



U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

TAWANA C. MARSHALL, CLERK

THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 9, 2014

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re

1701 COMMERCE, LLC,

Debtor.

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Chapter 11

Case No. 12-41748-DML-11

ORDER CONFIRMING FIRST AMENDED PLAN OF REORGANIZATION

1701 Commerce, LLC, LLC, the within debtor and debtor in possession (the “**Debtor**”), having filed a Plan of Reorganization (the “**Plan**”) (Docket No. 522) and accompanying Disclosure Statement for Debtor’s Plan of Reorganization (the “**Disclosure Statement**”) (Docket No. 523), under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”); and this Court having entered an Order on October 31, 2013 (Docket No. 535) (the “**Disclosure Statement Approval Order**”), which, among other things, approved the Disclosure Statement,

relieved the Debtor of the obligation to solicit votes on the Plan because no creditors' claims were being impaired under the Plan, and scheduled a hearing pursuant to Sections 1128 and 1129 of the Bankruptcy Code and Rule 3017(c) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") to consider confirmation of the Plan for November 26, 2013 (the "**Confirmation Hearing**"); and it appearing that no objections to confirmation of the Plan were filed by any party-in-interest, and the Debtor having filed a Notice of No Objections to Confirmation on November 23, 2013 (Docket No. 547); and the Debtor having filed a First Amended Plan of Reorganization on November 23, 2013 (Docket No. 544) (the "**Amended Plan**"),¹ which addresses several minor comments on the Plan by the United States Trustee and various changes but does not alter the material terms of the Plan; and the Court having reviewed and considered, among other things, the Memorandum of Law in Support of Confirmation of Debtor's First Amended Plan of Reorganization (Docket No. 163) (the "**Confirmation Memorandum**");

And upon the Confirmation Hearing and the Court's consideration of the Confirmation Memorandum, and the arguments of counsel made at the Confirmation Hearing; and upon the record of the Confirmation Hearing after due deliberation and sufficient cause appearing therefor, this Court makes the following findings of fact and conclusions of law with respect to confirmation of the Amended Plan:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

a. Findings. The findings set forth herein constitute the Court's findings of fact and conclusions of law under Fed. R. Civ. P. 52, as made applicable herein by Bankruptcy Rules 7052 and 9014. Any finding of fact shall constitute a finding of fact even if it is referred to as a

¹ Unless otherwise noted, the capitalized terms herein shall have the definitions ascribed to them in the Amended Plan.

conclusion of law, and any conclusion of law shall constitute a conclusion of law even if it is referred to as a finding of fact.

b. Commencement of Case. The Debtor filed a voluntary petition for relief pursuant to Chapter 11 of the Bankruptcy Code on March 26, 2012 (the “**Petition Date**”).

c. Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§ 157(b)(2) and 1334(a)). This Court has jurisdiction over the Debtor’s Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. Confirmation of a plan is a “core” proceeding pursuant to 28 U.S.C. § 157(b)(2)(L). Venue of the Debtor’s Chapter 11 Case in this Court was proper as of the Petition Date and continues to be proper pursuant to 28 U.S.C. §§ 1408 and 1409.

d. Transmittal of Solicitation Materials; Notice. The (i) Disclosure Statement, (ii) Plan, and (iii) Disclosure Statement Approval Order (collectively, the “**Confirmation Package**”) was served in compliance with the Disclosure Statement Approval Order, and such service was adequate and sufficient. A Certificate of Service was executed by Michael D. Warner, Esq., with respect to the mailing of the Confirmation Package and was filed with this Court on November 5, 2013 (Docket No. 538). On November 23, 2013, the Debtor filed the Amended Plan, and service was made via ECF on various parties in interest.

e. Burden of Proof. The Debtor has met its burden of proving the elements of Sections 1129(a) of the Bankruptcy Code by a preponderance of the evidence as further described herein.

