

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

In re:)
) Chapter 11
NVN Liquidation, Inc., *et al.*,)
f/k/a NOVAN, INC.,¹) Case No. 23-10937 (LSS)
) (Jointly Administered)
Debtors.)
) **Re: 459, 476, 529, 542**
)

**NOTICE OF FILING OF PROPOSED ORDER (I) APPROVING
AMENDED COMBINED DISCLOSURE STATEMENT AND CHAPTER 11 PLAN
OF LIQUIDATION PROPOSED BY THE DEBTORS AS CONTAINING
ADEQUATE INFORMATION ON A FINAL BASIS AND (II) CONFIRMING
COMBINED DISCLOSURE STATEMENT AND CHAPTER 11 PLAN
OF LIQUIDATION PROPOSED BY THE DEBTORS**

PLEASE TAKE NOTICE that, on December 13, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Combined Disclosure Statement and Chapter 11 Plan of Liquidation Proposed by the Debtors* (as may be amended, modified, or supplemented and including all exhibits and supplements thereto, the “Combined Disclosure Statement & Plan”) [D.I. 459, 529 and 542] with the United States Bankruptcy Court for the District of Delaware (the “Court”).

PLEASE TAKE FURTHER NOTICE that on December 19, 2023, the Court entered the *Order (I) Approving the Combined Disclosure Statement and Chapter 11 Plan of Liquidation on an Interim Basis; (II) Establishing Solicitation and Tabulation Procedures; (III) Approving the Form of Ballot and Solicitation Materials; (IV) Establishing the Voting Record Date; (V) Fixing the Date, Time, and Place for the Confirmation Hearing and the Deadline for Filing Objections Thereto; and (VI) Granting Related Relief* [D.I. 476] approving the Combined Disclosure Statement & Plan on an interim basis (the “Interim Approval & Procedures Order”).

PLEASE TAKE FURTHER NOTICE that, in accordance with the Interim Approval & Procedures Order the Debtors hereby file the proposed *Order (I) Approving Amended Combined Disclosure Statement and Chapter 11 Plan of Liquidation Proposed by the Debtors as Containing Adequate Information on a Final Basis and (II) Confirming Combined Disclosure Statement and Chapter 11 Plan of Liquidation Proposed by the Debtors* (the “Proposed Confirmation Order”), attached hereto as **Exhibit A**.

¹ The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors’ federal tax identification number (if applicable), are: NVN Liquidation, Inc., (f/k/a Novan, Inc.) (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is P.O. Box 64, Pittsboro, NC 27312.



Dated: January 22, 2024
Wilmington, Delaware

Respectfully submitted,

/s/ Daniel B Butz

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Exhibit A

Proposed Confirmation Order

the Date, Time and Place for the Confirmation Hearing and the Deadline for Filing Objections Thereto; and (VI) Granting Related Relief [D.I. 439] (the “Motion”);

WHEREAS, on October 16, 2019, the Bankruptcy Court entered the *Order (I) Approving the Combined Disclosure Statement and Chapter 11 Plan of Liquidation on an Interim Basis; (II) Establishing Solicitation and Tabulation Procedures; (III) Approving the Form of Ballot and Solicitation Materials; (IV) Establishing the Voting Record Date; (V) Fixing the Date, Time, and Place for the Confirmation Hearing and the Deadline for Filing Objections Thereto; and (VI) Granting Related Relief* [D.I. 476] (the “Interim Approval and Procedures Order”), conditionally approving the Combined Disclosure Statement and Plan for solicitation purposes only and authorizing the Debtors to solicit the Combined Disclosure Statement and Plan;

WHEREAS, due notice of the Confirmation Hearing (as defined in the Interim Approval and Procedures Order) has been given to Holders of Claims and Interests and other parties in interest in compliance with the Bankruptcy Code, the Bankruptcy Rules and the Interim Approval and Procedures Order, as set forth in, among other things, various *certificates of service* [D.I. 491, 496, 512, 532, 535, 537] (collectively, the “Solicitation Certificates”) and the *Affidavit of Publication* [D.I. 496] (the “Publication Verification”);

WHEREAS, in compliance with the Bankruptcy Code, the Bankruptcy Rules and the Interim Approval and Procedures Order, solicitation packages containing a Ballot, the Combined Disclosure Statement and Plan, the Interim Approval and Procedures Order (without certain exhibits), the Confirmation Hearing Notice, and the letter from the Creditors’ Committee (defined below) in support of the Combined Disclosure Statement and Plan (collectively, the “Solicitation Packages”) were transmitted to Holders of Claims in Classes 3 and 4 (the “Voting Classes”) as well as to Holders of Claims in Class 5;

WHEREAS, on January 11, 2024, the Debtors filed the *Notice of Filing Plan Supplement with Respect to Combined Disclosure Statement and Chapter 11 Plan of Liquidation Proposed by the Debtors* [D.I. 522] (as amended on January 22, 2024 [D.I. 543] and as may be further amended or supplemented, the “Plan Supplement”);

WHEREAS, on January 19, 2024, the *United States Trustee’s Limited Objection to Confirmation of the Amended Combined Disclosure Statement and Chapter 11 Plan of Liquidation Proposed by the Debtors* [D.I. 534] was filed by the U.S. Trustee;

WHEREAS, on January 22, 2024, Kurtzman Carson Consultants LLC (“KCC”) filed the *Declaration of Darlene S. Calderon with Respect to the Tabulation of Votes on the Combined Disclosure Statement and Chapter 11 Plan of Liquidation Proposed by the Debtors* [D.I. 538] (the “KCC Declaration”), containing a tabulation of all valid Ballots received and demonstrating acceptance of the Combined Disclosure Statement and Plan by the Voting Classes (the “Voting Certification”);

WHEREAS on January 23, 2024, the Debtors filed the *Memorandum of Law in Support of Confirmation of the Combined Disclosure Statement and Chapter 11 Plan of Liquidation Proposed by the Debtors* [D.I. ____] (the “Confirmation Brief”);

WHEREAS, on January 25, 2024, the Bankruptcy Court conducted the Confirmation Hearing to consider, (a) on a final basis, whether the Disclosure Statement portion of the Combined Disclosure Statement and Plan contained adequate information within the meaning of section 1125(a) of the Bankruptcy Code, and (b) Confirmation of the plan portion of the Combined Disclosure Statement and Plan.

