



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

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THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 26, 2018

Mark X. Mullin

United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	CHAPTER 11
	§	
VASARI, LLC,	§	CASE NO. 17-44346-mxm-11
	§	
DEBTOR.	§	Complex Case
	§	
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**AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
CONFIRMING DEBTOR'S THIRD AMENDED PLAN OF REORGANIZATION FOR
VASARI, LLC (WITH TECHNICAL MODIFICATIONS) DATED AS OF JUNE 19, 2018**

Came on for consideration confirmation of Debtor's *Third Amended Plan of Reorganization for Vasari, LLC, (with Technical Modifications)* dated as of June 19, 2018 [Docket No. 394] (as may be further amended, modified, or supplemented from time to time, the "Plan") filed by Vasari, LLC, the debtor and debtor-in-possession (the "Debtor") in the above-referenced case (the "Case"); and the Court having entered an Order on May 17, 2018 [Docket No. 339] (the "Disclosure Statement Order"), among other things, approving the *Second Amended Disclosure Statement for Chapter 11 Plan of Reorganization for Vasari, LLC* [Docket

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No. 336] (the “Disclosure Statement”); and upon the certification of Jung W. Song, a representative of Donlin, Recano & Company, Inc., the balloting and tabulation agent in the Case; and the Court having reviewed the certification filed certifying the ballots accepting and rejecting the Plan; and the Court having held the hearing to confirm the Plan on June 15, 2018 (“Confirmation Hearing”) after due notice to holders of Claims and Interests and other parties in interest in accordance with the Disclosure Statement, Disclosure Statement Order, Title 11 of the United States Code (the “Bankruptcy Code”), the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Local Bankruptcy Rules for the United States Bankruptcy Court for the Northern District of Texas (the “Local Rules”); and the Court having reviewed all documents in connection with confirmation of the Plan and having heard all parties desiring to be heard at the Confirmation Hearing; and upon the record compiled in this Case; and after due deliberation and consideration of all the foregoing; and sufficient cause appearing therefore; the Court hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THE COURT FINDS AND CONCLUDES THAT:

A. Capitalized Terms. Capitalized terms used but not defined herein shall have the meanings given to them in the Plan.

B. Findings and Conclusions. 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 pursuant to 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 findings of facts constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

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C. Jurisdiction, Venue, and Core Proceeding. This Court has jurisdiction over this Case pursuant to 28 U.S.C. §§ 157 and 1334(a). Venue is proper under 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b)(2).

D. Approval of Disclosure Statement. On May 16, 2018, Debtor filed the Disclosure Statement. On May 17, 2018, the Court entered an Order, the Disclosure Statement Order, approving the adequacy of the Disclosure Statement pursuant to Section 1125 of the Bankruptcy Code, and establishing deadlines for solicitation of votes for the confirmation of the Plan. The Debtor's use of the Disclosure Statement to solicit votes to accept or reject the Plan was authorized by the Disclosure Statement Order and appropriate. Solicitation of votes on the Plan was in compliance with the Disclosure Statement Order.

E. Solicitation. Votes for acceptance or rejection of the Plan were solicited in good faith and in compliance with Section 1125 and 1126 of the Bankruptcy Code and Bankruptcy Rules 3017 and 3018, the Disclosure Statement, the Disclosure Statement Order, all other applicable provisions of the Bankruptcy Code, and all other applicable rules, laws, and regulations.

F. Voting. As set forth in the record at the Confirmation Hearing, and by the certification of Jung W. Song, each impaired Class of Claims and Interests either (a) voted to accept the Plan under Section 1126 of the Bankruptcy Code and for purposes of Section 1129(a)(8)(A) of the Bankruptcy Code; or (b) is not discriminated unfairly against, and the Plan is fair and equitable, with respect to such Class of Claims for purposes of Section 1129(b)(2). Voting on the Plan and treatment thereunder are reflected on the *Declaration of Jung W. Song on Behalf of Donlin, Recano & Company, Inc. Regarding Voting and Tabulation of Ballots Accepting and Rejecting the Second Amended Plan of Reorganization for Vasari, LLC* filed by

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the Debtor on June 14, 2018 [Docket No. 388]. The procedure by which ballots were received and tabulated was fair, properly conducted, and in accordance with the Bankruptcy Code, the Bankruptcy Rules, Local Rules, the Disclosure Statement, and the Disclosure Statement Order.

G. Modifications to the Plan. The modifications and amendments to the Second Amended Plan of Reorganization for Vasari, LLC, dated May 16, 2018 (the “Second Amended Plan”) [Docket No. 337], reflected in the Plan and as otherwise set forth on the record at the Confirmation Hearing, or made by this Confirmation Order, do not materially and adversely affect or change the treatment of any creditor who has not accepted such modifications. Accordingly, pursuant to Bankruptcy Rule 3019, re-solicitation of acceptances or rejections under Section 1126 of the Bankruptcy Code is not required, nor do they require that holders of Claims not accepting such modifications be afforded an opportunity to change previously cast acceptances or rejections of the Plan. Disclosure of the modifications on the record at the Confirmation Hearing constitutes due and sufficient notice thereof under the circumstances of this Case. Accordingly, pursuant to Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all holders of Claims that have accepted or are conclusively deemed to have accepted the Plan are deemed to have accepted such modifications to the Plan.

