

**UNITED STATES BANKRUPTCY COURT
THE SOUTHERN DISTRICT OF NEW YORK**

In re:

GMG CAPITAL PARTNERS III, L.P. *et al.*,¹

Debtors.

Chapter 11

Case No. 13-12937 (SMB)

Jointly Administered

**ORDER CONFIRMING SECOND AMENDED JOINT CHAPTER 11
PLAN OF REORGANIZATION OF DEBTORS GMG CAPITAL PARTNERS III, L.P.
AND GMG CAPITAL PARTNERS III COMPANION FUND, L.P.**

This matter is before the Court for entry of an order (this “Confirmation Order”) confirming the *Second Amended Joint Chapter 11 Plan of Reorganization for Debtors GMG Capital Partners III, L.P and GMG Capital Partners III Companion Fund, L.P.*, dated June 26, 2015 [Docket No. 293] (together with all exhibits and supplements thereto filed with the Court, the “Plan”, a copy of which is annexed hereto as **Exhibit A**).

On July 10, 2015, the Court entered that certain *Order (a) Approving The Disclosure Statement; (B) Fixing The Voting Record Date; (C) Approving The Solicitation Materials And Procedures For Distribution Thereof; (D) Approving The Forms Of Ballots And Establishing Procedures For Voting On The Proponents Plan Of Reorganization,; (E) Scheduling A Hearing And Establishing Notice And Objection Procedures In Respect Of Confirmation Of Debtor’s Plan Of Reorganization; And (F) Granting Related Relief* (the “Disclosure Statement Order”) [Docket No. 296]. Based upon this Court’s review of:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, if applicable, are: (i) GMG Capital Partners III, L.P. (9146); (ii) GMG Capital Partners III Companion Fund, L.P. (0603); GMG Capital Investments, LLC (9144); and (iv) GMS Capital Partners II, L.P. (8938). The Plan that is being confirmed only pertains to the first two Debtors.

- i. the *Memorandum Of Law In Support Of Confirmation Of Second Amended Joint Chapter 11 Plan Of Reorganization* [Docket No. 303-2] (the “Confirmation Brief”) filed on August 7, 2015;
- ii. the *Declaration Of Jonathan T. Koevary, Esq. Regarding Solicitation And Tabulation Of Votes In Connection With The Debtors’ Second Amended Chapter 11 Plan Of Reorganization* [Docket No. 303-8] (the “Voting Affidavit”) with a “Ballot Tabulation Report” attached thereto as Exhibit A, filed on August 7, 2015;
- iii. the *Declaration Of Joachim Gfoeller, Jr. In Support Of (I) Confirmation Of the Debtors’ Second Amended Chapter 11 Plan Of Reorganization* [Docket Nos. 303-3 – 303-8] (the “Gfoeller Declaration”);
- iv. all of the evidence proffered or adduced, and arguments of counsel made at the August 11, 2015 Confirmation Hearing;
- v. the Disclosure Statement, the Plan and the Solicitation Packages (as defined below) having been distributed as provided in the Disclosure Statement Order;
- vi. due notice of (x) entry of the Disclosure Statement Order, (y) the Confirmation Hearing, and (z) the deadline for voting on, and/or objecting to, the Plan having been provided to holders of Claims² against and Interests in the Debtors and other parties in interest in accordance with the Disclosure Statement Order, the Bankruptcy Code and the Bankruptcy Rules, as established by the affidavits of service, mailing, and/or publication filed with the Court; and
- vii. the entire record of these Chapter 11 Cases;

and after due deliberation thereon and good cause appearing therefor, it is hereby
DETERMINED, FOUND, ADJUDGED, AND DECREED:³

FINDINGS OF FACT

A. Jurisdiction and Venue. On September 10, 2013 (the “Petition Date”), GMG Capital Partners III, L.P and GMG Capital Partners III Companion Fund, L.P. (together, the

²Capitalized terms used herein and not defined shall have the meanings ascribed to them in the Plan or Disclosure Statement, as applicable.

³This Confirmation Order constitutes this Court’s findings of fact and conclusions of law under Fed. R. Civ. P. 52, as made applicable by Bankruptcy Rules 7052 and 9014. Any and all findings of fact shall constitute findings of fact even if they are stated as conclusions of law, and any and all conclusions of law shall constitute conclusions of law even if they are stated as findings of fact.

