection of accounts receivable, (ii) the pursuit of Causes of Action (including 549 Avoidance Actions but excluding for the avoidance of doubt Avoidance Actions), and (iii) 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 unspent Cash 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.

c. On the Effective Date, to the extent the Liquidating Trustee determines that the amounts in the Reserve Accounts are insufficient to pay the Allowed Claims permitted to be paid from each Reserve Account in accordance with the Plan in full, the Liquidating Trustee may establish a segregated deposit account to be used solely for the payment of Other Available Cash to holders 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. The account shall be funded solely

from Other Available Cash. To the extent Cash remains in such account following the 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, Allowed Priority Tax Claims and Allowed Other Priority Claims, such Cash shall be distributed to the Beneficiaries as if such Cash were Other Assets.

2.5. Tax Treatment of Transfer of Trust Assets to the Liquidating Trust.

For all federal income tax purposes, all parties (including, without limitation, the Debtors, the Liquidating Trustee, and the Beneficiaries) shall treat the transfer of Trust Assets to the Liquidating Trust, as set forth in Sections 2.1, 2.3 and 2.4 of this Liquidating Trust Agreement and in accordance with the Plan, as a transfer of such assets to the Beneficiaries and a transfer by the Beneficiaries of such assets to the Liquidating Trust. In all events, the Beneficiaries of the Liquidating Trust shall be treated as the grantors and deemed owners of the Trust Assets.

2.6. Transfer Free and Clear of Claims.

In accordance with Section 2.1 hereof, except as set forth in the Plan, the Debtors hereby transfer and assign the Trust Assets to the Liquidating Trust free and clear of any Liens, Claims, interests, encumbrances or any liability of any kind (except that the Trust Assets other than the Other Assets shall remain subject to the Liens securing (i) the First Lien Facility Secured Claim and any First Lien Facility Adequate Protection Claim as provided in Section 5.2 of the Plan and (ii) the Second Lien Facility Secured Claim and any Second Lien Facility Adequate Protection Claim as provided in Section 5.3 of the Plan), and the Liquidating Trustee on behalf of the Liquidating Trust hereby assumes and agrees that, except as set forth in the Plan, all such Trust Assets will be transferred to the Liquidating Trust free and clear of any Liens, Claims, interests, encumbrances or any liability of any kind.

2.7. Transfer of Trust Assets.

Except as otherwise provided by the Plan or this 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 herein and the Plan or to maintain the value of the Trust Assets during liquidation.

On the Effective Date, (a) the Debtors' equity interests in Graceway Canada and (b) 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 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 Second Lien Facility Lenders as provided in Section 5.3 of the Plan; *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.

2.8. Property in the Liquidating Trust.

The Liquidating Trust shall hold the legal title to all property at any time constituting a part of the Trust Estate and shall hold such property in trust to be administered and disposed of by it pursuant to the terms of this Liquidating Trust Agreement, the Plan and the Confirmation Order for the benefit of the Beneficiaries. The Liquidating Trustee is authorized to make disbursements and payments from the Trust Estate in accordance with the provisions of Sections 5 and 6 of this Liquidating Trust Agreement and pursuant to the Plan.

2.9. 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 Trust Assets. 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.

2.10. 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 creditors and Beneficiaries holding Claims against the Debtors, the Estates, the Assets, the Liquidating Trustee, the Liquidating Trust and the Trust Assets until the Final Distribution Date.

**SECTION III BENEFICIAL INTERESTS.**

3.1. No Transfer or Exchange.

Unless the Liquidating Trustee determines otherwise, beneficial interests in the Liquidating Trust (the "Beneficial Interests") shall not be transferable. In the event the Liquidating Trustee does authorize the transfer of Beneficial Interests, the Liquidating Trustee, based upon his good faith determination after consultation with his counsel, shall establish procedures to govern the registration and transfer of Beneficial Interests ("Permitted Transfer"). Once such procedures have been established, if ever, the Liquidating Trustee shall notify all holders of Beneficial Interests of such procedures. Notwithstanding the foregoing, a transfer of a Beneficial Interest shall be not be permitted by the Liquidating Trustee if such transfer would be contrary to maintaining the Liquidating Trust as a liquidating trust 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.

3.2. No Certification.

Unless the Liquidating Trustee determines otherwise, the Beneficial Interests will not be certificated and no security of any sort will be distributed to the Beneficiaries with respect to their interest in the Liquidating Trust. In the event the Liquidating Trustee does permit the certification of the Beneficial Interests, the Liquidating Trustee, based upon his good faith determination after consultation with his counsel, shall establish procedures to govern such certification. Once such procedures have been established, if ever, the Liquidating Trustee shall notify all Beneficiaries of such procedures.

3.3. Absolute Owners.

The Liquidating Trustee may deem and treat the persons who are Beneficiaries (as determined in accordance with the Plan) as the absolute owners of the Beneficial Interests in the Liquidating Trust for the purpose of receiving distributions and payments thereof, or on account thereof, and for all other purposes whatsoever. Unless the Liquidating Trustee receives actual written notice of a Permitted Transfer from the duly authorized transferee not less than thirty (30) days prior to a distribution made pursuant to the terms of this Liquidating Trust Agreement, and subject to the applicable provisions of Bankruptcy Rule 3001(e), the Liquidating Trustee shall have no duty or obligation to make or direct any distributions or payments to such transferee of a Permitted Transfer.

3.4. Means of Payment.

Cash payable to Beneficiaries pursuant to Section 5 hereof will be paid by checks drawn on a domestic bank account maintained by the Liquidating Trust or by wire transfer from a domestic bank account maintained by the Liquidating Trust at the sole option of the Liquidating Trustee.

3.5. Amount of Payment.

The amount of Cash payments and distributions to Beneficiaries shall be made and calculated in accordance with the Plan.

3.6. Acceptance of Conveyance.

The Liquidating Trustee is hereby directed to, and the Liquidating Trustee agrees that he will: (a) accept delivery of the Trust Estate on behalf of the Liquidating Trust; (b) accept all bills of sale, deeds, assumptions and assignments, and all other instruments of conveyance required to be delivered by the Debtors with respect to the Trust Estate transferred to the Liquidating Trustee on behalf of the Liquidating Trust pursuant to or in connection with the Plan, the Confirmation Order, or this Liquidating Trust Agreement; and (c) take such other action as may be required of the Liquidating Trust hereunder, including the receipt and acceptance as part of the Trust Estate of any property or rights, including, without limitation, notes, other negotiable

instruments, Claims, Causes of Action, and other choses-in-action belonging to the Debtors or their Estates.

