

10-14-2004

To the Honorable Assistant Secretary and Commissioner
original document(s) or copy(ies) thereof.



Record the attached

1. Name of conveying party(ies):

SAPNA Debt Holding, LLC

☐ Individual(s)

☐ Association

☐ General Partnership

☐ Limited Partnership

☐ Corporation-

☒ Other Limited liability company - Delaware

Additional name(s) of conveying party(ies) attached?

☐ Yes or ☒ No?

OFFICE OF PUBLIC RECORDS

102858411

Name of receiving party(ies):

Name: Spring Air Partners - California, Inc.

Street Address 111 N. Baldwin Park Blvd.

Industry, CA 91746

☐ Individual(s) citizenship

☐ Association

☐ General Partnership

☐ Limited Partnership

☒ Corporation - New Jersey

☐ Other

If assignee is not domiciled in the United States, a domestic

Representative designation is attached: ☐ Yes or ☒ No?
(Designations must be a separate document from Assignment)

Additional name(s) & address(es) attached? ☐ Yes or ☒ No?

3. Nature of conveyance:

☐ Assignment of Interest

☐ Merger

☐ Security Agreement

☐ Change of Name

☒ Release of Security Interest recorded at Reel/
Frame 2931/0859 and assigned to conveying party at
Reel/Frame 2929/0530, by way of Bankruptcy Court Order (see
attached copy of order, pg. 16, paragraph 7).

Execution Date: June 29, 2004

4. Application number(s) or registration number(s): Attorney Docket No.: 16532.031800

A. Trademark Application No.(s):

B. Trademark Registration No. 2,657,064

Additional numbers attached? ☐ Yes or ☒ No?

5. Name and address of party to whom correspondence
concerning document should be mailed:

Name: Greenberg Traurig, P.A. Attn: Manuel Valcarcel, Esq.

Internal Address: _____

Street Address: 1221 Brickell Avenue

City: Miami, State: Florida ZIP: 33131

6. Total number of applications and registrations
involved: 1

7. Total fee (37 C.F.R. § 3.41).....\$40.00

☒ Enclosed

☒ Authorized any deficiency to be charged to
deposit account

8. Deposit account Number: 50-1792

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and Signature.

*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true
copy of the original document.*

Manuel R. Valcarcel, Esq.

Name of Person Signing

Signature

October 7, 2004

Date

Total number of pages including cover sheet(s): 27

OMB No. 0651-0011 (exp. 4/94)

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Mail documents to be recorded with required cover sheet information:

Mail Stop Assignment Recordation Services
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Alexandria, VA 22313-1450

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:

SPRING AIR PARTNERS – NORTH
AMERICA, INC. et al.¹

Debtors.

)
) Chapter 11

)
) Case No. 04-11915 (RDD)

)
) Jointly Administered

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
CONFIRMING DEBTORS' FIRST AMENDED JOINT PLAN
OF REORGANIZATION**

Spring Air Partners – North America, Inc. and certain of its subsidiaries, as debtors and debtors in possession (collectively the “Debtors”), filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) on March 22, 2004 (the “Petition Date”).

On May 7, 2004, the Debtors filed their First Amended Joint Plan Under Chapter 11 of the Bankruptcy Code, dated May 7, 2004 (as the same may be amended or modified hereby, the “Plan”, a copy of which is attached hereto as Exhibit A)² and the Debtors' Second Amended Joint Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code dated May 7, 2004 (the “Disclosure Statement”). On May 7, 2004, this Court entered an Order (i) Approving The Form And Manner of Notice of the Disclosure Statement Hearing and Confirmation Hearing; (ii) Approving the Disclosure Statement (iii) Fixing of a Record Date; (iv) Approving the Notice and Objection Procedures in Respect of Confirmation of the Plan;

¹ The Debtors are the following entities: Spring Air Partners – North America, Inc., Spring Air Partners – Canada, Inc., Spring Air Partners – Pennsylvania, Inc., Spring Air Partners – New Jersey, Inc., Spring Air Partners – California, Inc., Chattam & Wells, Inc., Spring Air Partners – Texas, Inc., Spring Air Partners – Ohio L.L.C., Spring Air California – Deluxe Bedding Co., Inc., Chattam & Wells Mattress Company, L.L.C., Southland Bedding Company, and Springco Bedding Co.

² Unless otherwise defined in this Order, all capitalized terms used herein shall have the meaning assigned to them in the Plan.