“Debtors”) commenced chapter 11 cases (the “Chapter 11 Cases”) by filing a voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors were and are qualified to be a debtor under Section 109 of the Bankruptcy Code. Venue in the Southern District of New York was proper as of the Petition Date pursuant to 28 U.S.C. §§ 1408 and 1409, and continues to be proper. Confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b)(2). This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

B. Judicial Notice. The Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the Bankruptcy Clerk, including, without limitation, all pleadings and other documents filed, all orders entered, and the evidence and arguments made, proffered, or adduced at the hearings held before the Court during the pendency of the Chapter 11 Cases.

C. Burden of Proof. The Debtors have met their burden of proving the elements of Section 1129(a) and (b) of the Bankruptcy Code as applicable by a preponderance of the evidence.

D. The Plan. On June 26, 2015 the Debtors filed a revised *Disclosure Statement With Respect To Debtors’ Joint Second Amended Chapter 11 Plan Of Reorganization* (the “Disclosure Statement”) [Docket No. 293].

E. Disclosure Statement Order. On July 10, 2015, this Court entered the Disclosure Statement Order. The Disclosure Statement Order, *inter alia*, (i) set August 11 at 10:00 a.m. (prevailing Eastern time), as the date for the commencement of the hearing to consider confirmation of the Plan (the “Confirmation Hearing”); (ii) approved the form and method of notice of the Confirmation Hearing (the “Confirmation Hearing Notice”); (iii) established certain

procedures for soliciting and tabulating votes with respect to the Plan; and (iv) provided that objections, if any, to confirmation of the Plan shall be filed with the Bankruptcy Court so as to be received by the Clerk of the United States Bankruptcy Court for the Southern District of New York on or before 4:00 p.m., prevailing Eastern time, August 4, 2015.

F. Other Plan Documents. On July 30 2015, the Debtors filed the *Supplement to the Debtors' Second Joint Amended Chapter 11 Plan of Reorganization* [Docket No. 302 (the "Plan Supplement") which is part of the Plan.

G. Transmittal and Mailing of Materials; Notice. Due, adequate and sufficient notice of the Disclosure Statement, the Plan, the Disclosure Statement Order, and of the Confirmation Hearing, together with all deadlines for voting on or filing objections to the Plan, was given to all known Holders of Claims and Interests. As evidenced in the *Certificate of Service re: Solicitation* [Docket No. 301], the Debtors complied with the service requirements and procedures approved in the Disclosure Statement Order. The Disclosure Statement, the Plan, Ballots and Confirmation Hearing Notice were transmitted and served in accordance with the Disclosure Statement Order, Bankruptcy Code and the Bankruptcy Rules, and such transmittal and service were adequate and sufficient and no other or further notice is or shall be required.

H. Voting Report. The Voting Affidavit certifies the method and results of the Ballot tabulation of the votes in Classes 2A, 2B, 3A, 3B, 4A, 4B, 5A, and 5B to accept or reject the Plan.

I. Solicitation. Based upon the Voting Affidavit, votes for acceptance and rejection of the Plan were solicited in good faith and complied with Sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, the Disclosure Statement, the Disclosure

Statement Order, all other applicable provisions of the Bankruptcy Code, Bankruptcy Rules and all other applicable rules, laws and regulations.

J. Ballots. All procedures used to distribute the Solicitation Packages and Ballots to the applicable holders of Claims and Interests and/or their counsel and to tabulate the Ballots were fair and conducted in accordance with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of the Bankruptcy Court for the Southern District of New York and all other applicable rules, laws and regulations. As evidenced by the Voting Affidavit, all Ballots were properly tabulated.

K. Impaired Classes that Have Voted to Accept the Plan. As evidenced by the Voting Affidavit, which certified both the method and results of the voting, pursuant to the requirements of Sections 1124 and 1126 of the Bankruptcy Code, 2A, 2B, 3A, 3B, 4A, 4B, 5A, and 5B have voted to accept the Plan. As such, all Impaired Classes entitled to vote on the Plan have voted to accept the Plan.

L. Class 1 is Deemed to Accept the Plan. The Court finds that, under the Plan, Class 1 is unimpaired as that term is defined in Section 1124 of the Bankruptcy Code (“Unimpaired”). Therefore, pursuant to Section 1126(f) of the Bankruptcy Code, Class 1 is conclusively presumed to have accepted the Plan.