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

i Section 1122 of the Bankruptcy Code – Classification of Claims and Equity Interests. In accordance with Section 1122(a) of the Bankruptcy Code, the Amended Plan provides for the separate classification of Claims against and Equity Interests in the Debtor based on differences in the legal nature and/or priority of the Claims and Equity Interests. Each of the Claims or Equity Interests in each particular Class is substantially similar to the other Claims or Equity Interests in such Class. Thus, the Amended Plan satisfies the requirements of Section 1122(a) of the Bankruptcy Code.

ii Section 1123 of the Bankruptcy Code – Mandatory Contents of a Plan of Reorganization. The Amended Plan satisfies Section 1123 of the Bankruptcy Code for the reasons stated herein:

- a. Section 1123(a)(1). The Amended Plan designates 2 Classes of Claims and 1 Class of Equity Interests subject to Section 1122 of the Bankruptcy Code. Thus, the Amended Plan satisfies Section 1123(a)(1) of the Bankruptcy Code.
- b. Section 1123(a)(2). The Amended Plan identifies Class 1 (Secured Claim of CapSource), Class 2 (General Unsecured Claims) and Class 3 (Equity Interests in the Debtor) as unimpaired. Thus, the Amended Plan satisfies Section 1123(a)(2) of the Bankruptcy Code.
- c. Section 1123(a)(3). There are no impaired classes of claims under the Amended Plan. Thus, the Amended Plan satisfies Section 1123(a)(3) of the Bankruptcy Code.
- d. Section 1123(a)(4). The Amended Plan provides for the same treatment for each Claim or Equity Interest within a particular class as required by Section 1123(a)(4) of the Bankruptcy Code. Thus, the Amended Plan satisfies Section 1123(a)(4) of the Bankruptcy Code.
- e. Section 1123(a)(5). Article IV of the Amended Plan sets forth the means for implementation of the Amended Plan as required by Section 1123(a)(5). The Amended Plan specifically provides for, *inter alia*: (a) continuing corporate existence of the Debtor; (b) preservation of all Causes of Action with the Debtor; and (c) the vesting of all property of the estate in the Reorganized Debtor. Furthermore, Article V of the Amended Plan specifies distribution mechanisms and procedures under the Amended Plan. Thus, the Amended Plan satisfies Section 1123(a)(5) of the Bankruptcy Code.

- f. Section 1123(a)(6). Section 1123(a)(6) of the Bankruptcy Code is not applicable to the Debtor because the Debtor is not issuing any non-voting equity securities under the Amended Plan.
- g. Section 1123(a)(7). The Amended Plan provides that Vestin Mortgage, LLC, will continue as the managing member of the Debtor. See Amended Plan at Art. IV, Section E. Thus, the Amended Plan complies with Section 1123(a)(7) of the Bankruptcy Code.
- h. Section 1123(a)(8). Section 1123(a)(8) of the Bankruptcy Code is not applicable to the Debtor because the Debtor is not an individual.

g. Section 1123(b) of the Bankruptcy Code - Additional Amended Plan Provisions.

The Amended Plan contains additional provisions which are appropriate, in the best interests of the Debtor and its estate, and consistent with the applicable provisions of the Bankruptcy Code. Thus, the Amended Plan satisfies Section 1123 of the Bankruptcy Code.

i Section 1123(b)(1) of the Bankruptcy Code - Impairment of Claims and Equity Interests. As permitted by Section 1123(b)(1) of the Bankruptcy Code, the Amended Plan leaves unimpaired each Class of Claims and Equity Interests. Thus, the Amended Plan is consistent with Section 1123(b)(1) of the Bankruptcy Code.

ii Section 1123(b)(2) of the Bankruptcy Code - Executory Contracts and Unexpired Leases. In accordance with Section 1123(b)(2) of the Bankruptcy Code, Article VII, Section A. of the Amended Plan provides that on the Effective Date, all Executory Contracts, to the extent not previously rejected, by action of the parties, pursuant to the Bankruptcy Code and/or by Final Order of the Bankruptcy Court, will be deemed rejected. Thus, the Amended Plan is consistent with Section 1123(b)(2) of the Bankruptcy Code.

iii Section 1123(b)(3) - Retention of Claims Held by the Debtors. In accordance with Section 1123(b)(3) of the Bankruptcy Code, Article IV, Section D. of the Amended Plan provides that the Post-Confirmation Debtor will retain all of the Causes of Action. Thus, the Amended Plan is consistent with Section 1123(b)(3) of the Bankruptcy Code.