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(v) Approving Solicitation Packages and Procedures for Distribution Thereof; and
(vi) Approving the Forms of Ballot and Establishment of Procedures for Voting on the Plan (the "Disclosure Statement Order") in which the Court (a) approved the Disclosure Statement and (b) scheduled a hearing on June 29, 2004 (the "Confirmation Hearing") to consider confirmation of the Plan.

On May 12, 2004, the Debtors provided all holders of claims against and equity security interests of the Debtors with Solicitation Packages as provided and defined in the Disclosure Statement Order.

On June 4, 2004, the Debtors filed and served their (i) Motion to Approve Technical Modifications to the First Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code (the "Modification Motion") and (ii) the Motion to Assume Certain Executory Contracts and Cure Costs.

On June 15, 2004, the Debtors filed the Plan Supplement (the "Plan Supplement").

In the Disclosure Statement Order, this Court (i) fixed May 5, 2004 as the record date for determining the holders of Claims entitled to vote to accept or reject the Plan, (ii) fixed June 22, 2004 as the deadline for voting to accept or reject the Plan, (iii) fixed June 22, 2004 as the deadline for objecting to confirmation of the Plan and (iv) fixed June 29, 2004 at 10:00 Eastern Standard Time as the date and time for the commencement of the Confirmation Hearing.

On June 25, 2004, the Debtors filed their Memorandum of Law in Support of Confirmation of the Debtors' First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of Bankruptcy Code (the "Plan Confirmation Brief"), together with the Affidavit of Robert Thompson in Support of Confirmation of the Debtors' First Amended Joint Plan Under Chapter



11 of the Bankruptcy Code (the "Thompson Affidavit"), the Affidavit of John Koskiewicz in Support of Confirmation of the Debtors' First Amended Joint Plan Under Chapter 11 of the Bankruptcy Code (the "Koskiewicz Affidavit") and the Affidavit of Jeffrey Manning in Support of Confirmation of the Debtors' First Amended Joint Plan Under Chapter 11 of the Bankruptcy Code (the "Manning Affidavit") as exhibits thereto in support of the Plan Confirmation Brief. Also on June 25, 2004, the Debtors filed the Affidavit of Leslie Salcedo Certifying the Ballots Accepting or Rejecting the Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, Dated May 7, 2004 and the Affidavit of Service of Leslie A. Salcedo dated June 22, 2004, (together, the "Salcedo Affidavit") pursuant to Local Bankruptcy Rule 3018-1.

Objections to confirmation of the Plan have been filed, and each such objection has been resolved, withdrawn, or, with respect to the objection of Argosy Capital Group, L.P., overruled for the reasons set forth by the Court on the record of the Confirmation Hearing.

Upon the close of the Confirmation Hearing, upon the record and minutes taken at the Confirmation Hearing; and upon all prior proceedings held herein; and upon the review of the Plan, the Disclosure Statement, the Thompson Affidavit, the Koskiewicz Affidavit, the Manning Affidavit, the Salcedo Affidavit and the Plan Supplement, and after due deliberation thereon and good cause appearing therefor, the Court hereby makes and issues the following Findings of Fact, Conclusions of Law, and Order.³

³ This confirmation order constitutes the Court's findings of fact and conclusions of law under Fed. R. Civ. P. 52, as made applicable by Bankruptcy Rules 7052 and 9014. Any and all findings of fact shall constitute conclusions of law even if they are stated as findings of fact and any and all conclusions of law shall constitute conclusions of law even if they are stated as findings of fact.



FINDINGS OF FACT AND CONCLUSIONS OF LAW

a. Jurisdiction and Venue

The Court has jurisdiction over the Chapter 11 Cases pursuant to 28 U.S.C. § 1334. Venue of the Chapter 11 Cases is properly in this District pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L), over which this Court has jurisdiction to enter a final order. The Debtors are proper proponents of the Plan pursuant to § 1121(a) of the Bankruptcy Code.

b. Modifications to the Plan

The modifications to the Plan set forth in the Modification Motion are consistent with all of the provisions of the Bankruptcy Code, including, but not limited to, sections 1122, 1123, 1125 and 1127 of the Bankruptcy Code. The modifications to the Plan are hereby approved, pursuant to section 1127(a) of the Bankruptcy Code. Because such modifications do not adversely change the treatment of any class, no re-solicitation of the Plan is required under Bankruptcy Rule 3019.

c. Voting Results

Prior to the Confirmation Hearing, the Debtors filed the Salcedo Affidavit certifying the method and results of the Ballot tabulation for each of the Classes entitled to vote to accept or reject the Plan. All procedures used to distribute the Solicitation Package to the applicable Holders of Claims and to tabulate the Ballots were fair and conducted in accordance with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, the local rules of the Bankruptcy Court for the Southern District of New York (the "Local Bankruptcy Rules"), and all other applicable rules, laws and regulations.

