

Exhibit A – Proposed Order

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

-----X
In re : Chapter 11
Graceway Pharmaceuticals, LLC, *et al.*,¹ : Case No. 11-13036 (PJW)
Debtors. : (Jointly Administered)
-----X Related Docket No. ____

**ORDER APPROVING
SETTLEMENT BY AND BETWEEN
LIQUIDATING TRUSTEE AND CARDINAL HEALTH**

This matter coming before the Court on the *Certification of Counsel Regarding Settlement By and Between Liquidating Trustee and Cardinal Health* (the "Certification")²; the Court having reviewed the Certification; the Court finding that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and venue of this proceeding and the Certification in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; the Court having determined that notice of the Certification was appropriate under the particular circumstances; the Court having determined that the legal and factual basis set forth in the Certification establish just cause for the relief granted herein; the

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.

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.

Court having determined that the relief sought in the Certification is in the best interests of the Debtors and their estates; and after due deliberation and sufficient cause appearing therefor,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Cardinal Settlement, a copy of which is attached as Exhibit 1 to this Order, is hereby approved.
2. The Liquidating Trustee and Cardinal Health are authorized to take all steps necessary to implement the terms of the Cardinal Settlement.
3. The Court shall retain jurisdiction to hear and determine all matters arising from implementation of this Order.

Dated: October ____, 2012
Wilmington, DE

THE HONORABLE PETER J. WALSH
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1 to Order – Cardinal Settlement

SETTLEMENT AGREEMENT

This Settlement Agreement (the "**Agreement**") is dated as of the ___th day of September, 2012. This Agreement is made by and among Kip Horton ("**Trustee**"), solely in his capacity as Liquidating Trustee for the Graceway Liquidating Trust ("**Trust**"), as successor in interest to Graceway Pharmaceuticals, LLC ("Graceway") and several of its affiliated and related entities, Graceway Pharma Holding Corp., Graceway Holdings, LLC, Graceway Pharmaceuticals, LLC, Chester Valley Holdings, LLC, Chester Valley Pharmaceuticals, LLC, Graceway Canada Holdings, Inc., and Graceway International, Inc. (collectively, the "Affiliated Debtors" and together with Graceway collectively referred to as, the "**Debtors**"), on behalf of themselves and each of their successors and assigns, and Cardinal Health*, on behalf of itself and its respective subsidiaries and affiliates and each of their respective successors and assigns (collectively, "**Cardinal Health**"). The Trustee and Cardinal Health are referred to herein individually, as a "**Party**" and collectively, as the "**Parties.**" This Agreement is intended by the Parties to fully, finally and forever satisfy, resolve, discharge and settle any claims held between the Parties as set forth herein.

RECITALS

WHEREAS, on September 29, 2011 (the "**Petition Date**"), each of the Debtors filed a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the "**Chapter 11 Cases**"). The Chapter 11 Cases are pending before the Honorable Peter J. Walsh, Judge for the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"); and

WHEREAS, prior to the Petition Date and allegedly in the ordinary course of business, the Debtor sold its products to Cardinal Health, which then sold and distributed such products to various hospitals, supermarkets, pharmacies, nursing home, clinics and other institutions, which in turn sold the products directly to patients and end-users; and

WHEREAS, prior to the Petition Date and in the ordinary course of business, Cardinal Health and Graceway entered into certain written agreements, which among other things, governed the terms of the sale of products from Graceway to Cardinal Health and pursuant to which Cardinal Health provided certain management and distribution services to Graceway (the "**Cardinal Agreements**"); and