iv Section 1123(b)(4) – Sale of All or Substantially All of the Property of the Estate. In accordance with Section 1123(b)(4), the Amended Plan recognizes the pre-Confirmation sale of substantially all of the property of the Estate, and the distribution of the proceeds of such sale among holders of claims and interests.

v Section 1123(b)(5) - Modification of the Rights of Holders of Claims. In accordance with Section 1123(b)(5) of the Bankruptcy Code, the Amended Plan leaves unaffected the rights of holders of Claims in Class 1 (Secured Claim of CapSource), Class 2 (General Unsecured Claims), and Class 3 (Equity Interests in the Debtor). See Amended Plan at Art. III, Sec. B.

vi Section 1123(b)(6) - Other Provisions Not Inconsistent with Applicable Provisions of the Bankruptcy Code. In accordance with Section 1123(b)(6) of the Bankruptcy Code, the Amended Plan includes certain release, temporary injunction and exculpation provisions that are consistent with the applicable provisions of the Bankruptcy Code and conform to the requirements of case law in the Fifth Circuit.

vii Section 1123(c) – Use, Sale or Lease of Exempted Property. Section 1123(c) of the Bankruptcy Code is not applicable to the Debtor's Chapter 11 case because the Debtor is not an individual.

viii Section 1123(d) - Cure of Defaults. Article VII, Section A. of the Amended Plan provides that on the Effective Date, all Executory Contracts, to the extent not previously rejected, by action of the parties, pursuant to the Bankruptcy Code and/or by Final Order of the Bankruptcy Court, will be deemed rejected. Thus, Section 1123(d) of the Bankruptcy Code does not apply to the Amended Plan.

h. Section 1129(a)(2) - Compliance By the Debtor, as Proponent of the Amended Plan, with Applicable Provisions of the Bankruptcy Code. The Debtor, as the proponent of the Amended Plan, complied with all applicable provisions of the Bankruptcy Code, as required by Section 1129(a)(2) of the Bankruptcy Code. Because the Amended Plan leaves the Holders of Allowed Claims and Equity Interests Unimpaired, the Debtor is not required to solicit votes for acceptance or rejection of the Amended Plan.

i. Section 1129(a)(3) - Proposal of the Amended Plan in Good Faith. The Debtor proposed the Amended Plan in good faith and not by any means forbidden by law. In determining that the Amended Plan has been proposed in good faith, this Court has examined the totality of the circumstances surrounding the formulation of the Amended Plan. Based on the evidence presented at the Confirmation Hearing, the Court finds and concludes that the Amended Plan has been proposed with the legitimate purpose of maximizing the value of the Debtor's estate and return available to creditors and other parties-in-interest.

j. Section 1129(a)(4) - Court Approval of Certain Payments as Reasonable. In accordance with Section 1129(a)(4) of the Bankruptcy Code, no payment for services or costs and expenses in or in connection with the Chapter 11 Case, or in connection with the Amended Plan and incident to the Chapter 11 Case, including Fee Applications, has been or will be made by the Debtor other than payments that have been authorized by order of this Court. Article VIII, Section g. of the Amended Plan provides for the retention of jurisdiction of the Bankruptcy Court to hear and determine all Fee Applications. Thus, the Amended Plan complies with Section 1129(a)(4) of the Bankruptcy Code.

k. Section 1129(a)(5) - Disclosure of Identity of Proposed Management, Compensation of Insiders and Consistency of Management Proposals with the Interests of Creditors and Public Policy. The Amended Plan provides that the Debtor's three (3) members holding the following interests, *to wit*: Vestin Fund III, LLC (1.70%), Vestin Realty Mortgage I, Inc. (7.93%), and Vestin Realty Mortgage II, Inc. (90.37%), shall retain such interests pursuant to the treatment of Class 3. The Reorganized Debtors shall continue to be managed by Vestin Mortgage, LLC, which is managed by Michael Shustek. After the Effective Date, the Reorganized Debtor shall continue to exist in accordance with the applicable law in Nevada and pursuant to its organizational documents in effect prior to the Effective Date. Thus, the Amended Plan satisfies Section 1129(a)(5) of the Bankruptcy Code.