H. Bankruptcy Rule 3016. In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan. The Debtor appropriately filed the Disclosure Statement and the Plan with the Court, thereby satisfying Bankruptcy Rule 3016(b). The discharge, release, injunction and exculpation provisions of the Plan are set forth in specific and conspicuous language in the Ballots, thereby complying with Bankruptcy Rule 3016(c).

I. Compliance with Bankruptcy Code Section 1129(a)(1). The Plan complies with any and all applicable provisions of the Bankruptcy Code and Bankruptcy Rules, thereby

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satisfying Section 1129(a)(1). The Court makes further findings below that the Plan complies with the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules. The omission or exclusion of a specific finding herein does not constitute a finding that the Debtor has not complied with any and all applicable provisions of the Bankruptcy Code and Bankruptcy Rules:

- a. Proper Classification under Sections 1122 and 1123(a)(1). In addition to the Administrative Expense Claims and Priority Tax Claims, which need not be classified, the Plan designates six (6) Classes of Claims (Classes 1–6) against the Debtor. The Claims placed in each Class are substantially similar to other Claims in each such Class, and such classification is therefore consistent with the Bankruptcy Code Section 1122. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims created under the Plan, and such Classes and the Plan’s treatment thereof do not unfairly discriminate between holders in each Class of Claims. The Plan satisfies Bankruptcy Code Sections 1122 and 1123(a)(1).
- b. Specification of Classes Not Impaired under the Plan under Section 1123(a)(2). Article II of the Plan specifies each particular Class of Claims or Interest that is not impaired under the Plan. The Plan satisfies Bankruptcy Code Section 1123(a)(2).
- c. Specified Treatment of Impaired Classes – Section 1123(a)(3). Article IV of the Plan specifies the treatment of the impaired Classes of Claims thereby satisfying Bankruptcy Code Section 1123(a)(3).
- d. No Discrimination – Section 1123(a)(4). The Plan either provides the same treatment for each Claim in each respective Class or the holder of a particular Claim or Interest has agreed to a less favorable treatment of its particular Claim or Interest, thereby satisfying Bankruptcy Code Section 1123(a)(4).
- e. Implementation of the Plan – Section 1123(a)(5). Article VI of the Plan provides adequate and proper means for implementing the Plan. Pursuant to the Plan, the Effective Date of the Plan shall not occur until the First Business Day on which all of the conditions set forth in Section 10.1 of the Plan have been satisfied or waived and no stay of the Confirmation Order is in effect. Additionally, Section 6.3 of the Plan and Section 6.5.3 of the Disclosure Statement unequivocally and specifically provide for the release of all Causes of Action held by the Debtor, except for those certain Preserved Avoidance Claims that will be pursued by the GUC Administrator on behalf of the Debtor for the benefit of Holders of Allowed General Unsecured Claims.

- f. Charter of the Debtor – Section 1123(a)(6). The Plan provides for the cancellation of all Claims or Interests in the Debtor on the Effective Date. Following the Effective Date, the Plan authorizes and requires the Reorganized Debtor to issue and deliver the New Member Interests in the Reorganized Debtor as provided in the Subscription Agreement.
 - g. Selection of Officers and Directors – Section 1123(a)(7). The Plan contemplates, but does not explicitly state, the Reorganized Debtor's intent to maintain the same or substantially the same officers and directors currently operating the Debtor following the Effective Date. The Court finds this designation consistent with the interests of holders of Claims or Interests against the Debtor.
 - h. Additional Plan Provisions – Section 1123(b). The Plan's provisions are appropriate and not inconsistent with the applicable provisions of the Bankruptcy Code.
- J. Compliance with Bankruptcy Code Section 1129(a)(2). The Debtor has complied with the applicable provisions of the Bankruptcy Code, thereby satisfying Bankruptcy Code Section 1129(a)(2). Specifically, the Debtor proffered the testimony of Debbie Wood stating that the Plan complies with all applicable provisions of the Bankruptcy Code.
- K. Plan Proposed in Good Faith – Section 1129(a)(3). The Debtor has proposed the Plan in good faith and not by means forbidden by law, thereby satisfying Bankruptcy Code Section 1129(a)(3). The Court has examined the totality of the circumstances surrounding the formulation of the Plan. Based on the evidence presented at the Confirmation Hearing, the Court finds and concludes that the Plan has been proposed with the legitimate and honest purpose of reorganizing the Debtor's business to maximize the recovery to the Debtor's creditors in accordance with the priorities set forth in the Bankruptcy Code.
- L. Payment for Services or Costs and Expenses – Section 1129(a)(4). Any payments made or to be made by the Debtor for services or for costs and expenses in connection with this Case has been approved by, or are subject to the approval of, the Court as reasonable, thereby satisfying Bankruptcy Code Section 1129(a)(4).

M. Identification of Directors, Officers, and Insiders – Section 1129(a)(5). The Plan proposes retention of the Debtor’s officers and directors. The identity of the Reorganized Debtor’s proposed officers and directors, and the nature of their compensation, was made known on December 5, 2017 in the Statement of Financial Affairs and was testified to at the Meeting of Creditors held on December 15, 2017 [Docket No. 197]. Therefore Bankruptcy Code Section 1129(a)(5) has been satisfied.

