

EXHIBIT A

Plan

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

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

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Dated: February 28, 2012

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.

ARTICLE 1 DEFINITIONS, INTERPRETATION AND RULES OF CONSTRUCTION 3

A. Scope of Definitions 3

B. Definitions..... 3

1.1	1.0% Holdback Account.....	3
1.2	363 Sale.....	3
1.3	549 Avoidance Action	3
1.4	549 Avoidance Action Proceeds.....	3
1.5	Acquired Assets	4
1.6	Administrative Expense Claim	4
1.7	Administrative Expense Claims Bar Date	4
1.8	Affiliate	4
1.9	Allowed Claim or Allowed Interest.....	4
1.10	Allowed [] Claim or Allowed [] Interest.....	5
1.11	Approving Majority First Lien Lenders.....	5
1.12	Asset Purchase Agreement	5
1.13	Assets	5
1.14	Assumed.....	6
1.15	Assumed Liabilities	6
1.16	Assumption Schedule.....	6
1.17	Avoidance Action	6
1.18	Avoidance Action Proceeds.....	6
1.19	Bankruptcy Code	6
1.20	Bankruptcy Court.....	7
1.21	Bankruptcy Rules.....	7
1.22	Bar Date	7
1.23	Beneficiaries	7
1.24	Bid Procedures Order.....	7
1.25	Budget.....	7
1.26	Business Day.....	7
1.27	Canadian Distribution Amount.....	7
1.28	Cash.....	8
1.29	Causes of Action	8
1.30	Causes of Action Proceeds.....	8
1.31	CCR Account.....	8
1.32	Chapter 11 Cases.....	9
1.33	Claim.....	9
1.34	Class.....	9
1.35	Committee Settlement.....	9
1.36	Confirmation	10
1.37	Confirmation Date	10
1.38	Confirmation Hearing	10
1.39	Confirmation Order.....	10
1.40	Consenting First Lien Lenders.....	10
1.41	Contingency Fee Counsel Fees and Expenses	10

1.42	Creditor	10
1.43	Creditor Releasees	10
1.44	Creditors' Committee.....	11
1.45	Debtor(s)	11
1.46	Debtor Releasees.....	11
1.47	Deficiency Claims.....	12
1.48	Designated Account	12
1.49	DIP Order.....	12
1.50	Disclosure Statement	12
1.51	Disputed Claim or Disputed Interest.....	12
1.52	Disputed [] Claim or Disputed [] Interest	13
1.53	Disputed Claims Reserve.....	13
1.54	Effective Date	13
1.55	Employee Account.....	13
1.56	Entity.....	14
1.57	Estate.....	14
1.58	Estate Fund Amount	14
1.59	Face Amount.....	14
1.60	Federal Bankruptcy Rule(s)	15
1.61	File or Filed.....	15
1.62	Final Distribution.....	15
1.63	Final Distribution Date	15
1.64	Final Order.....	15
1.65	First Lien Available Cash	16
1.66	First Lien Claimholders	17
1.67	First Lien Credit Agreement	17
1.68	First Lien Facility Adequate Protection Claim	17
1.69	First Lien Facility Agent.....	17
1.70	First Lien Facility Claim.....	17
1.71	First Lien Facility Deficiency Claim	17
1.72	First Lien Facility Lenders.....	17
1.73	First Lien Facility Secured Claim.....	17
1.74	First Lien Trust Administrative Fund	18
1.75	General Unsecured Claims	18
1.76	Graceway Canada	18
1.77	Governmental Claims Bar Date.....	18
1.78	Governmental Unit.....	18
1.79	GTCR.....	18
1.80	Impaired.....	19
1.81	Indemnification Claims.....	19
1.82	Intercreditor Agreement.....	19
1.83	Intercompany Claims	19
1.84	Interest.....	19
1.85	Lazard	19
1.86	Lazard Account.....	19
1.87	Lien	20