NOW, THEREFORE, based upon the Bankruptcy Court’s consideration of the entire record of the Chapter 11 Cases, including, among other things, (i) the Combined Disclosure Statement and Plan, (ii) the Motion, (iii) the Solicitation Certificates, (iv) the Publication

Verification, (v) the Voting Certification, (vi) the Confirmation Brief, (vii) any objections to the Combined Disclosure Statement and Plan, and (viii) the Confirmation Hearing, and the Bankruptcy Court having found the Combined Disclosure Statement and Plan contains adequate information within the meaning of section 1125(a) of the Bankruptcy Code and is confirmable in its current form and all objections thereto have either been settled, withdrawn or overruled at the Confirmation Hearing, and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT³:

A. Findings and Conclusions. The findings and conclusions set forth herein and in the record of the Confirmation Hearing constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. Jurisdiction, Venue, Core Proceeding. On the Petition Date, the Debtors commenced with this Bankruptcy Court voluntary cases under chapter 11 of the Bankruptcy Code. The Bankruptcy Court has jurisdiction over the Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334. Approval of the Combined Disclosure Statement and Plan as containing adequate information and confirmation of the Combined Disclosure Statement and Plan are core proceedings pursuant to 28 U.S.C. § 157(b), and this Bankruptcy Court has jurisdiction to enter a Final Order with respect thereto. The Debtors are eligible debtors under section 109 of the Bankruptcy Code. Venue is proper before this Bankruptcy Court pursuant to 28 U.S.C. §§ 1408

³ To the extent any findings of fact constitute conclusions of law or vice-versa, they shall be construed as such.

and 1409. The Debtors are the plan proponents in accordance with section 1121(a) of the Bankruptcy Code.

C. The Official Committee of Unsecured Creditors. On July 28, 2024, the Office of the United States Trustee for the District of Delaware appointed an Official Committee of Unsecured Creditors (the “Creditors’ Committee”) [D.I. 72].

D. Judicial Notice. The Bankruptcy Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the clerk of the Bankruptcy Court, including all pleadings and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at the hearings held before the Bankruptcy Court during the pendency of the Chapter 11 Cases, all adversary proceedings filed in the Chapter 11 Cases, and the appellate court dockets of any and all appeals taken from any order entered or opinions issued by the Bankruptcy Court.

E. Approval Under Section 1125. The Combined Disclosure Statement and Plan contains adequate information within the meaning of section 1125(a) of the Bankruptcy Code.

F. Interim Approval and Procedures Order Compliance. The Debtors have complied with the Interim Approval and Procedures Order, including the solicitation process, in all respects.

G. Burden of Proof. The Debtors have the burden of proving the elements of sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence. The Debtors have met this burden.

H. Voting. As evidenced by the Voting Certification, votes to accept or reject the Combined Disclosure Statement and Plan have been solicited and tabulated fairly, in good faith, and in a manner consistent with the Bankruptcy Code and the Bankruptcy Rules, the solicitation process set forth in the Interim Approval and Procedures Order, and applicable non-bankruptcy law.

I. Solicitation. The Solicitation Packages were transmitted, served and published in compliance with the Bankruptcy Code, the Bankruptcy Rules, including Bankruptcy Rules 3017 and 3018, and the Interim Approval and Procedures Order. The form of the Ballot adequately addressed the particular needs of the Chapter 11 Cases and is appropriate for the Holders of Claims in the Voting Classes, which are Impaired under the Combined Disclosure Statement and Plan, and who may receive a distribution under the Combined Disclosure Statement and Plan, and whose votes were, therefore, solicited. The Court further finds the following:

1. The period during which the Debtors solicited acceptances of the Combined Disclosure Statement and Plan was reasonable in the circumstances of the Chapter 11 Cases and enabled Holders of Claims to make an informed decision to accept or reject the Combined Disclosure Statement and Plan. The Debtors were not required to solicit votes from the Holders of Claims in the following Classes as each such Class is Unimpaired under the Combined Disclosure Statement and Plan and thus conclusively presumed to have accepted the Combined Disclosure Statement and Plan: Class 1 (Other Priority Claims) and Class 2 (Other Secured Claims Claims).

2. The Debtors also were not required to solicit votes from the Holders of Claims or Interests in Class 5 (Subordinated Claims) and Class 6 (Equity Interests) (collectively, the “Deemed Rejecting Classes”) as each such Class will receive no recovery under the Combined Disclosure Statement and Plan and is deemed to reject the Combined Disclosure Statement and Plan.

3. As described in and as evidenced by the Voting Certification and the Solicitation Certificates, the transmittal and service of the Solicitation Packages was timely, adequate, and sufficient under the circumstances. The solicitation of votes on the Combined Disclosure Statement and Plan complied with the Interim Approval and Procedures Order, was appropriate and satisfactory based upon the circumstances of the Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and any other applicable rules, laws, and regulations. In connection therewith, the Debtors, and any and all affiliates, members, managers, shareholders, partners, employees, attorneys and advisors of the foregoing are entitled to the protection of section 1125(e) of the Bankruptcy Code.

J. Good Faith. The Debtors have not engaged in any collusive or unfair conduct in connection with the Combined Disclosure Statement and Plan. The Combined

Disclosure Statement and Plan was negotiated and conducted at arms'-length and without collusion with any Person or Entity.

K. Notice. As is evidenced by the Voting Certification and the Solicitation Certificates, the transmittal and service of the Solicitation Packages were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to Confirmation of the Combined Disclosure Statement and Plan) have been given due, proper, timely, and adequate notice in accordance with the Interim Approval and Procedures Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required.

L. Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(1)). The Combined Disclosure Statement and Plan complies with the applicable provisions of the Bankruptcy Code and, as required by Bankruptcy Rule 3016, the Combined Disclosure Statement and Plan is dated and identifies the Debtors as plan proponents, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

M. The Debtors' Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtors have complied with all applicable provisions of the Bankruptcy Code, satisfying the requirements of section 1129(a)(2) of the Bankruptcy Code.

N. Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Combined Disclosure Statement and Plan has been proposed in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code.

O. Payment for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). Any payment made or to be made by the Debtors, or by a Person issuing securities or acquiring property

under the Combined Disclosure Statement and Plan, for services or for costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Combined Disclosure Statement and Plan and incident to the Chapter 11 Cases, has been approved by, or is subject to the approval of, the Bankruptcy Court as reasonable, thereby satisfying section 1129(a)(4) of the Bankruptcy Code.

P. Liquidating Trustee, Directors, Officers and Insiders (11 U.S.C. § 1129(a)(5)). The Debtors have complied with section 1129(a)(5) of the Bankruptcy Code. The identity, affiliations and compensation of the Liquidating Trustee proposed to serve after the Effective Date have been fully disclosed in the Plan Supplement.

Q. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Combined Disclosure Statement and Plan does not provide for rate changes by any of the Debtors or the Liquidating Trustee, on behalf of the Liquidating Trust. Thus, section 1129(a)(6) of the Bankruptcy Code is not applicable.

R. Best Interest of Creditors (11 U.S.C. 1129(a)(7)). The Combined Disclosure Statement and Plan satisfies section 1129(a)(7) of the Bankruptcy Code. The liquidation analysis provided in the Combined Disclosure Statement and Plan, and the other evidence proffered or adduced at or in connection with the Confirmation Hearing (i) is persuasive and credible, (ii) has not been controverted by other evidence, and (iii) establishes that each Holder of an Impaired Claim or Interest either has accepted the Combined Disclosure Statement and Plan or will receive or retain under the Combined Disclosure Statement and Plan, on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

S. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)). Classes 1 and 2 are not Impaired and deemed to accept the Combined Disclosure Statement and Plan, and Classes 3 and 4 voted to accept the Combined Disclosure Statement and Plan. The Deemed Rejecting Classes are Impaired by the Combined Disclosure Statement and Plan and are not entitled to receive or retain any property under the Combined Disclosure Statement and Plan and, therefore, are deemed to have rejected the Combined Disclosure Statement and Plan pursuant to section 1126(g) of the Bankruptcy Code. As found and determined below, pursuant to section 1129(b)(1) of the Bankruptcy Code, the Combined Disclosure Statement and Plan may be confirmed notwithstanding the fact that the Deemed Rejecting Classes are Impaired and are deemed to have rejected the Combined Disclosure Statement and Plan.

T. Administrative Expense Claims and Priority Tax Claims (11 U.S.C. § 1129(a)(9)). The treatment of Allowed Administrative Expense Claims under the Combined Disclosure Statement and Plan satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code. The treatment of Priority Tax Claims pursuant to the Combined Disclosure Statement and Plan satisfies the requirements of section 1129(a)(9)(C) of the Bankruptcy Code.

U. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(10)). Holders of Claims in the Voting Classes voted to accept the Combined Disclosure Statement and Plan, determined without including any acceptance of the Combined Disclosure Statement and Plan by any insider, thereby satisfying the requirements of section 1129(a)(10) of the Bankruptcy Code.

V. Feasibility (11 U.S.C. § 1129(a)(11)). The Combined Disclosure Statement and Plan provides for the transfer of the Liquidating Trust Assets to the Liquidating Trust, the designation of the Liquidating Trustee to administer the Liquidating Trust and make Distributions to Holders of Allowed Claims in accordance with the Liquidating Trust Agreement and the terms of the Combined Disclosure Statement and Plan, and the liquidation of the Debtors. In addition,

the Combined Disclosure Statement and Plan provide for the establishment of various reserves, setting aside money and property sufficient to make certain required payments and distributions. Funding of the Plan Claim Reserve provides the ability to pay reasonably anticipated Administrative Claims, Tax Claims, Other Priority Claims, and Other Secured Claims when and to the extent they become Allowed. Therefore, Confirmation of the Combined Disclosure Statement and Plan is not likely to be followed by the need for further financial reorganization of the Debtors, thereby satisfying (or eliminating the need to consider) section 1129(a)(11) of the Bankruptcy Code. The Disclosure Statement and the evidence proffered or adduced at the Confirmation Hearing related to the requirements of section 1129(a)(11) of the Bankruptcy Code (i) are persuasive and credible, (ii) have not been controverted by other evidence or challenged by any objection to confirmation of the Plan, and (iii) establish that the Plan satisfies the requirements of section 1129(a)(11) of the Bankruptcy Code.

W. Payment of Fees (11 U.S.C. 1129(a)(12)). The Combined Disclosure Statement and Plan provides that on the Effective Date the Debtors (and after the Effective Date as may be required, the Liquidating Trustee) shall pay all fees payable pursuant to section 1930 of title 28 of the United States Code, thereby satisfying section 1129(a)(12) of the Bankruptcy Code.

X. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). The Debtors do not maintain retirement plans or other benefits obligations. Accordingly, section 1129(a)(13) of the Bankruptcy Code is not applicable to the Combined Disclosure Statement and Plan.

Y. No Domestic Support Obligations (11 U.S.C. 1129(a)(14)). The Debtors are not required by a judicial or administrative order, or by statute, to pay a domestic support obligation. Accordingly, section 1129(a)(14) of the Bankruptcy Code is inapplicable to the Chapter 11 Cases.

Z. The Debtors are Not Individuals (11 U.S.C. § 1129(a)(15)). The Debtors are not individuals, and accordingly, section 1129(a)(15) of the Bankruptcy Code is inapplicable to the Chapter 11 Cases.

AA. No Applicable Non-bankruptcy Law Regarding Transfers (11 U.S.C. § 1129(a)(16)). The Debtors are moneyed, business, and/or commercial corporations, and accordingly, section 1129(a)(16) of the Bankruptcy Code is inapplicable to the Chapter 11 Cases.