M. Compliance with Bankruptcy Rule 3016(a). The Plan is dated and identifies the entities submitting the Plan as proponents, thereby satisfying Bankruptcy Rule 3016(a).

N. Plan Compliance with Applicable Provisions of the Bankruptcy Code (Section 1129(a)(1)). The Plan satisfies Section 1129(a)(1) of the Bankruptcy Code because it complies with the applicable provisions of the Bankruptcy Code, including, but not limited to:

i. Proper Classification (Sections 1122, 1123(a)(1)). In addition to Administrative Claims and Priority Tax Claims (which are not required to be classified), Article III of the Plan designates four Classes of Claims and one Class of Interests. As required by Section 1122(a) of the Bankruptcy Code, each Class of Claims and Interests contains only Claims and Interests that are substantially similar to the other Claims and Interests within that Class. Thus, the Plan satisfies Sections 1122 and 1123(a)(1) of the Bankruptcy Code.

ii. Specification of Treatment of Unimpaired Classes (Section 1123(a)(2)). Pursuant to Section 1123(a)(2) of the Bankruptcy Code, Article IV of the Plan specifies the treatment of all Classes of Claims that are Unimpaired. Thus, the Plan satisfies Section 1123(a)(2) of the Bankruptcy Code.

iii. Specification of Treatment of Impaired Claims (Section 1123(a)(3)). Pursuant to Section 1123(a)(3) of the Bankruptcy Code, Article IV of the Plan specifies the treatment of all Classes of Claims and Interests that are Impaired. Thus, the Plan satisfies Section 1123(a)(3) of the Bankruptcy Code.

iv. No Discrimination. Pursuant to Section 1123(a)(4) of the Bankruptcy Code, Article IV of the Plan also provides the same treatment for each type of Claim or Interest within a particular Class, unless the Holder of a particular Claim or Interest has agreed to different treatment. Thus, the Plan satisfies Section 1123(a)(4) of the Bankruptcy Code.

v. Implementation of the Plan (Section 1123(a)(5)). Pursuant to Section 1123(a)(5) of the Bankruptcy Code, Article VI of the Plan provides adequate and proper means for the Plan's implementation. Specifically, the Plan will be implemented through

the provision of the Exit Funding, the vesting of assets in the Reorganized Debtors and the granting of powers to the Escrow Agent.

vi. Prohibition Against Issuance of Non-Voting Equity Securities and Provisions for Voting Power of Classes of Securities (Section 1123(a)(6)). (Inapplicable).

vii. Selection of Officers and Directors (Section 1123(a)(7)). Upon the Effective Date, the Co-Managing Members of the Debtors shall remain the same as existed on the Petition Date. Accordingly, the Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code, as it does all of the other requirements of section 1123(a) of the Bankruptcy Code.

viii. Additional Plan Provisions (Section 1123(b)). The Plan's provisions are appropriate and consistent with the applicable provisions of the Bankruptcy Code, including, without limitation, provisions for: (1) releases and exculpation of various parties with respect to actions related to or taken in furtherance of the Chapter 11 Cases and injunctions against certain actions against the parties; (2) the rejection of executory contracts and unexpired leases; (3) the retention of and right to enforce, sue on, settle or compromise (or refuse to do any of the foregoing with respect to) certain claims or causes of action against third parties, to the extent not settled, waived and released under the Plan; (4) the resolution of all Claims and the treatment of Disputed Claims; and (5) implementation of the Exit Funding.

O. Bankruptcy Rule 3016(c). The Plan, specifically Article IX, describes in specific and conspicuous language the injunction, exculpation and limitation of liabilities provided for in the Plan, thereby satisfying Bankruptcy Rule 3016(c).

P. Debtors' Compliance with Applicable Provisions of the Bankruptcy Code (Section 1129(a)(2)). The Debtors, as Plan proponent, has complied with all applicable provisions of the Bankruptcy Code, as required by Section 1129(a)(2) of the Bankruptcy Code, including, without limitation, Sections 1122, 1123, 1124, 1125, 1126, 1127 and 1145 of the Bankruptcy Code and Bankruptcy Rules 3016, 3017, 3018 and 3019. In particular, the Debtors are proper debtors under Section 109 of the Bankruptcy Code and proper Plan proponents under Section 1121(a) of the Bankruptcy Code.

