

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

In re:

GRITSTONE BIO, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 24-12305 (KBO)

**Related Docket No. 585**

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**NOTICE OF FILING OF PROPOSED CONFIRMATION ORDER**

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**PLEASE TAKE NOTICE** that on March 31, 2025, the above-captioned debtor and debtor in possession (the “Debtor”) filed *Gritstone bio, Inc.’s Second Modified Chapter 11 Plan of Reorganization* [Docket No. 585] (the “Plan”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

**PLEASE TAKE FURTHER NOTICE** that the hearing to consider confirmation of the Plan (the “Confirmation Hearing”) will be held virtually before the Honorable Karen B. Owens, United States Bankruptcy Court Judge, at the United States Bankruptcy Court, 824 North Market Street, 6<sup>th</sup> Floor, Courtroom No. 3, Wilmington, Delaware 19801, on April 2, 2025, at 2:00 p.m., Prevailing Eastern Time.

**PLEASE TAKE FURTHER NOTICE** that attached hereto as **Exhibit A** is the proposed *Order Confirming Gritstone bio, Inc.’s Second Modified Chapter 11 Plan of Reorganization* (the “Proposed Confirmation Order”). The Debtor reserves the right to materially alter, amend, or modify the Proposed Confirmation Order at any time prior to the Confirmation Hearing. The Debtor intends to present a form of the Proposed Confirmation Order (subject to any modifications and/or amendments) to the Bankruptcy Court at the Confirmation Hearing.

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<sup>1</sup> The Debtor’s mailing address is 4698 Willow Road, Pleasanton, CA 94588, and the last four digits of the Debtor’s federal tax identification number is 9534.



Dated: March 31, 2025

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O'Neill

Debra I. Grassgreen, (admitted *pro hac vice*)

John W. Lucas, (admitted *pro hac vice*)

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**EXHIBIT A**

**Proposed Confirmation Order**

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

In re:

GRITSTONE BIO, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 24-12305 (KBO)

**Related Docket No. 585**

**ORDER CONFIRMING GRITSTONE BIO, INC.'S  
SECOND MODIFIED CHAPTER 11 PLAN OF REORGANIZATION**

Upon the filing by Gritstone Bio, Inc., the debtor and debtor in possession (the “**Debtor**”) of in the above-captioned chapter 11 case, of *Gritstone Bio, Inc.’s Second Modified Chapter 11 Plan of Reorganization* [D.I. 585], attached hereto as **Exhibit A** (including all exhibits and schedules thereto and as amended, modified, or supplemented from time to time, the “**Plan**”);<sup>2</sup> and the Court having previously approved the *First Modified Disclosure Statement with Respect to Gritstone Bio, Inc.’s Chapter 11 Plan of Reorganization* [D.I. 453] (the “**Disclosure Statement**”) and the solicitation procedures related to the Disclosure Statement and to the solicitation of votes on the Plan, in each case pursuant to Disclosure Statement Order [D.I. 442]; and the Debtor having served the Disclosure Statement and certain related solicitation materials on the Holders of Claims entitled to vote on the Plan in accordance with the Disclosure Statement Order, *see* D.I. 489, 502, and 538 (the “**Solicitation Affidavits**”); and the Debtor having served notice of the Confirmation Hearing [D.I. 454] in accordance with the Disclosure Statement Order (the “**Confirmation Hearing Notice**”), *see* D.I. 566 and 567 (the “**Confirmation Hearing Notice Affidavit**”); and the Debtor having filed the Plan Supplement [D.I. 492] in accordance with the Disclosure Statement Order; and the Court having considered the record in this Chapter 11 Case, the *Declaration of*

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<sup>1</sup> The Debtor’s mailing address is 4698 Willow Road, Pleasanton, CA 94588, and the last four digits of the Debtor’s federal tax identification number is 9534.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings provided for in the Plan.

*Steven J. Fleming in Support of Confirmation of Gritstone Bio, Inc. 's First Modified Chapter 11 Plan of Reorganization* [D.I. 559] and the *Declaration of Vassiliki ("Celia") Economides in Support of Confirmation of Gritstone Bio, Inc. 's First Modified Chapter 11 Plan of Reorganization* [D.I. 558] (collectively, the "**Confirmation Declarations**"), and the stakeholder support for the Plan as evidenced on the record and in the *Declaration of Jeffrey Miller with Respect to the Tabulation of Votes on Gritstone Bio, Inc. 's First Modified Chapter 11 Plan of Reorganization* [D.I. 557] (the "**Tabulation Declaration**"); and the Court having considered the compromises and settlements embodied in the Plan, the briefs and arguments regarding confirmation of the Plan, objections to confirmation of the Plan and any evidence in support thereof, and the evidence in support of confirmation of the Plan; and the Confirmation Hearing having been held on March 26, 2025; and after due deliberation:

**THE COURT HEREBY FINDS:**

A. **Findings of Fact.** The findings of fact and the conclusions of law stated in this Confirmation Order shall constitute findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to the proceeding by Fed. R. Bankr. P. 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it is adopted as such, and to the extent any conclusion of law shall be determined to be a finding of fact, it is adopted as such.

B. **Jurisdiction; Venue; Core Proceeding.** The Court has jurisdiction over the Chapter 11 Case 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 as of February 29, 2012. This Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding pursuant to

28 U.S.C. § 157(b)(2)(L). Confirmation of a plan by this Court is a constitutional exercise of the jurisdiction and power conferred by Congress on this Court and the Court may enter a final order.

C. **Transmittal and Mailing of Solicitation Materials and Notices.** The solicitation materials and notices prescribed by the Disclosure Statement Order were served in compliance with the Disclosure Statement Order, and such service was appropriate and sufficient. Appropriate and sufficient notice of the Confirmation Hearing and the other deadlines and matters required to be noticed pursuant to the Disclosure Statement Order was given in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”) and the Disclosure Statement Order, and no other or further notice is or shall be required.