N. No Rate Changes – Section 1129(a)(6). The Plan does not provide for the change of any rate that is within the jurisdiction of any governmental regulatory commission after the occurrence of the Effective Date. Therefore, Bankruptcy Code Section 1129(a)(6) is inapplicable.

O. Best Interest of Creditors – Section 1129(a)(7). As set forth in the Liquidation Analysis and by evidence presented at the Confirmation Hearing, the “best interest” test is satisfied as to all Impaired Classes of Claims and Interests that have not accepted the Plan. As set forth in the Liquidation Analysis, a liquidation under Chapter 7 would adversely affect the ultimate proceeds available for distribution to holders of Claims and Interests due to: (i) the Cadence DIP Claim and the secured Cadence Prepetition Claims; (ii) increased costs, including administrative fees and costs payable to the Chapter 7 trustee and professional advisors of the trustee; (iii) the need to retain an investment banker to market the Debtor’s assets; (iv) loss of value through passage of time; and (v) limitations of Section 721 of the Bankruptcy Code. Confirmation of the Plan provides each rejecting creditor and interest holder with a recovery that is not less than such holder would receive in a Chapter 7 liquidation of the Debtor’s assets.

P. Acceptance by Impaired Classes– Section 1129(a)(8). Bankruptcy Code Section 1129(a)(8) was not satisfied by voting on the Plan. However, with respect to each rejecting

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Class of Claims or Interests, such Class was not unfairly discriminated against and such Class of Claims or Interests was treated fairly and equitably in accordance with Section 1129(b)(2).

Q. Treatment of Administrative, Other Priority Claims and Priority Tax Claims – Section 1129(a)(9). Consistent with Section 1129(a)(9)(A), Section 3.2.3 of the Plan provides that each holder of an Allowed Administrative Expense Claim shall be paid the total amount of such holder's Allowed Administrative Expense Claim as soon as reasonably practicable after the later of : (a) the Effective Date, (b) the first Business Day after the date that is ten (10) business dates after the date an Administrative Expense Claim becomes an Allowed Claim, or (c) such other date agreed upon in writing by the Debtor or Reorganized Debtor and the holder of such Allowed Administrative Expense Claim. Notwithstanding the foregoing, Allowed Fee Claims shall be paid pursuant to Sections 3.3.2 and 9.5 of the Plan. Consistent with Section 1129(a)(9)(C), Section 3.5 of the Plan provides that each holder of an Allowed Priority Tax Claim shall receive the total amount of such holder's Allowed Priority Tax Claim either (i) on, or as soon thereafter as is reasonably practicable, the later of the Effective Date and the first Business Day after the date that is thirty (30) calendar days after the date a Priority Tax Claim becomes an Allowed Claim, Cash in an amount equal to such Claim; or (ii) deferred Cash payments following the Effective Date over a period ending not later than five (5) years after the Petition Date, in an aggregate amount equal to the Allowed amount of such Priority Tax Claim (with any interest to which the holder of such Priority Tax Claim may be entitled calculated at 10%, except with regard to the holders of ad valorem property tax claims who shall receive interest from the Petition Date of the Plan through the Effective Date of the Plan and from the Effective Date through the date of payment in full in accordance with section 511 of the Bankruptcy Code); *provided, however*, that all Allowed Priority Tax Claims that are not due and

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payable on or before the Petition Date shall be paid in the ordinary course of the Debtor's business. No holder of an Administrative Expense Claim, Priority Tax Claim, or Priority Non-Tax Claim has objected to this treatment under the Plan. All of the provisions of Section 3.5 of the Plan impacting the priority tax claims, including the provisions preserving the lien claims held by ad valorem property tax claimants, are hereby incorporated into this Order. Nothing set forth in the Plan or this Confirmation Order shall (i) affect or impair any rights of the Comptroller to pursue any claims, rights, causes of action or any other remedies the Comptroller may have against any non-debtor third parties; or (ii) require the Comptroller to file any proof of claim, motion or request for payment in order to be paid any Administrative Expense Claims that arise in the ordinary course of the Debtor's business, including postpetition taxes incurred by the Debtor after the Petition Date (in accordance with Section 503(b)(1)(B)-(D) of the Bankruptcy Code), which shall be paid in accordance with Section 1129(a)(9)(A) of the Bankruptcy Code, or, if not due on the Effective Date, in the ordinary course of business in accordance with applicable law.

R. Acceptance by Impaired Class – Section 1129(a)(10). At least one Class of Claims that is impaired under the Plan has accepted the Plan thereby satisfying Bankruptcy Code Section 1129(a)(10).

S. Feasibility – Section 1129(a)(11). The feasibility requirement of Bankruptcy Code Section 1129(a)(11) is satisfied based upon the Debtor's Financial Projections, attached to the Disclosure Statement, as modified, and introduced at the Confirmation Hearing, which detail, among other things, that the projected level of Cash flow is sufficient to satisfy all of the Reorganized Debtor's future debt and debt related interest cost, research and development, capital expenditures and other obligations during this period.