Q. The Plan is Proposed in Good Faith (Section 1129(a)(3)). The Debtors have proposed the Plan in good faith and not by any means forbidden by law. The Plan has been negotiated in good faith, at arm's length and is fair and reasonable in all respects. In so determining, the Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Cases, the Plan itself and the process leading to its formulation. The Chapter 11 Cases were filed and the Plan was proposed with the legitimate purpose of entering transactions thereunder so as to maximize recoveries to creditors and interest holders. Accordingly, the Plan was proposed in good faith pursuant to Section 1129(a)(3) of the Bankruptcy Code.

R. Payments for Services or Costs and Expenses are Reasonable and Approved (Section 1129(a)(4)). Pursuant to Section 1129(a)(4) of the Bankruptcy Code, the payments to be made by the Debtors for services or for costs in connection with the Chapter 11 Cases, including all administrative expense and substantial contribution claims under Sections 503 and 507 of the Bankruptcy Code, or in connection with the Plan and incident to the Chapter 11 Case, are subject to the approval of the Court as reasonable, thereby satisfying Section 1129(a)(4) of the Bankruptcy Code.

S. Directors, Officers, Trustees and Insiders (Section 1129(a)(5)). Pursuant to the Plan, the general partner of the post-confirmation Debtors shall be the same general partner as was on the Petition Date, and the general partner's members shall consist of the same individuals that were members as of the Petition Date, however, as set forth in the Plan Supplement, and except as otherwise provided in this Order, all of the Debtors' assets will be transferred to the Escrow Agent, who is identified in Exhibit 1 to the Plan Supplement. No compensation or other payments will be received by any insider (as such term is defined in section 101(31) of the Bankruptcy Code) pursuant to the Plan. Accordingly, the Plan complies with the requirements of section 1129(a)(5) of the Bankruptcy Code.

T. No Rate Changes (Section 1129(a)(6)). Section 1129(a)(6) of the Bankruptcy Code is satisfied because the Plan does not provide for any change in rates over which a governmental regulatory commission has jurisdiction.

U. Best Interests Test (Section 1129(a)(7)). Based on the evidence that was proffered or adduced at or prior to, or in affidavits in connection with, the Confirmation Hearing, all holders of Claims or Interests will receive or retain under the Plan as much or more than they would receive if the Chapter 11 Cases were converted to cases under Chapter 7 of the Bankruptcy Code.

V. Acceptance by Impaired Classes (Section 1129(a)(8)). Under the Plan, Class 1 is not impaired under the Plan and all Holders of Claims in such Classes are conclusively presumed to have accepted the Plan. Moreover, Classes 2A, 2B, 3A, 3B, 4A, 4B, 5A, and 5B have voted to accept the Plan by the majority required by the Bankruptcy Code for each such Class. The Plan may be confirmed pursuant to section 1129(a) of the Bankruptcy Code.

W. Treatment of Claims Entitled to Priority Pursuant to Section 507(a) of the Bankruptcy Code (Section 1129(a)(9)). The treatment of Administrative Expense Claims and Priority Tax Claims under Article III of the Plan satisfies the requirements of Section 1129(a)(9) of the Bankruptcy Code.

X. Acceptance by an Impaired Class (Section 1129(a)(10)). Each Class that was entitled to vote not made up entirely by insiders (i.e., Classes 2A, 2B, 3A, 3B, 5A and 5B) voted to accept the Plan without including any acceptance by any insider.⁴ Accordingly, the requirements of section 1129(a)(10) of the Bankruptcy Code are satisfied. No party in interest has objected to the Plan on this or any other basis.

Y. Feasibility of the Plan (Section 1129(a)(11)). The Plan satisfies Section 1129(a)(11) of the Bankruptcy Code. For the purposes of determining whether the Plan is feasible, the Debtors have, among other things, executed the Exit Funding, which provides sufficient funding for the distributions under the Plan pending Liquidity Events which provide for payments under the priority scheme of the Plan.

Z. Payment of Bankruptcy Fees (Section 1129(a)(12)). In accordance with Section 1129(a)(12) of the Bankruptcy Code, Article III of the Plan provides for the payment of all fees payable under 28 U.S.C. § 1930(a). The Debtors have adequate means to pay all such fees.

AA. Retiree Benefits (Section 1129(a)(13)). The Debtors do not provide retiree benefits; accordingly, Section 1129(a)(13) of the Bankruptcy Code is not applicable.