WHEREAS, on the Petition Date, the Debtor requested the Bankruptcy Court's authority to continue to conduct business with Cardinal Health, and sought authority to pay Cardinal Health on account of certain outstanding prepetition obligations, in recognition of the importance of the Debtor's relationships with Cardinal Health, provided that Cardinal Health consented to release certain claims pursuant to a Wholesaler Support Agreement. *See Motion of the Debtors for an Order Under 11 U.S.C. §§ 105(a) and 363 Authorizing, the Debtors to Honor Certain Prepetition Obligations to Customers and to Continue Other Customer, Marketing, and Medical Affairs Programs* (the "**Customer Programs Motion**"), including the *Wholesaler Support Agreement* (the "**WSA**") appended thereto as Exhibit C [Docket No. 14]. The Bankruptcy Court entered an order authorizing this relief on September 30, 2011 [Docket No. 51]. However, no WSA's were subsequently executed and no payments were ever made to Cardinal Health or any other Wholesaler on account of any prepetition obligations of the Debtors ; and

WHEREAS, on the Petition Date, the Debtors filed a motion seeking to sell substantially all of their assets through a sale pursuant to Section 363 of the Bankruptcy Code (the "**Sale**") [Docket No. 12]. An auction was held on November 17, 2011, and Medicis Pharmaceutical Corporation ("**Medicis**") was selected as the winning bidder. On November 22, 2011, the Bankruptcy Court entered the Sale Order, approving the Sale to Medicis [Docket No. 306]. The Debtor closed the sale to Medicis on December 2, 2011 [Docket No. 335] and the Debtors ceased all business operations; and

WHEREAS, from the Petition Date through the closing of the Sale, the Debtor continued to ship product to Cardinal Health and Cardinal Health continued to receive and sell the Debtors' product; and

WHEREAS, on December 2, 2011, the Debtors filed a motion to, among other things, reject certain executory contracts, effective as of December 31, 2011 (the "**Rejection Motion**") [Docket No. 333]. Graceway designated all agreements it held with Cardinal Health to be rejected under the Rejection Motion (the "**Rejected Agreements**"). On December 28, 2011, the Bankruptcy Court entered the Order granting the Rejection Motion [Docket No. 416]; and

WHEREAS, Cardinal Health filed (a) a proof of claim against Graceway in the amount of \$1,530,202.45 on account of prepetition (i) product chargeback obligations, (ii) division returns, (iii) third-party returns, and (iv) fees for distribution services owed under certain Cardinal Agreements, (collectively, "**Claim No. 144**"), and (b) two identical proofs of claim (Claim Nos. 214 and 215) against Graceway in the amount of \$5,683,557.36 on account of (i) unsalable post-petition inventory, (ii) contract rejection damages in connection with certain Cardinal Agreements, and (iii) post-petition fees for distribution services owed under certain Cardinal Agreements ("**Claim Nos. 214 and 215**" and, together with Claim No. 144, the "**Cardinal Proofs of Claims**"); and

WHEREAS, Cardinal Health's aggregate prepetition claim against Graceway is asserted to be \$2,053,476.19 ("**Cardinal's Prepetition Claim**"), Cardinal Health's postpetition claim against Graceway is asserted to be \$1,070,527.84 ("**Cardinal's Postpetition Claim**"), and Cardinal Health's aggregate rejection damages claim against Graceway is asserted to be \$5,683,557.36 ("**Cardinal's Rejection Claim**" and together with Cardinal's Prepetition Claim, and Cardinal's Postpetition Claim, the "**Cardinal Claim**"); and

WHEREAS, in the aggregate, the Trust asserts Cardinal owes Graceway approximately \$3,894,885.00 on account of prepetition invoices (the "**Debtor's Prepetition Claim**") and approximately \$2,358,004.92 on account of postpetition invoices (the "**Debtor's Postpetition Claim**") and, together with the Debtor's Prepetition Claim, the "**Trust's Claim**"); and

WHEREAS, on April 20, 2012, the Bankruptcy Court entered an order [Docket No. 722] confirming ("**Confirmation Order**") the First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, *et al.*, dated February 28, 2012, as modified (the "**Plan**"), in the Chapter 11 Cases of the Debtors and, pursuant to the Plan, the Trustee was appointed as Liquidating Trustee (as defined in the Plan) on the Effective Date (as defined in the Plan) which occurred on May 4, 2012; and

