

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

)	
In re:)	Chapter 11
)	
AKORN, INC., <i>et al.</i> , ¹)	Case No. 20-11177 (KBO)
)	
Debtors.)	(Jointly Administered)
)	
)	Re: Docket Nos. 547 & 603
)	

**NOTICE OF FILING OF REVISED PROPOSED ORDER
CONFIRMING THE MODIFIED JOINT CHAPTER 11 PLAN OF
AKORN, INC. AND ITS DEBTOR AFFILIATES**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On August 25, 2020, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Modified Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Docket No. 547] (the “Plan”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).
2. On August 28, 2020, the Debtors filed a proposed form of order [Docket No. 603] (the “Confirmation Order”) confirming the Plan.
3. To resolve certain objections to confirmation of the Plan, the Debtors have made certain revisions to the Confirmation Order, the revised version of which is attached hereto as **Exhibit 1** (the “Revised Confirmation Order”).

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, if any, are: Akorn, Inc. (7400); 10 Edison Street LLC (7890); 13 Edison Street LLC; Advanced Vision Research, Inc. (9046); Akorn (New Jersey), Inc. (1474); Akorn Animal Health, Inc. (6645); Akorn Ophthalmics, Inc. (6266); Akorn Sales, Inc. (7866); Clover Pharmaceuticals Corp. (3735); Covenant Pharma, Inc. (0115); Hi-Tech Pharmacal Co., Inc. (8720); Inspire Pharmaceuticals, Inc. (9022); Oak Pharmaceuticals, Inc. (6647); Olta Pharmaceuticals Corp. (3621); VersaPharm Incorporated (6739); VPI Holdings Corp. (6716); and VPI Holdings Sub, LLC. The location of the Debtors’ service address is: 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045.



4. For the convenience of the Court and all parties in interest, a blackline comparison of the Revised Confirmation Order marked against the Confirmation Order is attached hereto as **Exhibit 2.**

5. A telephonic hearing to consider confirmation of the Plan is scheduled to continue on September 3, 2020 at 9:15 a.m. (Eastern Time) (the "Hearing") before The Honorable Karen B. Owens, United States Bankruptcy Judge for the District of Delaware

6. The Debtors intend to present the Revised Confirmation Order to the Court at the Hearing, and reserve all rights to make modifications to the Revised Confirmation Order prior to, or as a result of, the Hearing.

Wilmington, Delaware
September 2, 2020

/s/ Amanda R. Steele

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Exhibit 1

Revised Confirmation Order

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

<p>In re:</p> <p>AKORN, INC., <i>et al.</i>,¹</p> <p style="text-align: center;">Debtors.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 11</p> <p>Case No. 20-11177 (KBO)</p> <p>(Jointly Administered)</p>
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**ORDER CONFIRMING THE
MODIFIED JOINT CHAPTER 11 PLAN OF
AKORN, INC. AND ITS DEBTOR AFFILIATES**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”)² having:

- a. commenced, on May 20, 2020 (the “Petition Date”), these chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief in the United States Bankruptcy Court for the District of Delaware (the “Court”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”);
- b. continued to operate their business and manage their properties during these Chapter 11 Cases as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;
- c. filed,³ on May 26, 2020, the *Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Docket No. 101], the *Disclosure Statement for Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Docket No. 102], and the *Debtors’ Motion for Entry of an Order (I) Approving the Adequacy of the Disclosure Statement*,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, if any, are: Akorn, Inc. (7400); 10 Edison Street LLC (7890); 13 Edison Street LLC; Advanced Vision Research, Inc. (9046); Akorn (New Jersey), Inc. (1474); Akorn Animal Health, Inc. (6645); Akorn Ophthalmics, Inc. (6266); Akorn Sales, Inc. (7866); Clover Pharmaceuticals Corp. (3735); Covenant Pharma, Inc. (0115); Hi-Tech Pharmacal Co., Inc. (8720); Inspire Pharmaceuticals, Inc. (9022); Oak Pharmaceuticals, Inc. (6647); Olta Pharmaceuticals Corp. (3621); VersaPharm Incorporated (6739); VPI Holdings Corp. (6716); and VPI Holdings Sub, LLC. The location of the Debtors’ service address is: 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Plan, the Disclosure Statement, or the Bankruptcy Code (each as defined herein), as applicable. The rules of interpretation set forth in Article I.B. of the Plan apply.

³ Unless otherwise indicated, use of the term “filed” herein refers also to the service of the applicable document filed on the docket in these Chapter 11 Cases, as applicable.

- (II) *Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates*, (III) *Approving the Forms of Ballots and Notices in Connection Therewith*, and (IV) *Scheduling Certain Dates with Respect Thereto* [Docket No. 103] (the “Disclosure Statement Motion”);
- d. obtained, on June 15, 2020, the entry of the *Order (A) Authorizing and Approving Bidding Procedures, (B) Scheduling an Auction and a Sale Hearing, (C) Approving the Form and Manner of Notice Thereof, (D) Establishing Notice and Procedures for the Assumption and Assignment of Certain Executory Contracts and Leases, and (E) Granting Related Relief* [Docket No. 181] (the “Bidding Procedures Order”), approving the *Bidding Procedures* [Docket No. 181-1] (the “Bidding Procedures”)
- e. filed, on June 30, 2020, the *Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Docket No. 258] (as amended, supplemented, or otherwise modified from time to time, the “Plan”) and the *Disclosure Statement for Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Docket No. 267] (the “Disclosure Statement”);
- f. obtained, on July 2, 2020, the entry of the *Order (I) Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Joint Chapter 11 Plan of Akorn, Inc. and its Debtor Affiliates, (III) Approving the Forms of Ballots and Notices in Connection Therewith, and (IV) Scheduling Certain Dates with Respect Thereto* [Docket No. 318] (the “Disclosure Statement Order”) approving the Disclosure Statement, solicitation procedures (the “Solicitation Procedures”), and related notices, forms, and ballots (collectively, the “Solicitation Packages”);
- g. caused the Solicitation Packages and notice of the Confirmation Hearing and the deadline for objecting to confirmation of the Plan (“Confirmation”) to be distributed on or about July 10, 2020 (the “Solicitation Date”) and July 31, 2020, in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Disclosure Statement Order, and the Solicitation Procedures, as evidenced by, among other things, the *Certificate of Service* [Docket No. 363] (the “Certificate of Solicitation”) and the *Supplemental Certificate of Service* [Docket no. 576] (together with the Certificate of Solicitation, the “Certificates of Solicitation”);
- h. caused notice of the Confirmation Hearing (the “Confirmation Hearing Notice”) to be published, on July 9, 2020, in *The New York Times* (national edition), *USA Today* (national edition), and on August 13, 2020, in *U.S. Pharmacist*, as evidenced by the *Verification of Publication* [Docket No. 337], *Proof of Publication* [Docket No. 338], and *Verification of Publication* [Docket No. 577] (collectively,

the “Publication Certificates” and, together with the Certificates of Solicitation, the “Certificates”);

- i. filed, on August 7, 2020, the *Plan Supplement for Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Docket No. 434] (as modified, amended, or supplemented from time to time, the “Plan Supplement”) and caused notice of the filing of the Plan Supplement to be distributed and delivered certain solicitation and Plan Supplement documents via email and first class mail in accordance with paragraph 15 of the Disclosure Statement Order, as evidenced by, among other things, the related certificate of service [Docket Nos. 440];
- j. filed, on August 7, 2020, the *Notice of No Auction* [Docket No. 429];
- k. filed, on August 11, 2020, the *Notice of Adjournment of Confirmation Hearing and Sale Hearing* [Docket No. 438];
- l. caused the customized *Notice Regarding Executory Contracts and Unexpired Leases to be Rejected Pursuant to the Plan*, substantially in the form attached as Exhibit 9 to the Disclosure Statement Order to be served via email and overnight mail upon certain parties, on August 20, 2020, as evidenced by, among other things, the *Certificate of Service* [Docket No. 545];
- m. filed, on August 21, 2020, the *First Amended Plan Supplement for Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Docket No. 521] and caused notice of the filing of the first amended Plan Supplement to be distributed via email and first class mail in accordance with paragraph 15 of the Disclosure Statement Order, as evidenced by, among other things, the related certificate of service [Docket No. 571];
- n. filed, on August 25, 2020, the *Modified Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Docket No. 547], a copy of which is attached hereto as Exhibit A;
- o. filed, on August 28, 2020, the *Debtors’ Memorandum of Law of in Support of an Order Confirming the Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Docket No. 608] (the “Confirmation Brief”);
- p. filed, on August 28, 2020, the *Declaration of Leanne V. Rehder Scott Regarding the Solicitation and Tabulation of Votes on the Joint Chapter 11 Plan of Akorn, Inc. and its Debtor Affiliates* [Docket No. 607] (the “Voting Report”);

The Court having:

- q. entered the Bidding Procedures Order on June 15, 2020;
- r. entered the Disclosure Statement Order on July 2, 2020;

- s. set August 25, 2020 at 12:00 p.m. (prevailing Eastern Time) as the deadline for filing objections in opposition to the Plan (including any assumption of an Executory Contract or Unexpired Lease as contemplated in the Plan Supplement);
- t. set August 25, 2020 at 12:00 p.m. (prevailing Eastern Time) as the deadline for voting on the Plan;
- u. set September 1, 2020 at 10:00 a.m. (prevailing Eastern Time) as the date and time for the Confirmation Hearing, pursuant to Bankruptcy Rules 3017 and 3018 and sections 1126, 1128, and 1129 of the Bankruptcy Code;
- v. reviewed the Plan, the Disclosure Statement, the Plan Supplement, the Confirmation Brief, the Declarations, the Voting Report, the Confirmation Hearing Notice, the Certificates, the affidavits of service, and all filed pleadings, exhibits, statements, and comments regarding Confirmation, including all objections, statements, and reservations of rights filed by parties in interest on the docket of the Chapter 11 Cases;
- w. held the Confirmation Hearing;
- x. heard the statements and arguments made by counsel with respect to Confirmation;
- y. considered all oral representations, live testimony, written direct testimony, designated deposition testimony, exhibits, documents, filings, and other evidence presented at the Confirmation Hearing;
- z. entered rulings on the record at the Confirmation Hearing held on September 1, 2020 (the “Confirmation Ruling”);
- aa. overruled any and all objections to the Plan and Confirmation and all statements and reservations of rights not consensually resolved, agreed to, or withdrawn, unless otherwise indicated; and
- bb. taken judicial notice of all papers and pleadings and other documents filed, all orders entered, and all evidence and arguments presented in these Chapter 11 Cases.

NOW, THEREFORE, the Court having found that notice of the Confirmation Hearing and the opportunity for any party in interest to object to Confirmation have been adequate and appropriate as to all parties affected or to be affected by the Plan and the transactions contemplated thereby, and that the legal and factual bases set forth in the documents filed in support of Confirmation and other evidence presented at the Confirmation Hearing and the record of these Chapter 11 Cases establish just cause for the relief granted herein, and after due deliberation

thereon and good cause appearing therefor, the Court makes and issues the following findings of fact and conclusions of law, and orders:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

A. Findings and Conclusions.

1. The findings and conclusions set forth herein and in the record of the Confirmation Hearing constitute the Court's findings of fact and conclusions of law under rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the following conclusions of law constitute findings of fact, or vice versa, they are adopted as such.

B. Jurisdiction, Venue, and Core Proceeding.

2. The Court has jurisdiction over these Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Court has exclusive jurisdiction to determine whether the Disclosure Statement and the Plan comply with the applicable provisions of the Bankruptcy Code and should be approved and confirmed, respectively. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

C. Eligibility for Relief.

3. The Debtors were and are entities eligible for relief under section 109 of the Bankruptcy Code.

D. Commencement and Joint Administration of the Chapter 11 Cases.

4. On the Petition Date, each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. In accordance with the *Order (I) Directing Joint*

Administration of the Debtors' Related Chapter 11 Cases and (II) Granting Related Relief [Docket No. 57], these Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015. Since the Petition Date, the Debtors have operated their business and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in these Chapter 11 Cases.

E. Appointment of the Creditors' Committee.

5. On June 3, 2020, the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the "Committee") [Docket No. 125].

F. Judicial Notice, Objections Overruled.

6. The Court takes judicial notice of (and deems admitted into evidence for purposes of Confirmation of the Plan) the docket of these Chapter 11 Cases maintained by the clerk of the Court or its duly appointed agent, including all pleadings and other documents on file, all orders entered, all hearing transcripts, and all evidence and arguments made, proffered, or adduced at the hearings held before the Court during the pendency of these Chapter 11 Cases. All objections, statements, informal objections, and reservations of rights not consensually resolved, agreed to, or withdrawn, if any, related to the Plan or Confirmation are overruled unless otherwise indicated in this Confirmation Order.

G. Disclosure Statement Order.

7. On July 2, 2020, the Court entered the Disclosure Statement Order, which, among other things, fixed August 14, 2020, at 4:00 p.m. prevailing Eastern Time as the deadline for objecting to the Plan (including any assumption of an Executory Contract or Unexpired Lease as contemplated in the Plan Supplement) (the "Confirmation Objection Deadline"), August 14, 2020

at 5:00 pm prevailing Eastern Time as the deadline for voting to accept or reject the Plan (the “Voting Deadline”), and August 20, 2020, at 1:00 p.m. prevailing Eastern Time as the date and time for the commencement of the Confirmation Hearing.

8. On August 11, 2020, in accordance with the *Notice of Adjournment of Confirmation Hearing and Sale Hearing* [Docket No. 438], the Confirmation Objection Deadline was adjourned to August 25, 2020, at 12:00 p.m., prevailing Eastern Time, the Voting Deadline was adjourned to August 25, 2020, at 12:00 p.m., prevailing Eastern Time, and the commencement of the Confirmation Hearing was adjourned to September 1, 2020, at 10:00 a.m., prevailing Eastern Time.

H. Burden of Proof—Confirmation of the Plan.

9. The Debtors, as proponents of the Plan, have met their burden of proving the applicable elements of sections 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence, which is the applicable evidentiary standard for Confirmation.

I. Notice.

10. The Debtors provided due, adequate, and sufficient notice of the Disclosure Statement, the Disclosure Statement Order, the Plan, the Plan Supplement, the Solicitation Packages, the Confirmation Hearing Notice, the proposed assumption and rejection of Executory Contracts and Unexpired Leases under the Plan and the proposed cure amounts therefor, and all the other materials distributed by the Debtors in connection with Confirmation of the Plan, together with the Confirmation Objection Deadline, the Voting Deadline, and the Confirmation Hearing, and any applicable bar dates and hearings described in the Disclosure Statement Order, in compliance with the Bankruptcy Rules, the Local Rules, and the procedures set forth in the Disclosure Statement Order. No other or further notice is or shall be required.

J. Solicitation.

11. Before the Confirmation Hearing, the Debtors filed the Voting Report, which was admitted into evidence during the Confirmation Hearing. As described in the Voting Report, the solicitation of votes on the Plan complied with the Solicitation Procedures, was appropriate and satisfactory based upon the circumstances of these Chapter 11 Cases and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable rules, laws, and regulations.

12. As described in the Certificates of Solicitation, the Voting Report, and the Declarations, as applicable, the Solicitation Packages, the Plan Supplement, and the Confirmation Hearing Notice were transmitted and served, including to all Holders of Claims and Interests in Class 3, Class 4, Class 7, and Class 8 (collectively, the "Voting Classes"), in compliance with the Bankruptcy Code, including sections 1125 and 1126 thereof, the Bankruptcy Rules, including Bankruptcy Rules 3017 and 3018, the Local Rules, the Disclosure Statement Order, and any applicable nonbankruptcy law. Transmission and service of the Solicitation Packages and the Confirmation Hearing Notice were timely, adequate, and sufficient. No further notice is required.

13. As set forth in the Voting Report, the Solicitation Packages, and the Plan Supplement were distributed to Holders in the Voting Classes that held a Claim or Interest as of (a) July 1, 2020 for Holders in Class 3, Class 7, and Class 8 (the "Non-GUC Voting Record Date"), and (b) August 3, 2020 for Holders in Class 4 (the "GUC Voting Record Date" and together with the "Non-GUC Voting Record Date," the "Voting Record Date"). The establishment and notice of the Voting Record Date were reasonable and sufficient.

14. The period during which Holders in the Voting Classes were to submit acceptances or rejections to the Plan was reasonable and sufficient for such Holders to make an informed decision to accept or reject the Plan.

15. As set forth in the Plan, Holders of Claims and Interests in the Voting Classes were eligible to vote on the Plan in accordance with the Solicitation Procedures. Holders of Claims in Class 1, Class 2, and Class 6 (collectively, the “Deemed Accepting Classes”) are Unimpaired and conclusively presumed to accept the Plan and, therefore, were not entitled to vote to accept or reject the Plan. Holders of Claims in Class 5 either are Unimpaired and conclusively presumed to have accepted the Plan (to the extent reinstated) or Impaired and conclusively deemed to have rejected the Plan, and, therefore, are not entitled to vote to accept or reject the Plan.

K. Voting.

16. As evidenced by the Voting Report, votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Disclosure Statement Order, and any applicable nonbankruptcy law, rule, or regulation.

17. As evidenced by the Voting Report, Class 3 voted to accept the Plan and Class 4, Class 7, and Class 8 voted to reject the Plan, each in accordance with section 1126 of the Bankruptcy Code.

18. Based on the foregoing, and as evidenced by the Voting Report, at least one Impaired Class of Claims (excluding the acceptance by any insiders of any of the Debtors) has voted to accept the Plan in accordance with the requirements of sections 1124 and 1126 of the Bankruptcy Code.

L. Plan Supplement.

19. The Plan Supplement complies with the Bankruptcy Code and the terms of the Plan, and the filing and notice of the documents included in the Plan Supplement are adequate and proper in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Disclosure Statement Order, and the facts and circumstances of these Chapter 11 Cases. No other or further

notice is or will be required with respect to the Plan Supplement. All documents included in the Plan Supplement are integral to, part of, and incorporated by reference into the Plan. Subject to the terms of the Plan and the Restructuring Support Agreement and compliance with the Bankruptcy Code and the Bankruptcy Rules, the Debtors reserve the right to alter, amend, update, or modify the Plan Supplement before the Effective Date.

M. Modifications to the Plan.

20. Pursuant to section 1127 of the Bankruptcy Code, any modifications to the Plan (the “Plan Modifications”) since the commencement of Solicitation described or set forth herein constitute technical changes or changes with respect to particular Claims or Interests made with the agreement of the Holders of such Claims or Interests and do not materially and adversely affect the treatment of any such Claims or Interests. Pursuant to Bankruptcy Rule 3019, these modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or the resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan.

N. Bankruptcy Rule 3016

21. The Plan and all modifications thereto are dated and identify the Entities submitting them, thereby satisfying Bankruptcy Rule 3016(a). The Debtors appropriately filed the Disclosure Statement and the Plan with the Court, thereby satisfying Bankruptcy Rule 3016(b). The injunction, release, and exculpation provisions in the Disclosure Statement and the Plan describe, in bold font and with specific and conspicuous language, all acts to be enjoined and identify the entities that will be subject to the injunction, thereby satisfying Bankruptcy Rule 3016(c).

O. Compliance with the Requirements of Section 1129 of the Bankruptcy Code.

22. The Plan complies with all applicable provisions of section 1129 of the Bankruptcy

Code as follows:

a. Compliance of the Plan with Applicable Provisions of the Bankruptcy Code—Section 1129(a)(1).

23. The Plan complies with all applicable provisions of the Bankruptcy Code, including sections 1122 and 1123, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

(i) Proper Classification—Sections 1122 and 1123.

24. The Plan satisfies the requirements of sections 1122(a) and 1123(a)(1) of the Bankruptcy Code. Article III of the Plan provides for the separate classification of Claims and Interests into eight Classes. Valid business, factual, and legal reasons exist for the separate classification of such Classes of Claims and Interests. The classifications were not implemented for any improper purpose and do not unfairly discriminate between, or among, Holders of Claims or Interests. Each Class of Claims and Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class.

(ii) Specified Unimpaired Classes—Section 1123(a)(2).

25. The Plan satisfies the requirements of section 1123(a)(2) of the Bankruptcy Code. Article III of the Plan specifies that Claims and Interests, as applicable, in the following Classes (the “Unimpaired Classes”) are Unimpaired under the Plan within the meaning of section 1124 of the Bankruptcy Code:

Class	Designation
1	Other Priority Claims
2	Other Secured Claims
5	Intercompany Claims
6	Intercompany Interests

26. Additionally, Article II of the Plan specifies that Allowed Administrative Claims, DIP Facility Claims, Professional Fee Claims, Priority Tax Claims, and all fees due and payable pursuant to section 1930 of Title 28 of the United States Code before the Effective Date will be paid in full in accordance with the terms of the Plan, although these Claims are not separately classified under the Plan.

(iii) Specified Treatment of Impaired Classes—Section 1123(a)(3).

27. The Plan satisfies the requirements of section 1123(a)(3) of the Bankruptcy Code. Article III of the Plan specifies that Claims and Interests, as applicable, in the following Classes (the “Impaired Classes”) are Impaired under the Plan within the meaning of section 1124 of the Bankruptcy Code and describes the treatment of such Classes:

Class	Designation
3	Term Loan Claims
4	General Unsecured Claims
5	Intercompany Claims
7	Section 510(b) Claims
8	Akorn Interests

(iv) No Discrimination—Section 1123(a)(4).

28. The Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code. The Plan provides for the same treatment by the Debtors for each Claim or Interest in each respective Class unless the Holder of a particular Claim or Interest has agreed to a less favorable treatment of such Claim or Interest.

(v) Adequate Means for Plan Implementation—Section 1123(a)(5).

29. The Plan satisfies the requirements of section 1123(a)(5) of the Bankruptcy Code. The Plan and the various documents included in the Plan Supplement provide adequate and proper means for execution and implementation of the Plan, including: (a) the Schedule of Retained Causes of Action; (b) the Assumed Executory Contracts and Leases List; (c) the Description of Transaction Steps; (d) the Identity and Terms of Compensation of the Plan Administrator; and (e) any other necessary documentation related to the Sale Transaction or other Restructuring Transactions.

(vi) Non-Voting Equity Securities—Section 1123(a)(6).

30. The Plan satisfies the requirements of section 1123(a)(6) of the Bankruptcy Code. The Plan does not provide for the issuance of equity or other securities of the Debtors, including non-voting equity securities.

(vii) Directors and Officers—Section 1123(a)(7).

31. The Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code. In accordance with Article IV.L of the Plan, as of the Effective Date, the existing boards of directors or managers, as applicable, of the Debtors shall be dissolved without any further action required, and any remaining officers, directors, managers, or managing members of any Debtor shall be dismissed without any further action required. In addition, Article IV.L provides that the Plan Administrator shall act as the sole officer, director, and manager, as applicable, of the Debtors with respect to their affairs other than matters substantially related to the transactions described in Article IV.C.1 of the Plan. Also, Article IV.E provides that the Plan Administrator shall succeed to the powers of the Debtors' managers and officers and shall be appointed by the Debtors, in consultation with the Purchaser. The selection of the Plan Administrator and the process therefore is consistent with the interests of Holders of Claims and Interests and public policy.

b. Discretionary Contents of the Plan—Section 1123(b).

32. The Plan's discretionary provisions comply with section 1123(b) of the Bankruptcy Code and are consistent with the applicable provisions of the Bankruptcy Code. Thus, the Plan satisfies section 1123(b).