BB. Domestic Support Obligations. The Debtors are not required to pay any domestic support obligations; accordingly, Section 1129(a)(14) of the Bankruptcy Code is not applicable.

⁴ Class 4 voted in favor of the Plan but is comprised entirely of insiders and was not counted for the purpose of determining acceptance of an impaired class.

CC. Individual Debtor with Objection by Unsecured Claimant (Section 1129(a)(15)).

The Debtors are not individuals; accordingly, Section 1129(a)(15) of the Bankruptcy Code is not applicable.

DD. Corporation or Trust That is Not Moneyed, Business or Commercial Corporation or Trust (Section 1129(a)(16)). The Debtors are not moneyed, business or commercial corporation; accordingly, Section 1129(a)(16) of the Bankruptcy Code is not applicable.

EE. Sole Plan (Section 1129(c)). The Plan is the only plan that has been filed in this case that has been found to satisfy the requirements of subsections (a) section 1129 of the Bankruptcy Code. Accordingly, the requirements of section 1129(c) of the Bankruptcy Code have been satisfied.

FF. Principal Purpose of the Plan (Section 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933 (15 U.S.C. § 77e).

GG. Satisfaction of Confirmation Requirements. Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in Section 1129 of the Bankruptcy Code.

HH. Executory Contracts and Unexpired Leases. The Debtors have exercised reasonable business judgment in determining to reject each of its executory contracts and unexpired leases as set forth in Article VIII of the Plan and this Confirmation Order. Each rejection of an executory contract or unexpired lease pursuant to the Plan, the Plan Supplement, and this Confirmation Order shall be legal, valid and binding upon the Debtors and all non-Debtor parties to such executory contract or unexpired lease, all to the same extent as if such assumption or rejection had been effectuated pursuant to an appropriate authorizing order of this Court entered before the Confirmation Date under Section 365 of the Bankruptcy Code.

II. Releases and Discharges. The release, exculpation, and injunction provisions contained in the Plan are fair and equitable, **as modified by this order**, are given for valuable consideration, and are in the best interests of the Debtors and their estates, and such provisions shall be effective and binding on all persons and entities as set forth therein. Each of the discharge, release, injunction and exculpation provisions set forth in the Plan is: (1) within the jurisdiction of the Court under 28 U.S.C. §§ 1334(a), 1334(b) and 1334(d); (2) an essential means of implementing the Plan pursuant to Section 1123(a)(6) of the Bankruptcy Code; (3) an integral element of the Plan; (4) conferring material benefit on, and is in the best interests of, the Debtors, their estates, and their creditors and equity interest holders; (5) important to the overall objectives of the Plan to resolve all claims among or against the parties-in-interest in the Chapter 11 Cases with respect to the Debtors; and (6) consistent with Sections 105, 1123, 1129 and other applicable provisions of the Bankruptcy Code.[SMB: 8/11/15]

JJ. The agreements between the Debtors and non-Debtor affiliates GMG IIIA and GMG IIIB (“Affiliate Agreements”), as attached to the Gfoeller Confirmation Declaration and incorporated in the Plan, are properly authorized, valid, fair and reasonable, and in the best interests of parties affected thereby.

CONCLUSIONS OF LAW

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

1. Confirmation of the Plan. The Plan and each of its provisions (whether or not specifically approved herein) is approved and confirmed under Section 1129 of the Bankruptcy Code. The terms of the Plan and all Exhibits thereto or documents incorporated by reference therein, including the Exit Funding, the Affiliate Agreements and the Plan Supplement are an integral part of the Plan and this Confirmation Order and are all approved, and shall be effective and binding from and after the Confirmation Date, but subject to the Effective Date of the Plan.

2. Effective Date. The Effective Date of the Plan shall occur on the first Business Day on which all conditions set forth in Article V of the Plan have been satisfied or, if applicable, have been waived in accordance with the Plan.

3. Objections. There are no objections to and regarding the Plan that have not already been withdrawn, waived or settled.