WHEREAS, based on the Debtor's books and records, the Trustee asserts that (i) Cardinal Health effected postpetition setoffs, and (ii) effected prepetition setoffs during the 90 day period prior to the Petition Date both of which may be subject to avoidance pursuant to 11 U.S.C. §§547, 549 and 553; and

WHEREAS, after lengthy negotiations, the Trustee and Cardinal Health have agreed to settle, resolve and release all claims, disputes and issues between the Trust (on behalf of the Trustee, the Debtors and their respective estates) and Cardinal Health, including, but not limited to, the Cardinal Proofs of Claims and the Rejected Agreements, and Trust's Claims, on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties enter into this Agreement and agree to be bound by its terms, subject to the required consents under the Confirmation Order and Bankruptcy Court approval.

Relief From Stay and Authorization to Setoff

1. Solely to the extent necessary to effectuate this Agreement, Cardinal Health shall be granted relief from the automatic stay of 11 U.S.C. Sec. 362(a), to the extent it continues in effect and from the stay and injunction imposed under the Plan and Confirmation Order, to setoff the Cardinal's Claim against the Debtor's Claim, and is hereby authorized to effectuate such setoff effective upon the Trust's receipt of the Settlement Payment, defined below.

Aggregate Net Graceway Claim and Settlement Payment

2. After application of the setoff set forth in Paragraph 1 above, there remains a net obligation due and owing by Cardinal Health to the Trust in the amount of \$4,581,577.64 (the "Net Graceway Claim"). No later than ten (10) business days after the Settlement Effective Date (defined below), Cardinal Health shall pay to the Trust the Net Graceway Claim (the "Settlement Payment"), by check drawn on an account with sufficient immediately funds in one lump sum payment, in full satisfaction of any and all obligations owed by Cardinal Health to the Debtor as set forth herein.

Releases

3. Upon the Settlement Effective Date and following the Trust's receipt of the Settlement Payment, and except for any obligation arising under this Agreement, each Party expressly, on behalf of their respective current and future estates, predecessors, successors, assigns and representatives, including but not limited to, the Debtors, chapter 7 trustees, liquidating trustees, litigation trustees, and plan administrators: (i) conclusively, absolutely, unconditionally,

irrevocably and forever remises, acquits, waives, releases and discharges each Party from any and all causes of action, actions, judgments, liens, indebtedness, damages, losses, claims, claims for relief, liabilities and demands of every kind and character arising in connection with any matter whatsoever, including but not limited to, the Cardinal Agreements, and the Cardinal Proofs of Claim, whether known, or unknown, suspected or unsuspected, existing or prospective, which have accrued from the beginning of time to the date hereof, including but not limited to all causes of action under chapter 5 of the Bankruptcy Code, and (ii) covenants and agrees never to institute or cause to be instituted any suit, investigation or other form of action or proceeding of any kind or nature whatsoever against any of the Parties.

4. Within ten (10) business days following the Settlement Effective Date, Cardinal hereby agrees (i) to file a notice of withdrawal of all Cardinal's Proofs of Claims filed in the Chapter 11 Cases on behalf of any Cardinal entity or its respective current or former officers, directors, advisors, shareholders, members, enrollees or employees, and (ii) not to file any further proofs of claim in the Chapter 11 Cases or against the Trust or its property. As soon as Cardinal files a notice of withdrawal of the Cardinal's Proofs of Claims, the Trustee's claims and noticing agent shall be authorized to mark the Cardinal's Proofs of Claims as withdrawn on the official claims register in the Chapter 11 Cases and of the Trust.

Bankruptcy Court Approval and Effective Date

5. The Parties hereto agree that this Agreement is not effective until approved by the Bankruptcy Court. No later than two (2) business days after all Parties have executed this Agreement, the Trustee shall submit to the Bankruptcy Court under certification of counsel, this Agreement with an agreed form of order (the "Agreed Order").

6. Each of the Parties agrees to support the Agreed Order and to exercise commercially reasonable efforts to obtain Bankruptcy Court approval thereof.