3.7. Title.

On the Effective Date, legal title to all Trust Assets shall be vested in the Liquidating Trust in accordance with and pursuant to the terms of the Plan and this Liquidating Trust Agreement. Without limiting the foregoing, on the Effective Date, the Liquidating Trustee, on behalf of the Liquidating Trust, shall be: (a) authorized to act and have standing in any court of competent jurisdiction as representative of the Debtors' Estates in respect of any and all claims or causes of action that constitute Causes of Action; and (b) substituted as successor to the Debtors and/or the Creditors' Committee (i) in all actions and proceedings pending or thereafter commenced in the Bankruptcy Court or elsewhere in regard to the Causes of Action, (ii) in all actions and proceedings pending or thereafter commenced in the Bankruptcy Court or elsewhere in connection with or regarding all Claims, and (iii) in any agreement respecting the Trust Assets to which any of the Debtors is a party, including, without limitation, the Committee Settlement.

**SECTION IV ADMINISTRATION OF TRUST ESTATE.**

4.1. 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. 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 and shall be free and clear of all Liens and Claims of the First Lien Facility Agent or 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 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 hereof. Any monies deposited in the Trust Administrative Fund pursuant to the terms of this Liquidating Trust Agreement shall be invested in interest-bearing deposits or investments specified in Section 4.6(b) of this

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.

#### 4.2. 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. Any monies deposited in the First Lien Trust Administrative Fund pursuant to the terms of this Liquidating Trust Agreement shall be invested in interest-bearing deposits or investments specified in Section 4.6(b) of this Agreement, and the interest earned thereon shall be credited thereto.

#### 4.3. 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 if and when Allowed; *provided, however*, that funds shall be added to the Disputed Claims Reserve for Other Secured Claims (to the extent not otherwise satisfied in accordance with the terms of the Plan), Administrative Expense Claims, Priority Tax Claims and Other Priority 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 (or, if estimated for distribution purposes, the Estimated Amount) 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 Allowed, the Liquidating Trustee shall immediately release the portion of the Disputed Claim Reserve or applicable Reserve Account, as applicable, 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 (or, if estimated for distribution purposes, the Estimated 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 applicable Reserve Account and/or 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 and this Liquidating Trust Agreement and any surplus Cash held in any Reserve Account becoming available for distribution by the Liquidating Trustee as First Lien Available Cash in accordance with the Plan. For the avoidance of doubt, no payment shall be made from the Disputed Claims Reserve on account of the First Lien Facility Claims.

#### 4.4. 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 this 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:

- a. To receive and hold the Trust Assets and to have exclusive possession and control thereof as permissible under applicable law;
- b. 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 this Liquidating Trust Agreement;
- c. 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;
- d. To delegate his authority under this 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);
- e. 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 this Liquidating Trust Agreement;

f. 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;

g. To pay any and all reasonable and necessary expenses attributable or relating to the management, maintenance, operation, preservation or liquidation of the Trust Estate;

h. 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 (A) 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 and (B) once the First Lien Facility Claims are paid in full in Cash until such time as the Second 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 Second Lien Facility Agent or (ii) an Order of the Bankruptcy Court approving such compromise, settlement, other resolution, or withdrawal of any objections to Disputed Claims;

i. 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 this Liquidating Trust Agreement, any and all Causes of Action and claims in favor of or against the Debtors, the Debtors' Estates, the Trust Estate or the Liquidating Trust that have not been released under the Plan or otherwise as the Liquidating Trustee shall deem advisable; *provided, however*, that (A) 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 and (B) once the First Lien Facility Claims are paid in full in Cash until such time as the Second 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 Second Lien Facility Agent or (ii) an Order of the Bankruptcy Court approving such settlement or abandonment after notice and a hearing;

j. 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;

k. To take all appropriate action with respect to the Trust Estate, including, without limitation, the filing, prosecution, settlement or other resolution of Claims and Causes of Action, subject to the limitations set forth in subsections (i) and (j) above;

l. To sue or be sued in connection with any matter arising from or related to the Plan or this Liquidating Trust Agreement that affects in any way the rights or obligations of the Liquidating Trust, the Liquidating Trustee or the Beneficiaries;

m. To represent the interests of the Beneficiaries with respect to any matters relating to the Plan, this Liquidating Trust Agreement, or the Liquidating Trust affecting the rights of such Beneficiaries;

n. 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;

o. 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 herein;

p. To do any and all other things not in violation of any other terms of the Plan, the Confirmation Order and this 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 this Liquidating Trust Agreement and the Plan;

q. To file tax returns for the Liquidating Trust and the Disputed Claims Reserve, including pursuant to Treasury Regulation § 1.468B-9, and for each of the Debtors; and

r. 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.

#### 4.5. Objections to Claims.

From and after the Effective Date of the Plan, the Liquidating Trust, through the Liquidating Trustee, shall be the sole representative of the Debtors' Estates for all purposes, including, without limitation, investigating, settling, compromising, objecting to, and litigating in

the Bankruptcy Court or on appeal (or pursuant to a withdrawal of the reference of jurisdiction) objections to Claims.

4.6. Limitations on Liquidating Trustee; Investments; Debt.

a. No Trade or Business. The Liquidating Trustee shall carry out the purposes of the Liquidating Trust and the directions contained herein 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.

b. Investments. The Liquidating Trustee shall invest any monies held at any time as part of this 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 this Liquidating Trust Agreement, only in interest-bearing deposits or certificates of deposit issued by any federally insured banking institution or short-term obligations of, or short-term obligations 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 this 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 this Liquidating Trust Agreement, and to the conservation and protection of the Trust Estate in accordance with the provisions hereof.

c. Debt. Neither the Liquidating Trust, nor the Liquidating Trustee on behalf of the Liquidating Trust, shall incur any debt.

4.7. Limitations on Liquidating Trustee -- Causes of Action and Abandonment.

a. The Liquidating Trustee shall be obligated to consult with the Liquidating Trust Committee regarding all matters affecting the Trust Estate involving \$750,000 or more, including, but not limited to, Claims objections, litigation, contested matters and the sale, transfer or abandonment of other Trust Assets. Notwithstanding anything contained herein, a member of the Liquidating Trust Committee must recuse itself from the Liquidating Trust Committee regarding any contested matter, objection to Claim, or other Cause of Action to which it is a party or otherwise has a conflict of interest.

b. Subject to Sections 7.11 and 8.2 of the Plan, Section 4.4(i) herein and this clause b, on and after the Effective Date, the Liquidating Trustee shall have the exclusive authority to settle or abandon Causes of Action or abandon other Trust 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 settle or abandon Causes of Action or abandon other Trust 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 settlement or abandonment after notice and a hearing. After the First Lien Facility Claims are paid in full in Cash and until such time as the Second Lien Facility Claims are paid in full in Cash, in order to settle or abandon Causes of Action or abandon other Trust Assets owned by the Liquidating Trust, the Liquidating Trustee shall be required to obtain (i) the prior written consent of the Second Lien Facility Agent or (ii) an Order of the Bankruptcy Court approving such settlement or abandonment after notice and a hearing. After the Second 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, the Second Lien Facility Agent or the Bankruptcy Court to settle or abandon Causes of Action or abandon other Trust Assets owned by the Liquidating Trust.

c. In all other events, except as otherwise set forth herein, 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.

d. Notwithstanding anything herein to the contrary, the Liquidating Trustee shall be authorized to pay the reasonable fees and expenses incurred by its 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.