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

5. Plan Modifications.

- i. All modifications or amendments to the Plan as embodied in the Plan, or otherwise filed with the Court or disclosed in open court at or prior to the Confirmation Hearing (to the extent not withdrawn), are approved pursuant to Section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Code Sections 1125 or 1127 or Bankruptcy Rule 3016.
- ii. Notwithstanding anything to the contrary in the Plan, the Debtors' attorney-client privilege shall not vest into the Escrow Agent except and solely to the extent necessary to implement the Escrow Agent's duties under the Plan including the Exit Funding. All other Debtors' attorney-client privilege shall vest with the Reorganized Debtors.

6. Plan Classification Controlling. The terms of the Plan shall solely govern the classification of Claims and Interests for purposes of the distributions to be made thereunder.

7. Operations Between the Confirmation Date and the Effective Date. During the period from the Confirmation Date through and until the Effective Date, the Debtors shall continue to operate their businesses as debtors in possession, subject to the Bankruptcy Code, the Bankruptcy Rules and all orders of the Court that are in full force and effect. All actions taken

by the Debtor during the period from the Confirmation Date through the Effective Date shall be, and shall be taken in a manner, consistent in all material respects with this Confirmation Order and the Plan.

8. Board of Directors. Upon the Effective Date, the Co-Managing Members of the Debtors shall remain the same as existed on the Petition Date.

9. Escrow Agent. Notwithstanding anything to the contrary in the Escrow Agreement, the Escrow Agent is obligated to follow terms of the Plan as applicable, except to the extent such provisions are modified by the Confirmation Order.

10. Binding Effect. The Plan and its provisions shall be binding on the Debtors, the Escrow Agent, all Holders of Claims and Interests, GMG IIIA and GMG IIIB and their respective successors and assigns, including all governmental entities, whether or not the Claim or Interest of such Holder (a) is Impaired under the Plan or (b) has accepted the Plan.

11. Implementation. In accordance with section 1142 of the Bankruptcy Code, but subject to the fulfillment or waiver of all conditions precedent listed in Article V of the Plan, without further action by the Court or the interest holders, managers or directors of the Debtors, the Debtors and their Co-Managing Members (each, a “Designated Officer”) are authorized to: (a) take any and all actions necessary or appropriate to implement, effectuate and consummate the Plan, this Confirmation Order, the Exit Funding, the Affiliate Agreements, or the transactions contemplated thereby or hereby, including, without limitation, those transactions identified in the Plan and the Exit Funding; and (b) execute and deliver, adopt or amend, as the case may be, any contracts, instruments, releases, agreements and documents necessary to implement, effectuate and consummate the Plan.

12. To the extent that, under applicable non-bankruptcy law, any of the actions necessary or appropriate to implement, effectuate and consummate the Plan, this Order or the transactions contemplated hereby or thereby would otherwise require the consent or approval of the Co-Managing Members of the Debtors, this Order shall, pursuant to section 1142 of the Bankruptcy Code, constitute such consent or approval, and such actions are deemed to have been taken by unanimous action of the board of directors of the Debtor.

13. Effectiveness of All Actions. Except as otherwise set forth in the Plan or this Confirmation Order, all actions authorized to be taken pursuant to the Plan shall be effective on the Effective Date pursuant to this Confirmation Order, without further notice to or action, order or approval of the Court or further action by the respective officers, directors or members of the Debtor and with the effect that such actions had been taken by unanimous action of such officers, directors or members.

14. Causes of Action. Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated therein, on the Effective Date, all property in the Debtors' Estate, all Causes of Action, and any property acquired by any of the Debtor pursuant to the Plan shall vest in the post-confirmation Reorganized Debtors free and clear of all liens, claims, charges, or other encumbrances. On and after the Effective Date, solely in accordance with the Plan (unless otherwise modified by this Confirmation Order), the Escrow Agent, on behalf of the Reorganized Debtors, may use or dispose of property and compromise or settle any Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

15. Executory Contracts and Unexpired Leases. On the Effective Date, all Executory Contracts and unexpired leases to which the Debtor is a party shall be deemed rejected in

accordance with Article VIII of the plan. **Claims created by the rejection of executory contracts and unexpired leases or the expiration or termination of any executory contract or unexpired lease not timely filed pursuant to the provisions of paragraph 25 hereunder are forever barred from assertion and shall not be enforceable against the Debtors and their estates.**