D. **Solicitation.** All procedures used to distribute the solicitation materials to the appropriate creditors and to tabulate the ballots were fair and were conducted in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Disclosure Statement Order. Votes for acceptance or rejection of the Plan were solicited and cast in good faith, and only after transmittal of a disclosure statement containing adequate information, and otherwise in compliance with 11 U.S.C. §§ 1125 and 1126 and Fed. R. Bankr. P. 3017 and 3018. The Debtor and its Professionals have acted in good faith within the meaning of 11 U.S.C. §§ 1125(e) and 1129(a)(3), and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Disclosure Statement Order and are entitled to the protections afforded by 11 U.S.C. § 1125(e) and, to the extent applicable, the exculpation and injunctive provisions set forth in Article X of the Plan.

E. **Impaired Classes that Have Voted to Accept or Reject the Plan.** Classes 1 and 3-6 are Impaired under and entitled to vote on the Plan. As evidenced by the Tabulation

Declaration, Classes 1 and 3-6 have voted to accept the Plan pursuant to the requirements of 11 U.S.C. §§ 1124 and 1126, excluding the votes of any Insiders, if applicable.

F. **Classes Deemed to Accept Plan.** Class 2 is Unimpaired under the Plan. Pursuant to 11 U.S.C. § 1126(f), Holders of such Unimpaired Claims are conclusively presumed to have accepted the Plan.

G. **Classes Deemed to Reject Plan.** Classes 7 and 8 are Impaired under the Plan and not anticipated to receive any distribution under the Plan. Pursuant to 11 U.S.C. § 1126(g), Holders of Impaired Claims or Equity Interests that are not anticipated to receive a distribution under the Plan are conclusively presumed to have rejected the Plan.

H. **Releases, Exculpations and Injunctions.** The release, exculpation, and injunction provisions set forth in Article X of the Plan: (a) were conspicuously emphasized with bold typeface in the Plan, Disclosure Statement, and the Confirmation Hearing Notice such that all Holders of Claims and Equity Interests were provided adequate notice and an opportunity to object; (b) are within the jurisdiction and power of the Court under 28 U.S.C. §§ 1334(a), 1334(b) and 1334(d); (c) are an essential means of implementing the Plan pursuant to 11 U.S.C. § 1123(a)(5); (d) are an integral element of the transactions incorporated into the Plan; (e) confer material benefits on, and are in the best interests of, the Debtor, its Estate and its creditors; (f) are important to the overall objectives of the Plan to finally resolve all Claims among or against the key parties in interest in the Chapter 11 Case with respect to the Debtor; and (g) are consistent with 11 U.S.C. §§ 105, 1123 and 1129, and other applicable provisions of the Bankruptcy Code. With respect to the release pursuant to Article X.C of the Plan provided by Holders of Claims who affirmatively voted to accept the Plan and did not elect on their ballots to opt out of such release, such releases are (a) consensual, (b) in exchange for the good and valuable consideration provided by the Released Parties, representing a good faith settlement and compromise of any claims released therein; (c) in

the best interests of the Debtor and all Holders of Claims and Equity Interests; (d) narrowly tailored; (e) fair, equitable and reasonable; and (f) a bar to any of the releasing parties' assertion of any claims, obligations, rights, suits, damages, causes of action, remedies and liabilities released by such provisions. The record of the Confirmation Hearing and the Chapter 11 Case is sufficient to support the release, exculpation, and injunction provisions in the Plan.

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

**(i) Proper Classification -- 11 U.S.C. §§ 1122, 1123(a)(1).** Aside from Administrative Expense Claims and Priority Tax Claims, which need not be classified, the Plan designates eight Classes of Claims or Equity Interests against the Debtor. The Claims or Equity Interests placed in each Class are substantially similar to other Claims or Equity Interests, as the case may be, in each such Class. The classification of Claims and Equity Interests in the Plan is reasonable and necessary, has a rational, justifiable, and good faith basis. Valid business, factual and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate among Holders of Claims and Equity Interests. Thus, the Plan satisfies 11 U.S.C. §§ 1122 and 1123(a)(1).

**(ii) Specify Unimpaired Classes -- 11 U.S.C. § 1123(a)(2).** Article III.A of the Plan specifies that Class 2 is Unimpaired under the Plan, thereby satisfying 11 U.S.C. § 1123(a)(2).

**(iii) Specify Treatment of Impaired Classes -- 11 U.S.C. § 1123(a)(3).** Article III.A of the Plan specifies that Classes 1 and 3-8 are Impaired, and Article III.B of



the Plan specifies the treatment of Claims and Equity Interests in those Classes, thereby satisfying 11 U.S.C. § 1123(a)(3).

(iv) **No Discrimination -- 11 U.S.C. § 1123(a)(4).** The Plan provides for the same treatment for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest, thereby satisfying 11 U.S.C. § 1123(a)(4).

(v) **Implementation of Plan -- 11 U.S.C. § 1123(a)(5).** Article V and other provisions of the Plan provide adequate means for implementation of the Plan, including:

- (a) vesting all of the property of the Estate and of the Debtor, other than the Liquidating Trust Assets, in the Reorganized Debtor free and clear of any and all Claims, Liens and Equity Interests, except for those Claims and Liens expressly provided for in the Plan;
- (b) partial conversion of the Allowed DIP Financing Claim into the New Equity Interests in the Reorganized Debtor;
- (d) creation of the Liquidating Trust, funding of the Liquidating Trust, and vesting of the Liquidating Trust Assets in the Liquidating Trust; and
- (f) appointment of the Liquidating Trustee. The Plan provides adequate and proper means for its implementation, thereby satisfying 11 U.S.C. § 1123(a)(5).