7. If the Bankruptcy Court refuses to enter the Agreed Order procedurally after submitting it under certification of counsel, then within seven (7) business days the Trustee shall file a motion under Bankruptcy Rule of Procedure 9019 seeking entry of the Agreed Order. If the Bankruptcy Court thereafter refuses to enter the Agreed Order, then this Agreement and all of its terms shall be null and void as to the Parties, and the Parties shall be returned to the same positions they were in prior to execution of this Agreement, as if this Agreement had never been executed.

8. The Parties acknowledge and agree that upon the Bankruptcy Court's entry of the Agreed Order, none of them will appeal, or support any other person in appealing, such order.

9. This Agreement shall become effective and binding upon the Parties upon the first business day after the Agreed Order becomes final and non-appealable (the "**Settlement Effective Date**").

Representations and Warranties

10. Each Party represents and warrants to the other Parties, only as to itself and not as to each of the others, that the following statements are true and correct as of the date hereof with respect to such Party:

(a) *Third Party Beneficiaries:* The Parties each warrant, acknowledge and agree that except for the Trust and Cardinal there are no third party beneficiaries of the rights and obligations created by this Agreement, or of the releases provided under this Agreement; and

(b) *Sole interests:* The Parties each warrant that they own and have the right to release and resolve the claims released and resolved by means of this Agreement, that they have the sole right and exclusive authority to execute this Agreement and to tender and receive the consideration provided for herein, and that they have not sold, transferred, assigned, credited or otherwise set over to any other person or entity, any claim, lien, demand, cause of action, obligation, damage or liability covered hereby.

(c) *Necessary Approvals:* The Trustee warrants that he has obtained all the necessary approvals to enter into this Agreement required under the Plan, including without limitation, the approval of the Lenders (as that terms is defined in the Plan).

Miscellaneous

11. *Choice of Law and Jurisdiction:* This Agreement shall be governed by and construed under and in accordance with the laws of the State of Delaware, without regard to the conflicts of laws principles thereof. The Bankruptcy Court shall retain jurisdiction over any action or proceeding arising out of or relating to this Agreement, and all claims in respect of such action or proceeding may be heard and determined in such court. EACH OF THE PARTIES HEREBY IRREVOCABLY CONSENTS TO THE JURISDICTION OF THE BANKRUPTCY COURT AND WAIVES ITS RIGHTS TO A JURY TRIAL FOR ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT.

12. *Successors and Assigns:* This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs, affiliates and successors, including, but not limited to, chapter 7 trustees, liquidating trustees, litigation trustees, and plan administrators.

13. *Binding Effect:* The Parties' respective rights, obligations, remedies and protections provided for in this Agreement shall survive the conversion, dismissal or closing of the Debtors' bankruptcy cases, appointment of a chapter 7 or chapter 11 trustee therein, and substantive consolidation thereof, and the terms and provisions of this Agreement shall continue in full force and effect notwithstanding the entry of any order effecting the foregoing.