As evidenced by the Salcedo Affidavit, pursuant to sections 1124 and 1126 of the Bankruptcy Code, with the exception of Class 7, all Classes entitled to vote on the Plan have



voted to accept the Plan. In the alternative, in the light of the subordination provisions of the Existing Intercreditor Agreement, pursuant to which the holders of claims in Class 7 agreed that SDH would vote their claims, Class 7 has voted to accept the Plan (SDH having voted the Class 7 claims to accept the Plan). Enforcement of this provision of the Existing Intercreditor Agreement is consistent with section 510(a) of the Bankruptcy Code and not violative of section 1126 of the Bankruptcy Code or public policy, because the Plan seeks to enforce the priorities contained in the Existing Intercreditor Agreement and Argosy Capital Group's objection seeks to alter such previously agreed priorities.

d. Judicial Notice

This Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the Clerk of the Court and/or its duly appointed agent, including, without limitation, all pleadings and other documents on file, all orders entered, and all evidence (that was not subsequently withdrawn) and arguments made, proffered or adduced at the hearings held before this Court during the pendency of the Chapter 11 Cases. This Court admits into evidence the Thompson Affidavit, the Koskiewicz Affidavit, the Manning Affidavit and the Salcedo Affidavit. Resolutions of objections to confirmation explained on the record at the Confirmation Hearing are hereby incorporated by reference.

e. Transmittal and Mailing of Materials, Notice

Due, adequate and sufficient notice of the Disclosure Statement and Plan and of the Confirmation Hearing, along with all deadlines for voting on or objecting to the Plan, has been given to (a) all known creditors and holders of equity security interests; (b) parties that requested notice in accordance with Bankruptcy Rule 2002; (c) all parties to unexpired leases and executory contracts with the Debtors; and (d) all taxing authorities listed on the Debtors' Schedules or in the Debtors' Claims database, in accordance with the procedures set forth in the



Disclosure Statement Order and in substantial compliance with Bankruptcy Rules 2002(b), 3017 and 3020(b), and such transmittal and service were adequate and sufficient. Adequate and sufficient notice of the Confirmation Hearing and other bar dates and hearings described in the Disclosure Statement was given in compliance with the Bankruptcy Rules and Disclosure Statement and no other or further notice is or shall be required.

f. **Burden of Proof**

The Debtors, as proponents of the Plan, have met their burden of proving the elements of section 1129 of the Bankruptcy Code by a preponderance of the evidence, which is the applicable evidentiary standard. This Court also finds that the Debtors have satisfied the elements of section 1129 of the Bankruptcy Code by clear and convincing evidence.

g. **The Plan Satisfies the Requirement for Confirmation under Section 1129 of the Bankruptcy Code**

1. **The Plan Complies with the Applicable Provisions of the Bankruptcy Code. (Section 1129(a)(1) of the Bankruptcy Code)**

The Plan complies with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(1) of the Bankruptcy Code, including, without limitation, sections 1122 and 1123 of the Bankruptcy Code.

A. **The Plan Satisfies the Classification Requirements of Section 1122 of the Bankruptcy Code By Placing Only Substantially Similar Claims or Equity Interests in Each Class**

Pursuant to section 1122 of the Bankruptcy Code, Section 3 of the Plan provides for the separate classification of Claims and equity interests into eleven Classes, based on differences in the legal nature, security position, priority or other criteria of such Claims and equity interests (other than Administrative Expense Claims and Priority Tax claims, which are



addressed in Section 2 of the Plan).⁴ As required by section 1122(a) of the Bankruptcy Code, each Class of Claims and equity interests contains only Claims or equity interests that are substantially similar to the other Claims or equity interests within that Class.

B. The Plan Satisfies the Mandatory Plan Requirements of Section 1123(a) of the Bankruptcy Code

The Plan fully complies with each requirement of section 1123(a)(1)-(7) of the Bankruptcy Code, as follows:

(i) Section 1123(a)(1). Section 3 of the Plan designates each Class of Claims and equity interests, as required by section 1123(a)(1) of the Bankruptcy Code.

(ii) Section 1123(a)(2) and (3). Section 4 of the Plan specifies the unimpaired Classes of Claims and the treatment of each Class of Claims and equity interests that is impaired, in accordance with sections 1123(a)(2) and 1123(a)(3) of the Bankruptcy Code, respectively.

(iii) Section 1123(a)(4). The treatment of each Claim or equity interest within a Class is the same as the treatment of each other Claim or equity interest in that Class, unless the Holder of a Claim or equity interest has agreed to less favorable treatment on account of its Claim or equity interest.