(vi) **Non-Voting Equity Securities -- 11 U.S.C. § 1123(a)(6).** The Reorganized Debtor's governing documents include provisions prohibiting the issuance of non-voting equity securities, to the extent required by 11 U.S.C. § 1123(a)(6) and limited as necessary to facilitate compliance with applicable non-bankruptcy federal laws governing foreign ownership of the Debtor. Thus, the requirements of 11 U.S.C. § 1123(a)(6) are satisfied.

(vii) **Selection of Officers and Directors -- 11 U.S.C. § 1123(a)(7).** In the Plan Supplement, the Debtor has properly and adequately disclosed the identity and affiliations

of all individuals proposed to serve on or after the Effective Date as (a) directors of the Reorganized Debtor (subject to replacement or removal in accordance with the terms of the Reorganized Debtor's governing documents) and (b) officers of the Reorganized Debtor, and the manner of selection and appointment of such individuals is consistent with the interests of Holders of Claims and Equity Interests and with public policy and, accordingly satisfies the requirements of 11 U.S.C. § 1123(a)(7).

(viii) **Additional Plan Provisions -- 11 U.S.C. § 1123(b).** The Plan's additional provisions, including in respect of the assumption or rejection of the Debtor's executory contracts and unexpired leases and the settlements and compromises effected by the Plan, are appropriate and not inconsistent with the applicable provisions of the Bankruptcy Code.

J. **Compliance with Bankruptcy Code -- 11 U.S.C. § 1129(a)(2).** The Debtor, as the proponent of the Plan, has complied with the applicable provisions of the Bankruptcy Code, thereby satisfying 11 U.S.C. § 1129(a)(2).

K. **Plan Proposed in Good Faith -- 11 U.S.C. § 1129(a)(3).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying 11 U.S.C. § 1129(a)(3). The Court has examined the totality of the circumstances surrounding the formulation of the Plan. The Plan and related documents reflect and are the result of extensive, arm's-length and good faith negotiations among the Debtor, the DIP Lender, the Prepetition Agent, the Committee, and other creditors and parties in interest in the Chapter 11 Case and are consistent with the best interests of the Estate, creditors and other stakeholders. The Debtor, the DIP Lender, the Prepetition Agent, the Committee, and each of their respective agents, advisors and professionals acted in good faith in negotiating and proposing, where applicable, the Plan and all the agreements, compromises, settlements, transactions, and transfers contemplated thereby. The Plan is and shall be deemed a good faith compromise or settlement of all Claims, Equity Interests,

and controversies relating to any rights that a Holder of Claims or Equity Interests may have with respect to such Claims or Equity Interests, and such compromise or settlement is in the best interest of the Debtor, the Estate, and such Holders, and is fair, equitable, and reasonable.

**L. Payments for Services or Costs and Expenses -- 11 U.S.C. § 1129(a)(4).** The Plan complies with 11 U.S.C. § 1129(a)(4). Without limiting the generality of the foregoing, the selection and compensation of the Liquidating Trustee in accordance with the Plan and the Liquidating Trust Agreement is appropriate and proper.

**M. Director, Officers and Insiders -- 11 U.S.C. § 1129(a)(5).** The Debtor has complied with 11 U.S.C. § 1129(a)(5). Without limiting the generality of the foregoing, the identity and affiliations of the persons who will serve as initial directors and officers of the Reorganized Debtor as of the Effective Date have been fully disclosed in the Plan Supplement.

**N. No Rate Changes -- 11 U.S.C. § 1129(a)(6).** 11 U.S.C. § 1129(a)(6) is not applicable.

**O. Best Interests of Creditors -- 11 U.S.C. § 1129(a)(7).** The Plan satisfies 11 U.S.C. § 1129(a)(7). The liquidation analysis included in the Disclosure Statement and any other evidence proffered or adduced at the Confirmation Hearing with respect to the Plan's satisfaction of 11 U.S.C. § 1129(a)(7) (a) are reasonable, persuasive and credible, (b) use reasonable and appropriate methodologies and assumptions, (c) have not been controverted by other evidence, and (d) establish that each Holder of an Impaired Claim or Equity Interest either has accepted the Plan or will receive or retain under the Plan, on account of such Claim or Equity Interest, property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code.

**P. Acceptance or Rejection by Certain Classes -- 11 U.S.C. § 1129(a)(8).** As evidenced by the Tabulation Declaration: Class 2 is a Class of Unimpaired Claims that is

conclusively presumed to have accepted the Plan under 11 U.S.C. § 1126(f), and no votes were solicited from Holders of Claims in such Class; Classes 1 and 3-6 are Impaired and have voted to [accept] the Plan; and Classes 7 and 8 are deemed to have rejected the Plan and, consequently, no votes on the Plan were solicited from Holders of Claims and Interests, respectively, in such Classes. Nevertheless, the Plan is confirmable because it satisfies 11 U.S.C. § 1129(b) with respect to such non-accepting Classes of Claims and Equity Interests as detailed more fully below.

**Q. Treatment of Administrative and Priority Tax Claims -- 11 U.S.C. § 1129(a)(9).** The treatment of Administrative Expense Claims and Priority Tax Claims pursuant to Article II of the Plan satisfies the requirements of 11 U.S.C. §§ 1129(a)(9)(A), (B) and (C).

**R. Acceptance by Impaired Class -- 11 U.S.C. § 1129(a)(10).** Classes 1 and 3-6 are each Impaired, entitled to vote, and have voted to accept the Plan in accordance with 11 U.S.C. § 1126(c), excluding the votes of any Insiders holding Allowed Claims in any of those Classes, as applicable. Therefore, 11 U.S.C. § 1129(a)(10) is satisfied.