16. Satisfaction of Claims. ~~Except as otherwise provided in the Plan or this Confirmation Order, the rights afforded in the Plan and the treatment of all Claims and Interests under the Plan shall be in exchange for and in complete satisfaction, discharge and release of all Claims and Interests of any nature whatsoever, including any accrued post petition interest, against the Debtor, or any of its Estate, assets, properties or interests in property. Except as otherwise provided in the Plan or in Paragraph 17 of this Confirmation Order, on the Effective Date, all Claims against and Interests in the Debtors shall be satisfied, discharged and released in full.~~ [SMB: 8/11/15]

17. Injunctions and Stays. ~~The releases, exculpations and injunctions are as set forth in Article IX of the Plan are hereby approved and applicable to the assets transferable to the Escrow Agent under the Plan, provided however, that Notwithstanding anything to the contrary in the Plan, pursuant to section 1141(a)(3) of the Bankruptcy Code, the Debtors shall not be entitled to a the discharge. set forth in Section 9.1 of the Plan.~~ [SMB: 8/11/15]

18. Section 1146 Exemption. Pursuant to Section 1146(a) of the Bankruptcy Code, any transfers made pursuant to the Plan, whether before or after entry of this Order, including, without limitation, the closing of the Exit Funding, are and shall be transfers under or in contemplation of the Plan and shall not be subject to any ~~document recording tax, stamp tax conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax,~~

~~mortgage recording tax or government assessment.~~ Consistent with the foregoing, each recorder of deeds or similar official for any county, city or governmental unit in which any instrument hereunder is to be recorded shall be, and hereby is, ordered and directed to accept such instrument without requiring the payment of any such tax or governmental assessment. **[SMB: 8/11/15]**

19. Post-Confirmation Notices and Bar Dates. In accordance with Bankruptcy Rules 2002 and 3020(c), within fourteen (14) calendar days of entry of this Confirmation Order, notice of the entry of this Confirmation Order (the “Notice of Confirmation”) shall be served on all parties that were served with the Confirmation Hearing Notice; provided, however, that no notice or service of any kind shall be required to be mailed or made upon any Person or entity to whom the Debtors mailed a Confirmation Hearing Notice, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address,” “forwarding order expired,” or similar reason, unless the Debtors has been informed in writing by such Person or entity, or are otherwise aware, of that Person’s or entity’s new or correct address. Mailing and service of the Notice of Confirmation in the time and manner set forth in this Paragraph are good and sufficient under the particular circumstances and in accordance with the requirements of Bankruptcy Rules 2002 and 3020(c) and no further notice is necessary.

20. Notice of Effective Date. Within five (5) Business Days following the occurrence of the Effective Date, the Debtors shall file the notice of the occurrence of the Effective Date and shall serve a copy of same on the service list maintained by the Bankruptcy Clerk.

21. Authorization to Consummate. The Debtors are authorized to consummate and close the Exit Funding and the Escrow Agreement after entry of this Confirmation Order. Subject to satisfaction of the conditions precedent to the occurrence of the Effective Date set

forth in Section 5.1 of the Plan, or waiver of such conditions pursuant to Section 5.2 of the Plan, the Debtors are authorized and directed to execute, acknowledge and deliver such documents and instruments and to take such other actions as may be reasonably necessary to perform the terms and provisions of the Exit Funding, Escrow Agreement and all transactions contemplated by the Plan and all other agreements related thereto.

22. Failure to Consummate the Plan / Non-Occurrence of the Effective Date. If the Effective Date shall not occur, (i) the Plan shall be null and void; (ii) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims against or Interests in the Debtors; or (b) constitute an admission, acknowledgement, offer or undertaking by the Debtors; (iii) upon the filing of a notice of non-occurrence of Effective Date signed by counsel for the Debtors, the Debtors shall operate their businesses as a debtor in possession, subject to the Bankruptcy Code, Bankruptcy Rules and all orders of the Court then remaining in full force and effect; and (iv) all actions taken by any person or entity in reliance on the Confirmation Order, prior to the filing of the notice of non-occurrence of Effective Date shall remain valid and enforceable and shall not be subject to subsequent review or ratification by the Court. Upon the occurrence of the Effective Date, the Plan shall be deemed substantially consummated.

23. Retention of Jurisdiction. Pursuant to Sections 105(a) and 1142 of the Bankruptcy Code, and Sections 157 and 1334 of title 28 of the United States Code, notwithstanding the entry of this Confirmation Order and the occurrence of the Effective Date, this Court may properly and, upon the Effective Date shall, consistent with Article XI of the Plan, retain exclusive jurisdiction over all matters arising under or related to, the Chapter 11 Cases, including, without limitation, the matters set forth in Article XI of the Plan.

