



Order Filed on May 13, 2015
by Clerk
U.S. Bankruptcy
Court District of New Jersey

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-2(c)

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In Re:

LIBERTY HARBOR HOLDING, LLC.,

Debtors.

Case No.: 12-19958(NLW)
(Jointly Administered)

Hon. Novalyn L. Winfield

Chapter: 11

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER CONFIRMING DEBTORS'
FOURTH AMENDED JOINT PLAN OF REORGANIZATION**

The Debtors' Fourth Amended Joint Plan of Reorganization, as modified by this Order, is hereby confirmed pursuant to 11 U.S.C. § 1129(a) and the provisions of confirmation contained on the following pages are hereby **ORDERED**.

DATED: May 13, 2015

A handwritten signature in black ink that reads "Novalyn L. Winfield".

Honorable Novalyn L. Winfield
United States Bankruptcy Judge

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The Debtors having filed a Fourth Amended Joint Plan of Reorganization, on May 12, 2015 (Docket No.362) (hereinafter the "Plan" or the "Fourth Amended Plan")¹, pursuant to Section 1121 of the Bankruptcy Code, and said Plan having been circulated to all creditors, claimants, and parties in interest, and the Court having reviewed the contents of the Plan, the Ballots cast in favor and against the Plan, and the Court having conducted a hearing on confirmation of the Plan, in accordance with 11 U.S.C. Section 1128(a), and the Court having received evidence by way of Affidavits, proffers and testimony, and all objections to confirmation having either been resolved, withdrawn or overruled, and good cause appearing for the entry of this Order,

THE COURT FINDS AND CONCLUDES THAT:

A. Exclusive Jurisdiction; Venue; Core Proceeding. This Court has jurisdiction over this Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

¹ Unless otherwise specified, capitalized terms and phrases used herein have the meanings assigned to them in the Plan and the Disclosure Statement. Any term used in the Plan, the Disclosure Statement, or the Confirmation Order that is not defined in the Plan, the Disclosure Statement, or the Confirmation Order but that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

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B. Disclosure Statement Order. On December 3, 2013, this Court entered its *Order Approving Adequacy of Liberty Harbor Holding, LLC, Liberty Harbor North II Urban Renewal Company, LLC and Liberty Harbor North, Inc's Second Amended Disclosure Statement Establishing Solicitation Procedures for Confirmation of Debtors' Plan of Reorganization, Approving Form of Ballots and Scheduling Hearing and Establishing Notice and Objection Procedures in Respect to Confirmation of Debtors' Plan of Reorganization* (the "Disclosure Statement Order"). In the Disclosure Statement Order, this Court, among other things, approved: (i) the Disclosure Statement as containing adequate information within the meaning of Section 1125 of the Bankruptcy Code; (ii) the contents of the Solicitation Package² as complying with Bankruptcy Rules 2002 and 3017 and constituting sufficient notice to all interested parties; (iii) the Voting Deadline, the Confirmation Objection Deadline and scheduling the Confirmation Hearing; and (iv) the procedures for the solicitation and tabulation of votes to accept or reject the Plan as providing for a fair and equitable process, consistent with Section 1126 of the Bankruptcy Code.

C. Service of Solicitation Packages. The Solicitation Affidavit attests to the fact that Solicitation Packages were served in accordance with the Disclosure Statement Order and Bankruptcy Rule 3017(d).

² All Solicitation Packages included a CD-ROM containing the Plan and Disclosure Statement, and the Exhibits thereto.

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D. Good Faith Solicitation. Votes for the acceptance or rejection of the Plan were solicited in good faith and in compliance with the Disclosure Statement Order, Sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, and all other applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of New Jersey (the “Local Rules”), and all other applicable rules, laws and regulations. Accordingly, the Debtors and their agents, representatives, attorneys, advisors and other Persons involved in the solicitation process are entitled to the protections afforded by Section 1125(e) of the Bankruptcy Code and the exculpation provisions set forth in Section 9.4 of the Plan.

E. Notice. Due adequate and sufficient notice of the Disclosure Statement, the Plan, the Voting Deadline, the Confirmation Objection Deadline and the Confirmation Hearing was provided to all parties entitled to such notice, including all known holders of Claims, and no other or further notice is or shall be required.

F. Tabulation of Votes. As evidenced by the Tabulation Declaration, all Impaired Classes of Claims have voted to accept the Plan.