**S. Feasibility -- 11 U.S.C. § 1129(a)(11).** The Disclosure Statement, the Financial Projections, the Confirmation Declarations and other evidence proffered or adduced by the Debtor at the Confirmation Hearing with respect to the feasibility of the Plan (a) are reasonable, persuasive and credible, (b) have not been controverted by other evidence or challenged in any objection, and (c) establish that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Reorganized Debtor. Based upon the foregoing, the Court finds that the Debtor has satisfied the requirements of 11 U.S.C. § 1129(a)(11).

**T. Payment of Fees -- 11 U.S.C. § 1129(a)(12).** All fees payable under 28 U.S.C. § 1930 on or before the Effective Date, as determined by the Court, have been paid or will be paid on the Effective Date pursuant to the Plan, thus satisfying 11 U.S.C. § 1129(a)(12).

U. **Inapplicable Provisions -- 11 U.S.C. § 1129(a)(13)–(16).** Sections 1129(a)(13), (14), (15), and (16) of the Bankruptcy Code are inapplicable to the Plan.

V. **Fair and Equitable; No Unfair Discrimination -- 11 U.S.C. § 1129(b).** Classes 7 and 8 are deemed to reject the Plan. The Plan does not discriminate unfairly and is fair and equitable with respect to Classes 7 and 8 as required by 11 U.S.C. § 1129(b)(1) because 11 U.S.C. § 1129(b)(2)(B)(ii) and (b)(2)(C)(ii), as applicable, are satisfied. Thus, the Plan may be confirmed notwithstanding 11 U.S.C. § 1129(a)(8). No Class lower in the capital structure of the Debtor will obtain any distribution or retain any interest prior to Holders of Claims or Equity Interest in such Classes being paid in full. To the extent required, the value to be provided in connection with the conversion of the Allowed DIP Financing Claims into the New Equity Interests in the Reorganized Debtor has been market tested as a result of the bidding procedures approved by this Court [D.I. 181]. The public auction followed an extensive pre-bankruptcy and post-petition marketing process, which did not locate any potential purchaser. Based on this market testing, the value to be provided in connection with the conversion of the Allowed DIP Financing Claims into the New Equity Interests exceeds what third-party market participants would pay for the New Equity Interests.

W. **Only One Plan -- 11 U.S.C. § 1129(c).** Other than the Plan (including previous versions thereof), no other plan has been filed in the Chapter 11 Case. Accordingly, the requirements of 11 U.S.C. § 1129(c) have been satisfied.

X. **Principal Purpose -- 11 U.S.C. § 1129(d).** The principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. The Plan, therefore, satisfies the requirements of 11 U.S.C. § 1129(d).

Y. **Contracts and Leases.** Pursuant to Article VI of the Plan, the Debtor has exercised sound business judgment in assuming and rejecting executory contracts and unexpired leases pursuant to the Plan. No party to an executory contract or unexpired lease to be assumed or rejected by the Debtor pursuant to the Plan has objected to the assumption or rejection thereof, as applicable.<sup>3</sup>

Z. **Satisfaction of Confirmation Requirements.** The Debtor has met its burden of proving the Plan satisfies all of the requirements for confirmation set forth in 11 U.S.C. § 1129 by a preponderance of the evidence.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. **Confirmation of Plan.** The Plan is approved and confirmed under 11 U.S.C. § 1129. Any and all objections to the Plan are hereby overruled and denied in their entirety on the merits, with prejudice. The provisions of the Plan and this Confirmation Order are non-severable and mutually dependent. The failure specifically to include or reference any particular term or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such term and provision, it being the intent of the Court that the Plan, the Plan Supplement, and all related agreements and documents be approved and confirmed in their entirety. The compromises or settlements of Claims, Equity Interests, and controversies contemplated by the Plan are approved in accordance with 11 U.S.C. §§ 105, 363, and 1123 and Bankruptcy Rule 9019.

2. **Binding Effect.** Effective on the Effective Date, the Plan and its provisions shall be binding upon the Debtor, the Reorganized Debtor, the Liquidating Trust, the Liquidating Trustee, any individual or entity acquiring or receiving property or a distribution under the Plan

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<sup>3</sup> Oracle America, Inc. as successor in interest to NetSuite, Inc. (“**Oracle**”) filed a limited objection and reservation of rights [D.I. 526] (the “**Limited Objection**”) to the Plan, however, the Limited Objection has been consensually resolved and Oracle’s contract has been added to the Schedule of Assumed Contracts in the Debtor’s amended Plan Supplement. *See* D.I. 556-3.

and any Holder of a Claim against or Equity Interest in the Debtor, including all governmental entities, whether or not the Claim or Equity Interest of such Holder is Impaired under the Plan and whether or not such Holder has accepted the Plan, and their respective successor and assigns. Pursuant to 11 U.S.C. §§ 1123(a), 1123(b) and 1142(a) and the provisions of this Confirmation Order, from and after the Effective Date, the Debtor, the Reorganized Debtor, the Liquidating Trust and the Liquidating Trustee shall comply with the Plan, the Liquidating Trust Agreement, and all other Plan-related documents, and the Plan, the Liquidating Trust Agreement, and all other Plan-related documents shall be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

3. **Releases.** Subject to the exceptions and exclusions contained in the Plan, the release provisions of Article X.C and X.E of the Plan are approved, are incorporated by reference into and are an integral part of this Confirmation Order. Because Class 5 has voted to approve the Plan, Avoidance Actions arising under Section 547 of the Bankruptcy Code against Trade Creditors shall be, and shall be deemed to be, unconditionally released and discharged as of the Effective Date, *provided* that such release shall have no effect on the liability of any Trade Creditor arising from any act, omission, transaction, agreement, event or other occurrence, constituting fraud, criminal conduct, gross negligence, or willful misconduct. For avoidance of doubt, these releases shall have no effect on any and all Avoidance Actions against Trade Creditors except as otherwise expressly provided for herein.