1.88	Liquidating Trust	20
1.89	Liquidating Trust Agreement.....	20
1.90	Liquidating Trust Committee.....	20
1.91	Liquidating Trustee.....	20
1.92	Liquidating Trustee Fee Amount	20
1.93	Liquidating Trustee Fees.....	21
1.94	Liquidating Trustee First Lien Fees.....	21
1.95	Mezzanine Credit Agreement	21
1.96	Mezzanine Facility Agent.....	22
1.97	Mezzanine Facility Claim	22
1.98	Mezzanine Facility Lenders.....	22
1.99	Net Causes of Action Proceeds.....	22
1.100	Nycomed Litigation	22
1.101	Nycomed Litigation Proceeds.....	22
1.102	Old Equity.....	22
1.103	Old Equity Rights	22
1.104	Order	23
1.105	Other Assets	23
1.106	Other Available Cash.....	24
1.107	Other Priority Claim	24
1.108	Other Secured Claim Liens.....	24
1.109	Other Secured Claims	24
1.110	Overpayment Amount.....	24
1.111	Person.....	24
1.112	Petition Date.....	24
1.113	Plan	24
1.114	Possessory Lienholder Claims	25
1.115	Prepetition Claims Motions	25
1.116	Priority Tax Claim	25
1.117	Pro Rata.....	25
1.118	Professional.....	25
1.119	Professional Claim.....	26
1.120	Purchaser.....	26
1.121	Released Claims.....	26
1.122	Remaining Contracts.....	26
1.123	Reserve Accounts.....	26
1.124	Sale Allocation Motion	26
1.125	Sale Motion.....	27
1.126	Sale Order	27
1.127	Sale Proceeds	27
1.128	Sale Support Agreement	27
1.129	Scheduled	28
1.130	Schedules	28
1.131	Second Lien Credit Agreement.....	28
1.132	Second Lien Facility Adequate Protection Claim.....	28
1.133	Second Lien Facility Agent	28

1.134	Second Lien Facility Claim	28
1.135	Second Lien Facility Deficiency Claim	28
1.136	Second Lien Facility Lenders	28
1.137	Second Lien Facility Secured Claim	29
1.138	Second Lien Obligations	29
1.139	Secured Claim	29
1.140	Security	29
1.141	Tax Claims	29
1.142	Taxes	29
1.143	Trust Administrative Fund	30
1.144	Trust Estate or Trust Assets	30
1.145	Unimpaired	30
1.146	United States Trustee	30
1.147	Unsecured Claim	30
C.	Rules of Interpretation	31
D.	Computation of Time	33
ARTICLE 2 TREATMENT OF UNCLASSIFIED CLAIMS		33
2.1	Administrative Expense Claims	33
2.2	Statutory Fees	34
2.3	Professional Claims	34
2.4	Priority Tax Claims	35
2.5	Deadline for Filing Administrative Expense Claims	35
ARTICLE 3 CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS		37
A.	General	37
B.	Classification	38
3.1	Class 1: Other Priority Claims	38
3.2	Class 2: First Lien Facility Claims	38
3.3	Class 3: Second Lien Facility Claims	38
3.4	Class 4: Other Secured Claims	38
3.5	Class 5: General Unsecured Claims	38
3.6	Class 6: Intercompany Claims	38
3.7	Class 7: Old Equity	38
3.8	Class 8: Old Equity Rights	39
ARTICLE 4 IDENTIFICATION OF CLASSES OF CLAIMS AND INTERESTS IMPAIRED AND NOT IMPAIRED BY THE PLAN		39
4.1	Unimpaired Classes of Claims and Interests	39
4.2	Impaired Classes of Claims and Interests	39

