

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

In re:

NEW YORK MILITARY ACADEMY

Debtor.

Chapter 11

Case No. 15-35379 (CGM)

**ORDER CONFIRMING NEW YORK MILITARY ACADEMY'S FIRST
AMENDED CHAPTER 11 PLAN OF REORGANIZATION**

New York Military Academy, as debtor and debtor in possession (the “Debtor”) in the above-captioned chapter 11 case (the “Chapter 11 Case”), having proposed *New York Military Academy's First Amended Chapter 11 Plan of Reorganization*, dated December 15, 2015 (the “Plan”) [ECF Doc. No. 224];¹ and the Debtor having filed the *First Amended Disclosure Statement for New York Military Academy's First Amended Chapter 11 Plan of Reorganization*, dated December 15, 2015 (the “Disclosure Statement”) [ECF Doc. No. 223]; and this Court having conducted a combined hearing to consider approval of the Disclosure Statement and confirmation of the Plan (the “Confirmation Hearing”), as is appropriate under title 11 of the United States (as amended, the “Bankruptcy Code”) and the Rules of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rule(s)”); and the Debtor having provided due and sufficient notice of the Confirmation Hearing and for parties in interest to object to confirmation of the Plan [ECF Doc. No. 227]; and the Confirmation Hearing having been held on January 12, 2016; and upon all of the proceedings had before the Court and after full consideration of all memorandum of law, declarations, and testimony presented to the Court; and all other evidence

¹ Capitalized terms used but not defined herein shall the meanings ascribed to them in the Plan.

proffered or adduced, and arguments of counsel made, at the Confirmation Hearing; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY DETERMINED, FOUND, ADJUDGED, DECREED, AND ORDERED THAT:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Exclusive Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§ 157(b)(2) and 1334(a)). This Court has jurisdiction over the Chapter 11 Case pursuant to sections 157 and 1334 of title 28 of the United States Code. Venue is proper pursuant to sections 1408 and 1409 of title 28 of the United States Code. Confirmation of the Plan is a core proceeding pursuant to section 157(b)(2)(L) of title 28 of the United States Code, and this Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

B. Commencement of the Chapter 11 Case. On the Petition Date, the Debtor commenced a case under chapter 11 of the Bankruptcy Code. The Debtor is a proper debtor under section 109(d) of the Bankruptcy Code. The Debtor has operated its business (the School) and managed its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Case. The Committee was formed and appointed on April 2, 2015 [ECF Doc. No. 33].

C. Judicial Notice. This Court takes judicial notice of the docket of the Chapter 11 Case maintained by the Clerk of the Court, including (without limitation) all pleadings and other documents filed and orders entered thereon. This Court also takes judicial notice of all evidence proffered or adduced and all arguments made at the hearings held before this Court during the pendency of this Chapter 11 Case.

D. Burden of Proof. The Debtor has the burden of proving the elements of section 1129 of the Bankruptcy Code by a preponderance of the evidence, and it has met that burden as further found and determined herein.

E. Notice; Transmittal and Mailing of Materials.

a. Due, adequate, and sufficient notice of the Disclosure Statement, the Plan, and the Notice of (I) Combined Hearing to Consider Approval of Disclosure Statement and Confirmation of Plan and (II) Deadlines and Procedures to File Objections to Confirmation of the Plan, which provided adequate notice of the deadline for filing objections to the Plan, has been given to all known Holders of Claims (there are no Holders of equity interests in the Debtor) in accordance with the facts and circumstances of the Plan regarding sections 1125, 1126, and 1129 of the Bankruptcy Code (and Bankruptcy Rules 2002 and 3017), and no other or further notice is or shall be required;

b. The filing with this Court and service of the Plan on December 15, 2015 and the disclosure of any further modifications on the record at the Confirmation Hearing constitute due and sufficient notice of the Plan and all modifications thereto.

F. No Voting. As the Plan provides for the payment in full to all Holders of Allowed Claims, plus Post-Petition Interest, other applicable post-petition interest, and reasonable attorneys' fees (where appropriate), there are no Impaired Classes of Claims under the Plan. Accordingly, the solicitation requirements under sections 1125(b) and 1126(f) of the Bankruptcy Code and Bankruptcy Rule 3017 are inapplicable to the Chapter 11 Case.

G. Bankruptcy Rule 3016(a). The Plan reflects the date that it was filed with this Court and identifies the Debtor as the proponent of the Plan, thereby satisfying Bankruptcy Rule 3016(a).

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. Specifically:

a. Proper Classification (11 U.S.C. §§ 1122 and 1123(a)(1)). In addition to Administrative Claims (including Professional Fee Claims), Priority Tax Claims, and statutory fees owed to the U.S. Trustee that need not be classified, the Plan classifies nine Classes of Claims. The Claims placed in each Class are substantially similar to other Claims in each such Class. The classifications were not done for any improper purpose, and the Classes do not unfairly discriminate between or among Holders of Claims. The Plan thus satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

b. Specified Unimpaired Classes (11 U.S.C. § 1123(a)(2)). Article II of the Plan specifies that all Classes of Claims are not Impaired, thereby satisfying section 1123(a)(2) of the Bankruptcy Code.

c. Specified Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). There are no Impaired Classes under the Plan; thus, section 1123(a)(3) of the Bankruptcy Code is inapplicable to confirmation of the Plan.

d. No Discrimination (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 Claim has agreed to a less favorable treatment. Section 1123(a)(4) of the Bankruptcy Code is therefore satisfied.

e. Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan is funded by the Proceeds, the Proceeds are being held by the Debtor in the Deposit Account, and the

Proceeds are sufficient to satisfy all Allowed Claims. Section 1123(a)(5) of the Bankruptcy Code is therefore satisfied.

f. Equity Securities (11 U.S.C. §1123(a)(6)). The Debtor is a not-for-profit corporation and there are no equity securities involved in this Chapter 11 Case; thus, the requirements of section 1123(a)(6) of the Bankruptcy Code are inapplicable to confirmation of the Plan.

g. Designation of Debtor's Management Team (11 U.S.C. § 1123(a)(7)). Article III.C of the Plan contains provisions with respect to the management and management team of the Reorganized Debtor, which at this time will be led by Mr. Anthony Desa, the Debtor's President. The President will report to and operate pursuant to budgets that will be approved from time to time by the Board of Trustees and in accordance with the Interim Management Agreement, state or federal court orders or laws, and any other resolutions adopted by the Debtor or the Reorganized Debtor, and such processes are consistent with the interests of creditors and public policy in accordance with section 1123(a)(7) of the Bankruptcy Code.

h. The Debtor Is Not an Individual (11 U.S.C. § 1123(a)(8)). Certain confirmation requirements apply when a chapter 11 debtor is an individual. Here, the Debtor is not an individual; thus, the requirements of section 1123(a)(8) of the Bankruptcy Code are inapplicable to confirmation of the Plan.

i. Additional Plan Provisions (11 U.S.C. § 1123(b)(6)). The Plan's additional provisions are appropriate and consistent with the applicable provisions of the Bankruptcy Code.

I. Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtor, as the proponent of the Plan, has complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and applicable guidelines, thereby satisfying section 1129(a)(2) of the Bankruptcy Code.

J. Plan Proposed in Good Faith (11 U.S.C. §1129(a)(3)). The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. Under Bankruptcy Rule 3020(b)(2), with no objections to the Plan being filed, this Court determines that the Plan has been proposed in good faith and not by any means forbidden by law, without receiving evidence on such issues. Moreover, the Debtor's good faith is also evident from the facts and records of this Chapter 11 Case, the Disclosure Statement, the record of the Confirmation Hearing, and other proceedings held in this Chapter 11 Case. The Plan was proposed with the legitimate and honest purpose of maximizing the value of the Debtor's Estate through the sale of substantially all of its assets (the "Assets").

K. Payment for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). Subject to the provisions of Article II.B.2 of the Plan, any payment made or to be made by or on behalf of the Debtor for services or for costs and expenses in or in connection with the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, has been approved by, or is subject to the approval of, this Court as reasonable, thereby satisfying section 1129(a)(4) of the Bankruptcy Code.

L. Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)). The Debtor has complied with section 1129(a)(5) of the Bankruptcy Code. As reflected in the Debtor's Schedules, the Disclosure Statement, the APA (as approved by the Sale Order), and other submissions in the Chapter 11 Case, the identity, composition, and projected changes of the

Debtor's Board of Trustees have been disclosed. At this time, in connection with the APA, Mr. Anthony Desa, the Debtor's President, will remain as President of New York Military Academy Management Team through June 30, 2016 or until another time as mutually agreed to by the Purchaser and Mr. Desa. The Purchaser has agreed to compensate Mr. Desa on terms similar to those approved by the Debtor during the Chapter 11 Case. Therefore, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

M. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Debtor is a not-for-profit corporation and is not subject to governmental regulatory commission approval of its rates; thus, section 1129(a)(6) of the Bankruptcy Code is inapplicable to confirmation of the Plan.

N. Best Interests of Creditors (11 U.S.C. § 1129(a)(7)). The Plan satisfies the requirements under section 1129(a)(7) of the Bankruptcy Code. The Plan is fully funded, there is no Impaired Class of Claims, and all Classes are deemed to have accepted the Plan. The Proceeds are sufficient to satisfy the total projected amount of Allowed Claims against the Debtor, including a reserve for Disputed Claims, plus Post-Petition Interest or other applicable post-petition interest (where appropriate) and reasonable attorneys' fees (where appropriate). Holders of Allowed Claims, as of the Effective Date, will thus receive or retain an amount that is not less than (and indeed more than) the amount such Holder would receive or retain on such date if the Debtor was liquidated under chapter 7 of the Bankruptcy Code.

O. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)). All Classes of Claims are not Impaired and are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. The Plan therefore satisfies section 1129(a)(8) of the Bankruptcy Code.

P. Treatment of Administrative, Priority Tax, and Priority Non-Tax Claims (11 U.S.C. §1129(a)(9)). The Plan provides treatment for the payment in full of Allowed

Administrative Claims, Priority Tax Claims, and Priority Non-Tax Claims that, based on the facts and circumstances of this Chapter 11 Case, is consistent with the requirements of section 1129(a)(9) of the Bankruptcy Code.

Q. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(10)). No Classes of Claims are Impaired under the Plan, and all Classes of Claims are conclusively presumed to have accepted the Plan; thus, the requirements of section 1129(a)(10) of the Bankruptcy Code are inapplicable to confirmation of the Plan.