BB. Fair and Equitable, No Unfair Discrimination (11 U.S.C. § 1129(b)). Holders of Claims and Interests in the Deemed Rejecting Classes are deemed to have rejected the Combined Disclosure Statement and Plan. Based upon the evidence proffered, adduced, and presented by the Debtors at the Confirmation Hearing, the Combined Disclosure Statement and Plan does not discriminate unfairly and is fair and equitable with respect to the Deemed Rejecting Classes, as required by sections 1129(b)(1) and (b)(2) of the Bankruptcy Code. Thus, the Combined Disclosure Statement and Plan may be confirmed notwithstanding the deemed rejection of the Combined Disclosure Statement and Plan by the Deemed Rejecting Classes.

CC. Only One Plan (11 U.S.C. § 1129(c)). The Combined Disclosure Statement and Plan is the only plan filed in the Chapter 11 Cases, and accordingly, section 1129(c) of the Bankruptcy Code is inapplicable in the Chapter 11 Cases.

DD. Principal Purpose of the Plan (11 U.S.C. §1129(d)). The principal purpose of the Combined Disclosure Statement and Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act, and no Governmental Unit has objected to the Confirmation of the Combined Disclosure Statement and Plan on any such grounds. Therefore, the Combined Disclosure Statement and Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

EE. Good Faith Solicitation (11 U.S.C. § 1125(e)). Based on the record before the Bankruptcy Court and the record of the Chapter 11 Cases, the Debtors and their agents, successors, predecessors, control persons, members, officers, directors, employees and agents and their respective attorneys, financial advisors, investment bankers, accountants, and other professionals retained by such Persons, in each case, have acted in “good faith” within the meaning of section 1125(e) of the Bankruptcy Code in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and any applicable non-bankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with all their respective activities relating to the solicitation of acceptances to the Combined Disclosure Statement and Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and therefore are not, and on account of such offer, issuance and solicitation will not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Combined Disclosure Statement and Plan and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and, to the extent such parties are listed therein, the exculpation provisions set forth in Section 10.5 of the Combined Disclosure Statement and Plan.

FF. Implementation. All documents necessary to implement the Combined Disclosure Statement and Plan, and all other relevant and necessary documents have been developed and negotiated in good faith and at arms-length and shall, upon completion of documentation and execution, and subject to the occurrence of the Effective Date, be valid, binding, and enforceable agreements and not be in conflict with any federal or state law.

GG. Releases and Exculpation. The Bankruptcy Court has jurisdiction under sections 1334(a) and (b) of title 28 of the United States Code to approve the release, exculpation and injunction provisions in the Combined Disclosure Statement and Plan and this Confirmation

Order. Section 105(a) of the Bankruptcy Code permits approval of the foregoing provisions set forth in, among other articles, Article X of the Combined Disclosure Statement and Plan because, as has been established based upon the record in the Chapter 11 Cases and the evidence presented at the Confirmation Hearing, such provisions (i) were integral to achieving settlement among the various parties in interest and are essential to the formulation and implementation of the Combined Disclosure Statement and Plan, as provided in section 1123 of the Bankruptcy Code, (ii) confer substantial benefits on the Debtors' Estates, (iii) are fair, equitable, and reasonable, and (iv) are in the best interests of the Debtors, their Estates, and all parties in interest.

HH. Accordingly, based upon the record of the Chapter 11 Cases, the representations of the parties, and/or the evidence proffered, adduced, and/or presented at the Confirmation Hearing, this Bankruptcy Court finds that the exculpation provision set forth in Section 10.5 and the releases set forth in Section 10.6 and the related injunction in Section 10.4, of the Combined Disclosure Statement and Plan are consistent with the Bankruptcy Code and applicable law.

II. Waiver of Stay. For the reasons stated in the Combined Disclosure Statement and Plan and on the record at the Confirmation Hearing, good cause exists for waiving the stay of the Confirmation Order set forth in Bankruptcy Rule 3020(e).

JJ. Based on the foregoing, the Combined Disclosure Statement and Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

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

1. Findings of Fact and Conclusions of Law. The above-referenced findings of fact and conclusions of law are hereby incorporated by reference as though fully set forth herein.

2. Notice of the Confirmation Hearing. Notice of the Confirmation Hearing complied with the terms of the Interim Approval and Procedures Order, was appropriate and

satisfactory based upon the circumstances of the Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code and the Bankruptcy Rules.

3. Adequate Information. The Combined Disclosure Statement and Plan is approved on a final basis as containing adequate information within the meaning of section 1125 of the Bankruptcy Code, and any objections to the adequacy of the information contained in the Combined Disclosure Statement and Plan not otherwise consensually resolved are overruled.

4. Solicitation. The solicitation of votes on the Combined Disclosure Statement and Plan complied with the Interim Approval and Procedures Order, was appropriate and satisfactory based upon the circumstances of the Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and applicable non-bankruptcy law.

5. Ballots. The form of Ballots annexed to the Interim Approval and Procedures Order was in compliance with Bankruptcy Rule 3018(c), and as modified, substantially conforms to Official Form Number 314, and is approved in all respects.

6. Confirmation of the Combined Disclosure Statement and Plan. The Combined Disclosure Statement and Plan, attached hereto as **Exhibit A**, is approved and confirmed under section 1129 of the Bankruptcy Code. The terms of the Combined Disclosure Statement and Plan are incorporated by reference into, and are an integral part of, this Confirmation Order.

7. Objections Resolved or Overruled. All objections, responses, statements and comments in opposition to the Combined Disclosure Statement and Plan, other than those withdrawn with prejudice, waived, or settled prior to, or on the record at, the Confirmation Hearing, shall be, and hereby are, overruled in their entirety.

8. General Authorizations. The Combined Disclosure Statement and Plan was approved by all officers of the Debtors whose approval was necessary. Pursuant to the appropriate provisions of the corporate or business organizations law of the applicable states of organization of the Debtors, and section 1142(b) of the Bankruptcy Code, no additional action of the respective directors, members, managers or equity holders of the Debtors shall be required to authorize the Debtors to enter into, execute, deliver, file, adopt, amend, restate, consummate, or effectuate, as the case may be, the Combined Disclosure Statement and Plan and any contract, instrument, or other document to be executed, delivered, adopted or amended in connection with the implementation of the Combined Disclosure Statement and Plan.