G. Burden of Proof. As more fully set forth herein, the Debtors, as proponents of the Plan, have met their burden of proving the elements of Section 1129(a) of the Bankruptcy Code by a preponderance of evidence, which is the applicable evidentiary standard in this Court.

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However, the Court also finds that the Debtors have satisfied the elements of Section 1129(a) of the Bankruptcy Code under the clear and convincing standard of proof.

H. Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)). The Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying Section 1129(a)(1) of the Bankruptcy Code.

1. Proper Designation and Classification (11 U.S.C. §§ 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 five Classes of Claims. The Claims placed in each Class are substantially similar to other Claims in each such Class. Valid business, factual and legal reasons exist for separately classifying the various Classes of Claims created under the Plan, and such Classes do not unfairly discriminate. Therefore, the Plan satisfies Sections 1122 and 1123(a)(1) of the Bankruptcy Code.

2. Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)). Article IV of the Plan specifies the Classes of Claims that are unimpaired. Therefore, the Plan satisfies Section 1123(a)(2) of the Bankruptcy Code.

3. Specification of Treatment of Impaired Classes of Claims (11 U.S.C. § 1123(a)(3)). Article IV of the Plan specifies the Classes of Claims that are impaired under the Plan and the treatment of Claims in all such Classes. Therefore, the Plan satisfies Section 1123(a)(3) of the Bankruptcy Code.

4. Equal Treatment Within Each Class (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment for each Claim in each respective Class unless the holder of a particular Claim has agreed to less favorable treatment with respect to such Claim. Therefore, the Plan satisfies Section 1123(a)(4) of the Bankruptcy Code.

5. Adequate Means for Implementation of the Plan (11 U.S.C. § 1123(a)(5)). Article VII of the Plan, entitled "Means for Implementation of the Plan," sets forth numerous provisions that facilitate the implementation of the Plan, such as the proposed Plan Funding by the Mocco Entities, as well as the funding to date. Therefore, the Plan satisfies Section 1123(a)(5) of the Bankruptcy Code.

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6. Discretionary Contents of the Plan (11 U.S.C. § 1123(b)). The provisions of the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code, including, without limitation, provisions for (a) the retention of jurisdiction by this Court as to, among other things, all matters arising out of the Chapter 11 Case and the Plan, (b) the disposition of any remaining executory contracts and unexpired leases, (c) indemnification obligations, (d) releases by the Debtors, and (e) releases by holders of Claims.

I. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtors have proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying Section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Case and the formulation of the Plan. The Plan was proposed with the legitimate and honest purpose of maximizing the recovery to holders of Allowed Claims under the circumstances of this Chapter 11 Case.

J. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). The Professional Persons in this Chapter 11 Case are subject to the requirements of Sections 330 and 331 of the Bankruptcy Code and their respective fees. Fee applications have been filed by the Professional Persons and are under consideration by this Court as of the entry of this Order, and, therefore, are subject to approval by the Court as reasonable. Therefore, the Plan satisfies Section 1129(a)(4) of the Bankruptcy Code.

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K. No Rate Changes (11 U.S.C. § 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.

L. Best Interests Test (11 U.S.C. § 1129(a)(7)). The evidence proffered or adduced at the Confirmation Hearing (1) is persuasive and credible, (2) has not been controverted by other evidence or have not been challenged, (3) is based upon reasonable and sound assumptions, and (4) establish that each holder of an Impaired Claim either has accepted the Plan or will receive or retain under the Plan, on account of such Claim, property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain under chapter 7 of the Bankruptcy Code on such date. Therefore, the Plan satisfies Section 1129(a)(7) of the Bankruptcy Code.

M. Acceptance by All Impaired Classes (11 U.S.C. § 1129(a)(8)(10)). All Classes that are impaired under the Plan have voted to accept the Plan without counting the votes of any insiders.

N. Treatment of Claims Entitled to Priority (11 U.S.C. § 1129(a)(9)). The treatment of Allowed Administrative Expense Claims and Allowed Priority Non-Tax Claims under the Plan satisfies the requirements of Section 1129(a)(9)(A) and (B) of the Bankruptcy Code. The treatment of Allowed Priority Tax Claims under the Plan either does not implicate or satisfies the requirements of Section 1129(a)(9)(C) of the Bankruptcy Code and the treatment of Allowed

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Secured Claims under the Plan satisfies the requirements of Section 1129(a)(9)(D) of the Bankruptcy Code.