R. Feasibility (11 U.S.C. § 1129(a)(11)). The Plan is fully funded by the Proceeds and all Allowed Claims are being paid under the Plan, in full, with Post-Petition Interest or other applicable post-petition interest (where appropriate) and reasonable attorneys' fees (where appropriate). Accordingly, the Plan is feasible, thus satisfying the requirements of section 1129(a)(11) of the Bankruptcy Code.

S. Payment of Fees (11 U.S.C. § 1129(a)(12)). As provided in Article II.B.4 of the Plan, all fees payable pursuant to 28 U.S.C. § 1930, as determined by the Court, have been paid or shall be paid for each quarter (including any fraction thereof) until the Chapter 11 Case is dismissed or closed, whichever occurs first, thus satisfying the requirements of section 1129(a)(12) of the Bankruptcy Code.

T. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). Subject to the Modifications in this Confirmation Order and the Plan, the Debtor is not obligated under the Plan to pay any retiree benefits pursuant to section 1114 of the Bankruptcy Code, and therefore, the requirements of section 1129(a)(13) are inapplicable to confirmation of the Plan.

U. Domestic Support Obligation (11 U.S.C. § 1129(a)(14) and (15)). The Debtor does not owe any domestic support obligations and is not an individual; thus, the requirements of section 1129(a)(14) and (15) are inapplicable to confirmation of the Plan.

V. Transfer Made in Accordance with Applicable Nonbankruptcy Law (11 U.S.C. § 1129(a)(16)). The Plan satisfies section 1129(a)(16) of the Bankruptcy Code and any applicable nonbankruptcy law that governs the transfers of property under a plan to be made by a not-for-profit entity. Here, on October 29, 2015, the Debtor obtained approval from the Supreme Court of the State of New York, County of Orange, Hon. John P. Colangelo, to sell substantially all of its assets, thereby complying with Article 5 of the New York Not-for-Profit Corporation Law.

W. Cramdown Provisions Not Invoked (11 U.S.C. § 1129(b)). Because all Classes of Claims are deemed to have accepted the Plan (*see* 11 U.S.C. § 1126(f)), section 1129(b) of the Bankruptcy Code is inapplicable to confirmation of the Plan.

X. Only One Plan (11 U.S.C. § 1129(c)). The Plan (including previous versions thereof) is the only plan that has been presented in this Chapter 11 Case that has been found to satisfy the requirements of subsection (a) of the section 1129 of the Bankruptcy Code. Accordingly, confirmation of the Plan complies with the requirements of section 1129(c) of the Bankruptcy Code.

Y. Principal Purpose of the Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan, as evidenced by its terms, is to pay all Allowed Claims in full. No party in interest has requested that this Court deny confirmation of the Plan on grounds that the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the

Securities Act of 1933. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

Z. Not a Small Business Case (11 U.S.C. § 1129(e)). This Chapter 11 Case is not a small business case within the meaning of the Bankruptcy Code; thus, section 1129(e) is inapplicable to confirmation of the Plan.

AA. Satisfaction of Confirmation Requirements. Based upon the foregoing and all other pleadings and evidence proffered or adduced at or prior to the Confirmation Hearing, the Plan and the Debtor as proponent of the Plan satisfy the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

BB. Modification to the Plan. As provided for in submissions filed in support of Plan confirmation and the record at the Confirmation Hearing, the Debtor has received an informal objection to the Plan from the Committee and from the Pension Benefit Guaranty Corporation (the "PBGC"), and has agreed to make certain modifications of the Plan to address same:

a. As a precautionary measure, the Committee raised a concern and sought clarification as to the distribution of the Proceeds and the appropriate calculation and application of other applicable post-petition interest and reasonable attorneys' fees for payment on Claims in Class 2, Class 8, and Class 9, and how such payments may affect the distributions to Class 9 in the event that the Proceeds are insufficient to pay Holders of Allowed Claims the amounts projected under the Plan. To that end, the Debtor and the Committee have agreed to modify Article II.C of the Plan as follows (the "Committee Modification"):

[following chart of classified claims]

Except to the extent that a Holder of an Allowed Unsecured Claim agrees to a different treatment, within 30 days after the Effective

Date, each Holder of an Allowed Unsecured Claim shall receive on account of such Holder's Allowed Unsecured Claim, payment in full, in Cash, with (i) Post-Petition Interest, unless there is an applicable contractual interest rate, in which case Post-Petition Interest shall be modified and paid at such applicable contractual interest rate ("Contract Interest"), and (ii) reasonable attorneys' fees, if provided for by contract, and in each case only so long as Contract Interest and the right to reasonable attorneys' fees were set forth in a timely filed Proof of Claim, subject to the Debtor's right to verify or object to the existence of the asserted Contract Interest and reasonable attorneys' fees.

Notwithstanding anything contained in the Plan to the contrary, and except to the extent that such Holder of an Allowed Claim agrees to a different treatment, if there are insufficient funds to pay all Allowed Class 9 Unsecured Claims in full, with Post-Petition Interest or applicable Contract Interest and any applicable reasonable attorneys' fees, then (a) the Debtor and the Committee have the right to object to the liens and security interests of Landmark Development Partners, LLC (Class 2) and David Fields (Class 8), with such action to be filed within 30 days of the Effective Date, and (b) the Debtor shall withhold from distributions otherwise payable to all Holders of Allowed Claims, (A) any default rate of Contract Interest (or in case of Class 8, at the New York judgment rate), with post-petition interest to be paid at the applicable non-default rate of Contract Interest (or in the case of Class 8, at the Federal Judgment Rate), or such greater amount to all such Holders of Allowed Claims until funds available for distribution to such Holders have been exhausted, and (B) reasonable attorneys' fees, to the extent there are no available funds to make such distributions otherwise payable, with the balance of such amounts withheld, if any, to be paid out of the Disputed Claims Reserve as such funds become available.