4. **Determination of Discharge.** Subject to the exceptions and exclusions contained in the Plan, the discharge provisions of Article X.B of the Plan are approved, are incorporated by reference into and are an integral part of this Confirmation Order. Except as otherwise expressly provided herein, upon the Effective Date, all Holders of Claims and Equity Interests shall be forever precluded and enjoined, pursuant to sections 105, 524, 1141 of the Bankruptcy Code and

Article X.D of the Plan, from prosecuting or asserting any such discharged Claim against or terminated Equity Interest in the Debtor or the Reorganized Debtor. Notwithstanding anything to the contrary in this Confirmation Order or the Plan, nothing in this Confirmation Order or the Plan discharges, releases, resolves, exculpates, precludes, or enjoins: (a) any environmental liability to any governmental unit that is not a Claim as defined in 11 U.S.C. § 101(5); (b) any environmental Claim of any Governmental Unit arising on or after the Effective Date; (c) any environmental liability to any Governmental Unit on the part of any entity as the owner or operator of property after the Effective Date; (d) any liability to the United States on the part of any person or entity other than the Debtor or Reorganized Debtor; or (e) subject to applicable law, any valid right of setoff or recoupment of the United States. The Debtor's discharge and release from all Claims as provided herein and in the Plan shall not diminish, impair, or otherwise affect the enforceability of any insurance policy that may provide coverage for claims against the Debtor, the Reorganized Debtor, their current and former directors and officers, or any other person or entity.

5. **Exculpation.** The exculpation provisions of Article X.G of the Plan are approved, are incorporated by reference into and are an integral part of this Confirmation Order.

6. **Injunction.** The injunction provisions of Article X.D of the Plan are approved, are incorporated by reference into and are an integral part of this Confirmation Order.

7. **Cancellation of Equity Interests.** Pursuant to Article III.B.9 of the Plan (Class 8 – Equity Interests), except as otherwise specifically provided in the Plan or in this Confirmation Order, all Equity Interests shall be deemed automatically cancelled, discharged, and surrendered and shall be of no further force, and the obligations of the Debtor thereunder or in any way related thereto, including any obligation of the Debtor to pay any franchise or similar type taxes on account of such Equity Interests, shall be discharged.



8. **Plan Implementation.** All implementing actions required or contemplated by the Plan, including issuance of the New Equity Interests, the revesting of assets in the Reorganized Debtor, the appointment of the Liquidating Trustee, and the vesting of the Liquidating Trust Assets in the Liquidating Trust, are hereby authorized and approved in all respects in accordance with the Plan. The Liquidating Trust shall be deemed for all purposes to have been created in connection with the Plan and this Confirmation Order, and the Liquidating Trustee shall have the rights, duties, and powers as set forth in the Plan and the Liquidating Trust Agreement. Any officer of the Reorganized Debtor and/or the Liquidating Trustee, as applicable, shall be authorized to take any action as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan, whether or not specifically referred to in the Plan or any exhibit thereto, without further order of the Court or further action by the corporation or Liquidating Trust (as applicable) or any other person. For the avoidance of doubt, the Debtor, the Reorganized Debtor and their respective officers and directors and the Liquidating Trust and Liquidating Trustee are authorized and empowered pursuant to section 303 of the Delaware General Corporation Law to take any and all actions necessary or desirable to implement the transactions contemplated by the Plan and this Confirmation Order, in each case without any requirement of further vote, consent, approval, authorization or other action by the stockholders, officers or directors, or notice to, order of, or hearing before this Court. Any or all such documents shall be accepted upon presentment by each of the respective state filing offices and recorded in accordance with applicable state law and shall become effective in accordance with their terms and the provisions of state law. Immediately prior to the Effective Date, all existing officers and directors of the Debtor shall be deemed to have resigned from their respective positions, and the persons who will serve as initial directors and officers of the Reorganized Debtor will be deemed to have been appointed to such positions immediately on and as of the Effective Date. From and after the Effective Date, the

Reorganized Debtor may operate its business and manage its affairs and property in accordance with the Plan and related documents, without supervision of or approval by the Court, and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules other than restrictions expressly imposed by the Plan or this Confirmation Order. To effectively investigate, defend or pursue the Liquidating Trust Assets, including the Vested Causes of Action, the Debtor, the Reorganized Debtor, the Liquidating Trust, Liquidating Trustee and all counsel thereto, must be able to exchange information with each other on a confidential basis and cooperate in common interest efforts without waiving any applicable privilege. Given the common interests of the parties and the Liquidating Trust's position as successor to the Liquidating Trust Assets, sharing such information in the manner described in the previous sentence to the extent necessary, shall not waive or limit any applicable privilege or exemption from disclosure or discovery related to such information. Furthermore, the Debtor and the Reorganized Debtor, as applicable, shall fully and timely cooperate with all reasonable requests for documents and/or information from the Liquidating Trustee in connection with the Liquidating Trustee's execution of its duties pursuant to the Plan and the Liquidating Trust Agreement. For purposes of such cooperation, the Liquidating Trustee and the Debtor and/or Reorganized Debtor, as applicable, may enter into one or more confidentiality and/or common interest agreements or protective orders in form and substance reasonably acceptable to the Liquidating Trustee and Reorganized Debtor. Until the termination of the Liquidating Trust, the Reorganized Debtor shall be bound by and adhere to all legal hold and similar obligations of the Debtor, its agents, and advisors, and shall not transfer or destroy, without limitation, any communications, documents and/or information referring or relating to (i) the Granville Derivative Action, (ii) the Rodriguez Class Action (iii) the Board meeting minutes, Board agendas, notes and presentations, and/or (iv) any other Vested Causes of Action or other Liquidating Trust Assets. Any dispute with respect to the Debtor and/or the

Reorganized Debtor's cooperation under this paragraph may be brought before and decided by the Bankruptcy Court. The Liquidating Trustee shall not waive any applicable privilege without the express written consent of the Reorganized Debtor and any purported waiver not in compliance with the foregoing shall be ineffective.