(viii) Impairment / Unimpairment of Classes—Section 1123(b)(1).

33. The Plan is consistent with section 1123(b)(1) of the Bankruptcy Code. Article III of the Plan leaves each Class of Claims and Interests Impaired or Unimpaired.

(ix) Treatment of Executory Contracts and Unexpired Leases—Section 1123(b)(2).

34. The Plan is consistent with section 1123(b)(2) of the Bankruptcy Code. Article V of the Plan provides for the automatic rejection of the Debtors' Executory Contracts and Unexpired Leases not previously rejected, assumed, or assumed and assigned during these Chapter 11 Cases under section 365 of the Bankruptcy Code, nor scheduled to be assumed under the Plan or the Plan Supplement. The Debtors' determinations regarding the assumption and rejection of Executory Contracts and Unexpired Leases are based on and within the sound business judgment of the Debtors, are necessary to the implementation of the Plan, and are in the best interests of the Debtors, their Estates, Holders of Claims, and other parties in interest in these Chapter 11 Cases.

(x) Settlement, Releases, Exculpation, Injunction, and Preservation of Claims and Causes of Action—Section 1123(b)(3).

35. The Plan is consistent with section 1123(b)(3) of the Bankruptcy Code. Pursuant to section 1123 of the Bankruptcy Code, and in consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, and controversies relating to the contractual,

legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest, including, without limitation, the settlements and compromises provided for under the UCC Settlement. The compromise and settlement of such Claims and Interests embodied in the Plan and reinstatement and unimpairment of other Classes identified in the Plan are in the best interests of the Debtors, their Estates, and all Holders of Claims and Interests, and are fair, equitable, and reasonable.

36. The Plan incorporates an integrated compromise and settlement of all Claims, Interests, and controversies to achieve a beneficial and efficient resolution of these Chapter 11 Cases for all parties-in-interest. Accordingly, except as otherwise set forth in the Plan or herein, in consideration for the distribution and other benefits provided under the Plan, including the release, exculpation, and injunction provisions, the Plan shall constitute a good faith compromise and settlement of all such Claims, Interests, and controversies. Each component of the Settlement is an integral, integrated, and inextricably linked part of the compromise or settlement.

37. Based upon the representations and arguments of counsel to the Debtors, all other testimony either given or proffered, other evidence introduced at the Confirmation Hearing, and the full record of these Chapter 11 Cases, this Confirmation Order constitutes the Court's approval of the of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Interests and is fair, equitable, and reasonable.

(xi) Releases by Debtors.

38. Article VIII.E of the Plan describes certain releases granted by the Debtors, their Estates, the Plan Administrator, and the Acquired Entities (the "Debtor Release"). The Debtors have satisfied the business judgment standard with respect to the propriety of the Debtor Release.

Such release is a necessary and integral element of the Plan, and is fair, reasonable, and in the best interests of the Debtors, the Debtors' Estates, and Holders of Claims and Interests. The Debtors', their Estates', the Plan Administrator's, and the Acquired Entities' pursuit of any such claims against the Released Parties is not in the best interests of the Estates' various constituencies because the costs involved would likely outweigh any potential benefit from pursuing such claims. The Plan, including the Debtor Release, was negotiated by sophisticated parties represented by able counsel and financial advisors. The Debtor Release is therefore the result of an arm's-length negotiation process. Also, the Debtor Release is: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good faith settlement and compromise of the claims released by the releases in Article VIII.E of the Plan; (c) in the best interests of the Debtors and all Holders of Claims and Interests; (d) fair, equitable and reasonable; (e) given and made after reasonable investigation by the Debtors and after notice and opportunity for hearing; and (f) a bar to any of the Debtors asserting any claim released by the releases in Article VIII.E against any of the Released Parties. In light of, among other things, the value provided by the Released Parties to the Debtors' Estates and the critical nature of the Debtor Release to the Plan, the Debtor Release is approved.

(xii) Release by Holders of Claims and Interests.

39. Article VIII.F of the Plan describes certain releases granted by the Releasing Parties (the "Third-Party Release"). The Third-Party Release provides that each Releasing Party is deemed to have released and discharged each Debtor and Released Party from any and all Causes of Action, whether known or unknown, including any derivative claims asserted on behalf of the Debtors, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions between

or among a Debtor and another Debtor, the Standstill Agreement, these Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Restructuring Support Agreement, the DIP Loan Documents, the Disclosure Statement, the Plan, the Sale Transaction, or any Restructuring Transaction, contract, instrument, release, or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, or the Plan, these Chapter 11 Cases, the DIP Loan Documents, the Sale Transaction, the filing of these Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon the business or contractual arrangements between any Debtor and any Released Party, and any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date relating to any of the foregoing, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, fraud or gross negligence. The Third-Party Release is consensual with respect to the Releasing Parties. The Confirmation Hearing Notice sent to Holders of Claims and Interests and published in *The New York Times* (national edition) and *USA Today* (national edition) on July 9, 2020, and in *U.S. Pharmacist* on August 13, 2020, and the ballots and notice, as applicable, sent to Holders of Claims and Interests unambiguously stated that the Plan contains the Third-Party Release and that each Holder of Claims or Interests may elect not to grant such Third-Party Release. Such release provisions of the Plan were conspicuous, emphasized with boldface type in

the Plan, the Disclosure Statement, and the ballots and notices. Among other things, the Plan provides appropriate and specific disclosure with respect to the claims and Causes of Action that are subject to the Third-Party Release, and no other disclosure or notice is necessary. The Third-Party Release is a necessary and integral element of the Plan, and is fair, equitable, reasonable, and in the best interests of the Debtors, the Debtors' Estates, and all Holders of Claims and Interests. Also, the Third-Party Release is: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good faith settlement and compromise of the claims released by the Releasing Parties; (c) in the best interests of the Debtors and all Holders of Claims and Interests; (d) fair, equitable and reasonable; (e) given and made after notice and opportunity for hearing; (f) a bar to any of the Releasing Parties asserting any Claim released by the release herein against any of the Released Parties.

(xiii) Exculpation.

40. The exculpation described in Article VIII.G of the Plan (the "Exculpation") is appropriate under applicable law because it was proposed in good faith, was formulated following extensive good-faith, arm's-length negotiations with key constituents, and is appropriately limited in scope. Without limiting anything in the Exculpation, each Exculpated Party has participated in these Chapter 11 Cases in good faith and, except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated as set forth in the Plan; *provided* that the foregoing "Exculpation" shall have no effect on the liability of any entity for claims related to any act or omission that constitutes willful misconduct, actual fraud, or gross negligence, but in all respects such entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have participated in any and all activities potentially underlying any Exculpated Claim in good faith and in compliance with the applicable laws. The Exculpation,

including its carve-out for willful misconduct, actual fraud, or gross negligence is consistent with established practice in this jurisdiction and others.

(xiv) Injunction.

41. The injunction provision set forth in Article VIII.H of the Plan is necessary to implement, preserve, and enforce the Debtor Release, the Third-Party Release, and the Exculpation, and is narrowly tailored to achieve these purposes.

(xv) Causes of Action.

42. Article IV.Q of the Plan appropriately provides that, pursuant to the Sale Transaction Documentation, the Debtors assigned and transferred to the Purchaser all of the Transferred Causes of Action pursuant to the Sale Transaction Documentation in connection with the Sale Transaction. For the avoidance of doubt, the Debtors or the Plan Administrator, as applicable, will retain the right to enforce the terms of the Sale Transaction Documentation. Any Retained Causes of Action shall remain with the Debtors and shall vest with the Plan Administrator as of the Effective Date. As set forth in Article IV.E of the Plan, all Transferred Causes of Action were transferred to the Purchaser in the Sale Transaction, and the Retained Causes of Action shall vest in the Debtors on the Effective Date for prosecution, settlement, or other action as determined by the Plan Administrator.

43. No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any such Cause of Action against them as any indication that the Debtors will not pursue any and all available Causes of Actions against them. No preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

44. The provisions regarding the Transferred Causes of Action and Retained Causes of Action in the Plan, including the Plan Supplement, are appropriate, fair, equitable, and reasonable, and are in the best interests of the Debtors, the Debtors' estates, and Holders of Claims and Interests.

(xvi) Release of Liens.

45. Article VIII.D of the Plan appropriately provides that, except as otherwise specifically provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, and compromised, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Debtors and their successors and assigns without any further approval or order of the Court and without any action or Filing being required to be made by the Debtors. The provisions of the release of Liens are necessary to implement the Plan, and they are appropriate, fair, equitable, reasonable, and in the best interests of the Debtors, the Debtors' Estates, and Holders of Claims and Interests.

(xvii) Additional Plan Provisions—Section 1123(b)(6).

46. The other discretionary provisions of the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1123(b)(6) of the Bankruptcy Code.

P. Debtor Compliance with the Bankruptcy Code—Section 1129(a)(2).

47. The Debtors have complied with the applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Court, and thus, satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code. Specifically, each Debtor:

- c. is an eligible debtor under section 109, and a proper proponent of the Plan under section 1121(a), of the Bankruptcy Code; and
- d. complied with the applicable provisions of the Bankruptcy Code, including sections 1125 and 1126, the Bankruptcy Rules, the Local Rules, any applicable nonbankruptcy law, rule, and regulation, the Disclosure Statement Order, and all other applicable law, in transmitting the Solicitation Packages, and related documents and notices, and in soliciting and tabulating the votes on the Plan.

Q. Plan Proposed in Good Faith—Section 1129(a)(3).

48. The Plan satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code.

The Debtors have proposed the Plan in good faith and not by any means forbidden by law. In so determining, the Court has examined the totality of the circumstances surrounding the filing of these Chapter 11 Cases, the Plan, the process leading to Confirmation, including the support of Holders of Claims and Interests for the Plan, and the transactions to be implemented pursuant thereto. The Debtors' good faith is evident from the facts and the record of these Chapter 11 Cases, the Plan, the Disclosure Statement, the hearing on the Disclosure Statement, and the record of the Confirmation Hearing and other proceedings held in these Chapter 11 Cases.

49. These Chapter 11 Cases were filed, and the Plan was proposed, with the legitimate and honest purpose maximizing the value of the Debtors' Estates and to effectuate a successful reorganization of the Debtors' business. The Plan was the product of extensive negotiations conducted at arm's length among the Debtors and certain of their key stakeholders. The Plan's classification, settlement, exculpation, release, and injunction provisions have been negotiated in good faith and at arm's length, are consistent with sections 105, 1122, 1123(b)(6), 1129, and 1142 of the Bankruptcy Code, and are each necessary for the Debtors to consummate a value-maximizing conclusion to these Chapter 11 Cases. Accordingly, the requirements of section 1129(a)(3) of the Bankruptcy Code are satisfied.

R. Payment for Services or Costs and Expenses—Section 1129(a)(4).

50. The procedures set forth in the Plan for the Court's review and ultimate determination of the fees and expenses to be paid by the Debtors in connection with these Chapter 11 Cases, or in connection with the Plan and incident to these Chapter 11 Cases, satisfy the objectives of, and are in compliance with, section 1129(a)(4) of the Bankruptcy Code.

S. Directors, Officers, and Insiders—Section 1129(a)(5).

51. Because the Plan provides for the dissolution of the Debtors' Estates and the existing board of directors or managers, as applicable, of the Debtors and the dismissal of any remaining officers, directors, managers, or managing members of any Debtor, section 1129(a)(5) of the Bankruptcy Code does not apply to the Debtors. To the extent section 1129(a)(5) applies to the Debtors during the Wind-Down, they have satisfied the requirements of this provision by, among other things, disclosing the identity and compensation of the Plan Administrator.

T. No Rate Changes—Section 1129(a)(6).

52. Section 1129(a)(6) of the Bankruptcy Code is not applicable to these Chapter 11 Cases. The Plan does not propose any rate change subject to the jurisdiction of any governmental regulatory commission.

U. Best Interest of Creditors—Section 1129(a)(7).

53. The Debtors have demonstrated that the Plan is in the best interests of their creditors and equity interest holders and have satisfied the requirements of section 1129(a)(7) of the Bankruptcy Code. The evidence in support of the Plan that was proffered or adduced at the Confirmation Hearing and the facts and circumstances of these Chapter 11 Cases establish that Holders of Allowed Claims or Interests in each Class will recover as much or more under the Plan on account of such Claims or Interests, as of the Effective Date, than such Holders would have received if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

V. Acceptance by Certain Classes—Section 1129(a)(8).

54. Classes 1, 2, and 6 are Unimpaired under the Plan and are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Class 3 voted to accept the Plan. Nevertheless, because the Plan has not been accepted by Class 4, Class 7, and Class 8 (the “Rejecting Classes”), the Debtors seek Confirmation under section 1129(b), solely with respect to the Rejecting Classes, rather than section 1129(a)(8) of the Bankruptcy Code. Although section 1129(a)(8) has not been satisfied with respect to the Rejecting Classes, the Plan is confirmable because the Plan does not discriminate unfairly and is fair and equitable with respect to each of the Rejecting Classes and thus satisfies section 1129(b) of the Bankruptcy Code with respect to the Rejecting Classes as described further below. As a result, the requirements of section 1129(b) of the Bankruptcy Code are satisfied.

W. Treatment of Claims Entitled to Priority Under Section 507(a) of the Bankruptcy Code—Section 1129(a)(9).

55. The treatment of Administrative Claims, Allowed DIP Facility Claims, Allowed Professional Fee Claims, and Priority Tax Claims, under Article II of the Plan, and of Other Priority Claims under Article III of the Plan, satisfies the requirements of, and complies in all respects with, section 1129(a)(9) of the Bankruptcy Code.

X. Acceptance by At Least One Impaired Class—Section 1129(a)(10).

56. The Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code. As evidenced by the Voting Report, the Voting Classes voted to accept the Plan by the requisite numbers and amounts of Claims, determined without including any acceptance of the Plan by any insider (as that term is defined in section 101(31) of the Bankruptcy Code) specified under the Bankruptcy Code.

Y. Feasibility—Section 1129(a)(11).

57. The Plan satisfies section 1129(a)(11) of the Bankruptcy Code. The evidence supporting the Plan proffered or adduced by the Debtors at or before the Confirmation Hearing: (a) is reasonable, persuasive, credible, and accurate as of the dates such evidence was prepared, presented, or proffered; (b) has not been controverted by other persuasive evidence; (c) establishes that the Plan is feasible and Confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization, except as set forth in the Plan; and (d) establishes that the Debtors will have sufficient funds available to meet their obligations under the Plan.

Z. Payment of Statutory Fees—Section 1129(a)(12).

58. The Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code. Articles II.E and XII.C of the Plan provide for the payment of all fees due and payable under 28 U.S.C. § 1930(a), as determined by the Court at the Confirmation Hearing in accordance with section 1128 of the Bankruptcy Code.

AA. Continuation of Employee Benefits—Section 1129(a)(13).

59. The Debtors do not have any remaining obligations to pay retiree benefits (as defined in section 1114 of the Bankruptcy Code). Therefore, section 1129(a)(13) of the Bankruptcy Code is inapplicable to these Chapter 11 Cases and the Plan.

BB. Non-Applicability of Certain Sections—Sections 1129(a)(14), (15), and (16).

60. Sections 1129(a)(14), 1129(a)(15), and 1129(a)(16) of the Bankruptcy Code do not apply to these Chapter 11 Cases. The Debtors owe no domestic support obligations, are not individuals, and are not nonprofit corporations.

CC. “Cram Down” Requirements—Section 1129(b).

61. The Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code. Notwithstanding the fact that the Rejecting Classes have not accepted the Plan, the Plan may be

confirmed pursuant to section 1129(b)(1) of the Bankruptcy Code. *First*, all of the requirements of section 1129(a) of the Bankruptcy Code other than section 1129(a)(8) have been met. *Second*, the Plan is fair and equitable with respect to each of the Rejecting Classes. The Plan has been proposed in good faith, is reasonable and meets the requirements that no Holder of any Claim or Interest that is junior to each such Class will receive or retain any property under the Plan on account of such junior Claim or Interest and no Holder of a Claim or Interest in a Class senior to such Classes is receiving more than payment in full on account of its Claim or Interest. Accordingly, the Plan is fair and equitable towards all Holders of Claims and Interests, as applicable, in the Rejecting Classes. *Third*, the Plan does not discriminate unfairly with respect to the Rejecting Classes because similarly-situated Claim and Interest Holders will receive substantially similar treatment on account of their Claims or Interests, as applicable, in such Class. Therefore, the Plan may be confirmed despite the fact that not all Impaired Classes have voted to accept the Plan.

DD. Only One Plan—Section 1129(c).

62. The Plan satisfies the requirements of section 1129(c) of the Bankruptcy Code. The Plan is the only chapter 11 plan filed in each of these Chapter 11 Cases.

EE. Principal Purpose of the Plan—Section 1129(d).

63. The Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code. 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.

FF. Not Small Business Cases—Section 1129(e).

64. The Chapter 11 Cases are not small business cases and, accordingly, section 1129(e) of the Bankruptcy Code does not apply to the Chapter 11 Cases.

GG. Good Faith Solicitation—Section 1125(e).

65. The Debtors have acted in “good faith” within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to support and consummation of the Plan, including the solicitation and receipt of acceptances of the Plan, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

HH. Satisfaction of Confirmation Requirements.

66. Based on the foregoing, the Plan satisfies the requirements for Confirmation set forth in section 1129 of the Bankruptcy Code.

II. Likelihood of Satisfaction of Conditions Precedent to the Effective Date.

67. Each of the conditions precedent to the Effective Date, as set forth in Article IX of the Plan, has been or is reasonably likely to be satisfied or, as applicable, waived in accordance with Article IX of the Plan.

JJ. Implementation.

68. All documents and agreements necessary to implement the transactions contemplated by the Plan, including those contained or summarized in the Plan Supplement, and all other relevant and necessary documents have been negotiated in good faith and at arm’s length, are in the best interests of the Debtors, and shall, upon completion of documentation and execution, be valid, binding, and enforceable agreements and shall not be in conflict with any federal, state, or local law. The documents and agreements are essential elements of the Plan and entry into and consummation of the transactions contemplated by each such document or agreement is in the best interests of the Debtors, the Estates, and the Holders of Claims and Interests. The Debtors have exercised reasonable business judgment in determining which documents and agreements to enter into and have provided sufficient and adequate notice of such documents and agreements. The

Debtors are authorized to take any action reasonably necessary or appropriate to consummate such agreements and the transactions contemplated thereby.

KK. Executory Contracts and Unexpired Leases.

69. The Debtors' decisions to assume and to reject certain Executory Contracts and Unexpired Leases, as provided in Article V of the Plan and in the Plan Supplement, are reasonable exercises of the Debtors' business judgment. The Debtors have demonstrated adequate assurance of future performance of the Executory Contracts and Unexpired Leases within the meaning of section 365(b)(1)(C) of the Bankruptcy Code.

70. Except with respect to the Executory Contracts and Unexpired Leases discussed in the following paragraph of this Confirmation Order, the amounts set forth in the Plan Supplement (the "Cure Amounts") are the sole amounts necessary to be paid upon assumption of the associated Executory Contracts and Unexpired Leases under section 365(b)(1)(A) and (B) of the Bankruptcy Code, and the payment of such amounts will effect a cure of all defaults existing under such Executory Contracts and Unexpired Leases and compensate the counterparties to such Executory Contracts and Unexpired Leases for any actual pecuniary loss resulting from all defaults existing under such Executory Contracts and Unexpired Leases as of the Effective Date.

71. The objections of counterparties to the assumption of their Executory Contracts and Unexpired Leases, to the extent that such objection was timely raised in accordance with Article V.B of the Plan, are preserved and will be considered by the Court at date and time to be scheduled.

LL. Good Faith.

72. The Debtors, the Released Parties, and the Releasing Parties have been and will be acting in good faith if they proceed to: (a) consummate the Plan and the agreements, settlements, transactions, and transfers contemplated thereby; and (b) take the actions authorized and directed

by this Confirmation Order to effect the Plan and Restructuring Transactions. The Released Parties have made a substantial contribution to the Debtors' reorganization.

ORDER

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

73. **Findings of Fact and Conclusions of Law.** The above-referenced findings of fact and conclusions of law are hereby incorporated by reference as though fully set forth herein and constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable herein by Bankruptcy Rule 9014. To the extent that any finding of fact is determined to be a conclusion of law, it is deemed so, and vice versa.

74. **Solicitation.** To the extent applicable, the solicitation of votes on the Plan complied with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, all other provisions of the Bankruptcy Code, and all other applicable rules, laws, and regulations, and was appropriate and satisfactory and is approved in all respects.

75. **Notice of Confirmation Hearing.** The Notice of Confirmation Hearing was appropriate and satisfactory and is approved in all respects.

76. **Confirmation of the Plan.** The Plan is approved in its entirety and CONFIRMED under section 1129 of the Bankruptcy Code. The terms of the Plan, including the Plan Supplement, are incorporated by reference into and are an integral part of this Confirmation Order.

77. **Objections.** All objections and all statements and reservations of rights pertaining to Confirmation or approval of the Disclosure Statement that have not been withdrawn, waived, or consensually resolved are overruled on the merits unless otherwise indicated in this Confirmation Order.

78. **Plan Modifications.** The Plan Modifications do not materially adversely affect the treatment of any Claim against or Interest in any of the Debtors under the Plan, and are hereby

approved pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019. Pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or the resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that the Holders of Claims or Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan

79. **Deemed Acceptance of Plan.** In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Interests who voted to accept the Plan or who are conclusively presumed to accept the Plan are deemed to have accepted the Plan, as modified by the Plan Modifications. No Holder of a Claim or Interest shall be permitted to change its vote as a consequence of the Plan Modifications.

80. **No Action Required.** Under the provisions of the Delaware General Corporation Law, including section 303 thereof, and the comparable provisions of the Delaware Limited Liability Company Act, and section 1142(b) of the Bankruptcy Code, no action of the respective directors, equity holders, managers, or members of the Debtors is required to authorize the Debtors to enter into, execute, deliver, file, adopt, amend, restate, consummate, or effectuate, as the case may be, the Plan, the Restructuring Transactions, and any contract, assignment, certificate, instrument, or other document to be executed, delivered, adopted, or amended in connection with the implementation of the Plan, including the Sale Transaction Documentation.

81. **Binding Effect.** Subject to Article VIII of the Plan and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the Plan Supplement are immediately effective and enforceable and deemed binding on the Debtors, any and all Holders of Claims or Interests (irrespective of

whether the Holders of such Claims or Interests have, or are deemed to have, accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunction described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims and debts shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

82. Pursuant to section 1141 of the Bankruptcy Code, subject to the occurrence of the Effective Date and subject to the terms of the Plan and this Confirmation Order, all prior orders entered in these Chapter 11 Cases, all documents and agreements executed by the Debtors as authorized and directed thereunder and all motions or requests for relief by the Debtors pending before this Court as of the Effective Date shall be binding upon and shall inure to the benefit of the Debtors as applicable, and their respective successors and assigns.

83. **Effectiveness of All Actions.** All actions contemplated by the Plan, including all actions in connection with the Sale Transaction, are hereby effective and authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to, or order of the Court, or further action by the respective officers, directors, managers, members, or equity holders of the Debtors and with the effect that such actions had been taken by unanimous action of such officers, directors, managers, members, or equity holders.