b. The PBGC raised concerns as to the releases under the Plan (Article VIII.I) and a request to clarify the treatment of Executory Contracts or Unexpired Leases in Article VI.E of the Plan as it relates to the N.Y.M.A. Employees' Pension Plan and

Trust. To that end, the Debtor and the PBGC have agreed to modify the Plan as follows (the “PBGC Modifications”):²

- Article VIII.I [*after last sentence*]:

Moreover, notwithstanding the foregoing (or Article VIII.G of the Plan), there are no releases, injunctions, or exculpations of the Debtor or any other party, in any capacity, from any liability or responsibility under the Employment Retirement Income Security Act of 1974 (as amended) with respect to the N.Y.M.A. Employees’ Pension Plan and Trust (the “Pension Plan”) or any other defined benefit pension plan under any law, governmental policy, or regulatory provision. The PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility by any of the provisions of the Plan, the Confirmation Order, the Bankruptcy Code, or any other document filed in the Chapter 11 Case.

- Article VI.E [*after last sentence to last paragraph*]:

For the avoidance of doubt, the Pension Plan (as defined herein) is not an Executory Contract or Unexpired Lease that is being rejected under the Plan.

c. The Committee Modification and the PBGC Modifications are defined together herein as the “Modifications.” The Modifications address the only comments, informal objections, and feedback from parties in interest after the Debtor filed and served the Plan with due notice of an opportunity to object to confirmation of the Plan. The Modifications do not require the Debtor to re-notice the Plan for confirmation. Accordingly, the Plan is properly before this Court on due and proper notice, and the Modifications are incorporated into the Plan as if originally provided for under the Plan.

d. All references hereinafter to the Plan under this Confirmation Order shall be deemed to be made to the Plan, as modified by the Modifications.

² As reflected on the record at the Confirmation Hearing, the Debtor and the PBGC have reached a resolution as to all three amended Proofs of Claim filed by the PBGC (claim nos. 25, 26, and 27), whereby the PBGC will have an aggregate Allowed Claim that the Debtor will pay in the amount of \$573,407.62.

CC. Implementation. All documents and agreements necessary to implement the Plan, either previously approved by this Court, those contained in the Plan or this Confirmation Order, and all other relevant and necessary documents, have been negotiated in good faith at arm's-length and are in the best interests of the Debtor and the Reorganized Debtor and shall, upon completion of any such documentation and execution, be valid, binding, and enforceable documents and agreements not in conflict with any federal or state law.

DD. Good Faith. The Debtor, the Reorganized Debtor, the Committee, and all other parties (and all of their respective members, officers, directors, agents, financial advisors, attorneys, employees, partners, affiliates, and representatives) will be acting in good faith if they proceed to (i) consummate the Plan and (ii) take the actions authorized and directed by this Confirmation Order.

EE. Assumption or Rejection of Executory Contracts and Unexpired Leases. The Debtor has exercised its reasonable business judgment prior to the Confirmation Hearing in determining to assume the Executory Contracts and Unexpired Leases as set forth in Article VI of the Plan, and to reject any and all other Executory Contracts and Unexpired Leases, as set forth in Article VI of the Plan and as modified by the PBGC Modifications. Each assumption or rejection of an Executory Contract and Unexpired Lease pursuant to this Confirmation Order and in accordance with Article VI of the Plan or otherwise shall be legal, valid, and binding upon the Reorganized Debtor; provided, however, that nothing herein shall be construed as an order of this Court compelling performance under any assumed Executory Contract or Unexpired Lease.

FF. Adequate Assurance. By word, deed, or document, the Debtor has provided some form of adequate assurance of future performance for each of the Executory Contracts or Unexpired Leases that are being assumed under the Plan, and the Debtor has cured the defaults

(if any) under or relating to each of the Executory Contracts or Unexpired Leases that are being assumed by the Debtor under the Plan. The Plan and such assumptions, therefore, satisfy or will satisfy the requirements of section 365 of the Bankruptcy Code.

GG. Transfer by the Debtor; Vesting of Assets. All transfers of property of the Debtor's Estate, including, without limitation, the transfer of the Assets, as first proposed by the original version of the Plan, and in accordance with the APA and the Sale Order, shall be free and clear of all liens, charges, Claims, encumbrances, and other interests, except as expressly provided in the Plan or this Confirmation Order. Pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all remaining property of the Estate (including, without limitation, all charters, certifications, licenses, credentials, accreditations, permits, registrations, and other related documents and instruments for operating the School (collectively, the "Credentials") shall revest in the Reorganized Debtor or its successors or assigns, as the case may be, free and clear of all liens, charges, Claims, encumbrances and other interests, except as expressly provided in the Plan or this Confirmation Order. Such vesting does not constitute a voidable transfer under the Bankruptcy Code or applicable non-bankruptcy law, nor does the vesting of the Credentials constitute a "transfer" under Article 5 of the New York Not-for-Profit Corporation Law.