#### 4.8. Transferee Liabilities.

If any liability shall be asserted against the Liquidating Trust as transferee of the Trust Estate on account of any claimed liability of or through the Debtors, the Liquidating Trustee may use such part of the Trust Administrative Fund as may be necessary in contesting any such claimed liability and in payment, compromise, settlement and discharge thereof on terms reasonably satisfactory to the Liquidating Trustee; provided, however, that if any such claimed liability arises on account of the Liquidating Trustee's (a) collection of accounts receivable, (b) pursuit of Causes of Action (including 549 Avoidance Actions but excluding for the avoidance of doubt Avoidance Actions), and (c) objection to, and settlement of, Other Priority Tax Claims and Other Priority Claims, the Liquidating Trustee may use such part of the First Lien Administrative Trust Fund as may be necessary in contesting any such claimed liability and in payment, compromise, settlement and discharge thereof on terms reasonably satisfactory to the Liquidating Trustee. In no event shall the Liquidating Trustee be required or obligated to use his own property, funds or assets for any such purposes.

#### 4.9. Administration of Trust.

In administering the Liquidating Trust, the Liquidating Trustee, subject to the express limitations contained herein, is authorized and directed to do and perform all such acts, to execute and deliver such deeds, bills of sale, instruments of conveyance, and other documents as he may deem reasonably necessary or advisable to carry out the purposes of the Liquidating Trust.

#### 4.10. Payment of Expenses and Other Liabilities.

To the extent that the amount of funds in the Trust Administrative Fund is at any time insufficient, the Liquidating Trustee shall pay solely from the Other Assets all reasonable expenses, charges, liabilities and obligations of the Liquidating Trust 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, but including, without limiting the generality of the foregoing, such debts, liabilities, or obligations as may be payable from the Trust Estate, interest, taxes, assessments, and public charges of every kind and nature, and the costs, charges and expenses in connection with or arising out of the execution or administration of the Liquidating Trust and the Trust Estate, and such other payments and disbursements as are provided for in this Liquidating Trust Agreement or which may be reasonably determined by the Liquidating Trustee to be proper charges against the Liquidating Trust and the Trust Estate, and which the Liquidating Trustee, in his reasonable discretion and business judgment, may determine to be necessary or advisable to meet or satisfy unascertained, unliquidated or contingent liabilities of the Liquidating Trust. 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. For the avoidance of doubt, fees and expenses incurred in pursuing any Avoidance Actions shall ultimately reduce any proceeds received by the Liquidating Trust on account of such Avoidance Actions prior to distribution of such proceeds in accordance with the Plan. The Liquidating Trustee shall make such payments without application to or Order of the Bankruptcy Court, except as otherwise herein provided.

4.11. Payment of United States Trustee's Fees.

After the occurrence of the Effective Date, fees payable to the Office of the United States Trustee during the administration of the Plan and until the case is converted, dismissed or closed shall be paid by the Liquidating Trustee from the Trust Administrative Fund.

4.12. Liquidating Trustee Fees and Liquidating Trustee First Lien Fees.

The Liquidating Trustee is entitled to 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. The Liquidating Trustee Fees and Liquidating Trustee First Lien Fees will be paid in accordance with Schedule 4.12 hereto, provided that, subject to Section 4.10 hereof, (a) Liquidating Trustee Fees shall be paid solely from the Liquidating Trustee Fee Amount and the Other Assets, (b) Liquidating Trustee First Lien Fees shall be paid solely from the Sale Proceeds to which the First Lien Facility Agent or First Lien Claimholders would otherwise be entitled and (c) Contingency Fee Counsel Fees and Expenses shall be paid from Causes of Action Proceeds.

4.13. Fiscal Year.

The Liquidating Trust's fiscal year shall end on December 31 of each year, unless the Liquidating Trustee deems it advisable to establish some other date on which the fiscal year of the Liquidating Trust shall end.

4.14. Reports.

The Liquidating Trustee shall:

a. 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;

b. 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 income 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);

c. Prepare and provide to the Liquidating Trust Committee periodic budgets acceptable to the Liquidating Trust Committee, which set forth, among other things, Liquidating Trustee Fees and Liquidating Trustee First Lien Fees expected to be incurred over the budgeted period; and

d. Once each quarter, the Liquidating Trustee shall File with the Bankruptcy Court and serve on the United States Trustee, the Liquidating Trust Committee, and any

Beneficiary who requests copies of such quarterly report after the Confirmation Date, an unaudited written report setting forth the amounts and timing of all distributions made and expenses paid 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.

#### 4.15. 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 this Liquidating Trust Agreement. The Liquidating Trust Committee initially shall consist of (a) three (3) members appointed by the First Lien Facility Agent, (b) one (1) member appointed by the Second Lien Facility Agent, and (c) one (1) member appointed by the Creditors' Committee. Each member of the Liquidating Trust Committee shall serve for a term of two (2) 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 three (3) 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. Unless otherwise specified herein, 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 this Liquidating Trust Agreement. In the event that a Liquidating Trust Committee shall not be formed and continuing to exist under this Liquidating Trust Agreement, all references herein to required approval or other action of such Liquidating Trust Committee shall be of no force or effect. In performance of their duties hereunder, 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.

#### 4.16. Removal of the Liquidating Trustee.

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

## SECTION V PAYMENTS AND DISTRIBUTIONS.

### 5.1. Distributions to Beneficiaries.

a. Distributions to holders of 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 shall be made from the Reserve Accounts to the extent permitted by the Budget and/or the Sale Support Agreement and in accordance with the Plan. 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 in accordance with the Plan.

b. Distributions to holders of Allowed First Lien Facility Claims shall be made in accordance with the Plan.

c. Distributions to holders of any Allowed Second Lien Facility Secured Claims or Allowed Second Lien Facility Adequate Protection Claims shall be made on account of such Claims solely from any Other Available Cash upon which the Second Lien Facility Agent has a Lien in accordance with the Plan unless and until the Allowed First Lien Facility Claims are paid in full in Cash, and thereafter, in accordance with the Plan.

d. Distributions to holders of Allowed General Unsecured Claims shall be made solely from 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 in Cash of the Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, and Allowed Other Secured Claims (to the extent not otherwise satisfied in accordance with the terms of the Plan), all in accordance with the Plan.

e. Not later than ten (10) Business Days after receipt thereof, after the liquidation into Cash of Causes of Action (other than those Causes of Action abandoned by the Liquidating Trustee in accordance with the terms hereof and the Plan), the Liquidating Trustee shall distribute Net Causes of Action Proceeds to the holders of Allowed Claims in accordance with Sections 5.2, 5.3 and 5.4 of the Plan.

f. From and after the Effective Date, the Liquidating Trustee shall distribute on a bi-weekly basis all collections in respect of accounts receivable during each such two-week period in accordance with Sections 5.2 and 5.3 of the Plan.

g. Payments to the Beneficiaries hereunder shall be made only from the proceeds of the Trust Assets, and only to the extent that the Liquidating Trustee shall have sufficient proceeds from the Trust Assets to make such payments in accordance with this Section 5 and the Plan. Each Beneficiary shall be entitled to distributions solely from those Trust Assets available for distribution to such Beneficiary as expressly provided in the Plan.