9. **Specific Authorizations as to New Equity Interests; Exemption.** From and after the Effective Date, the Reorganized Debtor is authorized to issue the New Equity Interests in accordance with the provisions of the Plan. Pending the occurrence of the Effective Date, the Debtor is authorized and directed to take all actions as may be necessary to facilitate the issuance of the New Equity Interests as of the Effective Date, including, without limitation, executing, delivering and performing under the various documents, paying any agreed fees and costs, and providing such other support, assurances and indemnifications as may be required, to facilitate or implement the Reorganized Debtor's governing documents, any other Plan related document, or the issuance and distribution of the New Equity Interests. Upon such issuance, the New Equity Interests shall be duly and validly authorized, issued, and outstanding, fully paid and nonassessable and not subject to pre-emptive or similar rights of third parties. The exemption from the requirements of section 5 of the Securities Act of 1933, and any state or local law requiring registration for the offer, sale, issuance, exchange or transfer of the New Equity Interests provided for in the Plan is authorized by and ordered hereby pursuant to 11 U.S.C. § 1145.

10. **Governmental Approvals Not Required.** This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules or regulations of any State or any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in or contemplated by the Plan, the Disclosure Statement and any documents, instruments or agreements, and any amendments or modifications thereto.

11. **Exemption from Certain Transfer Taxes.** Pursuant to 11 U.S.C. § 1146(a), any transfers from the Debtor to the Reorganized Debtor or the Liquidating Trust or any other person pursuant to, in contemplation of, or in connection with the Plan, shall not be taxed under any law imposing a stamp tax, real estate transfer tax, mortgage recording tax, sales or use tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or government assessment, and the appropriate state or local governmental officials or agents shall forgo the 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. Such exemption specifically applies, without limitation, to all documents necessary to evidence and implement distributions under the Plan, including the documents contained in the Plan Supplement and all documents necessary to evidence and implement any of the transactions and actions described in the Plan or the Plan Supplement.

12. **Applicable Non-Bankruptcy Law.** Pursuant to 11 U.S.C. §§ 1123(a), 1123(b) and 1142(a), the provisions of this Confirmation Order, the Plan, or any other amendments or modifications thereto shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law. The consummation of the Plan, including the assumption of any executory contract or unexpired lease by the Reorganized Debtor, shall not constitute a change in ownership or change in control under any employee benefit plan or program, financial instrument, loan or financing agreement, executory contract or unexpired lease or contract, lease or agreement in existence on the Effective Date to which the Debtor is a party.

13. **Approval of Assumption or Rejection of Contracts and Leases.** Unless otherwise provided herein or in another order of the Court, the Debtor's assumption and rejection of executory contracts and unexpired leases, as applicable, pursuant to Article VI of the Plan is hereby approved as of the Effective Date. For the avoidance of doubt, only those executory

contracts and unexpired leases listed in the Schedule of Assumed Agreements (as amended) shall be assumed pursuant to the Plan and this Confirmation Order. All other executory contracts and leases to which the Debtor is a party that (a) the Debtor has not assumed and/or assigned or rejected with the approval of the Court prior to the Effective Date or (b) is not the subject of a motion to assume the same pending as of the Effective Date, shall be rejected pursuant to the Plan and this Confirmation Order as of the Effective Date. This Confirmation Order constitutes a conclusive determination that the amount of any cure and compensation due under the applicable contracts and leases assumed hereunder is fixed in the applicable amount set forth in the Schedule of Assumed Agreements (as amended), and no other or further amount is due and owing to the applicable counterparty on account of such contracts and leases. The Reorganized Debtor has demonstrated adequate assurance of future performance with respect to such contracts and leases, to the extent required, and otherwise satisfied the requirements of 11 U.S.C. § 365.

**14. Claims Based on Rejection of Executory Contracts and Unexpired Leases.**

Any Claims created by the rejection of executory contracts and unexpired leases pursuant to Article VI of the Plan and this Confirmation Order must be filed with the Bankruptcy Court and served on the Debtor and the Liquidating Trustee and their respective counsel in accordance with Article VI of the Plan. Except as expressly provided in the Plan or this Confirmation Order, any Claims arising from the rejection of an executory contract or unexpired lease pursuant to Article VI for which proofs of claim are not timely filed within that time period shall be forever barred from assertion, and shall not be enforceable, against the Debtor, the Estate, the Reorganized Debtor, the Liquidating Trust, their respective successors and assigns, and their respective assets and properties.