HH. Exemption from Transfer Taxes. The exemption from transfer taxes under section 1146 of the Bankruptcy Code from the Sale of the Assets is authorized in the Chapter 11 Case based on: (i) the original version of the Plan proposed the sale of the Assets as the basis for implementing the original version of the Plan; (ii) the Debtor did not consummate the sale of the Assets with the original proposed purchaser, thereby invoking the Debtor's Secured Lender to continue with a looming foreclosure sale; (iii) the emergent nature of the Debtor's motion to approve the Sale, as the Sale of the Assets to the Purchaser had to occur before October 31, 2015

to avoid the Secured Lender's foreclosure sale and the catastrophic effect such sale would have had on the Debtor and its creditors; (iv) the Proceeds from the Sale are necessary to fund and consummate the Plan; and (v) it was not economically feasible or practical for the Debtor to wait until the Plan was confirmed before consummating the Sale.

II. Releases, Exculpations, and Injunctions of Exculpated Parties. The Exculpated Parties that will benefit from the releases, exculpations, and related injunctions set forth in the Plan and as modified by the Modifications pursuant to this Confirmation Order (collectively, the "Releases") were instrumental to the successful prosecution of the Chapter 11 Case and/or provided a substantial contribution to the Debtor, which value provided a significant benefit to the Debtor's Estate and general unsecured creditors, and which will allow for distributions that would not otherwise be available. The Releases are integral to the successful implementation and consummation of the Plan. The Releases are supported by reasonable consideration, and, in light of the facts, circumstances, and nature of the Plan and the Chapter 11 Case, the Releases satisfy the standards contained in In re Metromedia Fiber Network, Inc., 416 F.3d 136 (2d Cir. 2005), are fair to the releasing parties, and are otherwise appropriate under In re Johns-Manville Corp., 600 F.3d 135 (2d Cir. 2010).

JJ. Waiver of Stay. Under the circumstances, it is appropriate that the 14-day stay imposed by Bankruptcy Rules 3020(e) and 7062(a) be waived and that the Plan be deemed immediately effective upon entry of this Confirmation Order.

ORDER

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED
AS FOLLOWS:**

1. Confirmation of the Plan. The Plan and each of its provisions (whether or not specifically set forth and approved in this Confirmation Order) is and are confirmed in each and every respect, effective immediately, pursuant to section 1129 of the Bankruptcy Code. To the extent necessary, the Disclosure Statement is hereby approved.

2. Objections. Any objections to confirmation of the Plan that have not been withdrawn, waived, or settled are overruled on the merits.

3. Plan Implementation. Without further order or authorization of this Court, the Debtor, Reorganized Debtor, and their successors are authorized and empowered to implement the Plan and to make any and all modifications to all documents included as part of the Plan or otherwise contemplated by the Plan that are consistent with the Plan and this Confirmation Order.

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

5. W-9 Forms and Execution of Additional Documents by Third Parties. Each Holder of an Allowed Claim receiving a distribution under the Plan and all other parties-in-interest shall, if requested by the Disbursing Agent, provide the Disbursing Agent with a completed and executed *Request for Taxpayer Identification Number and Certification* (“W-9 Form”). Any Holder of an Allowed Claim that does not return the W-9 Form to the Reorganized Debtor within 45 days from when requested shall forfeit the right to receive a distribution under

the Plan. Moreover, each Holder of an Allowed Claim receiving a distribution under the Plan shall, from time to time, take any reasonable actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

6. Notice. Notice of the Confirmation Hearing complied with the terms of the Bankruptcy Code and Bankruptcy Rules and was appropriate and satisfactory based on the circumstances of the Chapter 11 Case. No solicitation of votes to accept or reject the Plan was required based upon the nature and provisions of the Plan.

7. Plan Classifications Controlling. The classification of Claims for purposes of distributions made under the Plan shall be governed by the terms of the Plan and this Confirmation Order.

8. Treatment in Full Satisfaction. The treatment of Claims set forth in the Plan is in full and complete satisfaction of the legal, contractual, and equitable rights that each Holder of a Claim may have against the Debtor, the Debtor's Estate, or its respective property, on account of such Claim. Accordingly, such as an additional basis for the Releases provided in the Plan.

9. Continued Corporate Existence. Except as otherwise provided in the Plan, the Debtor shall, as a Reorganized Debtor, continue to exist and operate after the Effective Date as a separate legal entity, with all of the powers of a not-for-profit corporation, under the State of New York and the Credentials, and without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) under applicable New York law.

10. Cancellation of Liens and Related Agreements. On the Effective Date, and in consideration of the payments and distributions to made under the Plan, except to the extent otherwise provided in this Confirmation Order or the Plan, all the agreements and other documents evidencing Liens and Claims in all Classes under the Plan (as applicable) and rights

of any Holders of such Claims or Liens against the Debtor or its property, shall be cancelled, and the obligations of the Debtor thereunder and in any way related thereto shall be fully satisfied, released, and discharged; provided, however, that all such agreements and documents, rights of any Holders, and obligations of the Debtor shall remain in effect for the purposes of allowing distributions to be made under the Plan and determining the amount of any post-petition interest or reasonable attorneys' to be due on such Claims, subject to any and all defenses the Debtor and the Reorganized Debtor may have under this Plan and applicable law to any such asserted right or Claims.

11. Corporate Action. On the Effective Date, the adoption, filing, approval, and ratification, as necessary, of any corporate or related actions contemplated under the Plan shall be deemed authorized and approved in all respects. Without limiting the foregoing, such actions may include (i) the adoption and filing of new by-laws, (ii) amending, modifying, or supplementing the Interim Management Agreement, and (iii) the election or appointment, as the case may be, of trustees, directors, and officers for the Reorganized Debtor.