9. Binding Effect. On the date of and following entry of this Confirmation Order and subject to the occurrence of the Effective Date, the provisions of the Combined Disclosure Statement and Plan shall bind the Debtors, all Holders of Claims and Interests (irrespective of whether such Claims or Interests are Impaired under the Combined Disclosure Statement and Plan or whether the Holders of such Claims or Interests have accepted the Combined Disclosure Statement and Plan), any and all non-Debtor parties to Executory Contracts, including any unexpired leases, with the Debtors, any other party in interest in the Chapter 11 Cases, and the respective heirs, executors, administrators, successors, or assigns, if any, of any of the foregoing.

10. Vesting of Assets. As of the Effective Date, pursuant to the provisions of section 1141(b) and (c) of the Bankruptcy Code, all Liquidating Trust Assets shall vest in the Liquidating Trust free and clear of all Claims, Liens, encumbrances, charges, membership interests and other interests, except as otherwise expressly provided in the Combined Disclosure Statement and Plan or this Confirmation Order, and subject to the terms and conditions of the Combined Disclosure Statement and Plan and this Confirmation Order.

11. Liquidating Trust Agreement. The form of Liquidating Trust Agreement included as Exhibit A to the Plan Supplement, as may be subsequently modified, supplemented, or otherwise amended in a manner not materially inconsistent with the Plan pursuant to a filing with the Court prior to the Effective Date, is hereby approved in its entirety, and the Debtors and Liquidating Trustee, as applicable, are authorized to execute and to take any action necessary or appropriate to implement, effectuate or consummate the Liquidating Trust Agreement. Entry into the Liquidating Trust Agreement, the selection of the Liquidating Trustee and the form of Liquidating Trust Agreement is appropriate and in the best interests of the Debtors.

12. Appointment of the Liquidating Trustee. On the Effective Date, Alan D. Halperin shall be appointed as Liquidating Trustee of the Liquidating Trust. From and after the Effective Date, the Liquidating Trustee shall be the exclusive representative of each Debtor and of each the Estates with all rights and powers of a trustee under the Bankruptcy Code. Among other powers enumerated in Article IX, Section 9.4 of the Combined Disclosure Statement and Plan, and subject in all respects to the terms of the Liquidating Trust Agreement, the Liquidating Trustee shall be authorized to sell, lease, license, settle, compromise or otherwise dispose of Liquidating Trust Assets and shall have standing to pursue all claims and Causes of Action consisting of the Liquidating Trust Assets, including, without limitation, the EPI Acquisition Cause of Action, Supplier Cause of Action, and the EPI AR Causes of Action, that may be asserted by or on behalf of the Debtors or their Estates.

13. Implementation of the Combined Disclosure Statement and Plan. The Debtors and the Liquidating Trustee, as applicable, are hereby authorized to execute, deliver, file, or record such documents, contracts, instruments, releases, and other agreements, and take such other actions as may be necessary to effectuate, implement, and further evidence the terms and conditions of the Combined Disclosure Statement and Plan. On the Effective Date, the Liquidating

Trustee is authorized and empowered to issue, execute, file, and deliver or record such documents, contracts, instruments, releases and other agreements in the name of the Liquidating Trust and on behalf of the Debtors.

14. Compromise of Controversies. In consideration for the distributions and other benefits, including releases, provided under the Combined Disclosure Statement and Plan, the provisions of the Combined Disclosure Statement and Plan constitute a good faith compromise and settlement of all Claims and controversies resolved under the Combined Disclosure Statement and Plan. Consideration for all such compromises, settlements, and releases is adequate, and the entry of this Confirmation Order constitutes approval of such compromises and settlements under Bankruptcy Rule 9019, subject to the provisions of the Combined Disclosure Statement and Plan.

15. Rejection of Executory Contracts and Unexpired Leases. Except as is set forth in the Combined Disclosure Statement and Plan, pursuant to Article XI of the Combined Disclosure Statement and Plan, as of the Effective Date, each of the remaining Executory Contracts, including unexpired leases, to which any of the Debtors is a party are hereby rejected as of the Effective Date, unless such contract or lease: (i) previously has been rejected by the Debtors pursuant to a Final Order of the Bankruptcy Court; (ii) is expressly assumed pursuant to the Combined Disclosure Statement and Plan or previously shall have been assumed or assumed and assigned by the Debtors pursuant to a Final Order of the Bankruptcy Court; or (iii) is the subject of a pending motion to assume or reject on the Effective Date. Notwithstanding the foregoing, and for the avoidance of doubt, this Confirmation Order shall not constitute an order rejecting (a) any insurance policy or agreement of the Debtors that is determined to be an Executory Contract, and all insurance policies and agreements shall vest with, the Liquidating Trust in accordance with Section 9.13 of the Combined Disclosure Statement and Plan.

16. Conditions to Effectiveness. The Combined Disclosure Statement and Plan shall not become effective unless and until the conditions set forth in Section 13.2 of the Combined Disclosure Statement and Plan have been satisfied or waived pursuant to the Combined Disclosure Statement and Plan.

17. Final Administrative Bar Date. Holders of Administrative Claims, other than Holders of Fee Claims and Claims for U.S. Trustee Fees, must file with the Claims Agent and serve on the Liquidating Trustee requests for payment, in writing, together with supporting documents, substantially complying with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, so as to be actually received on or before thirty (30) calendar days after the Effective Date.

18. Professional Compensation. Except as provided in the Combined Disclosure Statement and Plan, all requests for payment of Fee Claims for services rendered or reimbursement of expenses incurred prior to the Effective Date must be filed and served in accordance with the Interim Compensation Procedures order by the date that is thirty (30) calendar days after the Effective Date. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and Professionals may be employed by the Liquidating Trustee on behalf of the Liquidating Trust and paid in the ordinary course of business without any further notice to, or action, order, or approval of, the Bankruptcy Court. Any Allowed Fee Claims shall be paid in accordance with the Combined Disclosure Statement and Plan.