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T. Payment of Fees – Section 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 the requirements of Bankruptcy Code Section 1129(a)(12).

U. Continuation of Retiree Benefits – Section 1129(a)(13). The Debtor does not have any retiree benefits to be continued under the Plan. Thus, Bankruptcy Code Section 1129(a)(13) is not applicable.

V. Domestic Support – Section 1129(a)(14). The Debtor is not required by a judicial or administrative order, or by statute, to pay a domestic support obligation. Thus, Bankruptcy Code Section 1129(a)(14) is not applicable.

W. Individual Debtor Case – Section 1129(a)(15). The Debtor is not an individual debtor and thus Bankruptcy Code Section 1129(a)(15) is not applicable.

X. Transfers of Property – Section 1129(a)(16). All transfers of property under the Plan will be made in accordance with any applicable provisions of non-bankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust. Thus Bankruptcy Code Section 1129(a)(16) is satisfied.

Y. Cadence Secured Claim. As of April 23, 2018, Debtor owed Cadence \$10,969,120.10 in principal, \$41,264.72 in accrued and unpaid interest, and \$1,581.25 in fees, plus any and all other obligations of the Debtor pursuant to the Cadence Prepetition Loan Documents, including but not limited to interest and fees accruing after April 23, 2018 and any and all accrued and accruing legal fees and disbursements (the “Allowed Cadence Claim”).¹ The

¹ In addition, Cadence is committed under a prepetition standby letter of credit issued in favor of Labatt Food Service, LLC in the maximum amount available for drawing of \$400,000.00.

Allowed Cadence Claim is fully secured by fully perfected, first-priority liens on and security interests in substantially all assets of the Debtor.

Z. Satisfaction of Section 1129(b) Requirements. The Plan satisfies the requirements of Section 1129(b) of the Bankruptcy Code because the Plan does not unfairly discriminate against any rejecting Class of Claims or Interests and the Plan treats the rejecting Classes fairly and equitably. Specifically, the Plan is fair and equitable with respect to Class 3 and Class 6 because the Plan does not allow any Claim or Interest junior to Class 3 or Class 6 to retain or receive any property on account of such Claim or Interest in accordance with Section 1129(b)(1)–(2) of the Bankruptcy Code.

AA. Satisfaction of Confirmation Requirements. The Plan satisfies the requirements of confirmation set forth in Bankruptcy Code Section 1129.

BB. Implementation of the Plan. Article VI of the Plan provides the means for implementing the Plan. The provisions of Article VI of the Plan are consistent with and permissible under Section 1123(a)(5) of the Bankruptcy Code and are consistent with the interests of Creditors, holders of Interests, and public policy.

CC. Preservation of the Preserved Avoidance Claims. The Preserved Avoidance Claims are hereby specifically and unequivocally reserved and retained for the prosecution, enforcement, and pursuit by the GUC Administrator as if he were the Debtor pursuant to Section 9.5 of the Plan.

DD. Releases, Exculpations, and Injunctions. The releases, exculpations, and injunctions provided in the Plan (a) are within the jurisdiction of the Court under 28 U.S.C. § 1334; (b) are the product of good faith, arm's-length negotiations, (c) are integral elements of the global settlement embodied in the Plan and are essential to the Plan's implementation, (d) confer

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material benefit on, and are in the best interests of the Debtor, its Estate and Creditors; and (e) are consistent with Sections 105, 524, 1123, 1129, and 1141 and other applicable provisions of the Bankruptcy Code. The release provision in Section 9.5(a) of the Plan (Releases by the Debtor) represents a valid exercise of the Debtor's business judgment. The release provision in Section 9.5(b) of the Plan (Releases by Holders of Claims and Interests) is appropriate, as the releases contained therein are consensual because the releases were disclosed in the Plan and Disclosure Statement, conspicuously disclosed in bold face font in the Ballots, and Holders of Claims entitled to vote on the Plan were given the option to opt-out of the releases. The exculpation and protective injunction provided in paragraphs 9.6 and 9.7 of the Plan are appropriate under applicable law because they were proposed in good faith, were formulated following good faith, arm's-length negotiations and were an integral component of the global settlement contained in the Plan and are appropriately limited in scope. The record at the Confirmation Hearing and in this Case is sufficient to support the injunctions, releases and exculpations provided for in the Plan and the failure to implement the injunctions, exculpations and releases would seriously impair the Debtor's ability to confirm the Plan. Notwithstanding anything to the contrary in the Plan or this Confirmation Order, the Protected Party injunction shall not affect a third party discharge in contravention of Section 524(e) of the Bankruptcy Code.

EE. Objections. All timely filed objections to final approval of the Disclosure Statement and/or to confirmation of the Plan were withdrawn, settled, or overruled.

DECREEES

ACCORDINGLY, THE COURT HEREBY ORDERS THAT:

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1. Confirmation of the Plan. The Plan, which consists of the Plan and modifications set forth in this Confirmation Order or on the record at the Confirmation Hearing, is **APPROVED** and **CONFIRMED** under Bankruptcy Code Section 1129 in its entirety. The terms of the Plan are incorporated by reference into and are an integral part of this Confirmation Order.