5.2. Frequency and Amounts of Cash Payments.

a. The Liquidating Trustee shall make distributions to Beneficiaries holding Allowed Other Secured Claims (to the extent not otherwise satisfied in accordance with the terms of the Plan), Administrative Expense Claims, Priority Tax Claims and Other Priority Claims in accordance with the Plan as soon as such Claims become Allowed Claims.

b. From time to time in accordance with Sections 10.8.2, 10.8.3, 10.8.4 and 10.8.5 of the Plan, the Liquidating Trustee shall make distributions to the First Lien Facility Agent for the benefit of the First Lien Claimholders.

c. From time to time in accordance with Section 10.8.3 of the Plan, the Liquidating Trustee shall make distributions to the Second Lien Facility Agent for the benefit of the Second Lien Facility Lenders from the Other Available Cash upon which the Second Lien Facility Agent has a Lien, unless and until the First Lien Facility Claims are paid in full in Cash, at which point such distributions shall be from the Other Available Cash upon which the Second Lien Facility Agent has a Lien in accordance with Section 10.8.3 of the Plan and the First Lien Available Cash in accordance with Sections 10.8.2, 10.8.3, 10.8.4 and 10.8.5 of the Plan.

d. As often as in the reasonable discretion and judgment of the Liquidating Trustee there shall be Other Available Cash in an amount sufficient to render feasible a distribution of Cash to the holders of Allowed General Unsecured Claims, the Liquidating Trustee shall transfer and pay, or cause to be transferred and paid, to the holders of Allowed General Unsecured Claims such aggregate amount of Other Available Cash, if any, as shall then be held in the Liquidating Trust, excluding reasonable amounts of Cash held in the Trust Administrative Fund pursuant to Section 4.1 hereof or otherwise needed to pay the expenses, debts, charges, liabilities and obligations of the Liquidating Trust (the "Distribution Amount"). The aggregate amounts required to be distributed to the holders of Allowed General Unsecured Claims shall be determined by the Liquidating Trustee pursuant to and in accordance with the terms of the Plan and this Liquidating Trust Agreement. The Distribution Amount(s) shall be paid to the holders of Allowed General Unsecured Claims at least once every three (3) months and shall be determined by the Liquidating Trustee in his reasonable discretion, and his determination shall be final and conclusive on all persons, in the absence of gross negligence or willful misconduct on the part of the Liquidating Trustee, and shall not be reviewed by the Bankruptcy Court. In determining the amount of any such distribution, the Liquidating Trust may rely and shall be fully protected in relying upon the advice and opinion of independent public accountants or of counsel to the Liquidating Trust.

5.3. Establishment of the Claim Accounts.

The Liquidating Trustee will establish on the Liquidating Trust's books and records an account representing each Allowed or Disputed Claim as set forth on the official claims register maintained by BMC Group, Inc. as claims agent or its successor (each, a "Claim Account"). It is expressly understood that the establishment of the Claim Accounts by the Liquidating Trustee or his agents is solely for administrative convenience, and that amounts allocable to such Claim Accounts need not be segregated and may be commingled for investment

purposes as specified herein. The Liquidating Trustee may rely on the official claims register as correct.

5.4. Distributions from Trust Estate.

Distributions will be made to the Beneficiaries in accordance with the terms of the Plan and the Claim Accounts will be adjusted by the Liquidating Trustee to reflect such distributions.

5.5. Fractional Distributions.

No distribution in fractions of cents shall be issued. If the Distribution Amount allocated to an Allowed Claim at the time of a distribution hereunder would include fractions of cents, the amount to be distributed shall be rounded down to the highest integral number of cents in the applicable Claim Account, but such rounding down shall not affect such allocation. The aggregate amount of the retained fractional distributions from the Distribution Amount shall be retained in the Liquidating Trust by the Liquidating Trustee and shall remain part of the Trust Estate.

5.6. Final Distribution.

After (a) the distribution of the payments described in Section 10.8.1 of the Plan, (b) the liquidation into Cash of all Trust Assets owned by the Liquidating Trust (other than those Trust Assets abandoned by the Liquidating Trustee in accordance with the terms of the Plan), (c) the collection of other sums due or otherwise remitted or returned to the Estates, (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 prepare a final accounting of any and all monies remaining in any accounts maintained by the Liquidating Trustee on behalf of the Liquidating Trust, including the Trust Administrative Fund, First Lien Trust Administrative Fund and any escrow funds, or otherwise remaining in the Trust Estate (the "Final Cash"). Once the amount of the Final Cash has been determined, the Liquidating Trustee shall make the Final Distribution, in accordance with the Plan and this Liquidating Trust Agreement; *provided, however*, that if the Final Cash consisting of Other Available Cash 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 a charity of his choice.

5.7. Termination Date.

The Liquidating Trust shall terminate on such date when (a) a final decree has been entered closing all of the Chapter 11 Cases, (b) all Trust Assets have been distributed and (c) all claims have been pursued or abandoned pursuant to, and in accordance with, the Plan and this Liquidating Trust Agreement (the "Termination Date"). 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 obligations under the Plan or the Liquidating Trust Agreement once the Liquidating Trust has terminated pursuant to this section.

## **SECTION VI OTHER DUTIES OF THE TRUSTEE.**

### **6.1. Management of Trust Estate.**

With respect to the Trust Assets, the Liquidating Trustee may, if sufficient funds are available from the Trust Administrative Fund or Other Available Cash, purchase and maintain in existence such insurance as the Liquidating Trustee deems reasonable and necessary or appropriate from time to time to protect the Liquidating Trust, the Trust Assets, the Liquidating Trustee, the Liquidating Trust Committee, and the Beneficiaries' interests in the Liquidating Trust or from any potential claims or liabilities relating thereto or the distribution thereof.