84. **General Settlement of Claims.** Except as otherwise expressly provided in the Plan, pursuant to section 1123 of the Bankruptcy Code, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan and the Sale Transaction Documentation, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released,

settled, compromised, or otherwise resolved pursuant to the Plan, including those resolved by the UCC Settlement. The Plan is hereby deemed a motion, proposed by the Debtors, to approve the good-faith compromise and settlement of all such Claims, Interests, Causes of Action, and controversies, and the entry of this Confirmation Order shall constitute the Court's approval of such compromise and settlement under section 1123 of the Bankruptcy Code, as well as a finding by the Court that such settlement and compromise is fair, equitable, reasonable, and in the best interests of the Debtors and their Estates.

85. **The UCC Settlement.** Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, the Plan incorporates and implements the UCC Settlement, a compromise and settlement of numerous issues and disputes between and among the Debtors, the Committee, the Holders of Class 3 Term Loan Claims, and the DIP Lenders designed to achieve a reasonable and effective resolution of the Chapter 11 Cases. Except as otherwise expressly set forth in the Plan, the UCC Settlement constitutes a settlement of all potential issues and Claims between and among the Debtors, the Committee, the Holders of Class 3 Term Loan Claims, and the DIP Lenders.

86. **Sources of Plan Consideration.** Cash on hand, borrowings under the DIP Facility, the Distributable Proceeds, if any, the Wind Down Amount, the Debtors' rights under the Sale Transaction Documentation, payments made directly by the Purchaser on account of any Assumed Liabilities under the Sale Transaction Documentation, payments of Cure Costs made by the Purchaser pursuant to sections 365 or 1123 of the Bankruptcy Code, the return of any utility deposits as set forth in the Utility Orders, and all Causes of Action not previously settled, released, or exculpated under the Plan, if any, shall be used to fund the distributions to Holders of Allowed Claims against the Debtors in accordance with the treatment of such Claims and subject to the

terms provided in the Plan. Unless otherwise agreed in writing by the Debtors and the Purchaser, distributions required by the Plan on account of Allowed Claims that are Assumed Liabilities shall be the sole responsibility of the Purchaser to the extent such Claim is Allowed against the Debtors.

87. **Restructuring Transactions.** The Debtors, the Plan Administrator, and the Purchaser are authorized, without further order of the Court, subject to the terms of the Restructuring Support Agreement, to take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Restructuring Transactions under or in connection with the Plan and Sale Transaction Documentation that are consistent with and pursuant to the terms and conditions of the Plan, the Restructuring Support Agreement, and the Sale Transaction Documentation, including: (a) the execution and delivery of all appropriate agreements or other documents of merger, consolidation, sale, restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan; (c) rejection, assumption, or assumption and assignment, as applicable, of Executory Contracts and Unexpired Leases; (d) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable state Law; and (e) any transaction described in the Description of Transactions Steps, if applicable.

88. All actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including the Restructuring Transactions are hereby authorized.

89. **Vesting of Assets.** Except as otherwise provided in this Confirmation Order, the Plan, the Sale Transaction Documentation, or any agreement, instrument, or other document incorporated therein or in the Plan Supplement, on the Effective Date, the Retained Assets shall vest in the Debtors for the purpose of liquidating the Estates, free and clear of all Liens, Claims, charges, and other encumbrances. For the avoidance of doubt, all Transferred Causes of Action were transferred to the Purchaser in the Sale Transaction, and the Retained Causes of Action shall vest in the Debtors on the Effective Date for prosecution, settlement, or other action as determined by the Plan Administrator.

90. On and after the Effective Date, except as otherwise provided in the Plan or this Confirmation Order, the Plan Administrator may operate the Debtors' businesses and use, acquire, or dispose of property and, as applicable, compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

91. **Plan Administrator.** The Plan Administrator shall retain and have all the rights, powers, and duties necessary to carry out his or her responsibilities under the Plan and as otherwise provided in this Confirmation Order.

92. The Plan Administrator shall act for the Debtors in the same fiduciary capacity as applicable to a board of managers and officers, subject to the provisions hereof (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same). On the Effective Date, the authority, power, and incumbency of the persons acting as managers and officers of the Debtors shall be deemed to have resigned, solely in their capacities as such, and a representative of the Plan Administrator shall be appointed as the sole manager and sole officer of the Debtors and shall succeed to the powers of the Debtors'

managers and officers. From and after the Effective Date, the Plan Administrator shall be the sole representative of, and shall act for, the Debtors. For the avoidance of doubt, the foregoing shall not limit the authority of the Debtors or the Plan Administrator, as applicable, to continue the employment any former manager or officer.

93. The powers of the Plan Administrator shall include any and all powers and authority to implement the Plan and to make distributions thereunder and wind down the businesses and affairs of the Debtors, including: (i) liquidating, receiving, holding, investing, supervising, and protecting the assets of the Debtors remaining after consummation of the Sale Transaction; (ii) taking all steps to execute all instruments and documents necessary to effectuate the distributions to be made under the Plan; (iii) making distributions as contemplated under the Plan; (iv) establishing and maintaining bank accounts in the name of the Debtors; (v) subject to the terms set forth herein, employing, retaining, terminating, or replacing professionals to represent it with respect to its responsibilities or otherwise effectuating the Plan to the extent necessary; (vi) paying all reasonable fees, expenses, debts, charges, and liabilities of the Debtors; (vii) administering and paying taxes of the Debtors, including filing tax returns; (viii) representing the interests of the Debtors before any taxing authority in all matters, including any action, suit, proceeding or audit; and (ix) exercising such other powers as may be vested in it pursuant to order of the Court or pursuant to the Plan, or as it reasonably deems to be necessary and proper to carry out the provisions of the Plan.

94. **Wind-Down.** On and after the Effective Date, the Plan Administrator will be authorized to implement the Plan and any applicable orders of the Court, and the Plan Administrator shall have the power and authority to take any action necessary to wind down and dissolve the Debtors' Estates.

95. As soon as practicable after the Effective Date, the Plan Administrator shall:

(a) cause the Debtors to comply with, and abide by, the terms of the Plan and any other documents contemplated thereby; (b) take any actions necessary to wind down the Debtors' Estates; and (c) take such other actions as the Plan Administrator may determine to be necessary or desirable to carry out the purposes of the Plan. From and after the Effective Date, except as set forth herein, the Debtors (x) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, and (y) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date.

96. On or prior to the Effective Date, the Debtors shall retain the Wind-Down Amount in accordance with the terms of the Sale Transaction Documentation. The Wind-Down Amount shall be used by the Plan Administrator solely to satisfy the distributions set forth herein, the expenses of the Debtors and the Plan Administrator as set forth in the Plan; provided that all costs and expenses associated with the winding down of the Debtors and the storage of records and documents shall constitute expenses of the Debtors and shall be paid from the Wind-Down Amount. In no event shall the Plan Administrator be required or permitted to use its personal funds or assets for such purposes.

97. **Cancellation of Notes, Instruments, Certificates, and Other Documents.** On the Effective Date, except as otherwise specifically provided for in the Plan or to the extent otherwise assumed by the Purchaser: (a) the obligations of any Debtor under any certificate, share, note, bond, indenture, purchase right, or other instrument or document, directly or indirectly

evidencing or creating any indebtedness or obligation of giving rise to any Claim shall be cancelled and deemed surrendered as to the Debtors, and the Debtors shall not have any continuing obligations thereunder; and (b) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificates or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, indenture, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtors shall be fully released, settled, and compromised; *provided, however*, that notwithstanding anything to the contrary contained in the Plan, any indenture or agreement that governs the rights of the DIP Agent and the Term Loan Agent shall continue in effect to allow the DIP Agent or the Term Loan Agent, as applicable, to (i) enforce its rights, Claims, and interests (and those of any predecessor or successor thereto) vis-à-vis any parties other than the Debtors, (ii) receive distributions under the Plan and to distribute them to Holders of Allowed DIP Facility Claims and Term Loan Claims, as applicable, in accordance with the terms of such agreements, (iii) enforce its rights to payment of fees, expenses, and indemnification obligations as against any money or property distributable to Holders of Allowed DIP Facility Claims and Term Loan Claims, as applicable, including any rights to priority of payment and/or to exercise charging liens, and (iv) appear and be heard in these Chapter 11 Cases or in any proceeding in the Court, including to enforce any obligation owed to the DIP Agent, the Term Loan Agent, or Holders of DIP Facility Claims and Term Loan Claims under the Plan, as applicable.

98. **Corporate Action.** Upon the Effective Date, by virtue of the solicitation of votes in favor of the Plan and entry of this Confirmation Order, all actions contemplated by the Plan (including any action to be undertaken by the Debtors or the Plan Administrator, as applicable)

shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, the Debtors, the Plan Administrator, or any other Entity or Person. All matters provided for in the Plan involving the corporate structure of the Debtors shall be deemed to have occurred and shall be in effect, without any requirement of further action by the Debtors or the Debtors' Estates.

99. Upon the Effective Date or as soon as reasonably practicable thereafter, after making all distributions provided for under the Plan, the Debtors shall be deemed to have been dissolved and terminated, except as necessary to satisfy their obligations under the Plan. The directors, managers, and officers of the Debtors shall be authorized to execute, deliver, File, or record such contracts, instruments, and other agreements or documents and take such other actions as they may deem necessary or appropriate to implement the provisions of Article IV.K of the Plan.

100. The authorizations and approvals contemplated by Article IV.K of the Plan shall be effective notwithstanding any requirements under applicable nonbankruptcy law.

101. **Distributions.** The procedures governing distributions contained in Article VI of the Plan shall be, and hereby are, approved in their entirety. Except as otherwise set forth in the Plan or this Confirmation Order, the Debtors or the Disbursing Agent, as applicable, shall make all distributions required under the Plan and the timing of distributions required under the Plan shall be made in accordance with and as set forth in the Plan.

102. **Claims Register.** Any Claim or Interest that has been paid or satisfied, or any Claim or Interest that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtors, without an objection having to be Filed and without any further notice to or action, order, or approval of the Court. The Debtors shall provide any Holder of such a Claim

or Interest with fourteen days' notice prior to the Claim or Interest being adjusted or expunged from the Claims Register as the result of a Claim or Interest being paid, satisfied, amended or superseded.

103. **Causes of Action.** Pursuant to the Sale Transaction Documentation, the Debtors assigned and transferred to the Purchaser all of the Transferred Causes of Action pursuant to the Sale Transaction Documentation in connection with the Sale Transaction. For the avoidance of doubt, the Debtors or the Plan Administrator, as applicable, will retain the right to enforce the terms of the Sale Transaction Documentation. Any Retained Causes of Action shall remain with the Debtors and shall vest with the Plan Administrator as of the Effective Date.

104. **Subordination.** Except as otherwise expressly provided in the Plan, this Confirmation Order, and any other order of the Court: (a) the classification and manner of satisfying all Claims and Interests under the Plan takes into consideration all subordination rights, whether arising by contract or under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise; (b) any distributions under the Plan to Holders shall be received and retained free from any obligations to hold or transfer the same to any other Holder and shall not be subject to levy, garnishment, attachment, or other legal process by any Holder by reason of claimed contractual subordination rights; and (c) any such subordination rights shall be waived, and this Confirmation Order shall constitute an injunction enjoining any Entity from enforcing or attempting to enforce any contractual, legal, or equitable subordination rights to property distributed under the Plan, in each case other than as provided in the Plan.

105. **Release of Liens.** Except as otherwise specifically provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all

mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, and compromised, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Debtors and their successors and assigns without any further approval or order of the Court and without any action or Filing being required to be made by the Debtors. In addition, the Term Loan Agent and the DIP Agent shall be authorized to execute and deliver all documents reasonably requested by the Debtors or the Plan Administrator to evidence the release of such mortgages, deeds of trust, Liens, pledges, and other security interests and shall authorize the Debtors to file UCC-3 termination statements (to the extent applicable) with respect thereto.

106. **Compromise of Controversies.** Pursuant to section 1123 of the Bankruptcy Code and in consideration for the distributions and other benefits, including releases, provided pursuant to the Plan, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of this Confirmation Order shall constitute the Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Court, after the Effective Date, the Plan Administrator may compromise and settle Claims against, and Interests in, the Debtors and their Estates and Causes of Action against other Entities.

All distributions made to Holders of Allowed Claims and Interests in any Class are intended to be and shall be final.

107. **Operations After Closing.** On and after the Effective Date, except as otherwise provided in the Plan, the Plan Administrator may operate the Debtors' businesses and may use, acquire, or dispose of property and, as applicable, compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

108. **Rejection of Contracts and Leases.** Except as otherwise provided in the Plan or in the Sale Transaction Documentation, each Executory Contract and Unexpired Lease (other than any Executory Contract or Unexpired Lease previously rejected, assumed, or assumed and assigned), any employee benefit plans, severance plans, and other Executory Contracts under which employee obligations arise, shall be deemed automatically rejected on the Effective Date pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (a) is specifically described in the Plan as to be assumed and assigned to the Plan Administrator, or other Entity, in connection with Confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned to the Plan Administrator, or other Entity, pursuant to the Plan or the Plan Supplement; (b) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Effective Date; (c) is to be assumed by the Debtors or assumed by the Debtors and assigned to the Purchaser or another third party, as applicable, in connection with the Sale Transaction following the consummation thereof; (d) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; (e) is a D&O Policy; or (f) is the Sale Transaction Documentation.

109. Entry of this Confirmation Order constitutes an approval of such assumptions, assignments, and rejections, including the assumption and assignment of the Executory Contracts or Unexpired Leases as provided in the Sale Transaction Documentation and the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Any motions to assume Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by a Final Order of the Court on or after the Effective Date.

110. Except as otherwise provided in this Confirmation Order, any and all objections or reservations of rights in connection with the rejection of an Executory Contract or Unexpired Lease under the Plan, if any, are overruled on their merits.

111. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases. Any monetary defaults under an Executory Contract or Unexpired Lease to be assumed by the Debtors as set forth in Article V.A of the Plan, as reflected on the Cure Notice shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of such Cure Costs in Cash on or about the Effective Date, subject to the limitations described below and set forth in Article IV.C of the Plan, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (a) the Cure Costs, (b) the ability of any assignee, as applicable, to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (c) any other matter pertaining to assumption, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption.

112. Assumption (or assumption and assignment) of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy related defaults, arising under any assumed (or assumed and assigned) Executory Contract or Unexpired Lease at any time before the date that the Debtors assume such Executory Contract or Unexpired Lease. All liabilities reflected in the Schedules and any Proof of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Court.

113. **Waiver.** Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, the Restructuring Support Agreement, or papers Filed with the Court before the Confirmation Date.

114. **Indemnification.** All Proofs of Claim Filed on account of an indemnification obligation to a director, officer, or employee shall automatically be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such indemnification obligation is assumed (or honored or reaffirmed, as the case may be) pursuant to the Plan, without any further notice to or action, order, or approval of the Court..

115. **Indemnification of Plan Administrator.** The Plan Administrator and all professionals retained by the Plan Administrator, each in their capacities as such, shall be deemed exculpated and indemnified, except for actual fraud, willful misconduct, or gross negligence, in

all respects by the Debtors. The Plan Administrator may obtain, at the expense of the Debtors, commercially reasonable liability or other appropriate insurance with respect to the indemnification obligations of the Debtors. The Plan Administrator may rely upon written information previously generated by the Debtors.

116. For the avoidance of doubt, notwithstanding anything to the contrary contained in this Confirmation Order or the Plan, the Plan Administrator, in its capacity as such, shall have no liability whatsoever to any party for the liabilities and/or obligations, however created, whether direct or indirect, in tort, contract, or otherwise, of the Debtors.

117. **Authorization to Consummate.** The Debtors are authorized to consummate the Plan at any time after the entry of this Confirmation Order subject to satisfaction or waiver (by the required parties) of the conditions precedent to Consummation set forth in Article IX of the Plan.

118. **Professional Compensation.** All final requests for payment of Professional Fee Claims incurred during the period from the Petition Date through the Confirmation Date shall be Filed no later than forty-five days after the Effective Date. All such final requests will be subject to approval by the Court after notice and a hearing in accordance with the procedures established by the Bankruptcy Code, Bankruptcy Rules, and prior orders of the Court, including the Interim Compensation Order, and once approved by the Court, shall be promptly paid from the Professional Fee Escrow Account up to the full Allowed amount. To the extent that funds held in the Professional Fee Escrow Account are insufficient to satisfy the amount of Professional Fee Claims owing to the Professionals, such Professionals shall have an Allowed Administrative Claim for any such deficiency, which shall be satisfied in accordance with Article II.A of the Plan.

119. As soon as possible after Confirmation and not later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the

Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust for the Professionals. Such funds shall not be considered property of the Debtors' Estates. The amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals from funds held in the Professional Fee Escrow Account as soon as reasonably practicable after such Claims are Allowed by a Final Order. When all such Allowed amounts owing to Professionals have been paid in full, any remaining amount in the Professional Fee Escrow Account shall promptly be transferred to the Plan Administrator.

120. Professionals shall reasonably estimate their unpaid Professional Fee Claims and other unpaid fees and expenses incurred before and as of the Confirmation Date, and shall deliver such estimate to the Debtors (and the Debtors shall deliver to the Ad Hoc Group Professionals) by the earlier of (a) five Business Days after the Confirmation Date and (b) two Business Days prior to the Effective Date; *provided* that such estimate shall not be considered an admission with respect to the fees and expenses of such Professional and such Professionals are not bound to any extent by the estimates. If a Professional does not provide an estimate, the Debtors may estimate the unbilled fees and expenses of such Professional.

121. Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors will, in the ordinary course of business and without any further notice to or action, order, or approval of the Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses incurred by the Debtors or the Plan Administrator. Upon the Confirmation Date, any requirement that Professionals and Ordinary Course Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code, the Interim Compensation Order, or the Ordinary Course Professionals Order, in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors and the Plan

Administrator may employ and pay any Professional or Ordinary Course Professional in the ordinary course of business without any further notice to or action, order, or approval of the Court.

122. **Payment of Fees and Expenses of Ad Hoc Term Lender Group.** Notwithstanding anything to the contrary herein, the unpaid reasonable and documented out-of-pocket fees and expenses of the DIP Agent (including its counsel) and the Ad Hoc Term Lender Group shall be paid in full, in Cash on or before the Effective Date in accordance with the Plan and the Restructuring Support Agreement and/or as required by the DIP Orders.

123. **Return of Deposits.** All utilities, including, but not limited to, any Person or Entity that received a deposit or other form of adequate assurance of performance under section 366 of the Bankruptcy Code during these Chapter 11 Cases, must return such deposit or other form of adequate assurance of performance to the Debtors or the Plan Administrator, as applicable, promptly following the occurrence of the Effective Date, if not returned or applied earlier.

124. **Release, Exculpation, Discharge, and Injunction Provisions.** The release, exculpation, discharge, injunction, opt in, and related provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all Persons and Entities to the extent provided therein except as otherwise provided in this Confirmation Order.

125. **Compensation and Benefits Programs.** On the Effective Date or as soon as reasonably practicable thereafter, the Debtors shall pay all compensation and benefit obligations under any present compensation, benefit, or incentive programs, including any programs approved pursuant to an Order of the Court, other than any compensation, benefit, and incentive obligations assumed by the Purchaser pursuant to the Sale Transaction Documentation.

126. **Mississippi Department of Revenue Matters.** Notwithstanding anything in the Plan or this Confirmation Order to the contrary:

- (i) the Mississippi Department of Revenue's (the "MDOR") setoff rights under section 553 of the Bankruptcy Code and recoupment rights, if any, are preserved;
- (ii) nothing in the Plan or this Confirmation Order shall excuse the Debtors or the Plan Administrator from any obligation under applicable Mississippi state law to timely submit returns and remit payment of taxes in the ordinary course of business, and the MDOR shall not be required to file a request for a payment of an expense described in sections 503(b)(1)(B) or (C) of the Bankruptcy Code as a condition for its being an allowed administrative expense;
- (iii) to the extent the MDOR's Priority Tax Claims, if any, are not paid in full in cash on the Effective Date, such Priority Tax Claims shall, at a minimum, be paid by regular, quarterly installment payments in cash over a period not to exceed five years after the date of the order for relief under section 301 of the Bankruptcy Code, all as required section 1129(a)(9)(C) of the Bankruptcy Code, along with non-bankruptcy interest in accordance with sections 511 and 1129(a)(9)(C) of the Bankruptcy Code and Mississippi state law, as applicable;
- (iv) MDOR shall be neither a "Released Party" nor a "Releasing Party" under the Plan;
- (v) the statutorily-mandated treatment of MDOR's Allowed Priority Tax Claims or any liabilities to MDOR described in section 503(b)(1)(B) and (C) of the Bankruptcy Code shall not be considered a settlement or compromise under Bankruptcy Rule 9019;
- (vi) solely to the extent permitted by Bankruptcy Rule 7015, the MDOR may timely amend any Proof of Claim against any Debtor after the Effective Date with respect to (a) a pending audit, (b) an audit that may be performed, with respect to any pre or post-petition tax return, or (c) a filed tax return.

127. **Texas Comptroller.** The following provisions of this Confirmation Order will govern the treatment of the Texas Comptroller of Public Accounts (the "Texas Comptroller") concerning the duties and responsibilities of the Debtors relating to all unclaimed property presumed abandoned (the "Texas Unclaimed Property") under Texas Property Code, Title 6, Chapters 72-76 and other applicable Texas laws (the "Texas Unclaimed Property Laws");

128. On or within thirty (30) days after the Effective Date, the Debtors shall review their books and records and turn over to the Texas Comptroller any known, self-identified Texas

Unclaimed Property presumed abandoned before the Petition Date and reflected in property reports delivered by the Debtors to the Texas Comptroller under the Texas Unclaimed Property Laws (the “Reported Unclaimed Property”). With respect to such Reported Unclaimed Property, the Texas Comptroller will not seek payment of any interest or penalty by the Debtors.

129. Notwithstanding section 362 of the Bankruptcy Code, after the Effective Date, the Texas Comptroller and its agents may commence an audit of the Debtors in accordance with the Texas Unclaimed Property Laws (the “Texas Unclaimed Property Audit”) and pursue recovery of any unremitted Texas Unclaimed Property identified pursuant to the Texas Unclaimed Property Audit. The Debtors shall reasonably cooperate with the Auditors to enable them to accurately and timely perform the Texas Unclaimed Property Audit by making the entities’ employees, professionals, books, and records available during normal business hours.

130. The Debtors’ rights and defenses with respect to any allegations and claims asserted against the Debtors arising from or relating to the Texas Unclaimed Property Audit are hereby reserved; provided, however, that upon agreement between the Debtors and the Texas Comptroller or a final nonappealable determination by a court or other tribunal with jurisdiction as to the amount of unremitted Texas Unclaimed Property, if any, that is due in connection with the Texas Unclaimed Property Audit, the Debtors shall turn over such unremitted Texas Unclaimed Property to the Texas Comptroller.

131. Subject to the Bar Date Order and Bankruptcy Rule 7015, the Texas Comptroller may timely file or amend any Proofs of Claim in these Chapter 11 Cases following the Effective Date as a result of the filing of any property reports or in the ordinary course of the Unclaimed Property Audit.

132. Nothing herein precludes Debtors from compliance with continued obligations pursuant to Texas Unclaimed Property Laws.