2. Objections. Any objections that have not been withdrawn, waived, or settled, and all reservations of rights pertaining to confirmation of the Plan included therein, are overruled on the merits.

3. Approval of Plan Modifications. The modifications and amendments to the Second Amended Plan as reflected in the Plan and otherwise made by this Confirmation Order are hereby approved. Such modifications do not materially and adversely affect or change the treatment of any creditor who has not accepted such modifications. Accordingly, pursuant to Bankruptcy Rule 3019, such modifications do not require additional disclosure under Section 1125 of the Bankruptcy Code, or re-solicitation of acceptances or rejections under Section 1126 of the Bankruptcy Code, nor do they require that holders of Claims not accepting such modifications be afforded an opportunity to change previously cast acceptances or rejection of the Plan. Disclosure of the modifications on the record at the Confirmation Hearing constitutes due and sufficient notice thereof under the circumstances of this Case.

4. Effects of Confirmation; Effectiveness; Successors and Assigns. On the Effective Date, the stay contemplated by Bankruptcy Rule 3020(e) is waived and lifted in all respects. Notwithstanding any otherwise applicable law but subject to the occurrence of the Effective Date, upon entry of this Confirmation Order, the terms of the Plan (including the exhibits thereto and referenced herein, and all documents and agreements executed pursuant to the Plan) and the **AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER CONFIRMING DEBTOR'S THIRD AMENDED PLAN OF REORGANIZATION FOR VASARI, LLC (WITH TECHNICAL MODIFICATIONS) DATED AS OF JUNE 19, 2018– Page 13**

Confirmation Order shall be binding upon (a) the Debtor; (b) all holders of Claims against and Interest in the Debtor, whether or not impaired under the Plan, and whether or not, if impaired, such holder accepted the Plan; (c) any other party in interest; (d) any Person making an appearance in this Case; and (e) each of the foregoing's respective heirs, successors, assigns, trustees, executors, administrators, affiliates, officers, directors, agents, representatives, attorneys, beneficiaries, or guardians.

5. Classification and Treatment. All Claims and Interests shall be, and hereby are, classified and treated as set forth in the Plan. The Plan's classification scheme shall be, and hereby is, approved. The treatment of all Claims and Interests as provided in the Plan shall be, and hereby is, approved.

6. Administrative Expense Claims (Other than Fee Claims or the Claim on account of the DIP Loan). The holder of any Administrative Expense Claim, other than holders of (i) the Cadence DIP Claim, (ii) a Fee Claim, a 503(b)(9) Claim, (iii) an Administrative Expense Claim Allowed on or before the Effective Date, (iv) an Administrative Expense Claim that has been Allowed on or before the Effective Date; (v) an Administrative Expense Claim for an expense or liability incurred and payable in the ordinary course of business by the Debtor; (vi) an Administrative Expense Claim on account of fees and expenses incurred on or after the Petition Date by ordinary course professionals retained by the Debtor pursuant to an order of the Bankruptcy Court; (vii) an Administrative Expense Claim arising, in the ordinary course of business, out of the employment by the Debtor of an individual from and after the Petition Date, but only to the extent that such Administrative Expense Claim is solely for outstanding wages, commissions, accrued benefits, or reimbursement of business expenses; or (viii) a claim for adequate protection arising under the Final DIP Order, must file with the Court, and serve on the

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Debtor or the Reorganized Debtor, proof of the Administrative Expense (“Administrative Expense Application”) on or before the Administrative Bar Date, which is ten (10) days after the filing of Notice of the Effective Date. An Administrative Expense Application must include at a minimum: (i) the exact amount asserted to be owed by the Debtor; (ii) the name of the holder of the Administrative Expense Claim; (iii) the asserted amount of the Administrative Expense Claim; (iv) the basis of the Administrative Expense Claim; and (v) supporting documentation for the Administrative Expense Claim. Failure to timely and properly file and serve the Administrative Expense Application shall result in the Administrative Expense Claim being forever barred and discharged.

7. Fee Claims. Each Professional who holds, or asserts a Fee Claim shall file with the Court its final fee application seeking final approval of all fees and expenses from the Petition Date through the Effective Date no later than ten (10) calendar days after the Effective Date. Except as otherwise set forth in the Plan, the Debtor shall pay any outstanding amounts owed to a Professional Person upon (a) the later of (i) the Effective Date, and (ii) fourteen (14) calendar days after the date upon which the order relating to the allowance of any such Fee Claim is entered, or (b) upon such other terms as have been or may be mutually agreed upon between the holder of such Fee Claim and the Reorganized Debtor, *provided, however*, that Allowed Fee Claims of Professional Persons Retained by the Committee shall be paid solely as follows (A) up to \$200,000.00 will be paid from the Unsecured Creditors Fund and (b) the remainder (the “Overage”) will be paid solely from the proceeds of the Preserved Avoidance Claims in an amount not to exceed \$50,000.00, in the order of priority set forth in Section 9.5(b) of the Plan. The Overage shall be paid by the Reorganized Debtor at the direction of the GUC

Administrator in such installments as the GUC Administrator may determine in the exercise of

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his sole discretion, assuming there are sufficient proceeds from the Preserved Avoidance Claims to pay the Overage in full. Except as otherwise set forth in the Plan, on the Effective Date, to the extent known, the Reorganized Debtor shall reserve and hold in a segregated account Cash in an amount equal to all accrued but unpaid Fee Claims as of the Effective Date, which Cash shall be disbursed solely to the holders of Allowed Fee Claims with the remainder to be reserved until all Fee Claims have been either Allowed and paid in full or Disallowed by Final Order, at which time any remaining Cash in the segregated account shall become the sole and exclusive property of the Reorganized Debtor.