O. Feasibility (11 U.S.C. § 1129(a)(11)). The Plan, Disclosure Statement and Exhibits thereto, and the evidence proffered or adduced at the Confirmation Hearing (i) are persuasive and credible, (ii) have not been controverted by other credible evidence or sufficiently challenged in any objection to the Plan, and (iii) establish that the Plan is feasible. Therefore, the Plan satisfies Section 1129(a)(11) of the Bankruptcy Code.

P. Payment of Fees (11 U.S.C. § 1129(a)(12)). The Debtors will pay, on or before the Effective Date, any unpaid fees payable under 28 U.S.C. § 1930, thereby satisfying Section 1129(a)(12) of the Bankruptcy Code.

Q. Principal Purpose of Plan (11 U.S.C. § 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. § 77(e)). Therefore, the Plan satisfies the requirements of Section 1129(d) of the Bankruptcy Code.

R. Executory Contracts. The Debtors have filed with the Court a list of those executory contracts and unexpired leases to be rejected pursuant to the Plan. The Debtors request that, pursuant to the Plan, all executory contracts and unexpired leases that are not rejected will be deemed assumed by the applicable Debtor as of the Effective Date including, but not limited to, the Redevelopment Agreement. Specifically, in conjunction with confirmation of

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the Plan, the Debtors shall be deemed to have assumed the Redevelopment Agreement, as amended by all subsequent amendments including, but not limited to the Kerrigan Settlement Agreement, and shall satisfy the requirements of Section 365 of the Bankruptcy Code with respect thereto including, but not limited to, any cure and adequate assurance.

S. Releases and Exculpation. Each of the release, indemnification and exculpation provisions set forth in the Plan: (1) is within the jurisdiction of the Court under 28 U.S.C. §§ 1334(a), (b) and (d); (2) is an essential means of implementing the Plan pursuant to Section 1123(a)(5) of the Bankruptcy Code; (3) is an integral element of the transactions incorporated into the Plan; (4) confers a material benefit on, and is in the best interest of, the Debtors, their estates and their creditors; (5) is important to the overall objectives of the Plan to finally resolve all Claims among or against the parties-in-interest in the Chapter 11 Case; and (6) is consistent with Sections 105, 1123, 1129 and other applicable provisions of the Bankruptcy Code.

T. Retention of Jurisdiction. The Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan.

U. Modifications of Plan. The Debtors have entered into various settlements with various Holders of Claims, some of which were entered into after the Disclosure Statement Order was entered. The modifications appearing in the Fourth Amended Plan are primarily based on and necessitated by those settlements. In accordance with Bankruptcy Code Section 1127(d), all ballots received with respect to the Plan shall be deemed to have been

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submitted with respect to the Fourth Amended Plan, and that (i) no further solicitation shall be required with respect to the Fourth Amended Plan, (ii) parties who have submitted ballots with respect to the Plan shall not be permitted to change their ballots with respect to the Fourth Amended Plan based on the modifications made therein, and (iii) the Fourth Amended Plan shall be deemed accepted by all creditors and equity security holders who have previously accepted the Plan.

WHEREFORE, IT IS HEREBY:

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Fourth Amended Plan, a copy of which is annexed hereto as Exhibit "A," as modified herein and each of its provisions are hereby confirmed under Section 1129 of the Bankruptcy Code. The terms of the Plan and the exhibits attached to the Disclosure Statement approved by Order dated, December 3, 2013 (Doc. 236) are incorporated by reference into and are an integral part of this Confirmation Order.

2. The Debtors shall be and are hereby authorized and directed to execute, deliver, file or record all documents and to take all actions necessary or appropriate to implement, effectuate and consummate the Plan, without further application to or Order of this Court. On and after the entry of this Confirmation Order, and subject to the occurrence of the Effective Date, the Plan and its provisions shall be binding upon the Debtors and any holder of a Claim

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against the Debtors, whether or not the Claim of such Creditor is impaired under the Plan and whether or not such Creditor has voted, or is deemed to have voted, for or against the Plan.