14. *No Admission; Reservation of Rights.* The Parties understand and agree that any claim, cause of action or defense that any Party may have against another is disputed, and that the Parties are entering into this Agreement for the purpose of settling such disputes by compromise in order to avoid further litigation. Neither the execution nor delivery of this Agreement shall constitute an admission of any contract interpretation, wrongdoing or liability whatsoever on the part of any of the Parties.
15. *Further Assurances.* The Parties hereby agree promptly to execute and deliver any and all such further instruments and documents and to take all such further actions as may be reasonably required by the other Parties to effectuate the terms and conditions of this Agreement.
16. *Construction.* No Party shall be deemed the drafter of this Agreement. The headings herein are solely for the convenience of the Parties and do not form a substantive part of this Agreement. If any term or other provision of this Agreement is finally held by a court having competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy: (i) said term or other provision shall be enforced to the maximum extent allowed and/or reconstrued in order to effect the intent of the Parties as closely as possible; and (ii) all other conditions and provisions of this Agreement not otherwise affected shall nevertheless remain in full force and effect.
17. *Entire Agreement.* This Agreement constitutes the entire agreement and understanding among the Parties with respect to the settlement of the dispute settled hereby, sets forth all terms and conditions of this Agreement, and cancels and supersedes any and all prior agreements, representations, and/or understandings, whether written or oral, among the Parties relating to the subject matter of this Agreement. Further, neither this Agreement nor any terms hereof may be amended, changed, waived or discharged unless such amendment, change, waiver or discharge is in a writing signed by the Party against whom enforcement is sought.
18. *Representation by Counsel.* The Parties acknowledge the benefit of professional advice rendered by legal counsel of their own selection prior to entering into this Agreement. The Parties further acknowledge that they have had a sufficient opportunity to discuss and review this Agreement with their attorneys and fully understand and agree to the terms set forth herein.
19. *Counterparts.* This Agreement may be executed in counterparts. Each counterpart shall be deemed an original. All counterparts shall constitute a single agreement. A facsimile or electronically submitted signed copy of the Agreement shall serve as an original executed copy for all purposes.
20. *Specific Performance.* It is understood and agreed by the Parties that money damages would not be a sufficient remedy for any breach of this Agreement by

any Party and each non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief as its sole and exclusive remedy of any such breach, including, without limitation, an order of the Bankruptcy Court or other court of competent jurisdiction requiring any Party to comply promptly with any of its obligations hereunder.

21. *Costs and Expenses.* Each Party agrees to be responsible for and to bear its own costs, expenses and attorneys' fees incurred in connection with the Cardinal Proofs of Claims and the negotiations related to and the preparation of this Agreement, and not to seek from each other reimbursement of any such costs, expenses and attorneys' fees, except as provided in the immediately preceding paragraph.
22. *Notices.* All communications related to the Agreement shall be in writing and shall be mailed first class certified mail or by nationally recognized overnight courier service, or by personal delivery, with postage or other applicable delivery fees prepaid and addressed as follows:

If to Cardinal Health:

Cardinal Health
Attn: Debra Willet
700 Cardinal Place
Dublin, OH 43017

and

Fox Rothschild LLP
Attn: Jeffrey M. Schlerf and L. John Bird
Citizens Bank Center, Suite 1600
919 N. Market Street
Wilmington, DE 19801

If to the Trust:

Kip Horton, Liquidating Trustee
Graceway Liquidating Trust
RPA Advisors, LLC
45 Eisenhower Drive
Paramus, NJ 07652

and

DLA Piper LLP
Attn: Stuart Brown
919 N. Market Street, 15th Floor
Wilmington, Delaware 19801

23. *Survival.* The representations, warranties, covenants and other provisions set forth herein shall survive the execution of this Agreement and the effectiveness of the releases granted hereunder.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

GRACEWAY LIQUIDATING TRUST

By: _____

Name: Kip Horton

Title: Liquidating Trustee for Graceway
Liquidating Trust

Notice Address:

Kip Horton

RPA Advisors, LLC

45 Eisenhower Drive

Paramus, NJ 07652

and

DLA Piper LLP

Attn: Stuart Brown

919 N. Market Street, 15th Floor

Wilmington, Delaware 19801

CARDINAL HEALTH*

By: _____

Name:

Title:

Notice Address:

Cardinal Health
Attn: Debra Willet
700 Cardinal Place
Dublin, OH 43017

and

Fox Rothschild LLP
Attn: Jeffrey M. Schlerf and L. John Bird
Citizens Bank Center, Suite 1600
919 N. Market Street
Wilmington, DE 19801

*As used herein, the term "Cardinal Health" includes, without limitation, the following affiliated operating companies: Cardinal Health 3, LLC, Cardinal Health 104, LP, Cardinal Health 107, Inc., Cardinal Health 110, Inc., Cardinal Health 112, LLC, Cardinal Health 113, LLC, Cardinal Health 411, Inc. and any other subsidiary or affiliate of Cardinal Health, Inc.

SIGNATURE PAGE TO SETTLEMENT AGREEMENT