8. Enforceability of the Plan. Pursuant to Sections 1123(a), 1141(a) and 1142 of the Bankruptcy Code and the provisions of this Confirmation Order, the Plan and all Plan-related documents shall be, and hereby are, valid, binding, and enforceable notwithstanding any otherwise applicable nonbankruptcy law. The modifications are enforceable and do not constitute material modifications that might otherwise require re-solicitation.

9. Authorization to Implement the Plan. Upon entry of this Confirmation Order, and subject to the occurrence of the Effective Date, the Debtor and Reorganized Debtor are authorized to take or cause to be taken and shall take or shall cause to be taken all actions necessary or appropriate to implement all provisions of, and to consummate, the Plan and to execute, enter into, or otherwise make effective all documents arising in connection therewith, on and after the Effective Date. All such actions taken or caused to be taken shall be, and hereby are, authorized and approved by the Court such that no further approval, act, or action need to be taken under any applicable law, order, rule, or regulation. The approvals and authorizations specifically set forth in this Confirmation Order are not intended to limit the authority of the

Debtor or Reorganized Debtor to take any and all actions necessary or appropriate to implement,
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effectuate, and consummate any and all documents or transactions contemplated by the Plan or the Confirmation Order.

10. Distributions Under the Plan. The Reorganized Debtor is approved as the disbursing agent and shall have all powers, rights, duties, and protections afforded to the Reorganized Debtor to make Plan Distributions under the provisions of the Plan. Pursuant to the terms and provisions of the Plan, the Reorganized Debtor shall make the Plan Distributions specified under the Plan.

11. Resolution of Claims. Except as otherwise ordered by the Court, any Claim that is not an Allowed Claim shall be determined, resolved, or adjudicated in accordance with the terms of the Plan. All objections to Claims shall be filed with the Court by the Claims Objection Deadline, which is the later of (a) forty-five (45) days after the Effective Date, and (b) such other date as may be fixed by the Bankruptcy Court for cause, whether fixed before or after the date specified in clause (a) hereof. A copy of the objection will be served upon the holder of the Claim to which such objection pertains and the United States Trustee. Nothing in the Plan or this Confirmation Order is intended to affect or modify the right of any party-in-interest to object to a Claim or Interest under Section 502(a) of the Bankruptcy Code.

12. Assumption of Executory Contracts. Pursuant to Section 8.1 of the Plan, on the Effective Date, all executory contracts and unexpired leases to which the Debtor is a party shall be deemed assumed as of the Effective Date except that (a) any executory contracts and unexpired leases that previously have been assumed or rejected pursuant to a Final Order of the Bankruptcy Court shall be treated as provided in such Final Order; (b) any executory contracts and unexpired leases listed on the Schedule of Assumed Contracts and Leases shall be deemed assumed as of the Effective Date; and (c) all executory contracts and unexpired leases that are

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the subject of a separate motion to assume or reject under section 365 of the Bankruptcy Code pending on the Effective Date shall be treated as provided for in the Final Order resolving such motion.

13. Rejection Damage Claims. Pursuant to Section 8.3 of the Plan, if the rejection of an executory contract or unexpired lease pursuant to the Plan gives rise to a rejection Claim, any such rejection Claim shall be forever barred and shall not be enforceable against the Debtor or its Estate unless a proof of rejection Claim is filed within thirty (30) days from the Effective Date. The Reorganized Debtor shall file any objection to a rejection Claim not later than the later of (i) forty-five (45) days after the filing of the applicable rejection damages proof of Claim and (ii) sixty (60) days after the entry of the Confirmation Order or such other period of limitation as may be specifically fixed by an order of this Court for objecting to such Claims.

14. Payment of U.S. Trustee Fees. All fees payable pursuant to 28 U.S.C. § 1930 after the Effective Date shall be paid on an ongoing basis until the Case is closed, converted, or dismissed. The Debtor shall be liable for the payment of all quarterly fees due and payable pursuant to 28 U.S.C. §1930(a)(6) prior to the Effective Date. The Debtor and Reorganized Debtor shall be jointly and severally liable for the payment of all quarterly fees due pursuant to 28 U.S.C. § 1930 after the Effective Date, and for any unpaid quarterly fees incurred by the Debtor prior to the Effective Date. The Reorganized Debtor shall provide the United States Trustee with post-confirmation quarterly reports that shall include all disbursements for that quarter.