### **6.2. Tax and Related Matters.**

Pursuant to and in accordance with the Plan, the Liquidating Trustee shall be responsible for all tax matters of the Trust Estate, including, but not limited to, the filing of all tax returns and other filings with governmental authorities on behalf of the Trust Estate, the Debtors' Estates and any subsidiaries (whether organized as a corporation, limited liability company or partnership and whether owned in whole or in part) for time periods ending on or before the last day in the taxable year of the Liquidating Trust including the Termination Date, including the filing of tax returns for the Liquidating Trust, except with respect to the Disputed Claims Reserve, as one or more grantor trusts pursuant to § 1.671-4(a) of the United States Income Tax Regulations, the filing of determination requests under Section 505(b) of the Bankruptcy Code, and responding to any tax audits of the Trust Estate. The Liquidating Trustee shall provide such information to the Beneficiaries as will enable them to properly file their separate tax returns and withhold and pay over any amounts required by tax law. The Liquidating Trustee is authorized to act as agent for the Trust Estate in withholding or paying over any amounts required by law (including tax law) to be withheld or paid with respect to the Trust Estate. Except as otherwise set forth in this Liquidating Trust Agreement or the Plan, any items of income, deduction, credit, or loss of the Liquidating Trust not allocable to the Disputed Claims Reserve shall be allocated for federal income tax purposes among the Beneficiaries in accordance with each Beneficiary's entitlement to the Trust Assets under the Plan for the relevant taxable period. 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. The Liquidating Trustee shall be entitled to deduct any federal or state withholding taxes from any payments made with respect to Allowed Claims, as appropriate, and shall otherwise comply with Section 346 of the Bankruptcy Code.

### **6.3. No Implied Duties.**

The Liquidating Trustee shall not manage, control, use, sell, dispose, collect or otherwise deal with the Trust Estate or otherwise take any action hereunder except as expressly

provided herein, and no implied duties or obligations whatsoever of the Liquidating Trustee shall be read into this Liquidating Trust Agreement.

## **SECTION VII CONCERNING THE LIQUIDATING TRUSTEE.**

### **7.1. Acceptance by Liquidating Trustee.**

The Liquidating Trustee accepts the Liquidating Trust hereby created for the benefit of the Beneficiaries and agrees to act as Liquidating Trustee of the Liquidating Trust pursuant to the terms of this Liquidating Trust Agreement and the Plan. The Liquidating Trustee shall have and exercise the rights and powers herein granted and shall be charged solely with the performance of the duties herein declared on the part of Liquidating Trustee. The Liquidating Trustee also agrees to receive and disburse all monies actually received by him constituting part of the Trust Estate pursuant to the terms of this Liquidating Trust Agreement and the Plan.

### **7.2. Discretionary Submission of Questions.**

Subject to the provisions of this Section VII, the Liquidating Trustee, in his sole discretion, may, but shall not be required to, submit to the Bankruptcy Court, from time to time, any question or questions with respect to which the Liquidating Trustee may desire to have explicit approval of the Bankruptcy Court for the taking of any specific action proposed to be taken by the Liquidating Trustee with respect to the Trust Estate, or any part thereof, and the administration and distribution of the Trust Estate. The written authorization of the Bankruptcy Court set forth in a Final Order shall constitute approval by the Bankruptcy Court of the proposed action to be taken by the Liquidating Trustee. All costs and expenses incurred by the Liquidating Trust in the exercise of any right, power or authority conferred by this Section 7.2 shall be costs and reasonable expenses of the Trust Estate, payable solely from the Trust Administrative Fund or Other Available Cash.

### **7.3. Liability of the Liquidating Trustee.**

a. **Limitation on Liability.** No provision of this 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 this Liquidating Trust Agreement.

b. **Reliance on Certificates or Opinions.** In the absence of gross negligence or willful misconduct on the part of the Liquidating Trustee, the Liquidating Trust may conclusively rely on the truth of the statements and correctness of the opinions expressed upon any certificates or opinions furnished to the Liquidating Trustee and conforming to the requirements of this Liquidating Trust Agreement.

c. **Discretion of Liquidating Trustee.** The Liquidating Trustee, within the limitations and restrictions expressed and imposed by this Liquidating Trust Agreement and the Plan, may act freely under all or any of the rights, powers and authority conferred hereby, in all matters concerning the Trust Estate, after forming his best reasonable business judgment based

upon the circumstances of any particular question or situation as to the best course to pursue, without the necessity of obtaining the consent or permission or authorization of the Beneficiaries, the Bankruptcy Court, or of any official or officer; and the rights, powers and authority conferred on the Liquidating Trustee by this Liquidating Trust Agreement are conferred in contemplation of such freedom of reasonable business judgment and action within the limitations and restrictions so expressed and imposed; *provided, however*, that the Liquidating Trustee shall not be liable for any error or exercise of judgment, unless it shall be proved in court of competent jurisdiction that such Liquidating Trustee was grossly negligent or acted in a manner that constituted willful misconduct.

7.4. Reliance by Liquidating Trustee.

a. **Genuineness of Documents.** The Liquidating Trustee may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, objection, Order, judgment, decree, or other paper or document reasonably believed by him to be genuine and to have been signed, made, entered or presented by the proper party, parties, official, officials, entity or entities.

b. **Retention of Counsel.** The Liquidating Trustee, after consultation with the Liquidating Trust Committee, may retain and consult with legal counsel, independent public accountants and other experts. Legal counsel so retained by the Liquidating Trustee to pursue Causes of Action for the benefit of the Beneficiaries may be retained on a contingent fee basis with such legal counsel's fees not to exceed the percentage of Causes of Action set forth in the definition of Contingency Fee Counsel Fees and Expenses in the Plan and on such other terms and provision acceptable to the Liquidating Trustee after consultation with the Liquidating Trust Committee. The Liquidating Trustee shall not be liable for any action taken or suffered by him or omitted to be taken by him without gross negligence or willful misconduct in reliance on any opinion or certification of such accountants or in accordance with the advice of such counsel or experts, provided that such accountants, counsel and experts were selected and retained with reasonable care. It shall not be a conflict of interest for the Liquidating Trustee to be represented by counsel to the Liquidating Trust Committee.

7.5. Reliance on Liquidating Trustee.

No person dealing with the Liquidating Trustee shall be obligated to see to the application of any monies, securities, or other property paid or delivered to them or to inquire into the expediency or propriety of any transaction or the right, power, or authority of the Liquidating Trustee to enter into or consummate the same upon such terms as the Liquidating Trustee may deem advisable. Persons dealing with the Liquidating Trustee shall look only to the Trust Estate to satisfy any liability incurred by the Liquidating Trustee to such persons in carrying out the terms of this Liquidating Trust Agreement, and, except as otherwise expressly provided herein, the Liquidating Trustee shall have no personal, individual or corporate obligation to satisfy any such liability.