24. Payment of Statutory Fees. All fees payable pursuant to Section 1930(a) of title 28 of the United States Code shall be paid on the earlier of when due or the Effective Date, or as soon thereafter as practicable. From and after the Effective Date, the Debtor shall be responsible for the preparation and filing of operating reports until entry of a final decree in this case.

25. Rejection Damages Bar Date. If the rejection of an executory contract or unexpired lease results in damages to the other party or parties to such contract or lease, any Claim for such damages, if not heretofore evidenced by a Proof of Claim that has been timely filed, shall be forever barred and shall not be enforceable against the Debtors, or its properties, successors or assigns, unless a Proof of Claim therefore is timely filed with the Bankruptcy Court and served upon counsel for the Debtors on or before (x) thirty (30) days after the later to occur of (i) notice of entry of an order approving the rejection of such Executory Contract or unexpired lease, and (ii) notice of entry of the Confirmation Order, or (iii) such other date as may be ordered by the Bankruptcy Court. Such Claims shall be treated as Class 3 General Unsecured Claims against the applicable Debtor and as such will be entitled to receive a pro rata distribution not to exceed the maximum payable amount as set forth in Section 4.3(ii)(a) or Section 4.8(ii)(a) of the Plan as applicable. The Debtors shall file a rejection damages bar date notice on the bankruptcy court docket with service to all creditors within two (2) business days following the occurrence of (i), (ii) or (iii) of this Paragraph, as applicable.

26. Administrative Expense Bar Date; Professional Fees. All Administrative Expense Claims (other than for Professional Fees) accruing through the Effective Date and not otherwise paid in the ordinary course of business shall be filed with the Bankruptcy Court by no later than 30 days after notice of the Effective Date is docketed. A notice

setting forth the Administrative Expense Claims Bar Date shall be filed on the Bankruptcy Court docket with service to all creditors within two (2) business days following the Effective Date. Any Holder of a Administrative Expense Claim (other than Professional Fees) who fails to file a timely request for the payment of a Administrative Expense Claim that is required to be filed on or before the Administrative Expense Claims Bar Date: (a) shall be forever barred, estopped and enjoined from asserting such Administrative Expense Claim against the Debtors or the Debtors and their property; and (b) such Holder shall not be permitted to participate in any distribution under the Plan on account of such Administrative Expense Claim. Any Professional seeking allowance by the Bankruptcy Court of a claim for Professional Fees shall file and serve on the Debtors and their counsel, the United States Trustee, and such other entities who are designated by the Bankruptcy Rules, the Confirmation Order or any other order(s) of the Court, its final application for allowance of such compensation and/or reimbursement by no later than sixty (60) days after the Effective Date or such other date as may be fixed by the Bankruptcy Court. Objections to any Professional Fee Claims must be filed and served on the Debtors and their counsel and the requesting party no later than thirty (30) days (or such longer period as may be allowed by order of the Bankruptcy Court) after the date on which an application for final allowance of such Professional Fee Claims was filed and served.

27. Immediate Effectiveness. Any stay of this Order provided by Federal Rule of Civil Procedure 62, as applicable pursuant to Bankruptcy Rule 7062, and Bankruptcy Rule 3020(e) shall not apply to this Order and is hereby waived, and the terms and provisions of this Order shall be immediately effective and enforceable upon its entry. The Debtors are authorized to consummate the Plan immediately upon entry of this Order.

28. Conflicts Between Order and Plan. To the extent of any inconsistency between the provisions of the Plan and this Confirmation Order, the terms and provisions contained in this Confirmation Order shall govern. The provisions of this Confirmation Order are integrated with each other and are nonseverable and mutually dependent unless expressly stated by further order of the Court. Failure specifically to include or reference any particular article, section, or provision of the Plan, Plan Supplement, or any related document in this Confirmation Order shall not diminish or impair the effectiveness of such article, section or provision, it being the intent of the Bankruptcy Court that the Plan and any related documents be confirmed.

29. Final Order. This Confirmation Order is intended to be a Final Order and the period in which an appeal must be filed to commence upon the entry hereof.

Dated: August 11th, 2015
New York, New York

/s/ STUART M. BERNSTEIN
STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A