ARTICLE 5 PROVISIONS FOR THE TREATMENT OF CLAIMS AND INTERESTS	39
5.1 Class 1 (Other Priority Claims).....	39
5.2 Class 2 (First Lien Facility Claims).....	39
5.3 Class 3 (Second Lien Facility Claims).....	41
5.4 Class 4 et seq. (Other Secured Claims).....	42
5.5 Class 5 (General Unsecured Claims).....	43
5.6 Class 6 (Intercompany Claims).....	45
5.7 Class 7 (Old Equity).....	45
5.8 Class 8 (Old Equity Rights).....	45
ARTICLE 6 TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES	45
6.1 Assumption, Assignment and Rejection Pursuant to the Sale Order	45
6.2 Assumption and Assignment of Remaining Contracts	46
6.3 Cure Payments; Assurance of Performance	46
6.4 Objections To Assumption of Remaining Contracts	47
6.5 Rejection	48
6.6 Approval of Rejection; Rejection Damages Claims Bar Date.....	48
ARTICLE 7 MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN	49
7.1 Substantive Consolidation of Claims against Debtors for Plan Purposes Only	49
7.2 The Liquidating Trust	50
7.3 Continuation of the Automatic Stay	51
7.4 Transfer of Equity Interests in Graceway Canada	52
7.5 Committee Settlement.....	52
7.6 Post-Confirmation Operations	53
7.7 Post-Confirmation Funding of Plan.....	53
7.8 Post-Effective Date Funding of Operations	54
7.9 Dissolution of the Debtors	55
7.10 Closing of the Debtors' Chapter 11 Cases	56
7.11 Post-Effective Date Cause of Action Settlements	56
7.12 Post-Effective Date Reporting	57
7.13 Cancellation of Existing Securities and Agreements.....	58
7.14 Dissolution of Creditors' Committee.....	58
7.15 Nycomed Litigation Proceeds.....	58
ARTICLE 8 POST-CONFIRMATION LITIGATION	60
8.1 Transfer and Enforcement of Causes of Action.....	60
8.2 Abandonment of Causes of Action and Other Assets of the Debtors.....	60
ARTICLE 9 PROCEDURES FOR TREATMENT OF DISPUTED CLAIMS	61
9.1 Objections to Claims.....	61

9.2	Resolution of Disputed Claims	61
9.3	Amendments to Claims	62
9.4	No Distributions Pending Allowance	62
ARTICLE 10 DISTRIBUTIONS		63
10.1	No Duplicate Distributions	63
10.2	Delivery of Distributions in General.....	63
10.3	Cash Payments	63
10.4	Interest on Claims	63
10.5	No De Minimis Distributions.....	64
10.6	Face Amount.....	64
10.7	Undeliverable Distributions	64
10.8	Timing of Distributions.....	65
10.9	Disputed Claims Reserve.....	68
10.10	Compliance with Tax Requirements.....	69
ARTICLE 11 CONDITIONS PRECEDENT		70
11.1	Conditions to Confirmation	70
11.2	Conditions to the Effective Date.....	70
11.3	Termination of Plan for Failure To Become Effective	71
11.4	Waiver of Conditions.....	71
11.5	Notice of Effective Date	71
ARTICLE 12 EFFECT OF CONFIRMATION		72
12.1	Jurisdiction of Court	72
12.2	Binding Effect.....	72
12.3	Term of Pre-Confirmation Injunctions or Stays	72
12.4	Injunction Against Interference with Plan	72
12.5	Exculpation	73
12.6	Injunction	75
12.7	Releases by Debtors.....	76
12.8	Releases by Holders of Claims and Interests.....	76
12.9	Limitation of Liability.....	77
ARTICLE 13 RETENTION OF JURISDICTION		78
13.1	Scope of Bankruptcy Court Jurisdiction.....	78
ARTICLE 14 ACCEPTANCE OR REJECTION OF THE PLAN		80
14.1	Persons Entitled to Vote.....	80
14.2	Acceptance by Impaired Classes	81
14.3	Request for Non-Consensual Confirmation.....	81
ARTICLE 15 MISCELLANEOUS PROVISIONS.....		81

15.1	Effectuating Documents and Further Transactions.....	81
15.2	Corporate Action.....	81
15.3	Payment of Statutory Fees	82
15.4	Modification of the Plan	82
15.5	Revocation of the Plan	82
15.6	Governing Law	82
15.7	No Admissions.....	83
15.8	Severability of Plan Provisions.....	83
15.9	Successors and Assigns.....	83
15.10	Exemption from Certain Transfer Taxes	83
15.11	Preservation of Rights of Setoffs	84
15.12	Defenses with Respect to Unimpaired Claims.....	84
15.13	No Injunctive Relief.....	84
15.14	Saturday, Sunday or Legal Holiday	84
15.15	Entire Agreement	85
15.16	Dissolution of Creditors' Committee.....	85
15.17	Notices	85

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 1 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 I.

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