7.6. Indemnification.

a. **Indemnification of Liquidating Trustee and Agents.** The Liquidating Trust hereby 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 this Liquidating Trust Agreement.

b. **Payment of Expenses.** Expenses (including reasonable attorneys' fees) incurred in defending any action, suit or proceeding referred to in this Section 7.6 may be paid by the Liquidating Trust from the Trust Administrative Fund or Other Available Cash in advance of the final disposition of such action, suit or proceeding, upon an undertaking by the Liquidating Trustee or an employee or agent of the Liquidating Trust entitled to be indemnified.

c. **Insurance.** The Liquidating Trust may maintain insurance during its existence and after its termination, at its expense payable from the Trust Administrative Fund or Other Available Cash, to protect itself, the Liquidating Trustee, and officers, employees or agents of the Liquidating Trust of and from any liability, whether or not the Liquidating Trust would have the legal power to directly indemnify the Liquidating Trustee, or officers, employees or agents of the Liquidating Trust against such liability. The terms "Liquidating Trustee," "officers," "employees" or "agents" as used herein, where applicable, include the heirs, successors, executors, administrators, personal representatives, or estates of such persons or entities.

d. **Bond.** As a condition to serving as Liquidating Trustee hereunder, the Liquidating Trustee and any successor trustee is required to and shall post a bond in favor of the Liquidating Trust in an amount not less than one million dollars (\$1,000,000), which bond shall be in substantially the form as that required by the United States Trustee's Office for trustees serving in bankruptcy cases within the District of Delaware, or such alternative form of financial surety or financial insurance policy as the Liquidating Trust Committee deems appropriate. The costs associated with the procurement and maintenance of the bond shall be funded out of the Trust Administrative Fund.

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

- (i) 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;
- (ii) Any taxes, charges and assessments which may be owed by, or levied or assessed against, the Trust Estate or any property held in trust hereunder; and
- (iii) Any reasonable, documented costs, and out-of-pocket expenses incurred by the Liquidating Trust Committee in carrying out its duties under the Plan.

7.7. Compensation of Liquidating Trustee.

The Liquidating Trustee will be compensated from the Trust Administrative Fund according to the terms of Schedule 4.12.

7.8. Resignation and Removal.

a. **Resignation.** The Liquidating Trustee may resign and be discharged from any future obligations and liabilities hereunder 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.

b. **Removal.** 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 hereof. Upon any such removal, such removed Liquidating Trustee shall be entitled to any reimbursement and indemnification set forth in this Liquidating Trust Agreement that remain due and owing to such Liquidating Trustee at the time of such removal.

c. **Appointment of a Successor Trustee.** If, at any time, the Liquidating Trustee shall give notice of his intent to resign pursuant to Section 7.8 hereof 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 this Liquidating Trust Agreement.

d. **Acceptance of Appointment by Successor Liquidating Trustee.** Any successor Liquidating Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder 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 hereunder with like effect as if originally named herein.

e. **Trust Continuance.** The death, resignation, incompetency or removal of the Liquidating Trustee shall operate neither to terminate the Liquidating Trust created by this Liquidating Trust Agreement nor to revoke any existing agency created pursuant to the terms of this 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 this 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.

## **SECTION VIII SUPPLEMENTS AND AMENDMENTS TO THIS LIQUIDATING TRUST AGREEMENT.**

### **8.1. Supplements and Amendments.**

Subject to the provisions of Sections 2, 8.2 and 8.3 hereof, at any time and from time to time, and subject to approval by the Bankruptcy Court if sought by the Liquidating Trustee pursuant to Section 7.2 of this Liquidating Trust Agreement, the Liquidating Trust Committee may direct the Liquidating Trustee to execute a supplement or amendment hereto for the purpose of adding provisions to, or changing or eliminating provisions of, this Liquidating Trust Agreement, or amendments thereto, as specified in such vote or consent; *provided, however,* that no such supplement or amendment shall (a) require any Beneficiary to furnish or advance funds to the Liquidating Trustee or shall entail any additional personal liability or the surrender of any individual right on the part of any Beneficiary except with the written consent of such Beneficiary, (b) without the prior written consent of the holder of an Allowed Administrative Expense Claim, Allowed Priority Tax Claim, Allowed Other Priority Claim, Allowed Other Secured Claim, Allowed First Lien Facility Claim, or Allowed Second Lien Facility Claim, change or modify the Liquidating Trustee's obligations with respect to such Claim, including, without limitation, provisions for payment of such Claim, or (c) without the consent of those holders of General Unsecured Claims holding not less than seventy-five percent (in aggregate dollar amount) of the General Unsecured Claims, change or modify any other provisions for distribution of the Trust Estate. In no event shall this Liquidating Trust Agreement be amended so as to change the purposes of the Liquidating Trust as set forth in Section 2 or the treatment of Claims under the Plan and this Liquidating Trust Agreement.

8.2. Declining to Execute Documents.

If, in the reasonable opinion of the Liquidating Trustee, any document required to be executed pursuant to the terms of Section 8.1 hereof materially and adversely affects any immunity or indemnity in favor of the Liquidating Trustee under this Liquidating Trust Agreement, the Liquidating Trustee may in his discretion decline to execute such document.

8.3. Notice of Form of Supplements and Amendments Requiring Vote or Consent.

A copy of each amendment or supplement (or a fair summary thereof) shall be furnished to the Beneficiaries promptly after the execution thereof, except that with respect to any proposed amendment or supplement for which the consent of certain Beneficiaries is required pursuant to Section 8.1 hereof, the form of such proposed supplement or amendment (or a fair summary thereof) shall be furnished to the applicable Beneficiaries prior to the Liquidating Trustee's seeking the approval thereof by vote or consent of such necessary parties.

8.4. Notice and Effect of Executed Amendment.

Upon the execution of any declaration of amendment or supplement, this Liquidating Trust Agreement shall be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Liquidating Trust Agreement of the Liquidating Trustee and the Beneficiaries shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such amendment or supplement shall be thereby deemed to be part of the terms and conditions of this Liquidating Trust Agreement for any and all purposes.

**SECTION IX MISCELLANEOUS.**

9.1. Title to Trust Estate.

No Beneficiary or any other party other than the Liquidating Trust shall have title to any part of the Trust Estate.

9.2. Sales of Trust Assets.

Any sale or other conveyance of any Trust Assets, or part thereof, by the Liquidating Trustee made in accordance with the terms of this Liquidating Trust Agreement shall bind the Beneficiaries and shall be effective to transfer or convey all right, title and interest of the Liquidating Trustee and the Beneficiaries in and to such Trust Asset.