19. Exculpation. Notwithstanding anything contained in the Plan to the contrary, the Exculpated Parties, and any property of any of the foregoing Persons, shall not have or incur any liability to any Entity for any postpetition act taken or omitted to be taken in connection with, related to or arising from the formulation, negotiation, preparation, dissemination,

implementation, administration of the Plan, the Plan Exhibits, the Disclosure Statement, or any contract, instrument, or other agreement or document created or entered into in connection with the Plan, or any other postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors, the Case, or the confirmation or consummation of the Plan, including but not limited to (i) formulating, preparing, disseminating, implementing, confirming, consummating or administering this Plan (including soliciting acceptances or rejections thereof if necessary); (ii) the Disclosure Statement, or any contract, instrument, release or other agreement or document entered into or any action taken or not taken in connection with this Plan; (iii) the Settlement Term Sheet; or (iv) any Distributions made pursuant to this Plan, except for acts constituting willful misconduct, bad faith, or gross negligence, and in all respects such parties shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under this Plan in accordance with applicable law. Notwithstanding the foregoing, for the avoidance of doubt, this Section of the Plan shall not (i) exculpate or release the Exculpated Parties from anything other than as expressly identified in the first sentence of this Section, (ii) prevent or limit the ability of the Debtors or the Liquidating Trustee to object to a Claim of an Exculpated Party on any basis other than matters exculpated or released in this Section, or (iii) prevent or limit the ability of the Debtors or the Liquidating Trustee to object to, or defend against, on any basis, any Administrative Claim of an Exculpated Party for substantial contribution.

20. Binding Exculpation Provision. All exculpation provisions embodied herein and/or in the Combined Disclosure Statement and Plan, including without limitation those contained in Section 10.5 of the Combined Disclosure Statement and Plan and/or the Liquidating Trust Agreement, are approved and shall be effective and binding on all Persons and Entities, except as may be otherwise provided herein.

21. Releases by the Debtors. Except as otherwise expressly provided in the Plan or this Confirmation Order, on the Effective Date, for good and valuable consideration, to the fullest extent permissible under applicable law, each of the Debtors and their Estates shall, and shall be deemed to, completely and forever release, waive, void, extinguish and discharge unconditionally, each and all of the Released Parties of and from any and all Claims, Causes of Action, obligations, suits, judgments, damages, debts, rights, remedies and liabilities of any nature whatsoever, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are or may be based in whole or part on any act, omission, transaction, event or other circumstance taking place or existing on or prior to the Effective Date (including prior to the Petition Date) in connection with or related to any of the Debtors, including, without limitation, (i) the chapter 11 cases, (ii) the combined Plan and Disclosure Statement, (iii) the subject matter of, or the transaction or events giving rise to, any claim or equity interest that is treated in this Plan, (iv) the business or contractual arrangements between any Debtor and any Released Party, (v) the negotiation, formulation or preparation of this combined Plan and Disclosure Statement, the Plan Supplement, or related agreements, instruments or other documents, (vi) the Sale or its related transaction documents, and the negotiation, formulation or preparation of the Sale and the related transaction documents, (vii) the Settlement Term Sheet, and (viii) the confirmation or consummation of this Plan or the solicitation of votes on this Plan that may be asserted by or on behalf of any of the Debtors or their respective Estates, against any of the Released Parties. The foregoing releases shall not extend to acts constituting willful misconduct, fraud, bad faith, or gross negligence.

22. Entry of this Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases embodied herein and/or in Section

10.6 of the Combined Disclosure Statement and Plan, which includes by reference each of the related provisions and definitions contained in the Combined Disclosure Statement and Plan, and further, shall constitute its finding that each release described in the Combined Disclosure Statement and Plan is (i) in exchange for the good and valuable consideration provided by the Released Parties, a good faith settlement and compromise of such Claims, (ii) in the best interests of the Debtors and all Holders of Interests and Claims, (iii) fair, equitable and reasonable; (iv) given and made after due notice and opportunity for hearing and (v) a bar to the Debtors asserting any claim, Cause of Action or liability related thereto, of any kind whatsoever, against any of the Released Parties or their property.

23. All release provisions embodied herein and/or in the Combined Disclosure Statement and Plan, including without limitation those contained in Section 10.6 of the Combined Disclosure Statement and Plan, are approved and shall be effective and binding on all Persons and Entities, except to the extent provided otherwise in the Combined Disclosure Statement and Plan or in this Confirmation Order

24. Injunctions. Persons and Entities who have held, hold, or may hold Claims or Equity Interests that have been released, dismissed, cancelled, settled or waived, or are subject to exculpation, under the Plan or this Confirmation Order, are permanently enjoined from taking any of the following actions against the Estate, the Released Parties, the Liquidating Trust, the Liquidating Trustee, or any of their respective property or assets, on account of any such Claims or Equity Interests: (i) commencing or continuing, in any manner or in any place, any action or proceeding seeking to collect or to recover in any manner against, or assert control or dominion over, any of their assets; (ii) enforcing, attaching, collecting, or recovering in any manner against their assets, any judgment, award, decree or order; (iii) creating, perfecting, or enforcing any Lien or encumbrance against their assets; (iv) asserting setoff unless such setoff was formally asserted

in a timely Filed proof of Claim or in a pleading Filed with the Bankruptcy Court prior to entry of this Confirmation Order (notwithstanding any indication in any proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of setoff) or right of subrogation of any kind against any debt, liability, or obligation due to the Debtors; and (v) commencing or continuing in any manner any action or other proceeding of any kind on account of, in connection with or with respect to any such Claims or Interests; provided, however, that such Persons and Entities shall not be precluded from exercising their rights under and consistent with the terms of the Plan, the Liquidating Trust Agreement, or this Confirmation Order. The injunction provided for herein and in section 10.4 of the Plan shall in no way expand or enlarge the breadth of the releases granted in the Plan, and shall not grant the Debtors a discharge in accordance with section 10.3 of the Plan and paragraph 27 of this Confirmation Order.