l. Section 1129(a)(6) - Approval of Rate Changes. The Debtor's Amended Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

m. Section 1129(a)(7) - Best Interests of Holders of Claims and Equity Interests. The Amended Plan satisfies Section 1129(a)(7) of the Bankruptcy Code. Here, the "best interests test" is satisfied because the Holders of Allowed Claims in Classes 1 and 2 will be paid 100% of their Allowed Claims, including interest accrued from and after the Petition Date through the Distribution Date at the Federal Interest Rate.

n. Section 1129(a)(8) - Acceptance of the Amended Plan by Each Impaired Class as to Certain Debtors. Because all classes of creditors are being left unimpaired under the Amended Plan, the requirements of Section 1129(a)(8) of the Bankruptcy Code have been met.

o. Section 1129(a)(9) - Treatment of Claims Entitled to Priority Pursuant to Section 507(a) of the Bankruptcy Code. As set forth in Article II of the Amended Plan, all administrative and priority claims will be paid in accordance with Section 1129(a)(9) of the Bankruptcy Code.

p. Section 1129(a)(10) - Acceptance By at Least One Impaired, Non-Insider Class. Because no classes of claims are being impaired under the Amended Plan, Section 1129(a)(10) of the Bankruptcy Code does not apply.

q. Section 1129(a)(11) - Feasibility of the Amended Plan. Because the Amended Plan provides for the payment in full of all allowed Administrative Expense Claims, the payment of 100% of all Allowed Class 1 and Class 2 Claims, including interest accrued from and after the Petition Date, at the Federal Post Judgment Interest Rate, and the reversion of any surplus funds to the Post-Confirmation Debtor, Section 1129(a)(11) does not apply here

r. Section 1129(a)(12) - Payment of Bankruptcy Fees. All fees payable under 28 U.S.C. § 1930 have been paid or the Amended Plan provides for the payment of all such fees on the Effective Date, as required by Section 1129(a)(12) of the Bankruptcy Code.

s. Section 1129(a)(13) - Retiree Benefits. There are no Claims against the Debtor for payment of any retiree benefits, as that term is defined in Section 1114 of the Bankruptcy Code. Section 1129(a)(13) of the Bankruptcy Code is thus not applicable.

t. Section 1129(a)(14) - Domestic Support Obligations. The Debtor is not obligated to pay any domestic support obligations. Section 1129(a)(14) of the Bankruptcy Code is thus not applicable.

u. Section 1129(a)(15) - Payment of Unsecured Claims In Case of Individual Debtor. The Debtor is not an individual. Section 1129(a)(15) of the Bankruptcy Code is thus not applicable.

v. Section 1129(a)(16) - Restrictions on Transfers of Property of Nonprofit Entities. The Debtor is a moneyed, business, and commercial corporation. As such, Section 1129(a)(16) is inapplicable here.

w. Section 1129(d) - Purpose of Amended Plan. The principal purpose of the Amended Plan is not avoidance of taxes or avoidance of the requirements of Section 5 of the Securities Act of 1933, and there has been no filing by any governmental unit asserting such avoidance.

DECREEES

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED

THAT:

CONFIRMATION OF THE AMENDED PLAN. Pursuant to Section 1129 of the Bankruptcy Code, the Amended Plan and each of its provisions (whether or not specifically addressed and approved herein), as modified by this Order, is hereby CONFIRMED and the Debtor is authorized and directed, without the need for action by any directors, members, officers and/or shareholders, to implement the Amended Plan in accordance with the terms thereof and to take any and all actions contemplated to be taken under the Amended Plan. Any and all Objections to confirmation of the Amended Plan that have not been withdrawn or consensually resolved are OVERRULED.

i **VESTING OF ASSETS (11 U.S.C. § 1141(b) and (c)).** Except as otherwise provided in the Amended Plan or this Confirmation Order, from and after the Effective Date, the Reorganized Debtor may operate its business, and may use, acquire and dispose of property without supervision or approval by the Bankruptcy Court and free of any restrictions imposed by the Bankruptcy Code, but subject to the continuing jurisdiction of the Bankruptcy Court as set forth in Article VIII of the Amended Plan. Except as otherwise provided in the Amended Plan or this Confirmation Order, as of the Effective Date, all property of the Debtor conveyed, transferred and/or assigned to the Reorganized Debtor shall be free and clear of all Liens, Claims and Equity Interests.