3. Except as otherwise provided in Section 9.1 of the Plan, on the Effective Date, title to all property of the Debtors' Estates shall revert in the applicable Reorganized Debtor free and clear of all liens, claims, encumbrances, charges and interests arising on or before the Confirmation Date. Subject to the provisions of the Plan, the Redevelopment Agreement and the Kerrigan Settlement/Kerrigan Settlement Order, the Debtors may continue to operate their businesses free of any restriction imposed by the Bankruptcy Code or the Court.

4. Except as otherwise provided in the Plan (including, but not limited to Section 9.3 of the Plan), the occurrence of the Effective Date shall operate as a discharge, pursuant to and to the full extent of Section 1141(d)(1) of the Bankruptcy Code, effective as of the Effective Date of any and all debts of and claims (other than Administrative Expenses) against the Debtors, that arose at any time prior to the Confirmation Date. On or after the Effective Date, as to every discharged debt and Claim, the entity that held such debt or claim shall be precluded from asserting against the Debtors or their property any debt or Claim based upon any document, instrument, act, omission, transaction or other activity of any kind or nature that occurred prior to the Confirmation Date.

5. In accordance with Section 9.4 of the Plan, except as to the Kerrigan Settlement and the Redevelopment Agreement, from and after the Effective Date, none of the Debtors, nor

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any of their respective employees, agents, or Professional Persons employed by any of them, shall have or incur any liability or obligation to any Entity and shall be deemed released by each of the foregoing against the other, and by all holders of Claims, for and from any claims, obligations, rights, causes of action and liabilities, for any act or omission from the Petition Date through the Effective Date, in connection with or related to the Plan, the Chapter 11 Case or the operation of the Debtors' business during the Chapter 11 Case, including, but not limited to and without limiting the generality of this Section, the formulation, preparation, dissemination, implementation, confirmation, consummation or administration of the Plan, the Disclosure Statement, or any contract, instrument, release or any other agreement or document created or entered into in connection therewith including any distributions made pursuant to the Plan, except for acts that are deemed to constitute gross negligence, willful misconduct, fraud or bad faith.

6. Discharge Injunction. Pursuant to Sections 105, 1123, 1129 and 1141 of the Bankruptcy Code, and to the extent set forth in Section 9.5 of the Plan, all Entities that have held, hold or may hold Claims that are discharged pursuant to the terms of the Plan are hereby permanently stayed, restrained and enjoined, upon the occurrence of the Effective Date, from taking any of the following actions on account of such discharged Claims, other than actions brought solely to enforce any rights or obligations under the Plan: (i) commencing, conducting or continuing in any manner any action or proceeding of any kind (including any thereof in a

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judicial, arbitral, administrative or other forum) against the Debtors, any of their property, or any direct or indirect transferee of, or direct or indirect successor in interest to, the Debtors, or any property of any such transferee or successor, (ii) enforcing, levying, attaching (including pre-judgment attachment), collecting or otherwise recovering, by any manner or means, any judgment, award, decree or order against the Debtors, any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, the Debtors or any property of any such transferee or successor, (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any lien against the Debtors, any of their property, or any direct or indirect transferee of any property of, or successor in interest to, the Debtors, (iv) asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against the Debtors, or any direct or indirect transferee of any property of, or successor in interest to the Debtors, or (v) acting or proceeding in any manner that does not conform to or comply with the provisions of the Plan and this Order.

7. Releases. To the extent provided in Section 9.6 of the Plan, effective as of the Effective Date, and except as otherwise provided in the Plan or the Confirmation Order, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtors, in their individual capacities and as debtors in possession, will be deemed to have been forever released, waived and discharged from any and all Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities (other than the rights of the Debtors to

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enforce the Plan and the agreements delivered thereunder), whether in tort, contract, or otherwise, 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 based in whole or part on any act, omission, transaction, event or other occurrence, including actions in connection with indebtedness for money borrowed by the Debtors, taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Case or the Plan.

8. Redevelopment Agreement and Kerrigan Settlement. For the avoidance of doubt, nothing contained herein or in the Plan shall be deemed or construed to (i) adversely affect or impair any rights, claims or defenses of the JCRA or the Debtor's, Moccas and Mocco Entities under the Redevelopment Agreement or the Kerrigan Settlement/Kerrigan Settlement Order, as the case may be; or (ii) discharge or release P. Mocco or any other party from his, her or its obligations under the Redevelopment Agreement. Article 2.63 of the Plan be and is hereby amended to delete the words "including but not limited to the Kerrigan Settlement Agreement".