12. Operation as of the Effective Date. As of the Effective Date, unless otherwise provided in the Plan or this Confirmation Order, the Reorganized Debtor may operate its business in accordance with the Credentials and the Interim Management Agreement and may use, acquire, transfer, and dispose of property and prosecute, settle, and compromise Claims without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending case under any chapter or provision of the Bankruptcy Code.

13. Distributions Under the Plan. All distributions under the Plan shall be made in accordance with the Plan.

14. Unclaimed Distributions. All distributions under the Plan that remain unclaimed for 90 days after the applicable distribution date shall indefeasibly revert to the Reorganized Debtor. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically discharged and forever barred, notwithstanding any federal or state escheat laws or regulations to the contrary.

15. Disputed Claims. The provisions of Article V of the Plan and the Modifications herein are fair and reasonable and are approved, and the Debtor is authorized to establish the Disputed Claims Reserve.

16. Supplemental Administrative Claim Bar Date. All requests for payment of an Administrative Claim (other than a Professional Fee Claim) that arose, accrued, or otherwise became due between November 1, 2015 and the Effective Date, and not otherwise subject to the Bar Dates Order, must be filed with the Clerk of the Bankruptcy Court and served on counsel for the Debtor no later than 30 days after the Effective Date. Any requests for payment of an Administrative Claim that is not properly filed and served by such deadline shall be disallowed automatically without the need for any objection from the Debtor or the Reorganized Debtor or any action by this Court.

17. Professional Fee Claims. All applications by Professionals for compensations and reimbursement of expenses relating to the Chapter 11 Case prior to the Effective Date and not otherwise paid or reimbursed shall be filed with this Court within 30 days after the Effective Date. Any such application not filed within 30 days after the Effective Date shall be deemed waived and the Holder of such Professional Fee Claim shall be forever barred from receiving payment on account thereof.

18. Approval of Assumption or Rejection of Executory Contracts or Unexpired Leases. Subject to the PBGC Modifications, entry of this Confirmation Order shall constitute the approval, (a) pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption and/or assignment of the Executory Contracts or Unexpired Contracts assumed pursuant to Article VI.C of the Plan and (b) pursuant to section 365(a) and 1123(b)(2) of the Bankruptcy Code, of the rejection of the Executory Contracts and Unexpired Leases rejected pursuant to Article VI.A of the Plan. Moreover, for the avoidance of doubt, the Reorganized Debtor shall continue to comply with (i) Plan No. 386372, NYMA 403(b) Tax Deferred Annuity Plan and (ii) Plan No. 386373, NYMA 403(b) Defined Contribution Plan (with TIAA-CREF as administrator and asset holder) for the duration of the period for which the Debtor had obligated itself to provide such benefits and subject to the right of the Reorganized Debtor to modify or terminate same in accordance with the terms thereof.

19. Notice of Assumption and Rejection of Executory Contracts Under the Plan. The filing of the Plan and the entry of this Confirmation Order have provided adequate notice of the assumption, assumption and assignment, and rejection of Executory Contracts or Unexpired Leases pursuant to Article VI of the Plan.

20. Cure of Defaults. The parties to each Executory Contract or Unexpired Lease to be assumed or assumed and assigned pursuant to the Plan were afforded good and sufficient notice of the Plan and the provisions providing payment in full to Holders of Allowed Claims, and the Debtor has satisfied all requirements under section 365(b), (c), and (f) of the Bankruptcy Code.

21. Rejection Claims and Rejection Bar Date. Any Proof of Claim arising from the rejection of an Executory Contracts or Unexpired Leases under sections 502 and 365 of the Bankruptcy Code and not otherwise paid (each, a “Rejection Claim”) must be filed with the Clerk of the Bankruptcy Court within 30 days after the Effective Date. Any Rejection Claim for which a Proof of Claim is not properly filed and served by such deadline shall be forever barred and shall not be enforceable against the Debtor, the Reorganized Debtor, or Estate property. The Debtor or Reorganized Debtor may contest Rejection Claims in accordance with and to the extent provided by the Plan.

22. Discharge of Claims. Except as otherwise specifically provided in this Confirmation Order or in the Plan, the rights afforded in the Plan and the payments and distributions to be made hereunder shall discharge all existing debts and Claims of any kind, nature, or description whatsoever against the Debtor or any of its assets or properties to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as otherwise specifically provided herein or in the Plan, upon the Effective Date, all existing Claims against the Debtor shall be, and shall be deemed to be, discharged and terminated, and all Holders of Claims (and all representatives, trustees, or agents on behalf of each Holder) shall be precluded and enjoined from asserting against the Reorganized Debtor, its successors or assignees, or any of its assets or properties, any other or further Claim based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such Holder has filed a Proof of Claim and whether or not the facts or legal bases therefor were known or existed prior to the Effective Date. For the avoidance of doubt, nothing in this Confirmation Order or in the Plan shall constitute or be deemed to a waiver of any Claim, right, or cause of action that the Debtor may have against any Person or Entity in connection with, or

arising out of, any Existing Litigation Claims, including (without limitation) in the ALG Action and any rights under section 157(b) of title 28 of the United States Code.