133. **IRP Claimants.** Notwithstanding anything in the Plan or this Confirmation Order to the contrary, the injunction set forth by Article VIII.H of the Plan shall not prohibit certain plaintiffs (the “IRP Claimants”)⁴ from effectuating discovery on the Debtors and/or the Plan Administrator, as applicable, in connection with the action titled *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, MDL No. 2724 (E.D. Penn.) (the “Generics MDL”); *provided* that the rights of any party, including the Debtors and the Plan Administrator, to oppose such discovery are fully preserved.

134. Notwithstanding anything in the Plan or this Confirmation Order to the contrary, none of the plaintiffs in the Generics MDL, including the IRP Claimants, shall be deemed or treated as “Releasing Parties” under the Plan, except as otherwise agreed by the applicable plaintiff, including by such party “opting in” to granting the Third-Party Release on their applicable Ballot, and none of the Debtor Release set forth in Article VIII.E of the Plan, the Third-Party Release set forth in Article VIII.F of the Plan, the Injunction set forth in Article VIII.H of the Plan, and any discharges shall apply to the claims asserted in the Generics MDL; *provided* that nothing in the foregoing shall or shall be deemed to limit, modify, or otherwise adversely impact the Exculpation set forth in Article VIII.G of the Plan.

135. **Opt-Outs Actions.** Notwithstanding anything to the contrary in the Plan or this Confirmation Order, or any ancillary document related thereto, nothing herein or therein does, shall, or may be construed to release, enjoin, or otherwise adversely impact the claims and causes

⁴ The IRP Claimants consist of Reliable Pharmacy, Inc., Halliday’s & Koivisto’s Pharmacy, Russell’s Mr. Discount Drugs, Inc., Falconer Pharmacy, Inc., Chet Johnson Drug, Inc., and North Sunflower Medical Center, on behalf of themselves and as representatives of certain classes pending class certification under Fed. R. Civ. P. 23.

of action asserted against any non-Debtor defendant now or hereafter named in the securities class action litigations captioned as (i) AQR Funds – AQR Multi-Strategy Alternative Fund, *et al.* v. Akorn, Inc., *et al.*, Civ. A. No. 1:20-cv-00434 (N.D. Ill.), (ii) Magnetar Constellation Fund II-PRA LP, *et al.* v. Akorn, Inc., *et al.*, Civ. A. No. 1:19-cv-08418 (N.D. Ill.), (iii) Manikay Master Fund, LP, *et al.* v. Akorn, Inc., *et al.*, Civ. A. No. 1:19-cv-04651 (N.D. Ill.), and (iv) Twin Master Fund, Ltd., *et al.* v. Akorn, Inc., *et al.*, Civ. A. No. 1:19-cv-03648 (N.D. Ill.) (the “Opt-Out Actions”), it being understood that any such claims are fully and expressly preserved, and any recovery on account thereof may be secured from proceeds of available insurance, if any; *provided* that nothing in the foregoing shall or shall be deemed to limit, modify, or otherwise adversely impact (a) the Exculpation set forth in Article VIII.G of the Plan or (b) with respect to matters other than those related to the Opt-Out Actions, (x) the releases by the Debtors set forth in Article VIII.E of the Plan and (y) the Injunction set forth in Article VIII.H of the Plan. For the avoidance of doubt, each of the plaintiffs in the Opt-Out Actions shall be neither a “Releasing Party” nor a “Released Party” under the Plan.

136. **Louisiana Department of Revenue Matters.** Notwithstanding anything in the Plan or this Confirmation Order to the contrary:

- (i) the Louisiana Department of Revenue’s (the “LDR”) setoff rights under section 553 of the Bankruptcy Code and recoupment rights, if any, are preserved;
- (ii) nothing in the Plan or this Confirmation Order shall excuse the Debtors or the Plan Administrator from any obligation under applicable Louisiana state law to timely submit returns (including, for the avoidance of doubt, any delinquent returns, which delinquent returns shall be filed by the later of (a) 90 days after the Effective Date or (b) the applicable due date under Louisiana law) and remit payment of taxes in the ordinary course of business, and the LDR shall not be required to file a request for a payment of an expense described in sections 503(b)(1)(B) or (C) of the Bankruptcy Code as a condition for its being an allowed administrative expense. For the avoidance of doubt, the tax returns due to the Louisiana Department of

Revenue in the ordinary course of business include, without limitation, a 2019 Louisiana Corporate Return and 2020 Louisiana Corporate Return;

- (iii) to the extent the LDR's Priority Tax Claims, if any, are not paid in full in cash on the Effective Date, such Priority Tax Claims shall, at a minimum, be paid by regular, quarterly installment payments (to commence on the first day of the first calendar quarter following the Effective Date) in cash over a period not to exceed five years after the date of the order for relief under section 301 of the Bankruptcy Code, all as required section 1129(a)(9)(C) of the Bankruptcy Code, along with non-bankruptcy interest in accordance with sections 511 and 1129(a)(9)(C) of the Bankruptcy Code and Louisiana state law, as applicable;
- (iv) LDR shall be neither a "Released Party" nor a "Releasing Party" under the Plan, and no non-Debtor liable with any Debtor to the LDR for trust taxes pursuant to La. Stat. Rev. Ann. § 47:1561.1 shall be released from such liability, if any, pursuant to the Plan or this Confirmation Order;
- (v) the statutorily-mandated treatment of LDR's Allowed Priority Tax Claims or any liabilities to LDR described in section 503(b)(1)(B) and (C) of the Bankruptcy Code shall not be considered a settlement or compromise under Bankruptcy Rule 9019;
- (vi) solely to the extent permitted by Bankruptcy Rule 7015, the LDR may timely amend any Proof of Claim against any Debtor after the Effective Date with respect to (a) a pending audit, (b) an audit that may be performed, with respect to any pre or post-petition tax return, or (c) a filed tax return; *provided* that, in the case of subpart (c), LDR may amend any timely filed proof of claim to which the filed return relates without leave of the applicable Debtors, the Plan Administrator, or the Court;
- (vii) all tax returns filed by the Plan Administrator with the LDR shall be filed at the following address: Louisiana Department of Revenue, Bankruptcy Section, Collection Division, Attn: Bankruptcy Section Supervisor, Post Office Box 66658, Baton Rouge, LA 70896-6658, and this address shall be the designated address for notice and service of any request for determination of a tax liability pursuant to section 505 of the Bankruptcy Code;
- (viii) on and after the Effective Date, LDR's Allowed Administrative Claims, if any, may accrue statutory interest and penalty in accordance with applicable law; and
- (ix) the Debtors and the Plan Administrator shall be required to file all required documentation with the Louisiana Secretary of State and otherwise comply

with applicable Louisiana law with respect to withdrawal of Debtors registered to do business in the state of Louisiana therefrom.

137. **Certain Chubb Matters.** As used in this Confirmation Order: “Chubb Insurance Contracts” means all insurance policies, including any D&O Policies, that have been issued by the Chubb Companies to, or provide coverage, benefits or proceeds to any of the Debtors (or their predecessors) at any time, and all agreements, documents or instruments relating thereto; and “Chubb Companies” means ACE American Insurance Company, Westchester Fire Insurance Company, Illinois Union Insurance Company, Federal Insurance Company, Chubb Custom Insurance Company and each of their U.S.-based affiliates and successors. Notwithstanding anything to the contrary in the Plan, the Plan Supplement, the Disclosure Statement, the Restructuring Support Agreement, the Sale Transaction Documentation, Bidding Procedures Order, any Cure Notice, the Sale Order, the Confirmation Order, any bar date notice or claim objection, any other document related to any of the foregoing or any other order of the Bankruptcy Court (including, without limitation, any other provision that purports to be preemptory or supervening, grants an injunction, discharge or release, confers bankruptcy court jurisdiction or requires a party to opt out of any releases): (a) on the Plan Effective Date, the Chubb Insurance Contracts (solely to the extent not already assumed and assigned to the Purchaser pursuant to paragraph 27(ii) of the Sale Order) shall vest unaltered and in their entirety in the Debtors and the Debtors shall succeed to all of rights and obligations such that the Debtors shall remain liable in full for all of the Debtors’ obligations under the Chubb Insurance Contracts, regardless of whether such obligations arise before or after the Effective Date and without the need for any of the Chubb Companies to file a Proof of Claim, Administrative Claim, or to object to any Cure Notice; and (b) the automatic stay of Bankruptcy Code section 362(a) and the injunctions set forth in Article VIII.H. of the Plan, if and to the extent applicable, shall be deemed lifted without further order of

this Bankruptcy Court, solely to permit: (I) claimants with valid workers' compensation claims or direct action claims against the Chubb Companies under applicable non-bankruptcy law to proceed with their claims; (II) the Chubb Companies to administer, handle, defend, settle, and/or pay, in the ordinary course of business and without further order of this Bankruptcy Court, (A) workers' compensation claims, (B) claims where a claimant asserts a direct claim against the Chubb Companies under applicable non-bankruptcy law, or an order has been entered by this Bankruptcy Court granting a claimant relief from the automatic stay to proceed with its claim, and (C) all costs in relation to each of the foregoing; (III) the Chubb Companies to draw against any or all of the collateral or security provided by or on behalf of the Debtors at any time and to hold the proceeds thereof as security for the obligations of the Debtors and/or apply such proceeds to the obligations of the Debtors under the applicable Chubb Insurance Contracts, in such order as the Chubb Companies may determine; and (IV) the Chubb Companies to cancel any Chubb Insurance Contracts, and take, in their sole discretion, other actions relating to the Chubb Insurance Contracts (including setting off amounts due by the Debtors against any amounts due to the Debtors or otherwise applying any collateral or security provided by the Debtors, regardless of when any such amounts arise, become due or are provided), to the extent permissible under applicable non-bankruptcy law, and in accordance with the terms of the Chubb Insurance Contracts.

138. **Compliance with Tax Requirements.** In connection with the Plan, to the extent applicable, the Debtors shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Disbursing Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the

distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Debtors reserve the right to allocate all distributions made under the Plan in compliance with applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances. All Persons holding Claims or Interests shall be required to provide any information necessary to effect information reporting and the withholding of such taxes. Notwithstanding any other provision of the Plan to the contrary, each Holder of an Allowed Claim or Allowed Interest shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding, and other tax obligations, on account of such distribution.

139. **Exemption from Certain Taxes and Fees.** To the maximum extent provided by section 1146(a) of the Bankruptcy Code, any post-Confirmation transfer from any Entity pursuant to, in contemplation of, or in connection with the Plan, the Sale Transaction, or the Sale Transaction Documentation or pursuant to: (i) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors; or (ii) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instruments of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, in each case to the extent permitted by applicable bankruptcy law, and the appropriate state or local government

officials or agents shall forego collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment. The Court shall retain specific jurisdiction with respect to these matters.

140. **Insurance Policies.** Notwithstanding anything to the contrary in the Plan or this Confirmation Order, Confirmation and Consummation of the Plan shall not limit or affect the rights of any third-party beneficiary or other covered party of any of the Debtors' insurance policies with respect to such policies (including the D&O Policies), nor shall anything contained herein or therein (a) constitute or be deemed a waiver by such insurers of any rights or defenses, including coverage defenses, held by such insurers under any insurance policy, applicable law, equity, or otherwise, or (b) establish, determine, or otherwise imply any liability or obligation, including any coverage obligation, of any insurer. For purposes of the Plan and this Confirmation Order, the definition of "D&O Policies" is hereby amended as follows:

"D&O Policies" means all insurance policies (including any "tail policy" or run-off endorsement) that have been issued at any time to any of the Debtors as a first named insured providing directors', members', trustees', officers', or managers' liability coverage and all agreements, documents, or instruments relating thereto.

141. **United States Matters.** Notwithstanding any provision to the contrary in the Plan, this Confirmation Order or any implementing Plan documents (collectively, the "Documents"): As to the United States, nothing in the Documents shall: (1) discharge, release, enjoin, impair or otherwise preclude (a) any liability to the United States that is not a "claim" within the meaning of section 101(5) of the Bankruptcy Code, (b) any claim of the United States arising after the Confirmation Date, or (c) any liability of any entity or person under police or regulatory statutes or regulations to any Governmental Unit (as defined by section 101(27) of the Bankruptcy Code) as the owner, lessor, lessee or operator of property or rights to property that

such entity owns, operates or leases after the Confirmation Date; (2) release, nullify, preclude or enjoin the enforcement of any police or regulatory power; (3) modify the scope of Bankruptcy Code Section 525; (4) authorize the assumption, sale, assignment or other transfer of any federal (i) grants, (ii) grant funds, (iii) contracts, including but not limited to, Department of Veterans Affairs Federal Supply Schedule Contract Numbers V797P-5209B and 36F79720D0129, (iv) property, including but not limited to, intellectual property and patents, (v) leases, (vi) agreements, including but not limited to, any Medicare Coverage Gap Discount Program Agreement, or other interests of the federal government (collectively, “Federal Interests”) without compliance by the Debtors and the Purchaser with all terms of the Federal Interests and with all applicable non-bankruptcy law; (5) be interpreted to set cure amounts or to require the United States to novate, approve or otherwise consent to the assumption, transfer or assignment of any Federal Interests; (6) authorize the assumption, transfer or assignment of any governmental (i) license, (ii) permit, (iii) registration, (iv) authorization or (v) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements, obligations and approvals under non-bankruptcy laws; (7) confer exclusive jurisdiction to the Bankruptcy Court with respect to the Federal Interests, claims, liabilities and Causes of Action, except to the extent set forth in 28 U.S.C. § 1334 (as limited by any other provisions of the United States Code); (8) waive, alter or otherwise limit the United States’ property rights with respect to the Federal Interests, including but not limited to, inventory, patents, intellectual property, licenses, and data; (9) release, exculpate, enjoin, impair or discharge any non-Debtor from any claim, liability, suit, right or Cause of Action of the United States; (10) affect any setoff or recoupment rights of the United States and such rights are preserved (provided that the Debtors expressly reserve all defenses to any such rights of setoff or recoupment; provided, further, that, for the avoidance of doubt, the foregoing

shall be sufficient to preserve any setoff or recoupment rights of the United States notwithstanding Article VIII.H of the Plan); (11) require the United States to file an administrative claim in order to receive payment for any liability described in Section 503(b)(1)(B) and (C) pursuant to Section 503(b)(1)(D) of the Bankruptcy Code; (12) constitute an approval or consent by the United States without compliance with all applicable legal requirements and approvals under non-bankruptcy law; (13) be construed as a compromise or settlement of any liability, claim, Cause of Action or interest of the United States; (14) modify the scope of Section 502 of the Bankruptcy Code with respect to the claims of the United States; (15) cause the filing of any claim, including but not limited to amended claims, by the United States to be automatically disallowed and expunged on or after the Effective Date; (16) be deemed to alter the date of any Plan distribution to the United States, (17) require rejection damage claims relating to Federal Interests (a) to be filed by a deadline other than the later of (x) the Governmental Bar Date (as defined in the Bar Date Order) or (y) thirty days after the effective date of the rejection of such Federal Interest or (b) alter the treatment of such rejection claims under the Bankruptcy Code; (18) make prospective determinations as to the pre-petition nature of any Federal Interest or (19) bar or estop the United States from asserting against the Debtors, their successors or assigns, their property or their assets or estates, any claims, liabilities and obligations assumed by the Purchaser that the United States would be entitled to assert against the Debtors or the Debtors' estates under applicable law notwithstanding such assumption. Liens on property of the Debtors and Debtors' Estates securing claims of the United States shall be retained until the claim, with interest, if any, is paid in full. Administrative expense claims of the United States allowed pursuant to the Plan or the Bankruptcy Code shall accrue such interest and penalties as provided by non-bankruptcy law until paid in full. Priority Tax Claims of the United States allowed pursuant to the Plan or the Bankruptcy Code will

be paid in accordance with Section 1129(a)(9)(C) of the Bankruptcy Code. To the extent allowed Priority Tax Claims (including any penalties, interest or additions to tax entitled to priority under the Bankruptcy Code) are not paid in full in cash on the Effective Date, then such Priority Tax Claims shall accrue interest commencing on the Effective Date at the rate set forth in Section 511 of the Bankruptcy Code. Moreover, nothing shall effect a release, injunction or otherwise preclude any claim whatsoever against any Debtor or any of the Debtors' Estates by or on behalf of the United States for any liability arising a) out of pre-petition or post-petition tax periods for which a return has not been filed or b) as a result of any pending audit or audit that may be performed with respect to any pre-petition or post-petition tax period for which a claim is or will be Allowed. Further, nothing shall enjoin the United States from amending any claim to the extent permitted by applicable law against any Debtor or any of the Debtors' Estates with respect to any tax liability a) arising out of pre-petition or post-petition tax periods for which a tax return has not been filed or b) from a pending audit or audit that may be performed with respect to any pre-petition or post-petition tax period for which a claim is or will be Allowed. Any liability arising a) out of pre-petition or post-petition tax periods for which a return has not been filed or b) as a result of a pending audit or audit which may be performed with respect to any pre-petition or post-petition tax period shall, if Allowed, be paid in accordance with 1129(a)(9)(A) and (C) of the Bankruptcy Code. Without limiting the foregoing but for the avoidance of doubt, nothing contained in the Documents shall be deemed to bind the United States to any characterization of any transaction for tax purposes or to determine the tax liability of any person or entity, including, but not limited to, the Debtors and the Debtors' estates, nor shall the Documents be deemed to have determined the federal tax treatment of any item, distribution, or entity, including the federal tax consequences of this Plan, nor shall anything in the Documents be deemed to have conferred jurisdiction upon

the Bankruptcy Court to make determinations as to federal tax liability and federal tax treatment except as provided under Section 505 of the Bankruptcy Code.

142. **Documents, Mortgages, and Instruments.** Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring Transactions, and this Confirmation Order.

143. **Continued Effect of Stays and Injunction.** Unless otherwise provided in the Plan or this Confirmation Order, all injunctions or stays in effect in these Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or this Confirmation Order shall remain in full force and effect in accordance with their terms; *provided*, for the avoidance of doubt, that nothing in the Plan or this Confirmation Order shall prejudice the rights of parties in interest to seek relief from the automatic stay pursuant to section 362(d) of the Bankruptcy Code.

144. **Nonseverability of Plan Provisions Upon Confirmation.** Each term and provision of the Plan is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the consent of the Debtors, the Required Consenting Term Loan Lenders, the DIP Lenders, and the DIP Agent (to the extent of its consent right set forth in the DIP Loan Documents (if any)); and (c) nonseverable and mutually dependent.

145. **Notice of Subsequent Pleadings.** Except as otherwise provided in the Plan or in this Confirmation Order, notice of all subsequent pleadings in these Chapter 11 Cases after the Effective Date will be limited to the following parties: (a) the Debtors and their counsel; (b) the

Plan Administrator; (c) the U.S. Trustee; (d) any party known to be directly affected by the relief sought by such pleadings; and (e) any party that specifically requests additional notice in writing to the Debtors or the Plan Administrator, as applicable, or files a request for notice under Bankruptcy Rule 2002 after the Effective Date.

146. **Post-Confirmation Reports.** After the Effective Date, the Debtors shall not have any obligation to file with the Court or serve on any parties reports that the Debtors were obligated to file under the Bankruptcy Code or a Court order; *provided, however*, that the Debtors will comply with the U.S. Trustee's quarterly reporting requirements until the earliest of the applicable Debtor's Chapter 11 Case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

147. **Post-Confirmation Modifications.** Without need for further order or authorization of the Court, the Debtors are authorized to make any and all modifications to any and all documents that are necessary to effectuate the Plan that do not materially modify the terms of such documents and are consistent with the Plan (subject to any applicable consents or consultation rights set forth therein). Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtors expressly reserve their respective rights to alter, amend, or modify materially the Plan with respect to such Debtors, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article X of the Plan.

148. **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 and the classifications set forth on the ballots tendered to or returned by the Holders of Claims or Interests in connection with voting on the Plan: (a) were set forth thereon solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of Claims and Interests under the Plan for distribution purposes; (c) may not be relied upon by any Holder of a Claim or Interest as representing the actual classification of such Claim or Interest under the Plan for distribution purposes; and (d) shall not be binding on the Debtors except for voting purposes.

149. **Choice of Law.** Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated herein, the laws of the State of New York, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); *provided* that corporate or limited liability company governance matters relating to the Debtors not incorporated or formed (as applicable) in the State of New York shall be governed by the laws of the state of incorporation or formation (as applicable) of the applicable Debtor. The State of New York has (a) a substantial relationship to the parties and to the underlying transactions embodied by the Plan, and (b) a material interest in the determination of matters concerning the rights, obligations, construction, and implementation of the Plan and any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan.

150. **Applicable Nonbankruptcy Law.** The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

151. **Governmental Approvals Not Required; No Revocation of Permits.** This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state, federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement. As provided in section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license of the Acquired Entities on account of the filing or pendency of the Chapter 11 Cases or the discharge of any debt owed to such governmental unit.

152. **Notices of Confirmation and Effective Date.** The Debtors shall cause notice of entry of this Confirmation Order, of the occurrence of the Effective Date, and of applicable deadlines (the “Notice of Confirmation”) to be served in accordance with Bankruptcy Rules 2002 and 3020(c) on all parties served with the Confirmation Hearing Notice within seven Business Days after the Effective Date; *provided* that no notice of any kind shall be required to be mailed or made upon any Entity to whom the Debtors mailed notice of the Confirmation Hearing, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address,” or “forwarding order expired,” or similar reason, unless the Debtors have been informed in writing by such Entity, or are otherwise aware, of that Entity’s new address. For those parties receiving electronic service, filing on the docket is deemed sufficient to satisfy such service and notice requirements.

153. No later than ten Business Days after the Effective Date, the Debtors shall cause the Notice of Confirmation, modified for publication, to be published on one occasion in *The New York Times* (national edition) and *USA Today* (national edition). Mailing and publication of the Notice of Confirmation in the time and manner set forth in this paragraph will be good, adequate, and sufficient notice under the particular circumstances and in accordance with the requirements of Bankruptcy Rules 2002 and 3020(c). No further notice is necessary.

154. The Notice of Confirmation will have the effect of an order of the Court, will constitute sufficient notice of the entry of this Confirmation Order to filing and recording officers, and will be a recordable instrument notwithstanding any contrary provision of applicable non-bankruptcy law. The above-referenced notices are adequate under the particular circumstances of these Chapter 11 Cases and no other or further notice is necessary.

155. **Dissolution of the Committee.** Except to the extent provided in the Plan, on the Effective Date, the Committee shall dissolve, and the members of the Committee and their respective officers, employees, counsel, advisors and agents shall be released and discharged from further authority, duties, responsibilities and obligations related to and arising from and in connection with the Chapter 11 Cases, except with respect to (a) prosecuting any fee applications of the Professionals for the Committee, including payment thereon, or seeking reimbursement of expenses for members of the Committee; and (b) prosecuting or participating in any appeals or stays of orders relating to the Plan until such time as such orders become Final Orders. Upon dissolution of the Committee, the retention or employment of the Committee's respective attorneys, accountants and other agents shall terminate. The Debtors shall no longer be responsible for paying any fees or expenses incurred by the members of or advisors to the Committee after the Effective Date.

156. **Effect of Non-Occurrence of Conditions to the Effective Date.** If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of the Debtors, any Holders of a Claim or Interest, or any other Entity; or (c) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, any Holders, or any other Entity in any respect.