9. Based upon the representations and agreements made on the record before this Court on May 12, 2015, Article 6.1 of the Fourth Amended Plan of Reorganization is amended as follows: (a) In the fourth sentence of Article 6.1, the words "including, but not limited to the Kerrigan Settlement Agreement" shall be deleted; (b) In light of the representations by counsel for the JCRA that there exists no defaults which are required to be cured at this time, the final

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sentence of Article 6.1 reading, "In connection with Confirmation of the within Plan, the Court shall determine the amounts necessary to cure any defaults under the Redevelopment Agreement between the Debtors and the JCRA" be and is hereby deleted; (c) the following language shall be deemed added to Article 6.1, "To the extent the Kerrigan Settlement Agreement modified the rights and obligations of the parties to the Redevelopment Agreement, such modification shall be unaffected by Confirmation of the within Fourth Amended Plan of Reorganization".

10. In addition to the foregoing modifications, in Article 9.7 of the Fourth Amended Plan of Reorganization, following the words "claims or defenses", the words "of the City of Jersey City", shall be inserted.

11. Section 1146 Exemption. Pursuant to Bankruptcy Code Section 1146(c): (a) the issuance, transfer, or exchange of notes, Claims or equity securities under the Plan; (b) the creation or transfer of any mortgage, deed of trust, lien, pledge, or other security interest; (c) the making or assignment of any contract, lease or sublease; or (d) the making or delivery of any deed or other instrument of transfer under, in the furtherance of, or in connection with the Plan will not be subject to any stamp tax or other similar tax or any tax held to be a stamp tax or other similar tax by applicable law.

12. Continuation of Prior Stays and Injunctions. All of the injunctions and/or automatic stays provided for in or in connection with the Chapter 11 case, whether pursuant to Section 105, Section 362 or any other provision of the Bankruptcy Code or other applicable law,

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in existence immediately prior to confirmation, shall remain in full force and effect until a discharge and any other permanent injunctions become effective and thereafter, if so provided by the Plan, this Order, or by their own terms. In addition, all actions in the nature of those to be enjoined by the permanent injunctions contained in the Plan and herein shall be enjoined during the period between the Confirmation Date and the Effective Date. The Debtor may seek such further Orders as it may deem necessary to preserve the status quo during the time between the Confirmation Date and the Effective Date.

13. Retention of Jurisdiction. This Court shall have and retain continuing exclusive jurisdiction upon the Effective Date in accordance with Article XI of the Plan, to, among other things (as more fully set forth in Article XI of the Plan), enforce this Confirmation Order, including but not limited to the Releases and Injunctions contained herein and in the Plan and over all other matters arising under, arising out of, or related to the Chapter 11 Case and the Plan in accordance with the provisions of the Plan and Sections 105(a) and 1142 of the Bankruptcy Code. Notwithstanding anything in the Plan to the contrary, all parties, including, without limitation, the United States Trustee, reserve all rights as to what may be considered a disbursement for the purpose of calculating applicable statutory fees pursuant to 28 U.S.C. Section 1930(a)(6).

14. Conflicts Between Confirmation Order and Plan. The failure to specifically include any particular provision of the Plan in this Confirmation Order will not diminish the

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effectiveness of such provision, it being the intent of this Court that the Plan is confirmed in its entirety and incorporated herein by this reference. To the extent of any inconsistency between the provisions of the Plan and this Confirmation Order, the terms and conditions contained in this Confirmation Order shall govern. In the event of any inconsistency between the Kerrigan Settlement Order/Kerrigan Settlement and the Plan, the Kerrigan Settlement Order/Kerrigan Settlement shall prevail and govern. The provisions of this Confirmation Order are integrated with each other and are non-severable and are mutually dependent unless expressly stated by further Order of this Court.

15. Pursuant to Bankruptcy Rule 3020(e), this Confirmation Order shall not be stayed and shall be immediately effective upon entry on the docket of this Court.

16. Cause being found to exist therefore, it is hereby Ordered under Section 345(b)(2) of the Bankruptcy Code (11 U.S.C. 345(b)(2)), that, as to funds delivered to, held by and to be distributed by Wasserman, Jurista & Stolz, P.C., as Disbursing Agent under the Plan, the Disbursing Agent is expressly authorized to deposit such funds with a bank, without the deposit of securities of the kind specified in Section 9303 of Title 31 of the United States Code.