ii **IMPLEMENTATION OF THE AMENDED PLAN.** The transactions set forth in Article IV of the Amended Plan, as modified by this Order, are hereby approved, subject to the terms of this Confirmation Order. The Debtor and Reorganized Debtor are authorized to take all actions necessary or appropriate to enter into, implement and consummate the transactions set forth in Article IV of the Amended Plan, subject to the terms of this Confirmation Order:

(a) Continued Corporate Existence. After the Effective Date, the Reorganized Debtor shall continue to exist in accordance with the applicable law in Nevada and pursuant to its organizational documents in effect prior to the Effective Date, except to the extent such organizational documents are amended, restated or replaced under the Amended Plan.

(b) Members and Officers. On or after the Effective Date, the Debtor's three (3) members holding the following interests, *to wit*: Vestin Fund III, LLC (1.70%), Vestin Realty Mortgage I, Inc. (7.93%), and Vestin Realty Mortgage II, Inc. (90.37%), shall retain such interests pursuant to the treatment of Class 3. The Reorganized Debtors shall continue to be managed by Vestin Mortgage, LLC, which is managed by Michael Shustek.

(c) Corporate Action; Effectuating Documents; Further Transactions. On the Effective Date, all matters and actions provided for under the Amended Plan that would otherwise require approval of the members or manager of the Debtor or the Reorganized Debtor under the Amended Plan, shall be deemed to have been authorized and effective in all respects as provided herein and shall be taken without any requirement for further action by the members and manager of the Debtor and the Reorganized Debtor. The Debtor is authorized to execute, deliver, file or record such contracts, instruments, releases, and other agreements or documents and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Amended Plan.

(d) Operation of the Debtor in Possession Between the Confirmation Date and the Effective Date. The Debtor shall continue to operate as Debtor in Possession, subject to the supervision of the Bankruptcy Court, pursuant to the Bankruptcy Code, during the period from the Confirmation Date through and until the Effective Date, and any obligation incurred by the Debtor during that period shall constitute an Administrative Expense Claim.

(e) Vesting of Property of the Estate. On or after the Effective Date, all property of the Estate, all Causes of Action, and any property acquired by the Debtor under or in connection with the Plan, shall vest in the Reorganized Debtor on the Effective Date free and clear of all Liens, Claims, Interests, charges and other encumbrances, except as provided in this Plan or the Confirmation Order. From and after the Effective Date, the Reorganized Debtor may operate its business, and may use, acquire and dispose of property without supervision or approval by the Bankruptcy Court and free of any restrictions imposed by the Bankruptcy Code and Bankruptcy Rules, but subject to the continuing jurisdiction of the Bankruptcy Court as set forth in Article VIII of the Amended Plan.

iii **AMENDED PLAN EFFECTIVENESS.** The Amended Plan shall become effective upon the date which is (i) at least one (1) day after the Confirmation Order becomes a Final Order, and (ii) all conditions to the Effective Date as set forth in Article X of the Amended Plan have been satisfied or, if waivable, waived.

iv **DISTRIBUTIONS.** The provisions in Article V of the Amended Plan governing Distributions and related matters hereby are approved and found to be fair and reasonable. All Cash distributions shall be made from available Cash of the Debtor or Reorganized Debtor, as the case may be. The Debtor and the Reorganized Debtor, as applicable, may, pursuant to Section 553 of the Bankruptcy Code or applicable non-bankruptcy law, exercise its right of setoff or recoupment against any Allowed Claim and the distributions to be made pursuant to this Plan on account of such Claim (before distribution is made or account of such Claim), the claims, rights and causes of action of any nature that the Debtor may hold against the Holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or Reorganized Debtor of any such claims, rights and causes of action that the Debtor or Reorganized Debtor may possess against such Holder.