157. **Substantial Consummation.** On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

158. **Waiver of Stay.** For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Court.

159. **References to and Omissions of Plan Provisions.** References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

160. **Headings.** Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

161. **Effect of Conflict.** This Confirmation Order supersedes any Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is

any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control.

162. **Final, Appealable Order.** This Confirmation Order is a final judgment, order, or decree for purposes of 28 U.S.C. § 158(a), and the period in which an appeal must be filed shall commence upon the entry hereof.

163. **Retention of Jurisdiction.** The Court may properly, and upon the Effective Date shall, to the full extent set forth in the Plan, retain jurisdiction over all matters arising out of, and related to, these Chapter 11 Cases, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

EXHIBIT A

Plan

Exhibit 2

Blackline

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

In re:)	
)	Chapter 11
AKORN, INC., <i>et al.</i> , ¹)	Case No. 20-11177 (KBO)
)	
Debtors.)	(Jointly Administered)
)	

**ORDER CONFIRMING THE
MODIFIED JOINT CHAPTER 11 PLAN OF
AKORN, INC. AND ITS DEBTOR AFFILIATES**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”)² having:

- a. commenced, on May 20, 2020 (the “Petition Date”), these chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief in the United States Bankruptcy Court for the District of Delaware (the “Court”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”);
- b. continued to operate their business and manage their properties during these Chapter 11 Cases as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;
- c. filed,³ on May 26, 2020, the *Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Docket No. 101], the *Disclosure Statement for Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Docket No. 102], and the *Debtors’ Motion for Entry of an Order (I) Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates, (III) Approving the Forms of Ballots and Notices in Connection*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, if any, are: Akorn, Inc. (7400); 10 Edison Street LLC (7890); 13 Edison Street LLC; Advanced Vision Research, Inc. (9046); Akorn (New Jersey), Inc. (1474); Akorn Animal Health, Inc. (6645); Akorn Ophthalmics, Inc. (6266); Akorn Sales, Inc. (7866); Clover Pharmaceuticals Corp. (3735); Covenant Pharma, Inc. (0115); Hi-Tech Pharmacal Co., Inc. (8720); Inspire Pharmaceuticals, Inc. (9022); Oak Pharmaceuticals, Inc. (6647); Olta Pharmaceuticals Corp. (3621); VersaPharm Incorporated (6739); VPI Holdings Corp. (6716); and VPI Holdings Sub, LLC. The location of the Debtors’ service address is: 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Plan, the Disclosure Statement, or the Bankruptcy Code (each as defined herein), as applicable. The rules of interpretation set forth in Article I.B. of the Plan apply.

³ Unless otherwise indicated, use of the term “filed” herein refers also to the service of the applicable document filed on the docket in these Chapter 11 Cases, as applicable.

Therewith, and (IV) Scheduling Certain Dates with Respect Thereto [Docket No. 103] (the “Disclosure Statement Motion”);

- d. obtained, on June 15, 2020, the entry of the *Order (A) Authorizing and Approving Bidding Procedures, (B) Scheduling an Auction and a Sale Hearing, (C) Approving the Form and Manner of Notice Thereof, (D) Establishing Notice and Procedures for the Assumption and Assignment of Certain Executory Contracts and Leases, and (E) Granting Related Relief* [Docket No. 181] (the “Bidding Procedures Order”), approving the *Bidding Procedures* [Docket No. 181-1] (the “Bidding Procedures”)
- e. filed, on June 30, 2020, the *Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Docket No. 258] (as amended, supplemented, or otherwise modified from time to time, the “Plan”) and the *Disclosure Statement for Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Docket No. 267] (the “Disclosure Statement”);
- f. obtained, on July 2, 2020, the entry of the *Order (I) Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Joint Chapter 11 Plan of Akorn, Inc. and its Debtor Affiliates, (III) Approving the Forms of Ballots and Notices in Connection Therewith, and (IV) Scheduling Certain Dates with Respect Thereto* [Docket No. 318] (the “Disclosure Statement Order”) approving the Disclosure Statement, solicitation procedures (the “Solicitation Procedures”), and related notices, forms, and ballots (collectively, the “Solicitation Packages”);
- g. caused the Solicitation Packages and notice of the Confirmation Hearing and the deadline for objecting to confirmation of the Plan (“Confirmation”) to be distributed on or about July 10, 2020 (the “Solicitation Date”) and July 31, 2020, in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Disclosure Statement Order, and the Solicitation Procedures, as evidenced by, among other things, the *Certificate of Service* [Docket No. 363] (the “Certificate of Solicitation”) and the *Supplemental Certificate of Service* [Docket no. 576] (together with the Certificate of Solicitation, the “Certificates of Solicitation”);
- h. caused notice of the Confirmation Hearing (the “Confirmation Hearing Notice”) to be published, on July 9, 2020, in *The New York Times* (national edition), *USA Today* (national edition), and on August 13, 2020, in *U.S. Pharmacist*, as evidenced by the *Verification of Publication* [Docket No. 337], *Proof of Publication* [Docket No. 338], and *Verification of Publication* [Docket No. 577] (collectively, the “Publication Certificates” and, together with the Certificates of Solicitation, the “Certificates”);

- i. filed, on August 7, 2020, the *Plan Supplement for Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Docket No. 434] (as modified, amended, or supplemented from time to time, the “Plan Supplement”) and caused notice of the filing of the Plan Supplement to be distributed and delivered certain solicitation and Plan Supplement documents via email and first class mail in accordance with paragraph 15 of the Disclosure Statement Order, as evidenced by, among other things, the related certificate of service [Docket Nos. 440];
- j. filed, on August 7, 2020, the *Notice of No Auction* [Docket No. 429];
- k. filed, on August 11, 2020, the *Notice of Adjournment of Confirmation Hearing and Sale Hearing* [Docket No. 438];
- l. caused the customized *Notice Regarding Executory Contracts and Unexpired Leases to be Rejected Pursuant to the Plan*, substantially in the form attached as Exhibit 9 to the Disclosure Statement Order to be served via email and overnight mail upon certain parties, on August 20, 2020, as evidenced by, among other things, the *Certificate of Service* [Docket No. 545];
- m. filed, on August 21, 2020, the *First Amended Plan Supplement for Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Docket No. 521] and caused notice of the filing of the first amended Plan Supplement to be distributed via email and first class mail in accordance with paragraph 15 of the Disclosure Statement Order, as evidenced by, among other things, the related certificate of service [Docket No. 571];
- n. filed, on August 25, 2020, the *Modified Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Docket No. 547], a copy of which is attached hereto as Exhibit A;
- o. filed, on August 28, 2020, the *Debtors’ Memorandum of Law of in Support of an Order Confirming the Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Docket No. [\[redacted\]608](#)] (the “Confirmation Brief”);
- p. filed, on August 28, 2020, the *Declaration of Leanne V. Rehder Scott Regarding the Solicitation and Tabulation of Votes on the Joint Chapter 11 Plan of Akorn, Inc. and its Debtor Affiliates* [Docket No. [\[redacted\]607](#)] (the “Voting Report”);

The Court having:

- q. entered the Bidding Procedures Order on June 15, 2020;
- r. entered the Disclosure Statement Order on July 2, 2020;
- s. set August 25, 2020 at 12:00 p.m. (prevailing Eastern Time) as the deadline for filing objections in opposition to the Plan (including any assumption of an Executory Contract or Unexpired Lease as contemplated in the Plan Supplement);

- t. set August 25, 2020 at 12:00 p.m. (prevailing Eastern Time) as the deadline for voting on the Plan;
- u. set September 1, 2020 at 10:00 a.m. (prevailing Eastern Time) as the date and time for the Confirmation Hearing, pursuant to Bankruptcy Rules 3017 and 3018 and sections 1126, 1128, and 1129 of the Bankruptcy Code;
- v. reviewed the Plan, the Disclosure Statement, the Plan Supplement, the Confirmation Brief, the Declarations, the Voting Report, the Confirmation Hearing Notice, the Certificates, the affidavits of service, and all filed pleadings, exhibits, statements, and comments regarding Confirmation, including all objections, statements, and reservations of rights filed by parties in interest on the docket of the Chapter 11 Cases;
- w. held the Confirmation Hearing;
- x. heard the statements and arguments made by counsel with respect to Confirmation;
- y. considered all oral representations, live testimony, written direct testimony, designated deposition testimony, exhibits, documents, filings, and other evidence presented at the Confirmation Hearing;
- z. entered rulings on the record at the Confirmation Hearing held on September 1, 2020 (the “Confirmation Ruling”);
- aa. overruled any and all objections to the Plan and Confirmation and all statements and reservations of rights not consensually resolved, agreed to, or withdrawn, unless otherwise indicated; and
- bb. taken judicial notice of all papers and pleadings and other documents filed, all orders entered, and all evidence and arguments presented in these Chapter 11 Cases.

NOW, THEREFORE, the Court having found that notice of the Confirmation Hearing and the opportunity for any party in interest to object to Confirmation have been adequate and appropriate as to all parties affected or to be affected by the Plan and the transactions contemplated thereby, and that the legal and factual bases set forth in the documents filed in support of Confirmation and other evidence presented at the Confirmation Hearing and the record of these Chapter 11 Cases establish just cause for the relief granted herein, and after due

deliberation thereon and good cause appearing therefor, the Court makes and issues the following findings of fact and conclusions of law, and orders:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

A. Findings and Conclusions.

1. The findings and conclusions set forth herein and in the record of the Confirmation Hearing constitute the Court's findings of fact and conclusions of law under rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the following conclusions of law constitute findings of fact, or vice versa, they are adopted as such.

B. Jurisdiction, Venue, and Core Proceeding.

2. The Court has jurisdiction over these Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Court has exclusive jurisdiction to determine whether the Disclosure Statement and the Plan comply with the applicable provisions of the Bankruptcy Code and should be approved and confirmed, respectively. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

C. Eligibility for Relief.

3. The Debtors were and are entities eligible for relief under section 109 of the Bankruptcy Code.

D. Commencement and Joint Administration of the Chapter 11 Cases.

4. On the Petition Date, each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. In accordance with the *Order (I) Directing Joint*

Administration of the Debtors' Related Chapter 11 Cases and (II) Granting Related Relief [Docket No. 57], these Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015. Since the Petition Date, the Debtors have operated their business and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in these Chapter 11 Cases.

E. Appointment of the Creditors' Committee.

5. On June 3, 2020, the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the "Committee") [Docket No. 125].

F. Judicial Notice, Objections Overruled.

6. The Court takes judicial notice of (and deems admitted into evidence for purposes of Confirmation of the Plan) the docket of these Chapter 11 Cases maintained by the clerk of the Court or its duly appointed agent, including all pleadings and other documents on file, all orders entered, all hearing transcripts, and all evidence and arguments made, proffered, or adduced at the hearings held before the Court during the pendency of these Chapter 11 Cases. All objections, statements, informal objections, and reservations of rights not consensually resolved, agreed to, or withdrawn, if any, related to the Plan or Confirmation are overruled unless otherwise indicated in this Confirmation Order.

G. Disclosure Statement Order.

7. On July 2, 2020, the Court entered the Disclosure Statement Order, which, among other things, fixed August 14, 2020, at 4:00 p.m. prevailing Eastern Time as the deadline for objecting to the Plan (including any assumption of an Executory Contract or Unexpired Lease as contemplated in the Plan Supplement) (the "Confirmation Objection Deadline"), August 14,

2020 at 5:00 pm prevailing Eastern Time as the deadline for voting to accept or reject the Plan (the “Voting Deadline”), and August 20, 2020, at 1:00 p.m. prevailing Eastern Time as the date and time for the commencement of the Confirmation Hearing.

8. On August 11, 2020, in accordance with the *Notice of Adjournment of Confirmation Hearing and Sale Hearing* [Docket No. 438], the Confirmation Objection Deadline was adjourned to August 25, 2020, at 12:00 p.m., prevailing Eastern Time, the Voting Deadline was adjourned to August 25, 2020, at 12:00 p.m., prevailing Eastern Time, and the commencement of the Confirmation Hearing was adjourned to September 1, 2020, at 10:00 a.m., prevailing Eastern Time.

H. Burden of Proof—Confirmation of the Plan.

9. The Debtors, as proponents of the Plan, have met their burden of proving the applicable elements of sections 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence, which is the applicable evidentiary standard for Confirmation.

I. Notice.

10. The Debtors provided due, adequate, and sufficient notice of the Disclosure Statement, the Disclosure Statement Order, the Plan, the Plan Supplement, the Solicitation Packages, the Confirmation Hearing Notice, the proposed assumption and rejection of Executory Contracts and Unexpired Leases under the Plan and the proposed cure amounts therefor, and all the other materials distributed by the Debtors in connection with Confirmation of the Plan, together with the Confirmation Objection Deadline, the Voting Deadline, and the Confirmation Hearing, and any applicable bar dates and hearings described in the Disclosure Statement Order, in compliance with the Bankruptcy Rules, the Local Rules, and the procedures set forth in the Disclosure Statement Order. No other or further notice is or shall be required.

J. Solicitation.

11. Before the Confirmation Hearing, the Debtors filed the Voting Report, which was admitted into evidence during the Confirmation Hearing. As described in the Voting Report, the solicitation of votes on the Plan complied with the Solicitation Procedures, was appropriate and satisfactory based upon the circumstances of these Chapter 11 Cases and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable rules, laws, and regulations.

12. As described in the Certificates of Solicitation, the Voting Report, and the Declarations, as applicable, the Solicitation Packages, the Plan Supplement, and the Confirmation Hearing Notice were transmitted and served, including to all Holders of Claims and Interests in Class 3, Class 4, Class 7, and Class 8 (collectively, the “Voting Classes”), in compliance with the Bankruptcy Code, including sections 1125 and 1126 thereof, the Bankruptcy Rules, including Bankruptcy Rules 3017 and 3018, the Local Rules, the Disclosure Statement Order, and any applicable nonbankruptcy law. Transmission and service of the Solicitation Packages and the Confirmation Hearing Notice were timely, adequate, and sufficient. No further notice is required.

13. As set forth in the Voting Report, the Solicitation Packages, and the Plan Supplement were distributed to Holders in the Voting Classes that held a Claim or Interest as of (a) July 1, 2020 for Holders in Class 3, Class 7, and Class 8 (the “Non-GUC Voting Record Date”), and (b) August 3, 2020 for Holders in Class 4 (the “GUC Voting Record Date” and together with the “Non-GUC Voting Record Date,” the “Voting Record Date”). The establishment and notice of the Voting Record Date were reasonable and sufficient.

14. The period during which Holders in the Voting Classes were to submit acceptances or rejections to the Plan was reasonable and sufficient for such Holders to make an informed decision to accept or reject the Plan.

15. As set forth in the Plan, Holders of Claims and Interests in the Voting Classes were eligible to vote on the Plan in accordance with the Solicitation Procedures. Holders of Claims in Class 1, Class 2, and Class 6 (collectively, the “Deemed Accepting Classes”) are Unimpaired and conclusively presumed to accept the Plan and, therefore, were not entitled to vote to accept or reject the Plan. Holders of Claims in Class 5 either are Unimpaired and conclusively presumed to have accepted the Plan (to the extent reinstated) or Impaired and conclusively deemed to have rejected the Plan, and, therefore, are not entitled to vote to accept or reject the Plan.

K. Voting.

16. As evidenced by the Voting Report, votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Disclosure Statement Order, and any applicable nonbankruptcy law, rule, or regulation.

17. As evidenced by the Voting Report, Class 3 voted to accept the Plan and Class 4, Class 7, and Class 8 voted to reject the Plan, each in accordance with section 1126 of the Bankruptcy Code.

18. Based on the foregoing, and as evidenced by the Voting Report, at least one Impaired Class of Claims (excluding the acceptance by any insiders of any of the Debtors) has voted to accept the Plan in accordance with the requirements of sections 1124 and 1126 of the Bankruptcy Code.

L. Plan Supplement.

19. The Plan Supplement complies with the Bankruptcy Code and the terms of the Plan, and the filing and notice of the documents included in the Plan Supplement are adequate and proper in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Disclosure Statement Order, and the facts and circumstances of these Chapter 11 Cases. No other or further notice is or will be required with respect to the Plan Supplement. All documents included in the Plan Supplement are integral to, part of, and incorporated by reference into the Plan. Subject to the terms of the Plan and the Restructuring Support Agreement and compliance with the Bankruptcy Code and the Bankruptcy Rules, the Debtors reserve the right to alter, amend, update, or modify the Plan Supplement before the Effective Date.

M. Modifications to the Plan.

20. Pursuant to section 1127 of the Bankruptcy Code, any modifications to the Plan (the "Plan Modifications") since the commencement of Solicitation described or set forth herein constitute technical changes or changes with respect to particular Claims or Interests made with the agreement of the Holders of such Claims or Interests and do not materially and adversely affect the treatment of any such Claims or Interests. Pursuant to Bankruptcy Rule 3019, these modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or the resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan.

N. Bankruptcy Rule 3016

21. The Plan and all modifications thereto are dated and identify the Entities submitting them, thereby satisfying Bankruptcy Rule 3016(a). The Debtors appropriately filed the Disclosure Statement and the Plan with the Court, thereby satisfying Bankruptcy Rule

3016(b). The injunction, release, and exculpation provisions in the Disclosure Statement and the Plan describe, in bold font and with specific and conspicuous language, all acts to be enjoined and identify the entities that will be subject to the injunction, thereby satisfying Bankruptcy Rule 3016(c).

O. Compliance with the Requirements of Section 1129 of the Bankruptcy Code.

22. The Plan complies with all applicable provisions of section 1129 of the Bankruptcy Code as follows:

a. Compliance of the Plan with Applicable Provisions of the Bankruptcy Code—Section 1129(a)(1).

23. The Plan complies with all applicable provisions of the Bankruptcy Code, including sections 1122 and 1123, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

(i) Proper Classification—Sections 1122 and 1123.

24. The Plan satisfies the requirements of sections 1122(a) and 1123(a)(1) of the Bankruptcy Code. Article III of the Plan provides for the separate classification of Claims and Interests into eight Classes. Valid business, factual, and legal reasons exist for the separate classification of such Classes of Claims and Interests. The classifications were not implemented for any improper purpose and do not unfairly discriminate between, or among, Holders of Claims or Interests. Each Class of Claims and Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class.

(ii) Specified Unimpaired Classes—Section 1123(a)(2).

25. The Plan satisfies the requirements of section 1123(a)(2) of the Bankruptcy Code. Article III of the Plan specifies that Claims and Interests, as applicable, in the following Classes (the “Unimpaired Classes”) are Unimpaired under the Plan within the meaning of section 1124 of the Bankruptcy Code:

Class	Designation
1	Other Priority Claims
2	Other Secured Claims
5	Intercompany Claims
6	Intercompany Interests

26. Additionally, Article II of the Plan specifies that Allowed Administrative Claims, DIP Facility Claims, Professional Fee Claims, Priority Tax Claims, and all fees due and payable pursuant to section 1930 of Title 28 of the United States Code before the Effective Date will be paid in full in accordance with the terms of the Plan, although these Claims are not separately classified under the Plan.

(iii) Specified Treatment of Impaired Classes—Section 1123(a)(3).

27. The Plan satisfies the requirements of section 1123(a)(3) of the Bankruptcy Code. Article III of the Plan specifies that Claims and Interests, as applicable, in the following Classes (the “Impaired Classes”) are Impaired under the Plan within the meaning of section 1124 of the Bankruptcy Code and describes the treatment of such Classes:

Class	Designation
3	Term Loan Claims
4	General Unsecured Claims
5	Intercompany Claims
7	Section 510(b) Claims
8	Akorn Interests

(iv) No Discrimination—Section 1123(a)(4).

28. The Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code. The Plan provides for the same treatment by the Debtors for each Claim or Interest in each respective Class unless the Holder of a particular Claim or Interest has agreed to a less favorable treatment of such Claim or Interest.

(v) Adequate Means for Plan Implementation—Section 1123(a)(5).

29. The Plan satisfies the requirements of section 1123(a)(5) of the Bankruptcy Code. The Plan and the various documents included in the Plan Supplement provide adequate and proper means for execution and implementation of the Plan, including: (a) the Schedule of Retained Causes of Action; (b) the Assumed Executory Contracts and Leases List; (c) the Description of Transaction Steps; (d) the Identity and Terms of Compensation of the Plan Administrator; and (e) any other necessary documentation related to the Sale Transaction or other Restructuring Transactions.

(vi) Non-Voting Equity Securities—Section 1123(a)(6).

30. The Plan satisfies the requirements of section 1123(a)(6) of the Bankruptcy Code. The Plan does not provide for the issuance of equity or other securities of the Debtors, including non-voting equity securities.

(vii) Directors and Officers—Section 1123(a)(7).

31. The Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code. In accordance with Article IV.L of the Plan, as of the Effective Date, the existing boards of directors or managers, as applicable, of the Debtors shall be dissolved without any further action required, and any remaining officers, directors, managers, or managing members of any Debtor shall be dismissed without any further action required. In addition, Article IV.L provides that the Plan Administrator shall act as the sole officer, director, and manager, as applicable, of the Debtors with respect to their affairs other than matters substantially related to the transactions described in Article IV.C.1 of the Plan. Also, Article IV.E provides that the Plan Administrator shall succeed to the powers of the Debtors' managers and officers and shall be appointed by the Debtors, in consultation with the Purchaser. The selection of the Plan Administrator and the

process therefore is consistent with the interests of Holders of Claims and Interests and public policy.

b. Discretionary Contents of the Plan—Section 1123(b).

32. The Plan's discretionary provisions comply with section 1123(b) of the Bankruptcy Code and are consistent with the applicable provisions of the Bankruptcy Code. Thus, the Plan satisfies section 1123(b).

(viii) Impairment / Unimpairment of Classes—Section 1123(b)(1).

33. The Plan is consistent with section 1123(b)(1) of the Bankruptcy Code. Article III of the Plan leaves each Class of Claims and Interests Impaired or Unimpaired.

(ix) Treatment of Executory Contracts and Unexpired Leases—Section 1123(b)(2).

34. The Plan is consistent with section 1123(b)(2) of the Bankruptcy Code. Article V of the Plan provides for the automatic rejection of the Debtors' Executory Contracts and Unexpired Leases not previously rejected, assumed, or assumed and assigned during these Chapter 11 Cases under section 365 of the Bankruptcy Code, nor scheduled to be assumed under the Plan or the Plan Supplement. The Debtors' determinations regarding the assumption and rejection of Executory Contracts and Unexpired Leases are based on and within the sound business judgment of the Debtors, are necessary to the implementation of the Plan, and are in the best interests of the Debtors, their Estates, Holders of Claims, and other parties in interest in these Chapter 11 Cases.

(x) Settlement, Releases, Exculpation, Injunction, and Preservation of Claims and Causes of Action—Section 1123(b)(3).

35. The Plan is consistent with section 1123(b)(3) of the Bankruptcy Code. Pursuant to section 1123 of the Bankruptcy Code, and in consideration for the distributions and other

benefits provided under the Plan, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest, including, without limitation, the settlements and compromises provided for under the UCC Settlement. The compromise and settlement of such Claims and Interests embodied in the Plan and reinstatement and unimpairment of other Classes identified in the Plan are in the best interests of the Debtors, their Estates, and all Holders of Claims and Interests, and are fair, equitable, and reasonable.