25. Without in any way limiting paragraph 24 of this Confirmation Order and Section 10.4 of the Combined Disclosure Statement and Plan, by accepting distributions pursuant to the Plan, each Holder of an Allowed Claim will be deemed to have specifically consented to the Injunctions set forth in this Confirmation Order and Section 10.4 of the Combined Disclosure Statement and Plan.

26. Preservation of Causes of Action. Pursuant to the Combined Disclosure Statement and Plan, except as provided otherwise in the Combined Disclosure Statement and Plan or any Final Order of this Bankruptcy Court, the Retained Causes of Action shall be and are hereby preserved and shall be assigned to the Liquidating Trust on the Effective Date.

27. Debtors Will Not Receive a Discharge. In accordance with section 1141(d)(3) of the Bankruptcy Code, the Debtors shall not receive a discharge; provided, however, that no Holder of any Claim or Interest may, on account of such Claim or Interest, seek or receive any payment or other Distribution from, or seek recourse against, any of the Estates, the

Liquidating Trust, the Liquidating Trustee and/or their respective successors, assigns and/or property, except as expressly provided in the Plan and this Confirmation Order.

28. Reservation of Rights. Except as expressly set forth herein, the Combined Disclosure Statement and Plan shall have no force or effect until the Effective Date. None of the filing of the Combined Disclosure Statement and Plan, any statement or provision contained herein, or the taking of any action by the Debtors with respect to the Combined Disclosure Statement and Plan shall be or shall be deemed to be an admission or waiver of any rights of the Debtors, Holders of Claims or Interests before the Effective Date.

29. Payment of Statutory Fees. On the Effective Date, the Debtors shall pay in full in Cash all U.S. Trustee quarterly fees owed pursuant to 28 U.S.C. § 1930(a)(6) and any interest thereon pursuant to 31 U.S.C. § 3717. After the Effective Date, the Debtors or the Liquidating Trustee, as applicable, shall timely pay in full in Cash when due all U.S. Trustee quarterly fees owed under 28 U.S.C. § 1930(a)(6) and any interest thereon pursuant to 31 U.S.C. § 3717, until the Cases are closed, dismissed, or converted.

30. Reversal/Stay/Modification/Vacatur of Confirmation Order. Except as otherwise provided in this Confirmation Order, if any or all of the provisions of this Confirmation Order are hereafter reversed, modified, vacated, or stayed by subsequent order of this Bankruptcy Court or any other court, such reversal, stay, modification, or vacatur shall not affect the validity or enforceability of any act, obligation, indebtedness, liability, priority, or Lien incurred or undertaken by the Debtors, the Liquidating Trustee or Liquidating Trust, as applicable, pursuant to the Combined Disclosure Statement and Plan and this Confirmation Order prior to the effective date of such reversal, stay, modification, or vacatur. Notwithstanding any such reversal, stay, modification, or vacatur of this Confirmation Order, any such act or obligation incurred or undertaken pursuant to, or in reliance on, this Confirmation Order prior to the effective date of

such reversal, stay, modification, or vacatur shall be governed in all respects by the provisions of this Confirmation Order and the Combined Disclosure Statement and Plan or any amendments or modifications thereto.

31. Retention of Jurisdiction. Notwithstanding entry of this Confirmation Order or the occurrence of the Effective Date, and except as otherwise provided by applicable law, the Court shall retain such jurisdiction as is legally permissible, including for the following purposes:

- (i) To determine the allowability, classification, or priority of Claims upon Objection of the Liquidating Trustee or any other party in interest that files an objection, and the validity, extent, priority and nonavoidability of consensual and nonconsensual liens and other encumbrances;
- (ii) To issue injunctions or take such other actions or make such other orders as may be necessary or appropriate to restrain interference with this Plan or its execution or implementation by any Entity, to construe and to take any other action to enforce and execute this Plan, the Confirmation Order, or any other order of the Bankruptcy Court, to issue such orders as may be necessary for the implementation, execution, performance and consummation of this Plan and all matters referred to herein, and to determine all matters that may be pending before the Bankruptcy Court in these chapter 11 cases on or before the Effective Date with respect to any Entity;
- (iii) To protect the property of the Estates and Liquidation Trust Assets from claims against, or interference with, such property, including actions to quiet or otherwise clear title to such property or to resolve any dispute concerning Liens on property of the Estates or Liquidation Trust Assets;
- (iv) To determine any and all applications for allowance of Fee Claims;
- (v) To determine any Priority Tax Claim, Other Priority Claim, Administrative Claims or any other request for payment of claims or expenses entitled to priority under section 507(a) of the Bankruptcy Code;
- (vi) To resolve any disputes arising under or related to the implementation, execution, consummation or interpretation of this Plan and the making of Distributions hereunder;
- (vii) To determine any and all motions related to the rejection, assumption or assignment of Executory Contracts or unexpired leases, or to determine

any motion to reject an Executory Contract or unexpired lease pursuant to section 11.1 of this Plan;

- (viii) To determine all applications, motions, adversary proceedings, contested matters, actions, and any other litigated matters instituted in and prior to the closing of these chapter 11 cases, including any remands;
- (ix) To enter one or more Final Orders closing the Debtors' chapter 11 cases;
- (x) To modify this Plan under section 1127 of the Bankruptcy Code, to remedy any defect, cure any omission, or reconcile any inconsistency in this Plan or the Confirmation Order so as to carry out its intent and purposes;
- (xi) To issue such orders in aid of consummation of this Plan and the Confirmation Order notwithstanding any otherwise applicable non-bankruptcy law, with respect to any Entity, to the full extent authorized by the Bankruptcy Code;
- (xii) To enable the Liquidating Trustee to prosecute any and all proceedings to set aside Liens and to recover any transfers, assets, properties or damages to which the Liquidating Trust may be entitled on account of the Liquidating Trust Assets under applicable provisions of the Bankruptcy Code or any other federal, state or local laws except as may be expressly waived pursuant to this Plan;
- (xiii) To determine any tax liability of the Debtors or the Liquidating Trust pursuant to section 505 of the Bankruptcy Code, and to address any request by the Liquidating Trustee or the Liquidating Trust for a prompt audit pursuant to section 505(b) of the Bankruptcy Code;
- (xiv) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated;
- (xv) To resolve any disputes concerning whether an Entity had sufficient notice of the chapter 11 cases, the Bar Date Order or the otherwise applicable Claims Bar Date, the hearing to consider approval of the Disclosure Statement or the Confirmation Hearing;
- (xvi) To resolve any dispute or matter arising under or in connection with any order of the Bankruptcy Court entered in these chapter 11 cases;
- (xvii) To resolve any disputes concerning any exculpation of a non-debtor hereunder or the injunction against acts, employment of process or actions against such non-debtor arising hereunder;
- (xviii) To approve any Distributions, or objections thereto, under this Plan;
- (xix) To approve any offset exercised by the Liquidating Trustee; and

- (xx) To determine such other matters, and for such other purposes, as may be provided in this Confirmation Order or as may be authorized under provisions of the Bankruptcy Code.