15. Release of Causes of Action Except Preserved Avoidance Claims. Except as otherwise provided in the Plan and this Confirmation Order with respect to the Preserved Avoidance Claims, all other Causes of Action shall be released as set forth in the Plan, the

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Disclosure Statement (including all appendices thereto), and modifications. The GUC Administrator is hereby designated and appointed as the Debtor's representative for purposes of prosecuting and enforcing all Preserved Avoidance Claims, and the GUC Administrator has standing to bring all Preserved Avoidance Claims pursuant to 11 U.S.C. § 1123(a)(5), (b)(3), and (b)(6).

16. Releases, Injunction and Exculpations. The release, injunction and exculpation provisions set forth in Article IX of the Plan shall be, and hereby are, approved, and shall be effective without further action upon the occurrence of the Effective Date. Each of the Released Parties and any other Persons protected by the injunction set forth in Article IX of the Plan or this Confirmation Order shall have the right to independently seek the enforcement of such injunction. Any parties who elected to "opt out" of releases under the Plan, shall neither be protected by, nor bound by, the release provisions contained within Article IX of the Plan.

17. Releases by the Debtor. Effective as of the Effective Date, but subject to the occurrence of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, and except as otherwise provided in this Plan or the Confirmation Order, the Debtor and the Reorganized Debtor, in their individual capacities and as debtor in possession on behalf of the Estate, shall be deemed to forever release, waive and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities (other than the rights of the Debtor or the Reorganized Debtor to enforce the Plan and the contracts, instruments, releases, indentures and other agreements or documents delivered thereunder) against the Released Parties, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act, omission,

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transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Reorganized Debtor, the Released Parties, this Reorganization Case, the Plan or the Disclosure Statement, and all claims that could have been asserted by or on behalf of the Debtor or its Estate or the Reorganized Debtor, including claims that could be asserted by the Committee, whether directly, indirectly, derivatively or in any representative or any other capacity, other than claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities arising out of or relating to any act or omission of a Released Party or a former officer or director of the Debtor that constitutes fraud or willful misconduct.

18. Releases by Holders of Claims and Interests. Except as otherwise provided in the Plan or this Confirmation Order, on the Effective Date each holder of a Claim or Interest, in consideration for the obligations of the Debtor and the Reorganized Debtor under the Plan and the terms and provisions of the Plan (including, without limitation, the settlements and compromises embodied in the Plan), shall be deemed to have consented to the Plan for all purposes and the restructuring embodied herein and, unless such holder returned the appropriate Ballot clearly choosing to opt-out of such releases, shall also be deemed to forever release, waive and discharge all claims, demands, debts, rights, Causes of Action or liabilities (other than the right to enforce the obligations of any party under the Plan and the contracts, instruments, releases, agreements and documents delivered under or in connection with the Plan) against the Released Parties, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Reorganized Debtor, this Reorganization Case, the Plan or the Disclosure Statement.

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19. Injunctions. As of the Effective Date, the Confirmation Order shall permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities released pursuant to the Plan, including (but not limited to) the claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities released in Sections 9.5 and 9.6 of the Plan. To the extent that any Person seeks to pursue a Claim or Cause of Action against any Released Party, such Person must first obtain leave from the Bankruptcy Court to pursue such claim, and, unless the Bankruptcy Court orders otherwise, any such Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, losses, or liabilities shall be asserted in the Bankruptcy Court. Notwithstanding anything to the contrary in this Plan, this Protected Party injunction shall not effect a third party discharge in contravention of 11 U.S.C. § 524(e).

20. Notwithstanding anything to the contrary contained in the Plan: (i) except to the extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date, the releases provided for in Section 9.5 of the Plan shall not release any non-Debtor entity from any liability arising under (x) the Internal Revenue Code, or (y) any criminal laws of the United States or any state, city or municipality; and (ii) the releases set forth in Section 9.5 of the Plan shall not release any (x) claims against any Person to the extent such Person asserts a crossclaim, counterclaim and/or claim for setoff which seeks affirmative relief against the Debtor or any of its officers, directors, or representatives and (y) claims against any Person arising from or relating to such Person's fraud or willful misconduct, each as determined by a Final Order of the Bankruptcy Court. Furthermore, notwithstanding anything to the contrary herein, the releases provided for in this Section 9.5 of the Plan shall not release the Reorganized

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Debtor from the accrued but unbilled liabilities (as of the Effective Date) arising under the terms of the leases of nonresidential real property assumed pursuant to the Plan, including, without limitation, periodic operating expenses, real estate taxes and insurance reconciliations, and Reorganized Debtor shall receive the benefit of any credits associated therewith.

21. As to the United States of America, its agencies, departments, or agents (collectively, the “United States”), nothing in the Plan or Confirmation Order shall limit or expand the scope of any discharge, release or injunction to which the Debtor or the Reorganized Debtor are entitled under the Bankruptcy Code. The discharge, release and injunction provisions contained in the Plan and Confirmation Order are not intended and shall not be construed to bar the United States from, subsequent to the Confirmation Order, pursuing any police or regulatory action, except to the extent those discharge and injunctive provisions bar a Governmental Unit (as defined by Section 101(27) of the Bankruptcy Code) from pursuing Claims.