36. The Plan incorporates an integrated compromise and settlement of all Claims, Interests, and controversies to achieve a beneficial and efficient resolution of these Chapter 11 Cases for all parties-in-interest. Accordingly, except as otherwise set forth in the Plan or herein, in consideration for the distribution and other benefits provided under the Plan, including the release, exculpation, and injunction provisions, the Plan shall constitute a good faith compromise and settlement of all such Claims, Interests, and controversies. Each component of the Settlement is an integral, integrated, and inextricably linked part of the compromise or settlement.

37. Based upon the representations and arguments of counsel to the Debtors, all other testimony either given or proffered, other evidence introduced at the Confirmation Hearing, and the full record of these Chapter 11 Cases, this Confirmation Order constitutes the Court's approval of the of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Interests and is fair, equitable, and reasonable.

(xi) Releases by Debtors.

38. Article VIII.E of the Plan describes certain releases granted by the Debtors, their Estates, the Plan Administrator, and the Acquired Entities (the “Debtor Release”). The Debtors have satisfied the business judgment standard with respect to the propriety of the Debtor Release. Such release is a necessary and integral element of the Plan, and is fair, reasonable, and in the best interests of the Debtors, the Debtors’ Estates, and Holders of Claims and Interests. The Debtors’, their Estates’, the Plan Administrator’s, and the Acquired Entities’ pursuit of any such claims against the Released Parties is not in the best interests of the Estates’ various constituencies because the costs involved would likely outweigh any potential benefit from pursuing such claims. The Plan, including the Debtor Release, was negotiated by sophisticated parties represented by able counsel and financial advisors. The Debtor Release is therefore the result of an arm’s-length negotiation process. Also, the Debtor Release is: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good faith settlement and compromise of the claims released by the releases in Article VIII.E of the Plan; (c) in the best interests of the Debtors and all Holders of Claims and Interests; (d) fair, equitable and reasonable; (e) given and made after reasonable investigation by the Debtors and after notice and opportunity for hearing; and (f) a bar to any of the Debtors asserting any claim released by the releases in Article VIII.E against any of the Released Parties. In light of, among other things, the value provided by the Released Parties to the Debtors’ Estates and the critical nature of the Debtor Release to the Plan, the Debtor Release is approved.

(xii) Release by Holders of Claims and Interests.

39. Article VIII.F of the Plan describes certain releases granted by the Releasing Parties (the “Third-Party Release”). The Third-Party Release provides that each Releasing Party is deemed to have released and discharged each Debtor and Released Party from any and all

Causes of Action, whether known or unknown, including any derivative claims asserted on behalf of the Debtors, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions between or among a Debtor and another Debtor, the Standstill Agreement, these Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Restructuring Support Agreement, the DIP Loan Documents, the Disclosure Statement, the Plan, the Sale Transaction, or any Restructuring Transaction, contract, instrument, release, or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, or the Plan, these Chapter 11 Cases, the DIP Loan Documents, the Sale Transaction, the filing of these Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon the business or contractual arrangements between any Debtor and any Released Party, and any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date relating to any of the foregoing, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, fraud or gross negligence. The Third-Party Release is consensual with respect to the Releasing Parties. The Confirmation Hearing Notice sent to Holders of Claims and Interests and published in *The New York Times* (national edition)

and *USA Today* (national edition) on July 9, 2020, and in *U.S. Pharmacist* on August 13, 2020, and the ballots and notice, as applicable, sent to Holders of Claims and Interests unambiguously stated that the Plan contains the Third-Party Release and that each Holder of Claims or Interests may elect not to grant such Third-Party Release. Such release provisions of the Plan were conspicuous, emphasized with boldface type in the Plan, the Disclosure Statement, and the ballots and notices. Among other things, the Plan provides appropriate and specific disclosure with respect to the claims and Causes of Action that are subject to the Third-Party Release, and no other disclosure or notice is necessary. The Third-Party Release is a necessary and integral element of the Plan, and is fair, equitable, reasonable, and in the best interests of the Debtors, the Debtors' Estates, and all Holders of Claims and Interests. Also, the Third-Party Release is: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good faith settlement and compromise of the claims released by the Releasing Parties; (c) in the best interests of the Debtors and all Holders of Claims and Interests; (d) fair, equitable and reasonable; (e) given and made after notice and opportunity for hearing; (f) a bar to any of the Releasing Parties asserting any Claim released by the release herein against any of the Released Parties.

(xiii) Exculpation.

40. The exculpation described in Article VIII.G of the Plan (the "Exculpation") is appropriate under applicable law because it was proposed in good faith, was formulated following extensive good-faith, arm's-length negotiations with key constituents, and is appropriately limited in scope. Without limiting anything in the Exculpation, each Exculpated Party has participated in these Chapter 11 Cases in good faith and, except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated as set forth in the Plan; *provided* that the foregoing

“Exculpation” shall have no effect on the liability of any entity for claims related to any act or omission that constitutes willful misconduct, actual fraud, or gross negligence, but in all respects such entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have participated in any and all activities potentially underlying any Exculpated Claim in good faith and in compliance with the applicable laws. The Exculpation, including its carve-out for willful misconduct, actual fraud, or gross negligence is consistent with established practice in this jurisdiction and others.

(xiv) Injunction.

41. The injunction provision set forth in Article VIII.H of the Plan is necessary to implement, preserve, and enforce the Debtor Release, the Third-Party Release, and the Exculpation, and is narrowly tailored to achieve these purposes.

(xv) Causes of Action.

42. Article IV.Q of the Plan appropriately provides that, pursuant to the Sale Transaction Documentation, the Debtors assigned and transferred to the Purchaser all of the Transferred Causes of Action pursuant to the Sale Transaction Documentation in connection with the Sale Transaction. For the avoidance of doubt, the Debtors or the Plan Administrator, as applicable, will retain the right to enforce the terms of the Sale Transaction Documentation. Any Retained Causes of Action shall remain with the Debtors and shall vest with the Plan Administrator as of the Effective Date. As set forth in Article IV.E of the Plan, all Transferred Causes of Action were transferred to the Purchaser in the Sale Transaction, and the Retained Causes of Action shall vest in the Debtors on the Effective Date for prosecution, settlement, or other action as determined by the Plan Administrator.

43. No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any such Cause of Action against them as any

indication that the Debtors will not pursue any and all available Causes of Actions against them. No preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

44. The provisions regarding the Transferred Causes of Action and Retained Causes of Action in the Plan, including the Plan Supplement, are appropriate, fair, equitable, and reasonable, and are in the best interests of the Debtors, the Debtors' estates, and Holders of Claims and Interests.

(xvi) Release of Liens.

45. Article VIII.D of the Plan appropriately provides that, except as otherwise specifically provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, and compromised, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Debtors and their successors and assigns without any further approval or order of the Court and without any action or Filing being required to be made by the Debtors. The provisions of the release of Liens are necessary to implement the Plan, and they are appropriate, fair, equitable, reasonable, and in the best interests of the Debtors, the Debtors' Estates, and Holders of Claims and Interests.

(xvii) Additional Plan Provisions—Section 1123(b)(6).

46. The other discretionary provisions of the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1123(b)(6) of the Bankruptcy Code.

P. Debtor Compliance with the Bankruptcy Code—Section 1129(a)(2).

47. The Debtors have complied with the applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Court, and thus, satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code. Specifically, each Debtor:

- c. is an eligible debtor under section 109, and a proper proponent of the Plan under section 1121(a), of the Bankruptcy Code; and
- d. complied with the applicable provisions of the Bankruptcy Code, including sections 1125 and 1126, the Bankruptcy Rules, the Local Rules, any applicable nonbankruptcy law, rule, and regulation, the Disclosure Statement Order, and all other applicable law, in transmitting the Solicitation Packages, and related documents and notices, and in soliciting and tabulating the votes on the Plan.

Q. Plan Proposed in Good Faith—Section 1129(a)(3).

48. The Plan satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code. The Debtors have proposed the Plan in good faith and not by any means forbidden by law. In so determining, the Court has examined the totality of the circumstances surrounding the filing of these Chapter 11 Cases, the Plan, the process leading to Confirmation, including the support of Holders of Claims and Interests for the Plan, and the transactions to be implemented pursuant thereto. The Debtors' good faith is evident from the facts and the record of these Chapter 11 Cases, the Plan, the Disclosure Statement, the hearing on the Disclosure Statement, and the record of the Confirmation Hearing and other proceedings held in these Chapter 11 Cases.

49. These Chapter 11 Cases were filed, and the Plan was proposed, with the legitimate and honest purpose maximizing the value of the Debtors' Estates and to effectuate a successful reorganization of the Debtors' business. The Plan was the product of extensive negotiations conducted at arm's length among the Debtors and certain of their key stakeholders. The Plan's classification, settlement, exculpation, release, and injunction provisions have been negotiated in good faith and at arm's length, are consistent with sections 105, 1122, 1123(b)(6),

1129, and 1142 of the Bankruptcy Code, and are each necessary for the Debtors to consummate a value-maximizing conclusion to these Chapter 11 Cases. Accordingly, the requirements of section 1129(a)(3) of the Bankruptcy Code are satisfied.

R. Payment for Services or Costs and Expenses—Section 1129(a)(4).

50. The procedures set forth in the Plan for the Court's review and ultimate determination of the fees and expenses to be paid by the Debtors in connection with these Chapter 11 Cases, or in connection with the Plan and incident to these Chapter 11 Cases, satisfy the objectives of, and are in compliance with, section 1129(a)(4) of the Bankruptcy Code.

S. Directors, Officers, and Insiders—Section 1129(a)(5).

51. Because the Plan provides for the dissolution of the Debtors' Estates and the existing board of directors or managers, as applicable, of the Debtors and the dismissal of any remaining officers, directors, managers, or managing members of any Debtor, section 1129(a)(5) of the Bankruptcy Code does not apply to the Debtors. To the extent section 1129(a)(5) applies to the Debtors during the Wind-Down, they have satisfied the requirements of this provision by, among other things, disclosing the identity and compensation of the Plan Administrator.

T. No Rate Changes—Section 1129(a)(6).

52. Section 1129(a)(6) of the Bankruptcy Code is not applicable to these Chapter 11 Cases. The Plan does not propose any rate change subject to the jurisdiction of any governmental regulatory commission.

U. Best Interest of Creditors—Section 1129(a)(7).

53. The Debtors have demonstrated that the Plan is in the best interests of their creditors and equity interest holders and have satisfied the requirements of section 1129(a)(7) of the Bankruptcy Code. The evidence in support of the Plan that was proffered or adduced at the Confirmation Hearing and the facts and circumstances of these Chapter 11 Cases establish that

Holders of Allowed Claims or Interests in each Class will recover as much or more under the Plan on account of such Claims or Interests, as of the Effective Date, than such Holders would have received if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

V. Acceptance by Certain Classes—Section 1129(a)(8).

54. Classes 1, 2, and 6 are Unimpaired under the Plan and are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Class 3 voted to accept the Plan. Nevertheless, because the Plan has not been accepted by Class 4, Class 7, and Class 8 (the “Rejecting Classes”), the Debtors seek Confirmation under section 1129(b), solely with respect to the Rejecting Classes, rather than section 1129(a)(8) of the Bankruptcy Code. Although section 1129(a)(8) has not been satisfied with respect to the Rejecting Classes, the Plan is confirmable because the Plan does not discriminate unfairly and is fair and equitable with respect to each of the Rejecting Classes and thus satisfies section 1129(b) of the Bankruptcy Code with respect to the Rejecting Classes as described further below. As a result, the requirements of section 1129(b) of the Bankruptcy Code are satisfied.

W. Treatment of Claims Entitled to Priority Under Section 507(a) of the Bankruptcy Code—Section 1129(a)(9).

55. The treatment of Administrative Claims, Allowed DIP Facility Claims, Allowed Professional Fee Claims, and Priority Tax Claims, under Article II of the Plan, and of Other Priority Claims under Article III of the Plan, satisfies the requirements of, and complies in all respects with, section 1129(a)(9) of the Bankruptcy Code.

X. Acceptance by At Least One Impaired Class—Section 1129(a)(10).

56. The Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code. As evidenced by the Voting Report, the Voting Classes voted to accept the Plan by the requisite numbers and amounts of Claims, determined without including any acceptance of the

Plan by any insider (as that term is defined in section 101(31) of the Bankruptcy Code) specified under the Bankruptcy Code.

Y. Feasibility—Section 1129(a)(11).

57. The Plan satisfies section 1129(a)(11) of the Bankruptcy Code. The evidence supporting the Plan proffered or adduced by the Debtors at or before the Confirmation Hearing: (a) is reasonable, persuasive, credible, and accurate as of the dates such evidence was prepared, presented, or proffered; (b) has not been controverted by other persuasive evidence; (c) establishes that the Plan is feasible and Confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization, except as set forth in the Plan; and (d) establishes that the Debtors will have sufficient funds available to meet their obligations under the Plan.

Z. Payment of Statutory Fees—Section 1129(a)(12).

58. The Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code. Articles II.E and XII.C of the Plan provide for the payment of all fees due and payable under 28 U.S.C. § 1930(a), as determined by the Court at the Confirmation Hearing in accordance with section 1128 of the Bankruptcy Code.

AA. Continuation of Employee Benefits—Section 1129(a)(13).

59. The Debtors do not have any remaining obligations to pay retiree benefits (as defined in section 1114 of the Bankruptcy Code). Therefore, section 1129(a)(13) of the Bankruptcy Code is inapplicable to these Chapter 11 Cases and the Plan.

BB. Non-Applicability of Certain Sections—Sections 1129(a)(14), (15), and (16).

60. Sections 1129(a)(14), 1129(a)(15), and 1129(a)(16) of the Bankruptcy Code do not apply to these Chapter 11 Cases. The Debtors owe no domestic support obligations, are not individuals, and are not nonprofit corporations.

CC. “Cram Down” Requirements—Section 1129(b).

61. The Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code. Notwithstanding the fact that the Rejecting Classes have not accepted the Plan, the Plan may be confirmed pursuant to section 1129(b)(1) of the Bankruptcy Code. *First*, all of the requirements of section 1129(a) of the Bankruptcy Code other than section 1129(a)(8) have been met. *Second*, the Plan is fair and equitable with respect to each of the Rejecting Classes. The Plan has been proposed in good faith, is reasonable and meets the requirements that no Holder of any Claim or Interest that is junior to each such Class will receive or retain any property under the Plan on account of such junior Claim or Interest and no Holder of a Claim or Interest in a Class senior to such Classes is receiving more than payment in full on account of its Claim or Interest. Accordingly, the Plan is fair and equitable towards all Holders of Claims and Interests, as applicable, in the Rejecting Classes. *Third*, the Plan does not discriminate unfairly with respect to the Rejecting Classes because similarly-situated Claim and Interest Holders will receive substantially similar treatment on account of their Claims or Interests, as applicable, in such Class. Therefore, the Plan may be confirmed despite the fact that not all Impaired Classes have voted to accept the Plan.

DD. Only One Plan—Section 1129(c).

62. The Plan satisfies the requirements of section 1129(c) of the Bankruptcy Code. The Plan is the only chapter 11 plan filed in each of these Chapter 11 Cases.

EE. Principal Purpose of the Plan—Section 1129(d).

63. The Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code. 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.

FF. Not Small Business Cases—Section 1129(e).

64. The Chapter 11 Cases are not small business cases and, accordingly, section 1129(e) of the Bankruptcy Code does not apply to the Chapter 11 Cases.

GG. Good Faith Solicitation—Section 1125(e).

65. The Debtors have acted in “good faith” within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to support and consummation of the Plan, including the solicitation and receipt of acceptances of the Plan, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

HH. Satisfaction of Confirmation Requirements.

66. Based on the foregoing, the Plan satisfies the requirements for Confirmation set forth in section 1129 of the Bankruptcy Code.

II. Likelihood of Satisfaction of Conditions Precedent to the Effective Date.

67. Each of the conditions precedent to the Effective Date, as set forth in Article IX of the Plan, has been or is reasonably likely to be satisfied or, as applicable, waived in accordance with Article IX of the Plan.

JJ. Implementation.

68. All documents and agreements necessary to implement the transactions contemplated by the Plan, including those contained or summarized in the Plan Supplement, and all other relevant and necessary documents have been negotiated in good faith and at arm’s length, are in the best interests of the Debtors, and shall, upon completion of documentation and execution, be valid, binding, and enforceable agreements and shall not be in conflict with any federal, state, or local law. The documents and agreements are essential elements of the Plan and entry into and consummation of the transactions contemplated by each such document or

agreement is in the best interests of the Debtors, the Estates, and the Holders of Claims and Interests. The Debtors have exercised reasonable business judgment in determining which documents and agreements to enter into and have provided sufficient and adequate notice of such documents and agreements. The Debtors are authorized to take any action reasonably necessary or appropriate to consummate such agreements and the transactions contemplated thereby.

KK. Executory Contracts and Unexpired Leases.

69. The Debtors' decisions to assume and to reject certain Executory Contracts and Unexpired Leases, as provided in Article V of the Plan and in the Plan Supplement, are reasonable exercises of the Debtors' business judgment. The Debtors have demonstrated adequate assurance of future performance of the Executory Contracts and Unexpired Leases within the meaning of section 365(b)(1)(C) of the Bankruptcy Code.

70. Except with respect to the Executory Contracts and Unexpired Leases discussed in the following paragraph of this Confirmation Order, the amounts set forth in the Plan Supplement (the "Cure Amounts") are the sole amounts necessary to be paid upon assumption of the associated Executory Contracts and Unexpired Leases under section 365(b)(1)(A) and (B) of the Bankruptcy Code, and the payment of such amounts will effect a cure of all defaults existing under such Executory Contracts and Unexpired Leases and compensate the counterparties to such Executory Contracts and Unexpired Leases for any actual pecuniary loss resulting from all defaults existing under such Executory Contracts and Unexpired Leases as of the Effective Date.

71. The objections of counterparties to the assumption of their Executory Contracts and Unexpired Leases, to the extent that such objection was timely raised in accordance with Article V.B of the Plan, are preserved and will be considered by the Court at date and time to be scheduled.

LL. Good Faith.

72. The Debtors, the Released Parties, and the Releasing Parties have been and will be acting in good faith if they proceed to: (a) consummate the Plan and the agreements, settlements, transactions, and transfers contemplated thereby; and (b) take the actions authorized and directed by this Confirmation Order to effect the Plan and Restructuring Transactions. The Released Parties have made a substantial contribution to the Debtors' reorganization.

ORDER

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

73. **Findings of Fact and Conclusions of Law.** The above-referenced findings of fact and conclusions of law are hereby incorporated by reference as though fully set forth herein and constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable herein by Bankruptcy Rule 9014. To the extent that any finding of fact is determined to be a conclusion of law, it is deemed so, and vice versa.

74. **Solicitation.** To the extent applicable, the solicitation of votes on the Plan complied with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, all other provisions of the Bankruptcy Code, and all other applicable rules, laws, and regulations, and was appropriate and satisfactory and is approved in all respects.

75. **Notice of Confirmation Hearing.** The Notice of Confirmation Hearing was appropriate and satisfactory and is approved in all respects.

76. **Confirmation of the Plan.** The Plan is approved in its entirety and CONFIRMED under section 1129 of the Bankruptcy Code. The terms of the Plan, including the Plan Supplement, are incorporated by reference into and are an integral part of this Confirmation Order.

77. **Objections.** All objections and all statements and reservations of rights pertaining to Confirmation or approval of the Disclosure Statement that have not been withdrawn, waived, or consensually resolved are overruled on the merits unless otherwise indicated in this Confirmation Order.

78. **Plan Modifications.** The Plan Modifications do not materially adversely affect the treatment of any Claim against or Interest in any of the Debtors under the Plan, and are hereby approved pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019. Pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or the resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that the Holders of Claims or Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan

79. **Deemed Acceptance of Plan.** In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Interests who voted to accept the Plan or who are conclusively presumed to accept the Plan are deemed to have accepted the Plan, as modified by the Plan Modifications. No Holder of a Claim or Interest shall be permitted to change its vote as a consequence of the Plan Modifications.

80. **No Action Required.** Under the provisions of the Delaware General Corporation Law, including section 303 thereof, and the comparable provisions of the Delaware Limited Liability Company Act, and section 1142(b) of the Bankruptcy Code, no action of the respective directors, equity holders, managers, or members of the Debtors is required to authorize the Debtors to enter into, execute, deliver, file, adopt, amend, restate, consummate, or effectuate, as the case may be, the Plan, the Restructuring Transactions, and any contract, assignment,

certificate, instrument, or other document to be executed, delivered, adopted, or amended in connection with the implementation of the Plan, including the Sale Transaction Documentation.

81. **Binding Effect.** Subject to Article VIII of the Plan and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the Plan Supplement are immediately effective and enforceable and deemed binding on the Debtors, any and all Holders of Claims or Interests (irrespective of whether the Holders of such Claims or Interests have, or are deemed to have, accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunction described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims and debts shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

82. Pursuant to section 1141 of the Bankruptcy Code, subject to the occurrence of the Effective Date and subject to the terms of the Plan and this Confirmation Order, all prior orders entered in these Chapter 11 Cases, all documents and agreements executed by the Debtors as authorized and directed thereunder and all motions or requests for relief by the Debtors pending before this Court as of the Effective Date shall be binding upon and shall inure to the benefit of the Debtors as applicable, and their respective successors and assigns.

83. **Effectiveness of All Actions.** All actions contemplated by the Plan, including all actions in connection with the Sale Transaction, are hereby effective and authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to, or order of the Court, or further action by the respective officers, directors, managers, members, or equity holders of the Debtors and with the effect that such actions had

been taken by unanimous action of such officers, directors, managers, members, or equity holders.

84. **General Settlement of Claims.** Except as otherwise expressly provided in the Plan, pursuant to section 1123 of the Bankruptcy Code, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan and the Sale Transaction Documentation, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, or otherwise resolved pursuant to the Plan, including those resolved by the UCC Settlement. The Plan is hereby deemed a motion, proposed by the Debtors, to approve the good-faith compromise and settlement of all such Claims, Interests, Causes of Action, and controversies, and the entry of this Confirmation Order shall constitute the Court's approval of such compromise and settlement under section 1123 of the Bankruptcy Code, as well as a finding by the Court that such settlement and compromise is fair, equitable, reasonable, and in the best interests of the Debtors and their Estates.

85. **The UCC Settlement.** Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, the Plan incorporates and implements the UCC Settlement, a compromise and settlement of numerous issues and disputes between and among the Debtors, the Committee, the Holders of Class 3 Term Loan Claims, and the DIP Lenders designed to achieve a reasonable and effective resolution of the Chapter 11 Cases. Except as otherwise expressly set forth in the Plan, the UCC Settlement constitutes a settlement of all potential issues and Claims between and among the Debtors, the Committee, the Holders of Class 3 Term Loan Claims, and the DIP Lenders.

86. **Sources of Plan Consideration.** Cash on hand, borrowings under the DIP Facility, the Distributable Proceeds, if any, the Wind Down Amount, the Debtors' rights under the Sale Transaction Documentation, payments made directly by the Purchaser on account of any Assumed Liabilities under the Sale Transaction Documentation, payments of Cure Costs made by the Purchaser pursuant to sections 365 or 1123 of the Bankruptcy Code, the return of any utility deposits as set forth in the Utility Orders, and all Causes of Action not previously settled, released, or exculpated under the Plan, if any, shall be used to fund the distributions to Holders of Allowed Claims against the Debtors in accordance with the treatment of such Claims and subject to the terms provided in the Plan. Unless otherwise agreed in writing by the Debtors and the Purchaser, distributions required by the Plan on account of Allowed Claims that are Assumed Liabilities shall be the sole responsibility of the Purchaser to the extent such Claim is Allowed against the Debtors.