v **PROCEDURES FOR RESOLVING AND TREATING CONTESTED CLAIMS.**

(a) Prosecution of Objections to Claims. Except as set forth in the Amended Plan or any applicable Order of the Bankruptcy Court with respect to Administrative Expense Claims and Professional Compensation and Reimbursement Claims, all objections to Claims must be filed and served on the Holders of such Claims by the 30th day after the Effective Date, which deadline may be extended by the Bankruptcy Court. After the Effective Date, only the Reorganized Debtor shall have the authority to file objections to Claims and to settle,

compromise, withdraw, or litigate to judgment objections to Claims regardless of whether the Claims were filed before or after the Effective Date, including Administrative Expense Claims, and Professional Compensation and Reimbursement Claims. From and after the Effective Date, the Reorganized Debtor may settle or compromise any Disputed Claim without approval of the Bankruptcy Court.

(b) Allowance Of Claims; No Distribution Pending Allowance. Except as expressly provided herein or in any order entered in the Chapter 11 Case prior to the Effective Date (including the Confirmation Order), no Claim shall be deemed Allowed, unless and until such Claim is deemed Allowed under the Bankruptcy Code or the Bankruptcy Court enters a Final Order in the Chapter 11 Case allowing such Claim. Except as expressly provided in the Amended Plan or in any Order entered in the Chapter 11 Case prior to the Effective Date (including the Confirmation Order), the Reorganized Debtor on and after the Effective Date will have and retain any and all rights and defenses the Debtor had with respect thereto as of the Commencement Date. Notwithstanding anything to the contrary contained herein, no payments or distributions, if any contemplated by the Amended Plan, will be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim.

(c) Distributions After Allowance. To the extent that a Disputed Claim ultimately becomes an Allowed Claim, a distribution, if any, will be made to the holder of such Allowed Claim in accordance with the provisions of the Amended Plan. As soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court or other applicable court of competent jurisdiction allowing any Disputed Claim becomes a Final Order, or the date

upon which other final resolution has been reached to allow such Claim, the Debtor shall provide to the Holder of such Claim the distribution to which such holder is entitled under the Amended Plan.

(d) Reservation of Rights to Object to Allowance or Asserted Priority of Claims. Nothing herein will waive, prejudice or otherwise affect the rights of the Debtor or the Reorganized Debtor to object at any time, including after the Effective Date, to the allowance or asserted priority of any Claim, other than with respect to Claims that are deemed Allowed pursuant to Article VI of the Amended Plan or have been Allowed pursuant to this Order.

vi **PRESERVATION OF CAUSES OF ACTION, SETTLEMENT OF CLAIMS AND CONTROVERSIES.** Except as otherwise provided in the Amended Plan, the Confirmation Order or in any document, instrument, release or other agreement entered into in connection with the Amended Plan, in accordance with Section 1123(b) of the Bankruptcy Code, the Reorganized Debtor will retain all of the Causes of Action. The Reorganized Debtor may enforce, sue on, settle or compromise (or decline to do any of the foregoing) any and all of such Causes of Action. The failure of the Debtor to specifically list any claim, right of action, suit, proceeding or other Cause of Action in the Amended Plan does not, and will not be deemed to, constitute a waiver or release by the Debtor or the Reorganized Debtor of such claim, right of action, suit, proceeding or other Cause of Action and the Reorganized Debtor will retain the right to pursue such claims, rights of actions, suits, proceedings or other Causes of Action in its sole discretion and, therefore, no preclusion doctrine, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches will apply to such claim, right of action, suit, proceeding or other Cause of Action upon or after the Confirmation or consummation of the Amended Plan.

vii **EXECUTORY CONTRACTS AND UNEXPIRED LEASES.** In accordance with Section 1123(b)(2) of the Bankruptcy Code, all Executory Contracts, to the extent not previously rejected, by action of the parties, pursuant to the Bankruptcy Code and/or by Final Order of the Bankruptcy Court, will be deemed rejected.

viii **PROFESSIONAL COMPENSATION AND REIMBURSEMENT CLAIMS.** Any Person seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under Sections 503(b)(2), 503(b)(3), 503(b)(4) or 503(b)(5) of the Bankruptcy Code: (i) shall file respective final Fee Applications for services rendered and reimbursement of expenses incurred through the Effective Date no later than sixty (60) days after the Effective Date.