9.3. Notices.

Unless otherwise expressly specified or permitted by the terms of the Plan or this Liquidating Trust Agreement, all notices shall be in writing and delivered by registered or certified mail, return receipt requested, or by a hand or facsimile transmission (and confirmed by mail), in any such case addressed as follows:

If to the Liquidating Trustee:

Kip Horton  
RPA Advisors, LLC  
45 Eisenhower Drive  
Paramus, New Jersey 07652  
Phone: (201) 527-6653  
Email: khorton@rpaadvisors.com

and if to any Beneficiary, addressed to its latest mailing address reflected on the official claims register maintained by BMC Group, Inc..

9.4. Severability.

Any provision of this Liquidating Trust Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

9.5. Counterparts.

This Liquidating Trust Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument.

9.6. Binding Agreement.

All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Liquidating Trustee and his respective successors and assigns and any successor Liquidating Trustee provided for in Section VII, his respective successors and assigns, and the Beneficiaries, and their respective personal representatives, successors and assigns. Any request, notice, direction, consent, waiver or other instrument or action by any party hereto or any Beneficiary shall bind their respective heirs, personal representatives, successors and assigns.

9.7. No Personal Liability of Beneficiaries.

The Beneficiaries will not incur any personal liability through their ownership or possession of their Beneficial Interests, except for taxes imposed on the Beneficiaries pursuant to applicable provisions of federal, state or local law with respect to the receipt of such Beneficial Interests or distributions from or transactions of the Liquidating Trust and other charges specified herein. Liabilities of the Liquidating Trust are to be satisfied in all events (including the exhaustion of the Trust Estate) exclusively from the Trust Estate and such liabilities are not to attach to or be paid from any amounts distributed to the Beneficiaries, regardless of the time at which such distribution took place, or from the assets of the Beneficiaries.

9.8. Headings.

The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

9.9. Construction.

Except where the context otherwise requires, words importing the masculine gender shall include the feminine and the neuter, if appropriate; words importing the singular number shall include the plural number and vice versa; and words importing persons shall include partnerships, associations, and corporations.

9.10. Governing Law.

This Liquidating Trust Agreement, including all matters of construction, validity and performance hereof, shall in all respects be governed by, and construed and interpreted in accordance with, the internal laws of the State of Delaware.

9.11. Construction with the Plan.

The Plan is hereby incorporated fully by reference and is made a part hereof for all purposes. In the event of any inconsistency or conflict between the terms, conditions, definitions and provisions of this Liquidating Trust Agreement and the terms, conditions, definitions and provisions of the Plan, the terms, conditions, definitions and provisions of the Plan shall control.

9.12. Subject to Bankruptcy Court's Jurisdiction.

The Bankruptcy Court shall retain jurisdiction over this Liquidating Trust Agreement, the Liquidating Trust, the Trust Estate, the Liquidating Trustee and the Debtors to issue any and all Orders and to take other actions necessary to the implementation of this Liquidating Trust Agreement, such jurisdiction to include, without limitation, the jurisdiction contemplated by Section 1142 of the Bankruptcy Code.

9.13. Intention of the Parties.

The Debtors, the Beneficiaries and the Liquidating Trustee hereby express their intent to create and maintain the Liquidating Trust, except with respect to the Disputed Claims Reserve, as a liquidating trust 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, and the Liquidating Trustee further represents that the Liquidating Trust shall not: (a) receive transfers of listed stocks or securities, any readily-marketable assets (other than those constituting the trust estate), or any assets of a going business; or (b) receive and will not retain Cash or cash equivalents in excess of a reasonable amount to meet claims and contingent liabilities, determined in the reasonable discretion of the Liquidating Trustee in accordance with the provisions of Sections IV and V hereof.

Dated: \_\_\_\_\_, 2012

Graceway Pharma Holding Corp.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Graceway Holdings, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Graceway Pharmaceuticals, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Chester Valley Holdings, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Chester Valley Pharmaceuticals, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Graceway Canada Holdings, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Graceway International, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Liquidating Trustee

By: \_\_\_\_\_  
Name: Kip Horton

Schedule 4.12

Compensation of Liquidating Trustee

The Liquidating Trustee will receive a fee of \$640 per hour.

**Exhibit 3**

Assumption Schedule

[to come]

	<b>Contract Counterparty</b>	<b>Type of Contract</b>	<b>Contract Date</b>	<b>Notice Address</b>	<b>Brief Summary</b>	<b>Cure Amount</b>
1.						
2.						

**EXHIBIT B**

**Confirmation Notice**

**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

**NOTICE OF ENTRY OF ORDER CONFIRMING  
THE FIRST AMENDED JOINT PLAN OF LIQUIDATION  
OF GRACEWAY PHARMACEUTICALS, LLC, ET AL.**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

1. **Confirmation of the Plan.** On [\_\_\_\_], 2012, the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) entered an order (the “**Confirmation Order**”) confirming the First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, *et al.*, dated February 28, 2012, as modified (the “**Plan**”), in the Chapter 11 Cases of the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”). Unless otherwise defined in this Notice, capitalized terms and phrases used herein have the meanings given to them in the Plan and the Confirmation Order. This Notice is intended solely to provide notice of the entry of the Confirmation Order and it does not, and shall not be construed to, limit, modify or interpret any of the provisions of the Confirmation Order. The following paragraphs identify some of the provisions of the Confirmation Order for the convenience of Creditors; however, Creditors should refer to the full text of the Confirmation Order and should not rely upon the summary provided below.

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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.

## **2. Termination of Interests and Cancellation of Instruments.**

a. Except as provided in the Plan or the Confirmation Order, the rights afforded under the Plan and the treatment of Claims and Interests under the Plan shall be in exchange for and in complete satisfaction and release of all Claims and termination of all Interests arising on or before the Effective Date, including any interest accrued on Claims from September 29, 2011 (the "**Petition Date**"). Except as provided in the Plan or in the Confirmation Order, confirmation shall terminate (i) all interests or shares in, or warrants or rights asserted against, the Debtors of the type described in the definition of "equity security" in Bankruptcy Code Section 101(16) (including all common stock and all warrants to purchase or subscribe to common stock issued by the Debtors), and (ii) all Claims of a Debtor against any other Debtor.

