

[FORM ORDER CONFIRMING NON-CONSENSUAL SUBCHAPTER V PLAN –
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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK**

In re

[Debtor(s)]

Debtor(s).

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**ORDER CONFIRMING DEBTOR’S NON-CONSENSUAL
SUBCHAPTER V PLAN OF REORGANIZATION**

This matter came before the Court on [DATE] at [TIME], to consider confirmation of the [SUBCHAPTER V PLAN] (the “Plan”) (Doc. [XX]) filed on [DATE] by [DEBTOR] (“Debtor”). In connection with confirmation of the Plan, the Court has considered the evidence presented as well as the record of this case, including: (i) the ballot certification (Doc. [##]), (ii) the affidavit of [NAME] in support of confirmation of the Plan (Doc. [##]) [if submitted], (iii) the testimony of [NAME] proffered by the Debtor, [ANY ADDITIONAL CONSIDERATIONS]. Having

considered the evidence presented, the arguments of counsel, and being otherwise fully advised in the premises, after notice and a hearing, the Court finds and concludes as follows:

FINDINGS OF FACTS & CONCLUSIONS OF LAW

A. **Jurisdiction.** The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334, the United States District Court’s general order of reference, and other various applicable provisions of the Bankruptcy Code¹ and the Federal Rules of Bankruptcy Procedure (“FRBP”).

B. **Venue.** Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

C. **Notice.** Due, adequate, and sufficient notice of the Plan and the order setting a hearing on confirmation (Doc. [##]) were served upon all creditors, interest holders, and parties requesting notice. Accordingly, the method of service and solicitation of acceptance of the Plan, notice of the hearing to consider confirmation of the Plan, and notices of all other deadlines or requirements relating thereto (collectively, the “Confirmation Deadlines”) complied with the FRBP, were adequate and reasonable under the circumstances of this case, and no further or additional notice of the confirmation hearing or the confirmation deadlines was necessary or required.

D. **Objections to Confirmation.** Present at the hearing were [APPEARANCES]. [DISCUSS ANY OBJECTIONS TO CONFIRMATION].

E. **Proper Classification of Claims – 11 U.S.C. §§ 1122 and 1123.** The Plan adequately and properly identifies and classifies all claims. Pursuant to 11 U.S.C. § 1122(a), the claims placed in each class are substantially similar to other claims in each such class. Pursuant to 11 U.S.C. § 1123(a)(1), valid legal and business reasons exist for the various classes of claims

¹ The term “Bankruptcy Code” refers to the applicable section(s) of 11 U.S.C. § 101, et. seq. unless otherwise indicated.

created under the Plan and such classification does not unfairly discriminate among holders of claims. The classification of claims in the Plan is reasonable.

F. **Specified Unimpaired Classes – 11 U.S.C. § 1123(a)(2)**. The Plan specifies all classes or claims or interests that are not impaired under the Plan.

G. **Specified Treatment of Impaired Classes – 11 U.S.C. § 1123(a)(3)**. The Plan specifies the treatment of all classes of claims or interests that are impaired under the Plan.

H. **No Discrimination – 11 U.S.C. § 1123(a)(4)**. The Plan provides for the same treatment of claims or interests 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.

I. **Implementation of the Plan – 11 U.S.C. § 1123(a)(5)**. Article [#] of the Plan provides adequate means for the Plan's implementation. [OPTIONAL: PLAN PROPONENT TO EXPLAIN IN DETAIL].

J. **Non-Voting Equity Securities/Allocation of Voting Power – 11 U.S.C. § 1123(a)(6)**. [FOR A CORPORATION - INSERT AS APPROPRIATE].

K. **Interests of the Creditors, Equity Security Holders, & Public Policy – 11 U.S.C. § 1123(a)(7)**. The Plan contains only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the Plan and any successor to such officer, director, or trustee.

L. **Assumption & Rejection – 11 U.S.C. § 1123(b)(2)**. Article [##] of the Plan, pursuant to 11 U.S.C. § 365 of the Bankruptcy Code, provides for the assumption, rejection, or assignment of any executory contract or unexpired lease of the Debtor not previously rejected under such section.

M. [OPTIONAL - INSERT INFORMATION RELATING TO 11 U.S.C. §§ 1123(b)(3), (4), AND (5) AS APPROPRIATE].

N. Additional Plan Provisions – 11 U.S.C. § 1123(b)(6). Each of the provisions of the Plan is appropriate and not inconsistent with the applicable provisions of the Bankruptcy Code.

