

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

In re:

GRACEWAY PHARMACEUTICALS, LLC,
et al.,¹

Debtors.

Chapter 11

Case No. 11-13036 (PJW)

Jointly Administered

Docket Ref. No. 551 ~~718~~

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

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175), Case No. 11-13037 (PJW); Graceway Holdings, LLC, a Delaware limited liability company (2502), Case No. 11-13038 (PJW); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385), Case No. 11-13036 (PJW); Chester Valley Holdings, LLC, a Delaware limited liability company (9457), Case No. 11-13039 (PJW); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713), Case No. 11-13041 (PJW); Graceway Canada Holdings, Inc., a Delaware corporation (6663), Case No. 11-13042 (PJW); and Graceway International, Inc., a Delaware corporation (2399), Case No. 11-13043 (PJW). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 400, Bristol, TN 37620 (Attn: John Bellamy). On October 4, 2011, Graceway Canada Company filed an application in the Ontario Superior Court of Justice (Commercial List) pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C. 43.

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**”);² 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.

² 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:³

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

³ 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.⁴ 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.

⁴ 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: April 23, 2012
Wilmington, Delaware



Peter J. Walsh
United States Bankruptcy Judge