**15. Transfers by Debtor; Vesting and Revesting of Assets.** All transfers of property of the Estate, including, without limitation, the vesting of assets in the Reorganized Debtor and the

vesting of the Liquidating Trust Assets in the Liquidating Trust in order to make distributions to Holders of Allowed Claims to be made under Article III.B of the Plan, (a) are legal, valid and effective transfers of property, (b) vest the transferees with good title to such property free and clear of all Claims, Liens, interests, charges or other encumbrances, except as expressly provided in the Plan or this Confirmation Order, (c) do not and will not constitute avoidable transfers under the Bankruptcy Code or under applicable law, (d) do not and will not subject the Reorganized Debtor, the Liquidating Trust or the Liquidating Trustee to any liability by reason of such transfer under the Bankruptcy Code or under applicable nonbankruptcy law, including, without limitation, any laws affecting successor, transferee or stamp or recording tax liability, and (e) are for good consideration and value. Pursuant to 11 U.S.C. §§ 1141(b) and (c), the assets of the Debtor referenced in Article V.A of the Plan shall revest in the Reorganized Debtor free and clear of all Claims, Liens, interests, charges and other encumbrances, except as expressly provided in the Plan. Without limiting the foregoing, for the avoidance of doubt, all rights under and to insurance policies of the Debtor, other than the D&O Liability Insurance Policies, shall revest in the Reorganized Debtor free and clear of all Claims, Liens, interests, charges and other encumbrances. All Liquidating Trust Assets (including, for the avoidance of doubt, the D&O Liability Insurance Policies) shall vest in the Liquidating Trust free and clear of all Claims, Liens, interests, charges and other encumbrances. Such vesting and revesting does not constitute a voidable transfer under the Bankruptcy Code or applicable non-bankruptcy law.

16. **Survival of Final DIP Order; Binding Effect of Prior Orders.** The terms and conditions of the DIP Order and protections afforded to the DIP Lenders in the DIP Order shall continue and survive beyond the Effective Date, provided that the Allowed DIP Financing Claims shall be fully and finally satisfied pursuant to the treatment set forth in Article II.A.2 of the Plan. Pursuant to section 1141 of the Bankruptcy Code, effective as of and 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 the Chapter 11 Case, all documents and agreements executed by the Debtor as authorized and directed thereunder, and all motions or requests for relief by the Debtor pending before the Court as of the Effective Date that ultimately are granted shall be binding upon and shall inure to the benefit of the Debtor, the Reorganized Debtor, and their respective successors and assigns, including the Liquidating Trustee, as applicable.

17. **Conflict Between Plan and Confirmation Order.** The provisions of the Plan and of this Confirmation Order shall be construed in a manner consistent with each other so as to effect the purposes of each; provided, however, that if there is determined to be any direct conflict between any Plan provision and any provision of this Confirmation Order that cannot be so reconciled, then, solely to the extent of such conflict, the provisions of this Confirmation Order shall govern and any such provision of this Confirmation Order shall be deemed a modification of the Plan and shall control and take precedence. Any modifications to the solicitation version of the Plan set forth in this Confirmation Order and/or the Plan as approved hereby do not materially and adversely affect the treatment of any Claim against or Equity Interest in the Debtor. Accordingly, pursuant to 11 U.S.C. § 1127(b) and Bankruptcy Rule 3019, the Plan does not require additional disclosure under section 1125 of the Bankruptcy Code or the resolicitation of acceptances or rejections of the Plan under section 1126 of the Bankruptcy Code, nor does it require that Holders of Claims entitled to vote on the Plan be afforded an opportunity to change previously cast acceptances or rejections of the Plan as filed with the Court, and Holders of Claims that have accepted the Plan shall be deemed to have accepted the Plan as so modified.

18. **Plan Supplement.** Prior to the Effective Date, the Debtor shall have the right to finalize, amend, supplement, or modify the Plan Supplement, and any other documents necessary for the implementation of the transactions contemplated thereby, in accordance with the

Bankruptcy Code and the Bankruptcy Rules, and in accordance with and subject to any consent or consultation rights set forth in the Plan. The provisions of the Plan Supplement and of this Confirmation Order shall be construed in a manner consistent with each other so as to effect the purposes of each; provided, however, that if there is determined to be any direct conflict between any provision in the Plan Supplement (including any provision of any document included therein) and any provision of this Confirmation Order that cannot be so reconciled, then, solely to the extent of such conflict, the provisions of this Confirmation Order shall govern and any such provision of this Confirmation Order shall be deemed a modification of the Plan Supplement (or any such document included therein, as applicable) and shall control and take precedence.

19. **Tax Consequences.** In confirming the Plan, this Court has not made any determination as to the federal tax liabilities or tax consequences of the Plan. Nothing in the Plan or this Confirmation Order shall be deemed to be a determination of: (i) the federal tax liability of any person or entity, including but not limited to the Debtor and the Reorganized Debtor, or (ii) the federal tax treatment of any item, distribution or entity, including the federal tax consequences of the Plan.

20. **Reversal.** If any or all of the provisions of this Confirmation Order are hereafter reversed, modified, or vacated by subsequent order of the Court or any other court, in the absence of a stay of this Confirmation Order, such reversal, modification, or vacatur shall not affect the validity of the acts or obligations incurred or undertaken in good faith under or in connection with the Plan prior to the Debtor's, the Reorganized Debtor's, the Liquidating Trust's, or the Liquidating Trustee's receipt of written notice of any such order. Notwithstanding any such reversal, modification, or vacatur of this Confirmation Order, in the absence of a stay of this Confirmation Order, any such act or obligation incurred or undertaken in good faith pursuant to, and in reliance on, this Confirmation Order prior to the effective date of such reversal,



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

21. **Authorization to Consummate Plan.** Notwithstanding Fed. R. Bankr. P. 3020(e), this Confirmation Order shall take effect immediately upon its entry and the Debtor is authorized to consummate the Plan immediately after entry of this Confirmation Order and the satisfaction or waiver of all conditions to the Effective Date of the Plan, in accordance with the Plan. The Plan shall only become effective on the Effective Date. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

22. **Administrative Claims Bar Date.** All Professionals shall file their respective applications for final allowances of compensation for services rendered and reimbursement of expenses incurred on behalf of the Estate prior to the Effective Date on or before the date that is thirty (30) days after the Effective Date. The Debtor, Reorganized Debtor or Liquidating Trustee, as applicable, shall pay each Professional Fee Claim within fifteen (15) days after such claim becomes an Allowed Claim. All Other Administrative Expense Claims were required to be filed with the Bankruptcy Court in accordance with the Administrative Expense Bar Date Order, or if the Administrative Expense Bar Date Order does not apply to such Other Administrative Expense Claim, then not later than ten (10) days before the date scheduled for the Confirmation Hearing and objections (if any) to such Other Administrative Expense Claim may be filed no later than forty-five (45) days after the Effective Date. Any person or entity purportedly holding an Administrative Expense Claim that is required to file such Administrative Expense Claim but fails to do so in accordance with the Administrative Expense Bar Date Order or this Confirmation Order, as applicable, shall not participate in any distribution in the Chapter 11 Case on account of such purported Administrative Expense Claim.