O. [OPTIONAL - INSERT INFORMATION RELATING TO 11 U.S.C. § 1123(d) AS APPROPRIATE].

P. Principal Purpose of the Plan – 11 U.S.C. § 1129(d). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933.

Q. Subchapter V Plan Requirements – 11 U.S.C. § 1189. The Plan complies with 11 U.S.C. § 1189 because it was filed by the Debtor not later than 90 days after the order for relief under Chapter 11 [IF APPLICABLE – or the Court extended the period because the need for the extension was attributable to circumstances for which the Debtor should not justly be held accountable].

R. Contents of a Subchapter V Plan – 11 U.S.C. § 1190. In compliance with 11 U.S.C. § 1190, the Plan includes: (1) a brief history of the business operations of the Debtor, (2) a liquidation analysis, and (3) projections with respect to the ability of the Debtor to make payments under the proposed Plan of reorganization. The Plan provides for the submission of all or such portions of the future earnings or other future income of the Debtor to the supervision and control of the Subchapter V Trustee as is necessary for the execution of the Plan. [IF APPLICABLE – The Plan, notwithstanding 11 U.S.C. § 1123(b)(5), properly modifies the rights of the holder of a claim secured only by a security interest in real property that is the principal residence of the Debtor because the new value received in connection with the granting of the security interest was

(1) not used primarily to acquire the real property, and (2) used primarily in connection with the small business of the Debtor.]

S. **Satisfaction of Conditions – 11 U.S.C. § 1191(b).** The Court finds that, notwithstanding 11 U.S.C. § 510(a), the Plan (1) satisfies the applicable requirements of 11 U.S.C. § 1129(a), and (2) does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the Plan. As a result, the Plan is confirmed under 11 U.S.C. § 1191(b). With respect to the applicable provisions of 11 U.S.C. § 1129(a), the Court finds and concludes as follows:

1. **11 U.S.C. § 1129(a)(1) and (a)(2).** The Plan and the Plan proponent comply with the applicable provisions of the Bankruptcy Code.

2. **11 U.S.C. § 1129(a)(3).** The Plan was proposed in good faith and not by any means forbidden by law.

3. **11 U.S.C. § 1129(a)(4).** Any payment made or to be made by the Debtor, for services or for costs and expenses in or in connection with the case, or in connection with the Plan and incident to the case, has been approved by, or is subject to the approval of, the Court as reasonable.

4. **11 U.S.C. § 1129(a)(5).** The Plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the Debtor, [IF APPLICABLE - an affiliate of the Debtor participating in a joint Plan with the Debtor,] or [IF APPLICABLE - a successor to the Debtor under the Plan]; and the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders, and with public policy;

and the Plan proponent has disclosed the identity of any insider that will be employed or retained by the reorganized Debtor, and the nature of any compensation for such insider.

5. [OPTIONAL - INSERT INFORMATION RELATING TO 11 U.S.C. § 1129(a)(6) AS APPROPRIATE].

6. 11 U.S.C. § 1129(a)(7). The Plan provides that, with respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the Plan, or will receive or retain under the Plan on account of such claim or interest property of a value, as of the effective date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtor were liquidated under chapter 7 of this title on such date [IF APPLICABLE –, or each holder of a claim of such class will receive or retain under the Plan on account of such claim property of a value, as of the effective date of the Plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims in compliance with 11 U.S.C. § 1111(b)(2)].

7. 11 U.S.C. § 1129(a)(9). Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the Plan provides that [INSERT AS APPLICABLE with respect to claims of a kind specified in the applicable subsections of 11 U.S.C. § 507].

8. 11 U.S.C. § 1129(a)(11). Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan.

9. **11 U.S.C. § 1129(a)(12).** All fees payable under 28 U.S.C. § 1930, as determined by the Court at the hearing on confirmation of the Plan, have been paid or the Plan provides for the payment of all such fees on the Effective Date of the Plan.

10. **[IF APPLICABLE] 11 U.S.C. § 1129(a)(13).** The Plan provides for the continuation after Effective Date of payment of all retiree benefits, as that term is defined in 11 U.S.C. § 1114, at the level established pursuant to subsection (e)(1)(B) or (g) of § 1114 of the Bankruptcy Code, at any time prior to confirmation of the Plan, for the duration of the period the Debtor has obligated itself to provide such benefits].