23. Discharge of the Debtor. Upon the Effective Date and in consideration of the distributions to be made under the Plan, except as otherwise provided in this Confirmation Order or in the Plan, each Holder (as well as any representatives, trustees, or agents on behalf of each Holder) of a Claim and any affiliate of such Holder is deemed to have forever waived, released, and discharged the Debtor, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, rights, and liabilities that arose prior to the Effective Date. Upon the Effective Date, all such Persons and Entities are forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against the Debtor.

24. Injunction. Except as otherwise expressly provided in this Confirmation Order or in the Plan, any Person or Entity who has held, holds, or may hold Claims, and all other parties-in-interest, along with their respective present or former employees, agents, officers, directors, principals, representatives, and affiliates, are permanently enjoined, from and after the Effective Date, from (a) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim against the Debtor, the Reorganized Debtor, or property or interest in property of the Debtor or Reorganized Debtor, other than to enforce any right to a distribution pursuant to the Plan; (b) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against the Debtor, the Reorganized Debtor, or property or interest in property of the Debtor or Reorganized Debtor, other than to enforce any right to a distribution pursuant to the Plan; (c) creating, perfecting, or enforcing any Lien or encumbrance of any kind against the Debtor or Reorganized Debtor or against the

property or interests in property of the Debtor or Reorganized Debtor, other than to enforce any right to a distribution pursuant to the Plan; or (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from the Debtor or Reorganized Debtor or against the property or interests in property of the Debtor or Reorganized Debtor, with respect to any such Claim. Such injunction shall extend to any successors or assignees of the Debtor and Reorganized Debtor and any respective properties and interest in properties.

25. Exculpation. As provided for in Article VIII.H of the Plan and this Confirmation Order (subject to the Modifications), as of the Effective Date, and pursuant to section 1125(e) of the Bankruptcy Code, the Exculpated Parties and their respective affiliates, members, officers, directors, trustees, employees, advisors, actuaries, accountants, attorneys, financial advisors, investment bankers, consultants, professionals or agents, shall not have or incur any liability to any Holder of a Claim for any act or omission in connection with, related to or arising out of, the Chapter 11 Case, the negotiation of any settlement or agreement in the Chapter 11 Case, the pursuit of confirmation of the Plan, the consummation of the Plan, the preparation and distribution of the Plan and the Disclosure Statement, or the administration of the Plan or the property to be distributed under the Plan.

26. Release. As provided for in Article VIII.I, and subject to the Modifications herein, on the Effective Date, none of the Exculpated Parties shall have or incur liability for and are hereby released from any obligation to one another, to any Holder of a Claim or any other party in interest or Person or Entity, for any act or omission that occurred prior to the Effective Date and that relates to the Debtor and the debts owed by the Debtor, except for acts of gross negligence, willful misconduct, intentional fraud, intentional criminal conduct, intentional misuse of confidential information that causes damages, or ultra vires acts and each Exculpated

Party shall in all respects be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities (if any) under the Plan. Notwithstanding the foregoing, nothing in the Plan shall limit the liability of the Exculpated Parties to their respective clients pursuant to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8 Rule 1.8(h)(1) (2009).

27. Nothing in this Confirmation Order or the Plan shall effect a release of any Claim by the United States or any of its agencies arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States against the Exculpated Parties.

28. Retention of Causes of Action / Reservation of Rights. (a) Except as expressly provided in this Confirmation Order or the Plan, nothing contained in the Plan or this Confirmation Order shall be deemed to be a waiver or relinquishment of any rights or causes of action that the Debtor or the Reorganized Debtor may have, or that the Reorganized Debtor may choose to assert on behalf of the Estate, under any provision of the Bankruptcy Code or any applicable non-bankruptcy law, including, without limitation, (i) any and all Claims against any Person or Entity, to the extent such Person or Entity asserts a crossclaim, counterclaim, and/or Claim for setoff that seeks affirmative relief against the Debtor, the Reorganized Debtors, and their officers, directors, or representatives; (ii) the turnover of any property of the Debtor's Estate; and (iii) any applicable causes of action under chapter 5 of the Bankruptcy Code or other affirmative causes of action. (b) Except as set forth in this Confirmation Order or the Plan, nothing contained in the Plan or this Confirmation Order shall be deemed to be a waiver or relinquishment of any Claim, causes of action, rights of setoff, or other legal or equitable defense that the Debtor had immediately prior to the Petition Date or the Effective Date against or with respect to any Claim asserted against the Debtor. The Reorganized Debtor shall have, retain, reserve, and be entitled to assert all such Claim, causes of action, rights of setoff, or other legal

or equitable defense as fully as if the Chapter 11 Case had not been commenced, and all of the Reorganized Debtor's legal and equitable rights respecting any such Claim may be asserted after the Effective Date to the same extent as if the Chapter 11 Case had not been commenced.