23. **Distributions.** The Liquidating Trustee, on behalf of the Liquidating Trust, or such other Person or Entity as may be designated in accordance with the Liquidating Trust Agreement, will make the distributions to Liquidating Trust Beneficiaries required under the Plan in accordance with the Liquidating Trust Agreement and in accordance with the priorities set forth herein and the other provisions of the Plan, and administer and liquidate the Liquidating Trust Assets and otherwise wind down the Estate. Subject to the conditions set forth in section III.B.1. of the Plan, the \$400,000.00 Distribution to Class 1 of the Plan shall be paid to the Prepetition Agent by the Reorganized Debtor no later than (7) days after the Effective Date, unless otherwise agreed to in writing by the Prepetition Agent. Subject to Section III.B.5. of the Plan, as soon as practicable after the Effective Date, the Liquidating Trustee shall distribute \$1,700,000.00 of the Trust Initial Distribution, on a Pro Rata basis, to Holders of Allowed Class 5 Claims, including on account of the Prepetition Lenders' Deficiency Claim, subject to a reserve for Class 5 Claims which at the time of such distribution are not Allowed Class 5 Claims. Upon request by the Liquidating Trustee and/or the Committee to the Debtor and/or the Reorganized Debtor, the parties may agree that the Debtor and/or Reorganized Debtor will make distributions directly to Holders of Allowed Class 6 Claims from the amount of the Trust Initial Distribution, up to the amount of the Convenience Claim Cap, in accordance with the terms of such Holder's treatment under the Plan; *provided, for the avoidance of doubt*, that any such direct payments to Holders of Allowed Class 6 Claims shall reduce the amount of the Trust Initial Distribution that is required to be funded to the Trust under the Plan.

24. **Non-Occurrence of the Effective Date; Revocation of the Plan.** If the Plan is revoked or withdrawn pursuant to Article XIII.E of the Plan prior to the Effective Date, the Plan and this Confirmation Order shall be deemed null and void. In the event that the conditions to the occurrence of the Effective Date have not been timely satisfied or waived, and upon notification

Filed by the Debtor with the Bankruptcy Court, this Confirmation Order shall be vacated and the Debtor and all parties in interest shall be restored to the *status quo ante*. If this Confirmation Order is vacated, this Plan shall be null and void in all respects and nothing contained in this Plan or the Disclosure Statement shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor; (b) prejudice in any manner the rights of the Debtor or any other Person or Entity; or (c) constitute an admission, acknowledgment, offer or undertaking by the Debtor in any respect.

25. **Notice of Effective Date.** Within three (3) Business Days following the occurrence of the Effective Date, the Reorganized Debtor shall file a notice of entry of this Confirmation Order and the occurrence of the Effective Date in the form attached hereto as **Exhibit B** (the “**Effective Date Notice**”) and serve a copy of the Effective Date Notice on all known Holders of Claims and Equity Interests, the U.S. Trustee and all parties that have requested notice in this Chapter 11 Case pursuant to Bankruptcy Rule 2002. Such service constitutes good and sufficient notice of the entry of this Confirmation Order and of the relief granted herein and the occurrence of the Effective Date, including, without limitation, the rejection of executory contracts and unexpired leases of the Debtors as provided for in the Plan and this Confirmation Order, and any bar dates and deadlines established under the Plan and this Confirmation Order, and no other or further notice of the entry of this Confirmation Order, the occurrence of the Effective Date and any such rejections, bar dates and deadlines need be given. From and after the date that the Effective Date Notice is filed with the Court, and without need of further motion by the Debtor, Reorganized Debtor, or Liquidating Trustee, as applicable, or further order of the Court, parties who wish to continue receiving notices filed in the Chapter 11 Case must submit a written request for such notice to the Debtor’s claims and noticing agent, with a copy to (i) the Debtor, (ii) Reorganized Debtor, and (iii) the Liquidating Trustee, at the notice addresses provided in the Plan

and/or Plan Supplement, as applicable. Notwithstanding anything to the contrary in the Bankruptcy Rules, other than with respect to relief directly affecting any party, only parties who request such written notice in accordance with the provisions of this Paragraph 25 shall be entitled to notice of filings in the Chapter 11 Case from and after the date that the Notice of Effective Date is filed.

26. **SEC Carve-Out.** Notwithstanding any language to the contrary in the Disclosure Statement, Plan and/or this Confirmation Order, no provision shall (a) preclude the United States Securities and Exchange Commission (“SEC”) from enforcing its police or regulatory powers; or, (b) enjoin, limit, impair or delay the SEC from commencing or continuing any claims, causes of action, proceedings or investigations against any non-debtor person or non-debtor entity in any forum.

27. **Retention of Jurisdiction.** This Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Case and the Plan to the fullest extent permitted by law, including, without limitation, as set forth in Article XII of the Plan.

**Exhibit A**

**Plan of Reorganization**

**Exhibit B**

**Effective Date Notice**