11. **[IF APPLICABLE] 11 U.S.C. § 1129(a)(14).** If the Debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the Debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition.

12. **[IF APPLICABLE] 11 U.S.C. § 1129(a)(16).** All transfers of property under the Plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.]

T. **Requirements for Secured Claims – 11 U.S.C. § 1191(c).** With respect to the secured claims in Class **[#] ...**, the Plan meets the requirements of 11 U.S.C. § 1129(b)(2)(A).

1. As of the Effective Date of the Plan –

a. **[INCLUDE APPLICABLE PROVISION]** The Plan provides that all of the projected disposable income of the Debtor to be received in **[REVISE PER RULING OF COURT the 3-year period, or such longer period not to exceed**

5 years as the Court may fix], beginning on the date that the first payment is due under the Plan will be applied to make payments under the Plan; or

b. The value of property to be distributed under the Plan in [REVISE PER RULING OF COURT the 3-year period, or such longer period not to exceed 5 years as the Court may fix], beginning on the date on which the first distribution is due under the Plan is not less than the projected disposable income of the Debtor.

c. The Court finds that the Debtor has provided appropriate projections which provide for the Debtor's "disposable income" under the Plan defined as the income that is received by the Debtor and that is not reasonably necessary to be expended [FOR AN INDIVIDUAL DEBTOR CHOOSE WHICH APPLIES for the maintenance or support of the Debtor or dependent of the Debtor; or the domestic support obligation that first becomes payable after the date of the filing of the petition]; or [FOR CORPORATE DEBTOR for the payment of expenditures necessary for the continuation, preservation, or operation of the business of the Debtor].

2. [REVISE BASED ON RULING OF COURT – The Debtor will be able to make all payments under the Plan, or there is a reasonable likelihood that the Debtor will be able to make all payments under the Plan], and the Plan provides appropriate remedies, which may include the liquidation of nonexempt assets, to protect the holder of claims or interests in the event that the payments are not made.

U. Non-Standard Plan Provisions. [Insert any non-standard plan provisions if applicable.]

Accordingly, the Court **ORDERS**:

1. **Confirmation.** The Plan is confirmed under 11 U.S.C. § 1191(b).

2. **Binding Effect of Plan.** Pursuant 11 U.S.C. § 1141(a), except as provided in §§ 1141(d)(2) and (3), the provisions of the Plan as of the Effective Date, bind the Debtor, [IF APPLICABLE – any entity issuing securities under the Plan] [, IF APPLICABLE – any entity acquiring property under the Plan,] and any creditor, [IF APPLICABLE – equity security holder, or general partner in the Debtor,] whether or not the claim or interest of such creditor, [IF APPLICABLE – equity security holder, or general partner], is impaired under the Plan and whether or not such creditor, [IF APPLICABLE – equity security holder, or general partner] has accepted the Plan.

3. **Re-vesting of Property.** Under 11 U.S.C. § 1141(b), except as otherwise provided in the Plan or in this Confirmation Order, as of the Effective Date, all of the property of the estate vests in the Debtor. Except as provided in §§ 1141(d)(2) and (3) and except as otherwise provided in the Plan or in this Order, after confirmation of the Plan, the property dealt with by the Plan is free and clear of all claims and interests of creditors, [IF APPLICABLE - equity security holders, and of general partners in the Debtor].

4. **Post-Confirmation Operation of Business.** Except as otherwise provided in the Plan or in this Confirmation Order, on and after the Effective Date, the Debtor may operate its business and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code and FRBP and in all respects as if there were no pending case under any chapter or provisions of the Bankruptcy Code. The Debtor is entitled to retain and compensate professionals without the necessity of further approval of this Court. Except as set forth in the Plan concerning objections to claims, the Debtor may also settle or compromise any claims without Court approval.