ix **NOTICE OF CONFIRMATION ORDER, EFFECTIVE DATE AND RELATED MATTERS.** The Debtor shall, within five (5) calendar days of the entry of the Confirmation Order, serve notice of the entry of the Confirmation Order, with a copy of the Amended Plan, to all known holders of Claims and Equity Interests (which have not become disallowed as of the date of mailing). Within five (5) days of the occurrence of the Effective Date, the Debtor shall file with this Court and serve on all known holders of Claims and Equity Interests (which have not become disallowed as of the date of mailing) a written notice identifying, *inter alia*, the Effective Date.

x **RETENTION OF JURISDICTION.** Notwithstanding the entry of this Confirmation Order and the occurrence of the Effective Date, pursuant to and subject to Article VIII of the Amended Plan, this Court shall retain such exclusive jurisdiction over the Chapter 11 Case and any matter related to the Chapter 11 case after the Effective Date as is legally permissible, including exclusive jurisdiction over the matters described in Article VIII of the

Amended Plan. To the extent that it is not legally permissible for this Court to have exclusive jurisdiction over any of the matters described in Article VIII of the Amended Plan, this Court shall have nonexclusive jurisdiction over such matters to the extent legally permissible.

xi **BINDING EFFECT OF THE AMENDED PLAN.** The rights, benefits, and obligations of any Person or Entity named or referred to in the Amended Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, personal representative, successor, or assign of such Person or Entity, including, but not limited to, the Reorganized Debtor and all other parties-in-interest in the Chapter 11 Case.

xii **DISTRIBUTION RECORD DATE.** As of 5:00 p.m. prevailing Central time on the third (3rd) Business Day after the Court enters this Order (the “**Distribution Record Date**”), the claim registers for all Claims shall be deemed closed, and there shall be no further changes in the record holders of such Claims. Neither the Debtor nor the Reorganized Debtor shall have any obligation to recognize any transfer of Claims occurring on or after the Distribution Record Date. The Debtor and the Reorganized Debtor shall be entitled to recognize and deal for all purposes under the Plan only with those record holders stated on the claims registers as of the close of business on the Distribution Record Date, to the extent applicable.

xiii **MISCELLANEOUS PROVISIONS.**

(e) The releases, discharges, exculpations and injunctions set forth in the Amended Plan, including, but not limited to, the releases set forth in Article IX, Sections A. and B., temporary injunction set forth in Article IX, Section D., and exculpation set forth in Article IX, Section E. of the Amended Plan, shall be, and hereby are, approved as fair, equitable, reasonable and in the best interests of the Debtor, Reorganized Debtor, creditors, and equity

holders and are warranted based on the consent of all parties-in-interest affected by such provisions.

(f) Prior to, on or after the Effective Date (as appropriate), all matters expressly provided for under the Amended Plan that would otherwise require approval of the members or manager of the Debtor shall be deemed to have occurred and shall be in effect prior to, on or after the Effective Date (as appropriate) pursuant to the applicable state law without any requirement of further action by the interest holders or managers of the Debtor.

(g) From and after the Effective Date, the Reorganized Debtor shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable fees and expenses of Professionals thereafter incurred by the Debtor and the Reorganized Debtor, as the case may be, including, without limitation, those fees and expenses incurred in connection with the implementation and consummation of the Plan.

(h) If, prior to the Confirmation Date, any term or provision of the Amended Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Debtor, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Amended Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

(i) The failure to reference or discuss any particular provision of the Amended Plan in this Confirmation Order shall have no effect on the validity, binding effect and

enforceability of such provision and such provision shall have the same validity, binding effect and enforceability as every other provision of the Amended Plan and shall be deemed incorporated by reference into this Confirmation Order.

(j) In the event of any inconsistency among the Amended Plan, the Disclosure Statement, or any other instrument or document created or executed pursuant to the Amended Plan, the provisions of the Amended Plan shall govern.

(k) The provisions of Rule 3020(e) of the Federal Rules of Bankruptcy Procedure shall not apply, and this Confirmation Order shall take effect immediately and shall not be stayed.

*****END OF ORDER*****