## **3. Stay, Injunctions, Exculpation and Releases.**

a. Except as otherwise expressly provided in the Confirmation Order or 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.

b. None of the Debtors, the Liquidating Trustee (solely with respect to the Liquidating Trustee's actions prior to and including the Effective Date), 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 (with respect to the Debtors, as to officers as of the Petition Date or that have become officers thereafter), directors (with respect to the Debtors, as to directors as of the Petition Date or that have become directors thereafter), advisors, attorneys, financial advisors, investment bankers or agents, or any of such parties' successors and assigns, shall have or incur any obligation 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, advisors, attorneys, financial advisors, investment bankers, agents or related professionals, 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 postpetition activities leading to the promulgation and Confirmation of the Plan except fraud, willful misconduct or gross negligence as determined by a Final Order. Nothing in Section 12.5 of the Plan, as amended by the Confirmation Order, shall: (i) be construed as a release of any entity's fraud, gross negligence or willful misconduct with respect to matters set forth in Section 12.5 of the Plan, as amended by the Confirmation Order, 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.

c. 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, 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, the Liquidating Trustee (solely with respect to the Liquidating Trustee's actions prior to and including the Effective Date), 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 (with respect to the Debtors, as to officers as of the Petition Date or that have become officers thereafter), directors (with respect to the Debtors, as to directors as of the Petition Date or that have become directors thereafter), advisors, attorneys, financial advisors, investment bankers, related professionals or agents, 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 postpetition activities leading to the promulgation and Confirmation of the Plan except fraud, willful misconduct or gross negligence as determined by a Final Order.

d. Except as otherwise expressly provided in the Plan or the Confirmation Order, upon the Effective Date, each of the Debtors will (i) remise, acquit, waive, release and forever discharge each of the Debtor Releasees, as that term has been amended in the Confirmation Order, from, and (ii) covenant and agree 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, except fraud, willful misconduct or gross negligence as determined by a Final Order.

e. 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 who voted in favor of the Plan 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' or the Liquidating Trustee's 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 any Creditor Releasee, except fraud, willful misconduct or gross negligence as determined by a Final Order.

f. Except as otherwise expressly 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 by the Plan.

g. Pursuant to Section 1146(c) of the Bankruptcy Code, the issuance, transfer or exchange of any Security or the making or delivery of any instrument of transfer under the Plan may not be taxed under any law imposing a stamp tax, use tax, sales tax or similar tax. Any sale of any Asset occurring after or upon the Effective Date shall be deemed to be in furtherance of the Plan.

h. Each Person that voted in favor of the Plan shall be deemed to have specifically consented to the releases and injunctions set forth in the Plan and in the Confirmation Order.

#### **4. Bar Dates.**

a. *Professional Claims.* On or prior to the first Business Day that is at least thirty-five (35) days following the Effective Date or such other date ordered by the Bankruptcy Court (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 (the “**Overpayment Amount**”) 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.

b. *Administrative Expense Claims Other Than Tax Claims.* Other than with respect to (i) Administrative Expense Claims for which the Bankruptcy Court previously has established a Bar Date, and (ii) Tax Claims addressed in subsection c below, any and all requests for payment or proofs of Administrative Expense Claims, including Claims of all Professionals or other Entities requesting compensation or reimbursement of expenses pursuant to Bankruptcy Code Sections 327, 328, 330, 331, 503(b) or 1103 for services rendered on or before the Effective Date (including any compensation requested by any Professional or any other Entity for making a substantial contribution in the Chapter 11 Cases), must be Filed and served on the Liquidating Trustee and its counsel no later than the Administrative Expense Claims Bar Date. Objections to any such Administrative Expense Claims must be Filed and served on the claimant no later than sixty (60) days after the Administrative Expense Claims Bar Date, which date may be extended by application to the Bankruptcy Court. The Liquidating Trustee shall use reasonable efforts to promptly and diligently pursue resolution of any and all Disputed Administrative Expense Claims.

Holders of Administrative Expense Claims, including all Professionals or other Entities requesting compensation or reimbursement of expenses pursuant to Bankruptcy Code Sections 327, 328, 330, 331, 503(b) or 1103 for services rendered on or before the Effective Date (including any compensation requested by any Professional or any other Entity for making a substantial contribution in the Chapter 11 Cases), that are required to File a request for payment or proof of such Claims and that do not File such requests or proofs of Claim on or before the Administrative Expense Claims Bar Date shall be forever barred from asserting such Claims against the any of the Debtors, their Estates, or the Liquidating Trust.

c. *Tax Claims.* All requests for payment of Claims pursuant to Section 503 of the Bankruptcy Code by a Governmental Unit for Taxes (and for interest and/or penalties or other amounts related to such Taxes) for any tax year or period, all or any portion of which occurs or falls within the period from and including the Petition Date through and including the Effective Date, and for which no bar date has otherwise been previously established (“**Tax Claims**”), must be Filed on or before the later of: (i) thirty (30) days following the Effective Date; or (ii) to the extent applicable, sixty (60) days following the filing of a tax return for such Taxes (if such Taxes are assessed based on a tax return) for such tax year or period with the applicable Governmental Unit. Objections to any Tax Claims must be Filed within thirty (30) days after the later of the Administrative Expense Claims Bar Date or sixty (60) days following

the filing of a tax return for such Taxes, which objection dates may be extended by application to the Bankruptcy Court.

Any holder of a Tax Claim that is required to File a request for payment of such Tax Claim and other amounts due related to such Taxes and which does not File such a Claim by the applicable bar date shall be forever barred from asserting any such Claim against any of the Debtors or any non-Debtor member of the Debtors' consolidated tax group, the Debtors' Estates, the Liquidating Trust or any other Entity, or their respective property, whether any such Claim is deemed to arise prior to, on, or subsequent to the Effective Date, and shall receive no distribution under the Plan or otherwise on account of such Claim.

d. *Rejection Damages Claims.* If the rejection of an executory contract or unexpired lease pursuant to Section 6.5 of the Plan gives rise to a Claim by the other party or parties to the executory contract or unexpired lease, such Claim shall receive no distribution under the Plan or otherwise on account of such Claim unless a proof of Claim is filed within thirty (30) days after the mailing of notice of the entry of the Confirmation Order.

**5. Treatment of Executory Contracts.**

Except for those executory contracts and unexpired leases that (i) have been previously assumed and assigned or rejected pursuant to previous Orders of the Bankruptcy Court, or (ii) 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 nothing 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.

**6. Bankruptcy Court Address.** For purposes of Filing requests for payment of Administrative Expense Claims and applications for allowance of Professional Fee Claims, the address of the Court is 824 North Market Street, 5th Floor, Wilmington, Delaware 19801.

**7. Effective Date.** A separate notice of the occurrence of the Effective Date will be filed with the Court as soon as practicable.

**8. Copies of Confirmation Order.** Copies of the Confirmation Order may be obtained by written request to BMC Group, Inc., attn: Graceway Pharmaceuticals Solicitation Requests, PO Box 3020, Chanhassen, MN 55317-3020, and may be examined by any party in interest during normal business hours at the Office of the Clerk of the Court, United States Bankruptcy Court, 824 Market Street, 5th Floor, Wilmington, Delaware 19801. You may also obtain copies of the Confirmation Order or of any pleadings filed in these Chapter 11 Cases for a fee at: <http://www.deb.uscourts.gov> or free of charge at [www.bmcgroup.com/graceway](http://www.bmcgroup.com/graceway).

Dated: [\_\_\_\_], 2012

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