5. **Injunction and Discharge.** Because the Plan is confirmed under section 11 U.S.C. § 1191(b), and pursuant to 11 U.S.C. § 1192, as soon as practicable after completion by the Debtor

of all payments due within [REVISE PER RULING OF COURT: the first 3 years of the Plan or such longer period not to exceed 5 years as the Court may fix, unless the Court approves a written waiver of discharge executed by the Debtor after the order for relief under this chapter], the Court shall grant the Debtor a discharge of all debts provided in 11 U.S.C. § 1141(d)(1)(A), and all other debts allowed under 11 U.S.C. § 503 and provided for in the Plan, except any debt: (1) on which the last payment is due after [REVISE PER RULING OF COURT: the first 3 years of the Plan, or such other time not to exceed 5 years fixed by the Court]; or (2) of the kind specified in 11 U.S.C. § 523(a). To the extent the discharge provisions set forth in section [#] of the Plan are inconsistent with this Confirmation Order, 11 U.S.C. § 1141(d), or any other provision of the Bankruptcy Code, this Confirmation Order, 11 U.S.C. § 1192, and the Bankruptcy Code shall control.

6. **Disbursing Agent.** Under 11 U.S.C. § 1194(b), except as otherwise provided in the Plan or this Confirmation Order, the Subchapter V Trustee shall make payments under the Plan. [IF YOUR PLAN IDENTIFIES A DIFFERENT DISBURSING AGENT, SPECIFY].

7. **United States Trustee Guidelines.** The Debtor must comply with the guidelines set forth by the Office of the United States Trustee until the closing of this case by the issuance of a Final Decree by the Court.

8. **Effect of Confirmation Order on Plan.** The failure to reference or address all or part of any particular provision of the Plan herein has no effect on the validity, binding effect, or enforceability of such provision and such provision has the same validity, binding effect, and enforceability as every other provision of the Plan. To the extent that any inconsistencies exist between the terms of the Plan and this Confirmation Order, the terms of this Confirmation Order shall control.

9. **Executory Contracts and Leases.** Except as otherwise provided in a separate order of the Court, all executory contracts and unexpired leases not otherwise assumed are deemed rejected as of the Effective Date.

10. **Documents Required to Effectuate Plan.** The Debtor is authorized to execute any and all documents reasonably required to effectuate the provisions of the Plan or prior Orders of this Court.

11. **Modification After Confirmation.** Under 11 U.S.C. § 1193(c), the Debtor may modify the Plan at any time within [REVISE PER RULING OF COURT - 3 years or such longer time not to exceed 5 years, as fixed by the Court], but may not modify the Plan so that the Plan as modified fails to meet the requirements of 11 U.S.C. § 1191(b). The Plan as modified becomes the Plan only if circumstances warrant such modification and the Court, after notice and a hearing, confirms such Plan, as modified, under 11 U.S.C. § 1191(b).

12. **Discharge of the Subchapter V Trustee.** Except as provided in the Plan or this Confirmation Order, the Subchapter V Trustee shall make payments to creditors under the Plan and shall not be discharged until such payments have been made. Prior to the discharge of the Subchapter V Trustee, the Subchapter V Trustee shall comply with 11 U.S.C. § 1194 and distribute any applicable payments in accordance with the Plan. Debtor must file a final report and motion for entry of final decree on the later of: (a) the completion of all payments due under the Plan, or (b) entry of a final order resolving all disputed claims.

13. **Jurisdiction.** The Bankruptcy Court retains jurisdiction to:
- a. Resolve issues with respect to the Debtor's substantial consummation of the Plan and to the extent the Debtor seeks to amend or modify the Plan;
 - b. Resolve any motions, adversary proceedings, or contested matters, that are pending as of the date of substantial consummation;
 - c. Adjudicate objections to claims;

- d. Resolve disputes with respect to any and all injunctions created as a result of confirmation of the Plan;
- e. Adjudicate modifications of the Plan under 11 U.S.C. § 1193;
- f. Review and consider issues associated with the Debtor's final report and entry of final decree, and to enter a final decree; and
- g. Enter such orders as the Court deems necessary or appropriate with respect to enforcement of the Plan.

14. Debtor and Debtor's attorney are directed to appear before the Court on _____ at _____ (a.m./p.m.) and show cause why the report of substantial consummation (LBR 3022-1) has not been filed with the Court. If a notice of substantial consummation is filed prior to that date, the show cause hearing will be cancelled as moot. The Court shall monitor the case and set a § 105(a) conference if Debtor fails to make a motion for final decree after completing all payments contemplated under the Plan (Fed. R. Bankr. P. 3022 & Local Rule 3022-1).

15. [COUNSEL] must serve a copy of the signed order on all parties served with the motion and must file with the Court a certificate of service conforming with Local Rule 9013-1(c).

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