29. Retention of Jurisdiction. In accordance with (and as limited by) Article VII.C of the Plan and section 1142 of the Bankruptcy Code, this Court shall have exclusive jurisdiction of all matters arising out of and related to the Chapter 11 Case and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

a. To hear and determine any and all objections to the Allowance of any Claim or any controversy as to the classification of Claims or any matters that may directly, indirectly, or contingently affect the obligations of the Debtor to any Creditors, Holders of Claims, or other parties in interest;

b. To hear and determine any and all applications for compensation and reimbursement of expenses by any Professional;

c. To adjudicate through final judgment any contested matters or adversary proceedings as may be pending or subsequently initiated in this Court—including, without limitation, any Litigation—and to grant any and all Orders, releases, injunctions, and exculpations similar in scope to the releases, injunctions, and exculpations that could have been granted by Orders of this Court prior to the Effective Date;

d. To enforce and interpret the provisions of the Plan and this Confirmation Order;

e. To issue any injunction or other relief appropriate to implement the intent and purpose of the Plan, and to enter such further orders enforcing any injunctions or other relief issued under the Plan or pursuant to this Confirmation Order;

f. To interpret and determine such matters as this Confirmation Order may provide for, or as may be authorized under the Bankruptcy Code;

g. To enter and implement such orders as may be appropriate in the event that this Confirmation Order is, for any reason, stayed, reversed, revoked, modified, or vacated;

h. To hear and determine all matters with respect to the assumption or rejection of Executory Contracts or Unexpired Leases and any Claims resulting therefrom;

i. To hear and determine any application to modify the Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure Statement, or any order of this Court in such a manner as may be necessary to carry out the purposes and effects thereof;

j. To hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code (including the expedited determination of tax under section 505(b) of the Bankruptcy Code);

30. Exemption from Transfer Taxes and Recording Fees. Pursuant to section 1146(a) of the Bankruptcy Code, the delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with, this Plan, including any deeds, bills of sale, or assignments executed in connection with the Sale, whether real or personal property, shall not be subject to any stamp, real estate transfer, mortgage recording, sales, use, or other similar tax.

31. Effectiveness of All Actions. All actions authorized to be taken pursuant to the Plan shall be effective on, prior to, or after the Effective Date pursuant to this Confirmation Order, without further application to, or order of this Court, or further action by the respective officers, directors, members, or trustees of the other Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such officers, directors, members, or trustees.

32. Approval of Consents. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, and regulations of all states and any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments, or agreements, and any amendments or modifications thereto, and any other acts and transactions referred to in or contemplated by the Plan and any documents, instruments, or agreements, and any amendments or modifications thereto.

33. Payment of Professionals. Upon entry of this Confirmation Order, any requirement that Professionals comply with sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after the date hereof shall terminate, and the Debtor and Reorganized Debtor may employ and pay all Professionals in the ordinary course of business (including with respect to the month in which the Confirmation Date occurred) without any further notice to, action by, or order or approval of this Court or any other party.

34. Dissolution of the Committee. Upon the Effective Date, the Committee shall dissolve automatically, and its members shall be released and discharged from all rights, duties, responsibilities, and liabilities arising from, or related to, the Chapter 11 Case and under the Bankruptcy Code; provided, however, the Committee shall continue to exist after the Effective Date solely with respect to (i) all applications filed or to be filed pursuant to sections 330 and

331 of the Bankruptcy Code seeking payment of fees and reimbursement of expenses, and (ii) any motions or actions seeking the enforcement or implementation of the provisions of the Plan, the distribution of the Proceeds and any applicable Claim objections or avoidance actions to be brought, and this Confirmation Order.

35. Binding Effect. The Plan shall be binding upon and inure to the benefit of the Debtor, the Reorganized Debtor, all present and former Holders of Claims and their respective heirs, executors, administrators, successors, and assigns.

36. Governing Law. Except to the extent that the Bankruptcy Code, Bankruptcy Rules, or other federal law is applicable, or to the extent an exhibit to the Plan provides otherwise, the rights, duties, and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the principles of conflict of laws thereof.

37. Notice of Entry of Confirmation Order and Effective Date. Pursuant to Bankruptcy Rules 2002(f)(7), 2002(k), and 3020(c), the Reorganized Debtor shall file and serve a notice of entry of this Confirmation Order and Effective Date (the “Notice of Confirmation”) on all Holders of Claims, the U.S. Trustee, counsel to the Committee, and the New York State Office of the Attorney General, the New York State Department of Education, and other parties-in-interest by causing the Notice of Confirmation to be delivered to such parties by first-class mail, postage prepaid, within 10 Business Days after the Effective Date. Such notice is adequate under the particular circumstances and no other or further notice is necessary. The Notice of Confirmation shall also serve as the notice setting forth the Supplemental Administrative Claim Bar Date required by Article II.B of the Plan and as the notice of the Effective Date.

38. Substantial Consummation. Upon entry of this Confirmation Order, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

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

40. Findings of Fact. The determinations, findings, judgments, decrees, and orders set forth and incorporated herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. Each finding of fact set forth or incorporated herein, to the extent it is or may be deemed a conclusion of law, shall also constitute a conclusion of law. Each conclusion of law set forth or incorporated herein, to the extent it is or may be deemed a finding of fact, shall also constitute a finding of fact.

41. Conflicts Between Confirmation Order and Plan. The provisions of the 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 determined to be any inconsistency between any Plan provision and any provision of this Confirmation Order that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of this Confirmation Order shall govern and any such provision of this Confirmation Order shall be deemed a modification of the Plan and shall control and take precedence.

42. Effectiveness of Order. Notwithstanding Bankruptcy Rules 3020(e), 6004(h), 6006(d), 7062, or otherwise, the stay provided for under Bankruptcy Rule 3020(e) shall be waived and this Confirmation Order shall be effective and enforceable immediately upon entry. The Debtor is authorized to consummate the Plan and the distributions permitted thereunder immediately after entry of this Confirmation Order.

Dated: January 14, 2016
Poughkeepsie, New York



/s/ Cecelia G. Morris

Hon. Cecelia G. Morris
Chief U.S. Bankruptcy Judge