22. Accordingly, notwithstanding anything contained in the Plan or Confirmation Order to the contrary, nothing in the Plan or Confirmation Order shall discharge, release, impair or otherwise preclude: (1) any liability to the United States that is not a “claim” within the meaning of section 101(5) of the Bankruptcy Code; (2) any Claim of the United States arising on or after the Confirmation Date; (3) any valid right of setoff or recoupment of the United States against any of the Debtor; or (4) any liability of the Debtor or the Reorganized Debtor under environmental law to any Governmental Unit as the owner or operator of property that such entity owns or operates after the Confirmation Date, except those obligations to reimburse costs expended or paid by a Governmental Unit before the Petition Date or to pay penalties owing to a Governmental Unit for violations of environmental laws or regulations that occurred before the Petition Date. Nor shall anything in the Plan or Confirmation Order: (i) enjoin or otherwise bar

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the United States or any Governmental Unit from asserting or enforcing, outside the Bankruptcy Court, any liability described in the preceding sentence; or (ii) divest any court of jurisdiction to determine whether any liabilities asserted by the United States or any Governmental Unit are discharged or otherwise barred by the Plan, Confirmation Order, or the Bankruptcy Code.

23. Exculpation. None of the Released Parties shall have or incur any liability to any holder of any Claim or Interest or any other Person for any act or omission in connection with, or arising out of the Debtor's restructuring, including (without limitation) the negotiation, implementation and execution of the Plan, this Case, the Disclosure Statement, the solicitation of votes for and the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, including, without limitation, all documents ancillary thereto, all decisions, actions, inactions and alleged negligence or misconduct relating thereto and all activities leading to the promulgation and confirmation of the Plan except for fraud or willful misconduct, each as determined by a Final Order of the Bankruptcy Court; *provided, however*, that (i) nothing shall affect any Person's rights to enforce the Plan and the contracts, instruments, releases, indentures and other agreements or documents delivered thereunder, and (ii) nothing shall apply to claims arising under assumed unexpired leases after the date of such assumption.

24. Retention of Jurisdiction. Pursuant to Section 105(a) and 1142 of the Bankruptcy Code, the Court shall retain and shall have exclusive jurisdiction over any matter: (a) arising under the Bankruptcy Code; (b) arising in or related to the Case or the Plan; (c) that relates to the matters set forth in Section 12.1 of the Plan.

25. Specific Jurisdiction. The Court specifically retains jurisdiction pursuant to and for purposes set forth in Sections 105 and 1127 of the Bankruptcy Code and the Plan, including

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without limitation, to determine whether or not any claim or right has been affected by the Plan or this Confirmation Order, and for such other purposes as may be necessary or useful to aid in the enforcement or implementation of the Plan or this Confirmation Order.

26. Automatic Stay Under Section 362(a). The stay in effect in the Case pursuant to Section 362(a) of the Bankruptcy Code shall continue to be in effect until the Effective Date, and at that time shall be dissolved and of no further effect, subject to the injunction set forth in the Confirmation Order, Article IX of the Plan and/or Sections 524 and 1411 of the Bankruptcy Code.

27. Notice of Confirmation Order. The Debtor shall serve a copy of this Confirmation Order pursuant to Bankruptcy Rules 2002(f)(7), 2002(k), and 3020(c) on all Creditors, the United States Trustee, and entities that requested notice in this Case, by first-class mail, postage prepaid.

28. Notice of Effective Date. Within one (1) business day after the day selected by the Debtor to be the Effective Date, the Debtor shall file a notice of the occurrence of the Effective Date and serve a copy of same on (a) all creditors, (b) the United States Trustee, and (c) entities that have requested notice in this Case. “Substantial Consummation” of the Plan, as defined in Bankruptcy Code Section 1101(2), shall be deemed to occur on the Effective Date. The occurrence of the Effective Date and Cadence’s obligations under the Plan and this Confirmation Order are subject to and contingent upon the release of the Subscription Amount from escrow by Debtor’s counsel and payment of the Subscription Amount to the Reorganized Debtor. Contemporaneous with the payment of the Subscription Amount to the Reorganized Debtor, Debtor shall serve written notice to Cadence of the release and payment of the Subscription Amount to the Reorganized Debtor.

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29. Reference to Plan Provisions. The failure to specifically include or reference any particular provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Plan be confirmed in its entirety. Each provision of the Plan shall be deemed authorized and approved by this Order and shall have the same binding effect of every other provision of the Plan, whether or not mentioned in this Order. If any inconsistencies occur between the Plan and this Order, this Order shall govern.

30. Calculation of Time Period. All time periods set forth in this Confirmation Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

31. Reversal. If any or all of the provisions of this Confirmation Order are hereafter reversed, modified, or vacated by subsequent Order of this Court or any other court, such reversal, modification, or vacatur shall not affect the validity of the acts or obligations incurred or undertaken under or in connection with the Plan prior to the Debtor's receipt of written notice of such order; nor shall such reversal, modification, or vacatur of the Confirmation Order affect the validity or enforceability of such act or obligation. Notwithstanding any such reversal, modification, or vacatur of this Confirmation Order, any such act or obligation incurred or undertaken 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 all documents, instruments, and agreements related thereto or any amendments or modifications thereto.

###END OF ORDER###

Submitted by:

/s/ Vickie L. Driver

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