87. **Restructuring Transactions.** The Debtors, the Plan Administrator, and the Purchaser are authorized, without further order of the Court, subject to the terms of the Restructuring Support Agreement, to take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Restructuring Transactions under or in connection with the Plan and Sale Transaction Documentation that are consistent with and pursuant to the terms and conditions of the Plan, the Restructuring Support Agreement, and the Sale Transaction Documentation, including: (a) the execution and delivery of all appropriate agreements or other documents of merger, consolidation, sale, restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law; (b) the execution and delivery of appropriate instruments of transfer, assignment,

assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan; (c) rejection, assumption, or assumption and assignment, as applicable, of Executory Contracts and Unexpired Leases; (d) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable state Law; and (e) any transaction described in the Description of Transactions Steps, if applicable.

88. All actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including the Restructuring Transactions are hereby authorized.

89. **Vesting of Assets.** Except as otherwise provided in this Confirmation Order, the Plan, the Sale Transaction Documentation, or any agreement, instrument, or other document incorporated therein or in the Plan Supplement, on the Effective Date, the Retained Assets shall vest in the Debtors for the purpose of liquidating the Estates, free and clear of all Liens, Claims, charges, and other encumbrances. For the avoidance of doubt, all Transferred Causes of Action were transferred to the Purchaser in the Sale Transaction, and the Retained Causes of Action shall vest in the Debtors on the Effective Date for prosecution, settlement, or other action as determined by the Plan Administrator.

90. On and after the Effective Date, except as otherwise provided in the Plan or this Confirmation Order, the Plan Administrator may operate the Debtors' businesses and use, acquire, or dispose of property and, as applicable, compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

91. **Plan Administrator.** The Plan Administrator shall retain and have all the rights, powers, and duties necessary to carry out his or her responsibilities under the Plan and as otherwise provided in this Confirmation Order.

92. The Plan Administrator shall act for the Debtors in the same fiduciary capacity as applicable to a board of managers and officers, subject to the provisions hereof (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same). On the Effective Date, the authority, power, and incumbency of the persons acting as managers and officers of the Debtors shall be deemed to have resigned, solely in their capacities as such, and a representative of the Plan Administrator shall be appointed as the sole manager and sole officer of the Debtors and shall succeed to the powers of the Debtors' managers and officers. From and after the Effective Date, the Plan Administrator shall be the sole representative of, and shall act for, the Debtors. For the avoidance of doubt, the foregoing shall not limit the authority of the Debtors or the Plan Administrator, as applicable, to continue the employment any former manager or officer.

93. The powers of the Plan Administrator shall include any and all powers and authority to implement the Plan and to make distributions thereunder and wind down the businesses and affairs of the Debtors, including: (i) liquidating, receiving, holding, investing, supervising, and protecting the assets of the Debtors remaining after consummation of the Sale Transaction; (ii) taking all steps to execute all instruments and documents necessary to effectuate the distributions to be made under the Plan; (iii) making distributions as contemplated under the Plan; (iv) establishing and maintaining bank accounts in the name of the Debtors; (v) subject to the terms set forth herein, employing, retaining, terminating, or replacing professionals to represent it with respect to its responsibilities or otherwise effectuating the Plan to the extent

necessary; (vi) paying all reasonable fees, expenses, debts, charges, and liabilities of the Debtors; (vii) administering and paying taxes of the Debtors, including filing tax returns; (viii) representing the interests of the Debtors before any taxing authority in all matters, including any action, suit, proceeding or audit; and (ix) exercising such other powers as may be vested in it pursuant to order of the Court or pursuant to the Plan, or as it reasonably deems to be necessary and proper to carry out the provisions of the Plan.

94. **Wind-Down.** On and after the Effective Date, the Plan Administrator will be authorized to implement the Plan and any applicable orders of the Court, and the Plan Administrator shall have the power and authority to take any action necessary to wind down and dissolve the Debtors' Estates.

95. As soon as practicable after the Effective Date, the Plan Administrator shall: (a) cause the Debtors to comply with, and abide by, the terms of the Plan and any other documents contemplated thereby; (b) take any actions necessary to wind down the Debtors' Estates; and (c) take such other actions as the Plan Administrator may determine to be necessary or desirable to carry out the purposes of the Plan. From and after the Effective Date, except as set forth herein, the Debtors (x) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, and (y) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date.

96. On or prior to the Effective Date, the Debtors shall retain the Wind-Down Amount in accordance with the terms of the Sale Transaction Documentation. The Wind-Down

Amount shall be used by the Plan Administrator solely to satisfy the distributions set forth herein, the expenses of the Debtors and the Plan Administrator as set forth in the Plan; provided that all costs and expenses associated with the winding down of the Debtors and the storage of records and documents shall constitute expenses of the Debtors and shall be paid from the Wind-Down Amount. In no event shall the Plan Administrator be required or permitted to use its personal funds or assets for such purposes.

97. **Cancellation of Notes, Instruments, Certificates, and Other Documents.** On the Effective Date, except as otherwise specifically provided for in the Plan or to the extent otherwise assumed by the Purchaser: (a) the obligations of any Debtor under any certificate, share, note, bond, indenture, purchase right, or other instrument or document, directly or indirectly evidencing or creating any indebtedness or obligation of giving rise to any Claim shall be cancelled and deemed surrendered as to the Debtors, and the Debtors shall not have any continuing obligations thereunder; and (b) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificates or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, indenture, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtors shall be fully released, settled, and compromised; *provided, however*, that notwithstanding anything to the contrary contained in the Plan, any indenture or agreement that governs the rights of the DIP Agent and the Term Loan Agent shall continue in effect to allow the DIP Agent or the Term Loan Agent, as applicable, to (i) enforce its rights, Claims, and interests (and those of any predecessor or successor thereto) vis-à-vis any parties other than the Debtors, (ii) receive distributions under the Plan and to distribute them to Holders of Allowed DIP Facility Claims and Term Loan Claims, as applicable,

in accordance with the terms of such agreements, (iii) enforce its rights to payment of fees, expenses, and indemnification obligations as against any money or property distributable to Holders of Allowed DIP Facility Claims and Term Loan Claims, as applicable, including any rights to priority of payment and/or to exercise charging liens, and (iv) appear and be heard in these Chapter 11 Cases or in any proceeding in the Court, including to enforce any obligation owed to the DIP Agent, the Term Loan Agent, or Holders of DIP Facility Claims and Term Loan Claims under the Plan, as applicable.

98. **Corporate Action.** Upon the Effective Date, by virtue of the solicitation of votes in favor of the Plan and entry of this Confirmation Order, all actions contemplated by the Plan (including any action to be undertaken by the Debtors or the Plan Administrator, as applicable) shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, the Debtors, the Plan Administrator, or any other Entity or Person. All matters provided for in the Plan involving the corporate structure of the Debtors shall be deemed to have occurred and shall be in effect, without any requirement of further action by the Debtors or the Debtors' Estates.

99. Upon the Effective Date or as soon as reasonably practicable thereafter, after making all distributions provided for under the Plan, the Debtors shall be deemed to have been dissolved and terminated, except as necessary to satisfy their obligations under the Plan. The directors, managers, and officers of the Debtors shall be authorized to execute, deliver, File, or record such contracts, instruments, and other agreements or documents and take such other actions as they may deem necessary or appropriate to implement the provisions of Article IV.K of the Plan.

100. The authorizations and approvals contemplated by Article IV.K of the Plan shall be effective notwithstanding any requirements under applicable nonbankruptcy law.

101. **Distributions.** The procedures governing distributions contained in Article VI of the Plan shall be, and hereby are, approved in their entirety. Except as otherwise set forth in the Plan or this Confirmation Order, the Debtors or the Disbursing Agent, as applicable, shall make all distributions required under the Plan and the timing of distributions required under the Plan shall be made in accordance with and as set forth in the Plan.

102. **Claims Register.** Any Claim or Interest that has been paid or satisfied, or any Claim or Interest that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtors, without an objection having to be Filed and without any further notice to or action, order, or approval of the Court. The Debtors shall provide any Holder of such a Claim or Interest with fourteen days' notice prior to the Claim or Interest being adjusted or expunged from the Claims Register as the result of a Claim or Interest being paid, satisfied, amended or superseded.

103. **Causes of Action.** Pursuant to the Sale Transaction Documentation, the Debtors assigned and transferred to the Purchaser all of the Transferred Causes of Action pursuant to the Sale Transaction Documentation in connection with the Sale Transaction. For the avoidance of doubt, the Debtors or the Plan Administrator, as applicable, will retain the right to enforce the terms of the Sale Transaction Documentation. Any Retained Causes of Action shall remain with the Debtors and shall vest with the Plan Administrator as of the Effective Date.

104. **Subordination.** Except as otherwise expressly provided in the Plan, this Confirmation Order, and any other order of the Court: (a) the classification and manner of satisfying all Claims and Interests under the Plan takes into consideration all subordination

rights, whether arising by contract or under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise; (b) any distributions under the Plan to Holders shall be received and retained free from any obligations to hold or transfer the same to any other Holder and shall not be subject to levy, garnishment, attachment, or other legal process by any Holder by reason of claimed contractual subordination rights; and (c) any such subordination rights shall be waived, and this Confirmation Order shall constitute an injunction enjoining any Entity from enforcing or attempting to enforce any contractual, legal, or equitable subordination rights to property distributed under the Plan, in each case other than as provided in the Plan.

105. **Release of Liens.** Except as otherwise specifically provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, and compromised, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Debtors and their successors and assigns without any further approval or order of the Court and without any action or Filing being required to be made by the Debtors. In addition, the Term Loan Agent and the DIP Agent shall be authorized to execute and deliver all documents reasonably requested by the Debtors or the Plan Administrator to evidence the release of such mortgages, deeds of trust, Liens, pledges, and other security interests and shall authorize the Debtors to file UCC-3 termination statements (to the extent applicable) with respect thereto.

106. **Compromise of Controversies.** Pursuant to section 1123 of the Bankruptcy Code and in consideration for the distributions and other benefits, including releases, provided pursuant to the Plan, the provisions of the Plan shall constitute a good-faith compromise and

settlement of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of this Confirmation Order shall constitute the Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Court, after the Effective Date, the Plan Administrator may compromise and settle Claims against, and Interests in, the Debtors and their Estates and Causes of Action against other Entities. All distributions made to Holders of Allowed Claims and Interests in any Class are intended to be and shall be final.

107. **Operations After Closing.** On and after the Effective Date, except as otherwise provided in the Plan, the Plan Administrator may operate the Debtors' businesses and may use, acquire, or dispose of property and, as applicable, compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

108. **Rejection of Contracts and Leases.** Except as otherwise provided in the Plan or in the Sale Transaction Documentation, each Executory Contract and Unexpired Lease (other than any Executory Contract or Unexpired Lease previously rejected, assumed, or assumed and assigned), any employee benefit plans, severance plans, and other Executory Contracts under which employee obligations arise, shall be deemed automatically rejected on the Effective Date pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or

Unexpired Lease: (a) is specifically described in the Plan as to be assumed and assigned to the Plan Administrator, or other Entity, in connection with Confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned to the Plan Administrator, or other Entity, pursuant to the Plan or the Plan Supplement; (b) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Effective Date; (c) is to be assumed by the Debtors or assumed by the Debtors and assigned to the Purchaser or another third party, as applicable, in connection with the Sale Transaction following the consummation thereof; (d) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; (e) is a D&O Policy; or (f) is the Sale Transaction Documentation.

109. Entry of this Confirmation Order constitutes an approval of such assumptions, assignments, and rejections, including the assumption and assignment of the Executory Contracts or Unexpired Leases as provided in the Sale Transaction Documentation and the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Any motions to assume Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by a Final Order of the Court on or after the Effective Date.

110. Except as otherwise provided in this Confirmation Order, any and all objections or reservations of rights in connection with the rejection of an Executory Contract or Unexpired Lease under the Plan, if any, are overruled on their merits.

111. **Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.** Any monetary defaults under an Executory Contract or Unexpired Lease to be assumed by the Debtors as set forth in Article V.A of the Plan, as reflected on the Cure Notice shall be satisfied,

pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of such Cure Costs in Cash on or about the Effective Date, subject to the limitations described below and set forth in Article IV.C of the Plan, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (a) the Cure Costs, (b) the ability of any assignee, as applicable, to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (c) any other matter pertaining to assumption, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption.

112. Assumption (or assumption and assignment) of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy related defaults, arising under any assumed (or assumed and assigned) Executory Contract or Unexpired Lease at any time before the date that the Debtors assume such Executory Contract or Unexpired Lease. All liabilities reflected in the Schedules and any Proof of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Court.

113. **Waiver.** Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not

disclosed in the Plan, the Disclosure Statement, the Restructuring Support Agreement, or papers Filed with the Court before the Confirmation Date.

114. **Indemnification.** All Proofs of Claim Filed on account of an indemnification obligation to a director, officer, or employee shall automatically be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such indemnification obligation is assumed (or honored or reaffirmed, as the case may be) pursuant to the Plan, without any further notice to or action, order, or approval of the Court..

115. **Indemnification of Plan Administrator.** The Plan Administrator and all professionals retained by the Plan Administrator, each in their capacities as such, shall be deemed exculpated and indemnified, except for actual fraud, willful misconduct, or gross negligence, in all respects by the Debtors. The Plan Administrator may obtain, at the expense of the Debtors, commercially reasonable liability or other appropriate insurance with respect to the indemnification obligations of the Debtors. The Plan Administrator may rely upon written information previously generated by the Debtors.

116. For the avoidance of doubt, notwithstanding anything to the contrary contained in this Confirmation Order or the Plan, the Plan Administrator, in its capacity as such, shall have no liability whatsoever to any party for the liabilities and/or obligations, however created, whether direct or indirect, in tort, contract, or otherwise, of the Debtors.

117. **Authorization to Consummate.** The Debtors are authorized to consummate the Plan at any time after the entry of this Confirmation Order subject to satisfaction or waiver (by the required parties) of the conditions precedent to Consummation set forth in Article IX of the Plan.

118. **Professional Compensation.** All final requests for payment of Professional Fee Claims incurred during the period from the Petition Date through the Confirmation Date shall be Filed no later than forty-five days after the Effective Date. All such final requests will be subject to approval by the Court after notice and a hearing in accordance with the procedures established by the Bankruptcy Code, Bankruptcy Rules, and prior orders of the Court, including the Interim Compensation Order, and once approved by the Court, shall be promptly paid from the Professional Fee Escrow Account up to the full Allowed amount. To the extent that funds held in the Professional Fee Escrow Account are insufficient to satisfy the amount of Professional Fee Claims owing to the Professionals, such Professionals shall have an Allowed Administrative Claim for any such deficiency, which shall be satisfied in accordance with Article II.A of the Plan.

119. As soon as possible after Confirmation and not later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust for the Professionals. Such funds shall not be considered property of the Debtors' Estates. The amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals from funds held in the Professional Fee Escrow Account as soon as reasonably practicable after such Claims are Allowed by a Final Order. When all such Allowed amounts owing to Professionals have been paid in full, any remaining amount in the Professional Fee Escrow Account shall promptly be transferred to the Plan Administrator.

120. Professionals shall reasonably estimate their unpaid Professional Fee Claims and other unpaid fees and expenses incurred before and as of the Confirmation Date, and shall deliver such estimate to the Debtors (and the Debtors shall deliver to the Ad Hoc Group Professionals)

by the earlier of (a) five Business Days after the Confirmation Date and (b) two Business Days prior to the Effective Date; *provided* that such estimate shall not be considered an admission with respect to the fees and expenses of such Professional and such Professionals are not bound to any extent by the estimates. If a Professional does not provide an estimate, the Debtors may estimate the unbilled fees and expenses of such Professional.

121. Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors will, in the ordinary course of business and without any further notice to or action, order, or approval of the Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses incurred by the Debtors or the Plan Administrator. Upon the Confirmation Date, any requirement that Professionals and Ordinary Course Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code, the Interim Compensation Order, or the Ordinary Course Professionals Order, in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors and the Plan Administrator may employ and pay any Professional or Ordinary Course Professional in the ordinary course of business without any further notice to or action, order, or approval of the Court.

122. **Payment of Fees and Expenses of Ad Hoc Term Lender Group.** Notwithstanding anything to the contrary herein, the unpaid reasonable and documented out-of-pocket fees and expenses of the [DIP Agent \(including its counsel\) and the](#) Ad Hoc Term Lender Group shall be paid in full, in Cash on or before the Effective Date in accordance with the Plan and the Restructuring Support Agreement and/or as required by the DIP Orders.

123. **Return of Deposits.** All utilities, including, but not limited to, any Person or Entity that received a deposit or other form of adequate assurance of performance under section

366 of the Bankruptcy Code during these Chapter 11 Cases, must return such deposit or other form of adequate assurance of performance to the Debtors or the Plan Administrator, as applicable, promptly following the occurrence of the Effective Date, if not returned or applied earlier.

124. **Release, Exculpation, Discharge, and Injunction Provisions.** The release, exculpation, discharge, injunction, opt in, and related provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all Persons and Entities to the extent provided therein except as otherwise provided in this Confirmation Order.

125. **Compensation and Benefits Programs.** On the Effective Date or as soon as reasonably practicable thereafter, the Debtors shall pay all compensation and benefit obligations under any present compensation, benefit, or incentive programs, including any programs approved pursuant to an Order of the Court, other than any compensation, benefit, and incentive obligations assumed by the Purchaser pursuant to the Sale Transaction Documentation.

126. **Mississippi Department of Revenue Matters.** Notwithstanding anything in the Plan or this Confirmation Order to the contrary:

- (i) the Mississippi Department of Revenue's (the "MDOR") setoff rights under section 553 of the Bankruptcy Code and recoupment rights, if any, are preserved;
- (ii) nothing in the Plan or this Confirmation Order shall excuse the Debtors or the Plan Administrator from any obligation under applicable Mississippi state law to timely submit returns and remit payment of taxes in the ordinary course of business, and the MDOR shall not be required to file a request for a payment of an expense described in sections 503(b)(1)(B) or (C) of the Bankruptcy Code as a condition for its being an allowed administrative expense;
- (iii) to the extent the MDOR's Priority Tax Claims, if any, are not paid in full in cash on the Effective Date, such Priority Tax Claims shall, at a minimum, be paid by regular, quarterly installment payments in cash over

a period not to exceed five years after the date of the order for relief under section 301 of the Bankruptcy Code, all as required section 1129(a)(9)(C) of the Bankruptcy Code, along with non-bankruptcy interest in accordance with sections 511 and 1129(a)(9)(C) of the Bankruptcy Code and Mississippi state law, as applicable;

- (iv) MDOR shall be neither a “Released Party” nor a “Releasing Party” under the Plan;
- (v) the statutorily-mandated treatment of MDOR's Allowed Priority Tax Claims or any liabilities to MDOR described in section 503(b)(1)(B) and (C) of the Bankruptcy Code shall not be considered a settlement or compromise under Bankruptcy Rule 9019;
- (vi) solely to the extent permitted by Bankruptcy Rule 7015, the MDOR may timely amend any Proof of Claim against any Debtor after the Effective Date with respect to (a) a pending audit, (b) an audit that may be performed, with respect to any pre or post-petition tax return, or (c) a filed tax return.

127. **Texas Comptroller.** The following provisions of this Confirmation Order will govern the treatment of the Texas Comptroller of Public Accounts (the “Texas Comptroller”) concerning the duties and responsibilities of the Debtors relating to all unclaimed property presumed abandoned (the “Texas Unclaimed Property”) under Texas Property Code, Title 6, Chapters 72-76 and other applicable Texas laws (the “Texas Unclaimed Property Laws”):

128. On or within thirty (30) days after the Effective Date, the Debtors shall review their books and records and turn over to the Texas Comptroller any known, self-identified Texas Unclaimed Property presumed abandoned before the Petition Date and reflected in property reports delivered by the Debtors to the Texas Comptroller under the Texas Unclaimed Property Laws (the “Reported Unclaimed Property”). With respect to such Reported Unclaimed Property, the Texas Comptroller will not seek payment of any interest or penalty by the Debtors.

129. Notwithstanding section 362 of the Bankruptcy Code, after the Effective Date, the Texas Comptroller and its agents may commence an audit of the Debtors in accordance with the Texas Unclaimed Property Laws (the “Texas Unclaimed Property Audit”) and pursue recovery of

any unremitted Texas Unclaimed Property identified pursuant to the Texas Unclaimed Property Audit. The Debtors shall reasonably cooperate with the Auditors to enable them to accurately and timely perform the Texas Unclaimed Property Audit by making the entities' employees, professionals, books, and records available during normal business hours.

130. The Debtors' rights and defenses with respect to any allegations and claims asserted against the Debtors arising from or relating to the Texas Unclaimed Property Audit are hereby reserved; provided, however, that upon agreement between the Debtors and the Texas Comptroller or a final nonappealable determination by a court or other tribunal with jurisdiction as to the amount of unremitted Texas Unclaimed Property, if any, that is due in connection with the Texas Unclaimed Property Audit, the Debtors shall turn over such unremitted Texas Unclaimed Property to the Texas Comptroller.

131. Subject to the Bar Date Order and Bankruptcy Rule 7015, the Texas Comptroller may timely file or amend any Proofs of Claim in these Chapter 11 Cases following the Effective Date as a result of the filing of any property reports or in the ordinary course of the Unclaimed Property Audit.

132. Nothing herein precludes Debtors from compliance with continued obligations pursuant to Texas Unclaimed Property Laws.

133. **IRP Claimants.** Notwithstanding anything in the Plan or this Confirmation Order to the contrary, the injunction set forth by Article VIII.H of the Plan shall not prohibit certain plaintiffs (the "IRP Claimants")⁴ from effectuating discovery on the Debtors and/or the Plan Administrator, as applicable, in connection with the action titled *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, MDL No. 2724 (E.D. Penn.) (the "Generics MDL"); *provided that*

⁴ The IRP Claimants consist of Reliable Pharmacy, Inc., Halliday's & Koivisto's Pharmacy, Russell's Mr. Discount Drugs, Inc., Falconer Pharmacy, Inc., Chet Johnson Drug, Inc., and North Sunflower Medical Center, on behalf of themselves and as representatives of certain classes pending class certification under Fed. R. Civ. P. 23.

the rights of any party, including the Debtors and the Plan Administrator, to oppose such discovery are fully preserved.

134. Notwithstanding anything in the Plan or this Confirmation Order to the contrary, none of the plaintiffs in the Generics MDL, including the IRP Claimants, shall be deemed or treated as “Releasing Parties” under the Plan, except as otherwise agreed by the applicable plaintiff, including by such party “opting in” to granting the Third-Party Release on their applicable Ballot, and none of the Debtor Release set forth in Article VIII.E of the Plan, the Third-Party Release set forth in Article VIII.F of the Plan, the Injunction set forth in Article VIII.H of the Plan, and any discharges shall apply to the claims asserted in the Generics MDL; provided that nothing in the foregoing shall or shall be deemed to limit, modify, or otherwise adversely impact the Exculpation set forth in Article VIII.G of the Plan.