32. Exemption from Transfer Taxes and Recording Fees. Pursuant to section 1146(a) of the Bankruptcy Code, any transfer of property pursuant to or in connection with the Combined Disclosure Statement and Plan shall not be subject to any document recording tax, stamp tax, sales and use tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee or other similar tax or governmental assessment in the United States. This Confirmation Order hereby directs the appropriate federal, state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any applicable instruments or documents without the payment of any such tax or governmental assessment.

33. Modifications. Subject to certain restrictions and requirements set forth in section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, and those restrictions on modifications set forth in the Combined Disclosure Statement and Plan, the Debtors, subject to the written consent of the Creditors' Committee, may alter, amend or modify the Combined Disclosure Statement and Plan, including the Plan Supplement, without additional disclosure pursuant to section 1125 of the Bankruptcy Code prior to the Confirmation Date or order of this Court, provided that the Plan, as modified, and the Disclosure Statement meet applicable Bankruptcy Code Requirements.

34. After the Confirmation Date and before substantial consummation of the Plan, the Debtors, subject to the written consent of the Creditors' Committee, may modify the Plan in a way that materially or adversely affects the interests, rights, treatment, or Distributions of a Class of Claims or Interests, provided that: (i) the Plan, as modified, meets applicable Bankruptcy

Code requirements; (ii) the Debtors, with the written consent of the Creditors' Committee, obtain Court approval for such modification, after notice and a hearing; (iii) such modification is accepted by at least two-thirds in amount, and more than one-half in number, of Allowed Claims or Interests voting in each Class materially or adversely affected by such modification; and (iv) the Debtors comply with section 1125 of the Bankruptcy Code with respect to the Plan as modified.

35. Provisions of Combined Disclosure Statement and Plan and Confirmation Order Non-Severable and Mutually Dependent. The provisions of the Combined Disclosure Statement and Plan and this Confirmation Order, including the findings of fact and conclusions of law set forth herein, are non-severable and mutually dependent.

36. Governing Law. Except to the extent that the Bankruptcy Code, Bankruptcy Rules or other federal laws apply, the rights and obligations arising under the Plan shall be governed by and construed and enforced in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law.

37. Applicable Non-bankruptcy Law. To the extent permitted under sections 1123(a) and 1142(a) of the Bankruptcy Code, the provisions of this Confirmation Order, the Combined Disclosure Statement and Plan and related documents or any amendments or modifications thereto shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

38. Documents and Instruments. Each federal, state, commonwealth, local, foreign, or other governmental agency is hereby authorized to accept any and all documents and instruments necessary or appropriate to effectuate, implement or consummate the transactions contemplated by the Combined Disclosure Statement and Plan and this Confirmation Order.

39. Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state

or other governmental authority with respect to the implementation or Consummation of the Combined Disclosure Statement and Plan, any documents, instruments, or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Combined Disclosure Statement and Plan.

40. Notice of Entry of Confirmation Order and Effective Date. On or within two (2) Business Days of the Effective Date, the Debtors shall file and serve a notice of Effective Date and entry of this Confirmation Order (the “Effective Date Notice”). The Debtors will serve the Effective Date Notice on the following parties: (a) the U.S. Trustee, (b) all entities that are party to executory contracts and unexpired leases with the Debtors, (c) all entities that are party to litigation with the Debtors, (d) all current and former employees, directors and officers (to the extent that contact information for former employees, directors and officers is available in the Debtors’ records), (e) all regulatory authorities that regulate the Debtors’ businesses, (f) the Office of the Attorney General for the State of Delaware, (g) the office of the attorney general for each state in which the Debtors maintain or conduct business, (h) the taxing authorities for the jurisdictions in which the Debtors maintain or conduct business, (i) the Department of Justice, and (j) all parties who filed a request for service of notices under Bankruptcy Rule 2002.

41. Substantial Consummation. On the Effective Date, the Combined Disclosure Statement and Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

42. References to Plan Provisions. The failure to include or specifically describe or reference any particular provision of the Combined Disclosure Statement and Plan in this Confirmation Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Combined Disclosure Statement and Plan be approved and confirmed in its entirety.

43. Waiver of Stay. The stay of this Confirmation Order provided by any Bankruptcy Rule (including, without limitation, Bankruptcy Rules 3020(e), 6004(h), and 6006(d)), whether for fourteen (14) days or otherwise, is hereby waived.

44. No Waiver. The failure to specifically include any particular provision of the Combined Disclosure Statement and Plan in this Confirmation Order shall not diminish the effectiveness of such provision nor constitute a waiver thereof, it being the intent of this Bankruptcy Court that the Combined Disclosure Statement and Plan is confirmed in its entirety and incorporated herein by reference.

45. Dissolution of the Creditors' Committee. Upon the Effective Date, the Creditors' Committee shall dissolve automatically, except as provided for in the Plan, and their members shall be released and discharged from all rights, duties, responsibilities and liabilities arising from, or related to, the Chapter 11 Cases and under the Bankruptcy Code.

46. Confirmation Order Controlling. The provisions of the Combined Disclosure Statement and Plan and of this Confirmation Order shall be construed in a manner consistent with each other so as to effect the purposes of each; provided, however, that if there is any conflict or inconsistency, the terms of this Confirmation Order shall control and govern.