135. **Opt-Outs Actions.** Notwithstanding anything to the contrary in the Plan or this Confirmation Order, or any ancillary document related thereto, nothing herein or therein does, shall, or may be construed to release, enjoin, or otherwise adversely impact the claims and causes of action asserted against any non-Debtor defendant now or hereafter named in the securities class action litigations captioned as (i) AQR Funds – AQR Multi-Strategy Alternative Fund, *et al.* v. Akorn, Inc., *et al.*, Civ. A. No. 1:20-cv-00434 (N.D. Ill.), (ii) Magnetar Constellation Fund II-PRA LP, *et al.* v. Akorn, Inc., *et al.*, Civ. A. No. 1:19-cv-08418 (N.D. Ill.), (iii) Manikay Master Fund, LP, *et al.* v. Akorn, Inc., *et al.*, Civ. A. No. 1:19-cv-04651 (N.D. Ill.), and (iv) Twin Master Fund, Ltd., *et al.* v. Akorn, Inc., *et al.*, Civ. A. No. 1:19-cv-03648 (N.D. Ill.) (the “Opt-Out Actions”), it being understood that any such claims are fully and expressly preserved, and any recovery on account thereof may be secured from proceeds of available insurance, if any;

provided that nothing in the foregoing shall or shall be deemed to limit, modify, or otherwise adversely impact (a) the Exculpation set forth in Article VIII.G of the Plan or (b) with respect to matters other than those related to the Opt-Out Actions, (x) the releases by the Debtors set forth in Article VIII.E of the Plan and (y) the Injunction set forth in Article VIII.H of the Plan. For the avoidance of doubt, each of the plaintiffs in the Opt-Out Actions shall be neither a “Releasing Party” nor a “Released Party” under the Plan.

136. **Louisiana Department of Revenue Matters.** Notwithstanding anything in the Plan or this Confirmation Order to the contrary:

- (i) the Louisiana Department of Revenue's (the "LDR") setoff rights under section 553 of the Bankruptcy Code and recoupment rights, if any, are preserved;
- (ii) nothing in the Plan or this Confirmation Order shall excuse the Debtors or the Plan Administrator from any obligation under applicable Louisiana state law to timely submit returns (including, for the avoidance of doubt, any delinquent returns, which delinquent returns shall be filed by the later of (a) 90 days after the Effective Date or (b) the applicable due date under Louisiana law) and remit payment of taxes in the ordinary course of business, and the LDR shall not be required to file a request for a payment of an expense described in sections 503(b)(1)(B) or (C) of the Bankruptcy Code as a condition for its being an allowed administrative expense. For the avoidance of doubt, the tax returns due to the Louisiana Department of Revenue in the ordinary course of business include, without limitation, a 2019 Louisiana Corporate Return and 2020 Louisiana Corporate Return;
- (iii) to the extent the LDR's Priority Tax Claims, if any, are not paid in full in cash on the Effective Date, such Priority Tax Claims shall, at a minimum, be paid by regular, quarterly installment payments (to commence on the first day of the first calendar quarter following the Effective Date) in cash over a period not to exceed five years after the date of the order for relief under section 301 of the Bankruptcy Code, all as required section 1129(a)(9)(C) of the Bankruptcy Code, along with non-bankruptcy interest in accordance with sections 511 and 1129(a)(9)(C) of the Bankruptcy Code and Louisiana state law, as applicable;
- (iv) LDR shall be neither a "Released Party" nor a "Releasing Party" under the Plan, and no non-Debtor liable with any Debtor to the LDR for trust taxes pursuant to La. Stat. Rev. Ann. § 47:1561.1 shall be released from such liability, if any, pursuant to the Plan or this Confirmation Order;
- (v) the statutorily-mandated treatment of LDR's Allowed Priority Tax Claims or any liabilities to LDR described in section 503(b)(1)(B) and (C) of the Bankruptcy Code shall not be considered a settlement or compromise under Bankruptcy Rule 9019;
- (vi) solely to the extent permitted by Bankruptcy Rule 7015, the LDR may timely amend any Proof of Claim against any Debtor after the Effective Date with respect to (a) a pending audit, (b) an audit that may be performed, with respect to any pre or post-petition tax return, or (c) a filed tax return; *provided* that, in the case of subpart (c), LDR may amend any timely filed proof of claim to which the filed return relates without leave of the applicable Debtors, the Plan Administrator, or the Court;
- (vii) all tax returns filed by the Plan Administrator with the LDR shall be filed at the following address: Louisiana Department of Revenue, Bankruptcy

Section, Collection Division, Attn: Bankruptcy Section Supervisor, Post Office Box 66658, Baton Rouge, LA 70896-6658, and this address shall be the designated address for notice and service of any request for determination of a tax liability pursuant to section 505 of the Bankruptcy Code;

- (viii) on and after the Effective Date, LDR's Allowed Administrative Claims, if any, may accrue statutory interest and penalty in accordance with applicable law; and
- (ix) the Debtors and the Plan Administrator shall be required to file all required documentation with the Louisiana Secretary of State and otherwise comply with applicable Louisiana law with respect to withdrawal of Debtors registered to do business in the state of Louisiana therefrom.¶

137. Certain Chubb Matters. As used in this Confirmation Order: "Chubb Insurance Contracts" means all insurance policies, including any D&O Policies, that have been issued by the Chubb Companies to, or provide coverage, benefits or proceeds to any of the Debtors (or their predecessors) at any time, and all agreements, documents or instruments relating thereto; and "Chubb Companies" means ACE American Insurance Company, Westchester Fire Insurance Company, Illinois Union Insurance Company, Federal Insurance Company, Chubb Custom Insurance Company and each of their U.S.-based affiliates and successors. Notwithstanding anything to the contrary in the Plan, the Plan Supplement, the Disclosure Statement, the Restructuring Support Agreement, the Sale Transaction Documentation, Bidding Procedures Order, any Cure Notice, the Sale Order, the Confirmation Order, any bar date notice or claim objection, any other document related to any of the foregoing or any other order of the Bankruptcy Court (including, without limitation, any other provision that purports to be preemptory or supervening, grants an injunction, discharge or release, confers bankruptcy court jurisdiction or requires a party to opt out of any releases): (a) on the Plan Effective Date, the Chubb Insurance Contracts (solely to the extent not already assumed and assigned to

the Purchaser pursuant to paragraph 27(ii) of the Sale Order) shall vest unaltered and in their entirety in the Debtors and the Debtors shall succeed to all of rights and obligations such that the Debtors shall remain liable in full for all of the Debtors' obligations under the Chubb Insurance Contracts, regardless of whether such obligations arise before or after the Effective Date and without the need for any of the Chubb Companies to file a Proof of Claim, Administrative Claim, or to object to any Cure Notice; and (b) the automatic stay of Bankruptcy Code section 362(a) and the injunctions set forth in Article VIII.H. of the Plan, if and to the extent applicable, shall be deemed lifted without further order of this Bankruptcy Court, solely to permit: (I) claimants with valid workers' compensation claims or direct action claims against the Chubb Companies under applicable non-bankruptcy law to proceed with their claims; (II) the Chubb Companies to administer, handle, defend, settle, and/or pay, in the ordinary course of business and without further order of this Bankruptcy Court, (A) workers' compensation claims, (B) claims where a claimant asserts a direct claim against the Chubb Companies under applicable non-bankruptcy law, or an order has been entered by this Bankruptcy Court granting a claimant relief from the automatic stay to proceed with its claim, and (C) all costs in relation to each of the foregoing; (III) the Chubb Companies to draw against any or all of the collateral or security provided by or on behalf of the Debtors at any time and to hold the proceeds thereof as security for the obligations of the Debtors and/or apply such proceeds to the obligations of the Debtors under the applicable Chubb Insurance Contracts, in such order as the Chubb Companies may determine; and (IV) the Chubb Companies to cancel any Chubb Insurance Contracts, and take, in their sole discretion, other actions relating to the Chubb Insurance Contracts (including setting off amounts due by the Debtors against any

amounts due to the Debtors or otherwise applying any collateral or security provided by the Debtors, regardless of when any such amounts arise, become due or are provided), to the extent permissible under applicable non-bankruptcy law, and in accordance with the terms of the Chubb Insurance Contracts.

138. ~~137.~~ **Compliance with Tax Requirements.** In connection with the Plan, to the extent applicable, the Debtors shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Disbursing Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Debtors reserve the right to allocate all distributions made under the Plan in compliance with applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances. All Persons holding Claims or Interests shall be required to provide any information necessary to effect information reporting and the withholding of such taxes. Notwithstanding any other provision of the Plan to the contrary, each Holder of an Allowed Claim or Allowed Interest shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding, and other tax obligations, on account of such distribution.

139. ~~138.~~ **Exemption from Certain Taxes and Fees.** To the maximum extent provided by section 1146(a) of the Bankruptcy Code, any post-Confirmation transfer from any

Entity pursuant to, in contemplation of, or in connection with the Plan, the Sale Transaction, or the Sale Transaction Documentation or pursuant to: (i) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors; or (ii) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instruments of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, in each case to the extent permitted by applicable bankruptcy law, and the appropriate state or local government officials or agents shall forego collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment. The Court shall retain specific jurisdiction with respect to these matters.

140. ~~139.~~ **Insurance Policies.** Notwithstanding anything to the contrary in the Plan or this Confirmation Order, Confirmation and Consummation of the Plan shall not limit or affect the rights of any third-party beneficiary or other covered party of any of the Debtors' insurance policies with respect to such policies (including the D&O Policies), nor shall anything contained herein or therein (a) constitute or be deemed a waiver by such insurers of any rights or defenses, including coverage defenses, held by such insurers under any insurance policy, applicable law, equity, or otherwise, or (b) establish, determine, or otherwise imply any liability or obligation, including any coverage obligation, of any insurer. For purposes of the Plan and this Confirmation Order, the definition of "D&O Policies" is hereby amended as follows:

“D&O Policies” means all insurance policies (including any “tail policy” or run-off endorsement) that have been issued at any time to any of the Debtors as a first named insured providing directors’, members’, trustees’, officers’, or managers’ liability coverage and all agreements, documents, or instruments relating thereto.¶

141. United States Matters. Notwithstanding any provision to the contrary in the Plan, this Confirmation Order or any implementing Plan documents (collectively, the “Documents”): As to the United States, nothing in the Documents shall: (1) discharge, release, enjoin, impair or otherwise preclude (a) any liability to the United States that is not a “claim” within the meaning of section 101(5) of the Bankruptcy Code, (b) any claim of the United States arising after the Confirmation Date, or (c) any liability of any entity or person under police or regulatory statutes or regulations to any Governmental Unit (as defined by section 101(27) of the Bankruptcy Code) as the owner, lessor, lessee or operator of property or rights to property that such entity owns, operates or leases after the Confirmation Date; (2) release, nullify, preclude or enjoin the enforcement of any police or regulatory power; (3) modify the scope of Bankruptcy Code Section 525; (4) authorize the assumption, sale, assignment or other transfer of any federal (i) grants, (ii) grant funds, (iii) contracts, including but not limited to, Department of Veterans Affairs Federal Supply Schedule Contract Numbers V797P-5209B and 36F79720D0129, (iv) property, including but not limited to, intellectual property and patents, (v) leases, (vi) agreements, including but not limited to, any Medicare Coverage Gap Discount Program Agreement, or other interests of the federal government (collectively, “Federal Interests”) without compliance by the Debtors and the Purchaser with all terms of the Federal Interests and with all applicable non-bankruptcy law; (5) be interpreted to set cure amounts or to require the United States to novate, approve or otherwise consent to the assumption, transfer or assignment of any Federal Interests; (6) authorize the assumption, transfer or assignment

of any governmental (i) license, (ii) permit, (iii) registration, (iv) authorization or (v) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements, obligations and approvals under non-bankruptcy laws; (7) confer exclusive jurisdiction to the Bankruptcy Court with respect to the Federal Interests, claims, liabilities and Causes of Action, except to the extent set forth in 28 U.S.C. § 1334 (as limited by any other provisions of the United States Code); (8) waive, alter or otherwise limit the United States' property rights with respect to the Federal Interests, including but not limited to, inventory, patents, intellectual property, licenses, and data; (9) release, exculpate, enjoin, impair or discharge any non-Debtor from any claim, liability, suit, right or Cause of Action of the United States; (10) affect any setoff or recoupment rights of the United States and such rights are preserved (provided that the Debtors expressly reserve all defenses to any such rights of setoff or recoupment; provided, further, that, for the avoidance of doubt, the foregoing shall be sufficient to preserve any setoff or recoupment rights of the United States notwithstanding Article VIII.H of the Plan); (11) require the United States to file an administrative claim in order to receive payment for any liability described in Section 503(b)(1)(B) and (C) pursuant to Section 503(b)(1)(D) of the Bankruptcy Code; (12) constitute an approval or consent by the United States without compliance with all applicable legal requirements and approvals under non-bankruptcy law; (13) be construed as a compromise or settlement of any liability, claim, Cause of Action or interest of the United States; (14) modify the scope of Section 502 of the Bankruptcy Code with respect to the claims of the United States; (15) cause the filing of any claim, including but not limited to amended claims, by the United States to be automatically disallowed and expunged on or after the Effective Date; (16) be deemed to

alter the date of any Plan distribution to the United States, (17) require rejection damage claims relating to Federal Interests (a) to be filed by a deadline other than the later of (x) the Governmental Bar Date (as defined in the Bar Date Order) or (y) thirty days after the effective date of the rejection of such Federal Interest or (b) alter the treatment of such rejection claims under the Bankruptcy Code; (18) make prospective determinations as to the pre-petition nature of any Federal Interest or (19) bar or estop the United States from asserting against the Debtors, their successors or assigns, their property or their assets or estates, any claims, liabilities and obligations assumed by the Purchaser that the United States would be entitled to assert against the Debtors or the Debtors' estates under applicable law notwithstanding such assumption. Liens on property of the Debtors and Debtors' Estates securing claims of the United States shall be retained until the claim, with interest, if any, is paid in full. Administrative expense claims of the United States allowed pursuant to the Plan or the Bankruptcy Code shall accrue such interest and penalties as provided by non-bankruptcy law until paid in full. Priority Tax Claims of the United States allowed pursuant to the Plan or the Bankruptcy Code will be paid in accordance with Section 1129(a)(9)(C) of the Bankruptcy Code. To the extent allowed Priority Tax Claims (including any penalties, interest or additions to tax entitled to priority under the Bankruptcy Code) are not paid in full in cash on the Effective Date, then such Priority Tax Claims shall accrue interest commencing on the Effective Date at the rate set forth in Section 511 of the Bankruptcy Code. Moreover, nothing shall effect a release, injunction or otherwise preclude any claim whatsoever against any Debtor or any of the Debtors' Estates by or on behalf of the United States for any liability arising a) out of pre-petition or post-petition tax periods for which a return has not been filed or b) as a result of any

pending audit or audit that may be performed with respect to any pre-petition or post-petition tax period for which a claim is or will be Allowed. Further, nothing shall enjoin the United States from amending any claim to the extent permitted by applicable law against any Debtor or any of the Debtors' Estates with respect to any tax liability a) arising out of pre-petition or post-petition tax periods for which a tax return has not been filed or b) from a pending audit or audit that may be performed with respect to any pre-petition or post-petition tax period for which a claim is or will be Allowed. Any liability arising a) out of pre-petition or post-petition tax periods for which a return has not been filed or b) as a result of a pending audit or audit which may be performed with respect to any pre-petition or post-petition tax period shall, if Allowed, be paid in accordance with 1129(a)(9)(A) and (C) of the Bankruptcy Code. Without limiting the foregoing but for the avoidance of doubt, nothing contained in the Documents shall be deemed to bind the United States to any characterization of any transaction for tax purposes or to determine the tax liability of any person or entity, including, but not limited to, the Debtors and the Debtors' estates, nor shall the Documents be deemed to have determined the federal tax treatment of any item, distribution, or entity, including the federal tax consequences of this Plan, nor shall anything in the Documents be deemed to have conferred jurisdiction upon the Bankruptcy Court to make determinations as to federal tax liability and federal tax treatment except as provided under Section 505 of the Bankruptcy Code.

142. ~~140.~~—**Documents, Mortgages, and Instruments.** Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all

documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring Transactions, and this Confirmation Order.

143. ~~141.~~ **Continued Effect of Stays and Injunction.** Unless otherwise provided in the Plan or this Confirmation Order, all injunctions or stays in effect in these Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or this Confirmation Order shall remain in full force and effect in accordance with their terms; provided, for the avoidance of doubt, that nothing in the Plan or this Confirmation Order shall prejudice the rights of parties in interest to seek relief from the automatic stay pursuant to section 362(d) of the Bankruptcy Code.

144. ~~142.~~ **Nonseverability of Plan Provisions Upon Confirmation.** Each term and provision of the Plan is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the consent of the Debtors, the Required Consenting Term Loan Lenders, the DIP Lenders, and the DIP Agent (to the extent of its consent right set forth in the DIP Loan Documents (if any)); and (c) nonseverable and mutually dependent.

145. ~~143.~~ **Notice of Subsequent Pleadings.** Except as otherwise provided in the Plan or in this Confirmation Order, notice of all subsequent pleadings in these Chapter 11 Cases after the Effective Date will be limited to the following parties: (a) the Debtors and their counsel; (b) the Plan Administrator; (c) the U.S. Trustee; (d) any party known to be directly affected by the relief sought by such pleadings; and (e) any party that specifically requests additional notice in writing to the Debtors or the Plan Administrator, as applicable, or files a request for notice under

Bankruptcy Rule 2002 after the Effective Date. ~~The Notice and Claims Agent shall not be required to file updated service lists.~~

146. ~~144.~~ **Post-Confirmation Reports.** After the Effective Date, the Debtors shall not have any obligation to file with the Court or serve on any parties reports that the Debtors were obligated to file under the Bankruptcy Code or a Court order, ~~including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, and monthly or quarterly reports for Professionals;~~ *provided, however,* that the Debtors will comply with the U.S. Trustee's quarterly reporting requirements until the earliest of the applicable Debtor's Chapter 11 Case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

147. ~~145.~~ **Post-Confirmation Modifications.** Without need for further order or authorization of the Court, the Debtors are authorized to make any and all modifications to any and all documents that are necessary to effectuate the Plan that do not materially modify the terms of such documents and are consistent with the Plan (subject to any applicable consents or consultation rights set forth therein). Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtors expressly reserve their respective rights to alter, amend, or modify materially the Plan with respect to such Debtors, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement

shall be considered a modification of the Plan and shall be made in accordance with Article X of the Plan.

148. ~~146.~~ 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 and the classifications set forth on the ballots tendered to or returned by the Holders of Claims or Interests in connection with voting on the Plan: (a) were set forth thereon solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of Claims and Interests under the Plan for distribution purposes; (c) may not be relied upon by any Holder of a Claim or Interest as representing the actual classification of such Claim or Interest under the Plan for distribution purposes; and (d) shall not be binding on the Debtors except for voting purposes.

149. ~~147.~~ Choice of Law. Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated herein, the laws of the State of New York, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); *provided* that corporate or limited liability company governance matters relating to the Debtors not incorporated or formed (as applicable) in the State of New York shall be governed by the laws of the state of incorporation or formation (as applicable) of the applicable Debtor. The State of New York has (a) a substantial relationship to the parties and to the underlying transactions embodied by the Plan, and (b) a material interest in the determination of matters concerning the rights, obligations, construction, and implementation of the Plan and

any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan.

150. ~~148.~~ Applicable Nonbankruptcy Law. The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.¶

~~149. **Waiver of Filings.** Any requirement under section 521 of the Bankruptcy Code or Bankruptcy Rule 1007 obligating the Debtors to file any list, schedule, or statement with the Court or the U.S. Trustee is permanently waived as to any such list, schedule, or statement not filed as of the Confirmation Date.~~

151. ~~150.~~ Governmental Approvals Not Required; No Revocation of Permits. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state, federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement. As provided in section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license of the Acquired Entities on account of the filing or pendency of the Chapter 11 Cases or the discharge of any debt owed to such governmental unit.

152. ~~151.~~ Notices of Confirmation and Effective Date. The Debtors shall cause notice of entry of this Confirmation Order, of the occurrence of the Effective Date, and of applicable deadlines (the “Notice of Confirmation”) to be served in accordance with Bankruptcy Rules 2002 and 3020(c) on all parties served with the Confirmation Hearing Notice within seven Business Days after the Effective Date; *provided* that no notice of any kind shall be required to

be mailed or made upon any Entity to whom the Debtors mailed notice of the Confirmation Hearing, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address,” or “forwarding order expired,” or similar reason, unless the Debtors have been informed in writing by such Entity, or are otherwise aware, of that Entity’s new address. For those parties receiving electronic service, filing on the docket is deemed sufficient to satisfy such service and notice requirements.

153. ~~152.~~ No later than ten Business Days after the Effective Date, the Debtors shall cause the Notice of Confirmation, modified for publication, to be published on one occasion in *The New York Times* (national edition) and *USA Today* (national edition). Mailing and publication of the Notice of Confirmation in the time and manner set forth in this paragraph will be good, adequate, and sufficient notice under the particular circumstances and in accordance with the requirements of Bankruptcy Rules 2002 and 3020(c). No further notice is necessary.

154. ~~153.~~ The Notice of Confirmation will have the effect of an order of the Court, will constitute sufficient notice of the entry of this Confirmation Order to filing and recording officers, and will be a recordable instrument notwithstanding any contrary provision of applicable non-bankruptcy law. The above-referenced notices are adequate under the particular circumstances of these Chapter 11 Cases and no other or further notice is necessary.

155. ~~154.~~ **Dissolution of the Committee.** Except to the extent provided in the Plan, on the Effective Date, the Committee shall dissolve, and the members of the Committee and their respective officers, employees, counsel, advisors and agents shall be released and discharged from further authority, duties, responsibilities and obligations related to and arising from and in connection with the Chapter 11 Cases, except with respect to (a) prosecuting any fee applications of the Professionals for the Committee, including payment thereon, or seeking reimbursement of

expenses for members of the Committee; and (b) prosecuting or participating in any appeals or stays of orders relating to the Plan until such time as such orders become Final Orders. Upon dissolution of the Committee, the retention or employment of the Committee's respective attorneys, accountants and other agents shall terminate. The Debtors shall no longer be responsible for paying any fees or expenses incurred by the members of or advisors to the Committee after the Effective Date.

156. ~~155.~~ Effect of Non-Occurrence of Conditions to the Effective Date. If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of the Debtors, any Holders of a Claim or Interest, or any other Entity; or (c) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, any Holders, or any other Entity in any respect.

157. ~~156.~~ Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

158. ~~157.~~ Waiver of Stay. For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Court.

159. ~~158.~~ References to and Omissions of Plan Provisions. References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being

the intent of the Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

160. ~~159.~~ **Headings.** Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

161. ~~160.~~ **Effect of Conflict.** This Confirmation Order supersedes any Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control.

162. ~~161.~~ **Final, Appealable Order.** This Confirmation Order is a final judgment, order, or decree for purposes of 28 U.S.C. § 158(a), and the period in which an appeal must be filed shall commence upon the entry hereof.

163. ~~162.~~ **Retention of Jurisdiction.** The Court may properly, and upon the Effective Date shall, to the full extent set forth in the Plan, retain jurisdiction over all matters arising out of, and related to, these Chapter 11 Cases, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

EXHIBIT A

Plan