(iv) Section 1123(a)(5). Sections 6, 7 and 8 and various other provisions of the Plan set forth the means for implementation of the Plan. These provisions relate to, among other things, the retention by the Debtors of all of their assets other than certain litigation assets, the transfer of those litigation assets to a Litigation Entity, the issuance of new securities, the termination of certain subordination provisions, the

⁴ The Administrative Expense Claims and the Priority Tax Claims are not required to be classified pursuant to section 1123(a)(1) of the Bankruptcy Code. 11 U.S.C. § 1123(a)(1).



distribution of the Cash and various notes, warrants and stock issuable under the Plan, the cancellation of existing securities and agreements, the adoption of the New Management Stock Option Plan, the amendment of the New TSAC License Agreement, the borrowing under the DIP Loan and the New Senior Secured Credit Facility, procedures for treating disputed claims under the Plan, provisions governing executory contracts and unexpired leases, the amendment or restatement of each of the Debtors' Charters and By-Laws, the continued operation of the Reorganized Debtors and their management by officers and the Board of Directors and generally allowing for all corporate action necessary to effectuate the Plan.

(v) Section 1123(a)(6). Section 5.3(e)(i) of the Plan provides for the amendment or restatement of Reorganized Debtors' certificates of incorporation as necessary to satisfy the provisions of the Plan and the Bankruptcy Code, to ensure compliance with section 1123(a)(6) of the Bankruptcy Code. Moreover, the amended certificate of incorporation of Reorganized SAPNA filed with the Plan Supplement, prohibits the issuance of non-voting equity securities. Additionally, the form of amendment to the certificates of incorporation for each of the other Reorganized Debtors, filed with the Plan Supplement, prohibits the issuance of non-voting securities.

(vi) Section 1123(a)(7). The Plan complies with section 1123(a)(7) of the Bankruptcy Code because the identity and affiliations of all individuals or entities proposed to serve as of the Effective Date as executive officers and directors of the Reorganized Debtors, and directors of the Litigation Entity and the Liquidation Entity have been disclosed.



Pursuant to section 1123(b) of the Bankruptcy Code, the Plan contains various provisions that are discretionary, and such discretionary provisions are not inconsistent in any way with the applicable provisions of the Bankruptcy Code.

2. The Debtors Have Complied Fully With The Applicable Provisions Of The Bankruptcy Code (Section 1129(a)(2) of the Bankruptcy Code)

The Debtors, as proponents of the Plan, have complied with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(2) of the Bankruptcy Code, including, without limitation, sections 1123, 1125 and 1126 of the Bankruptcy Code and Bankruptcy Rules 3017, 3018 and 3019.

Votes for acceptance and rejection of the Plan were solicited in good faith and complied with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018 and the Disclosure Statement Order, the Disclosure Statement, the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, and all other applicable rules, laws and regulations.

The Debtors and their officers, directors, employees, advisors, attorneys, and agents have solicited votes on the Plan and have participated in the activities described in section 1125 of the Bankruptcy Code in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, and all other applicable rules, laws and regulations and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the exculpation provisions set forth in Section 11 of the Plan.

In accordance with section 1126 of the Bankruptcy Code and the Disclosure Statement Order, the Debtors solicited acceptances of the Plan from the holders of all Allowed

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Claims in each Class of impaired Claims that is entitled to receive distributions under the Plan. The impaired Classes entitled to vote on the Plan are Classes 1, 3, 5, 6, 7, 8 and 9. The Plan reflects that Classes 2 and 4 are unimpaired and, thus, are conclusively presumed to have accepted the Plan. The Plan reflects that Classes 10 and 11 will not receive or retain any property under the Plan and, therefore, are conclusively presumed to have rejected the Plan. In accordance with Section 4 of the Plan and the Disclosure Statement Order, the Plan Proponents did not solicit acceptances from the holders of Claims or equity security interests in Classes presumed to have either accepted or rejected the Plan.

3. The Plan Has Been Proposed in Good Faith and Not By Any Means Forbidden by Law (Section 1129(a)(3) of the Bankruptcy Code)

The Debtors have proposed the Plan in good faith and not by any means forbidden by law. The Plan was proposed with honesty and good intentions and with a basis for maximizing value to the Debtors' creditors. In determining that the Plan has been proposed in good faith, the Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Cases, the Plan itself, and the process leading to its formulation. See Bankruptcy Rule 3020(b). The Chapter 11 Cases were filed, and the Plan was proposed, with the legitimate and honest purpose of reorganizing the Debtors' debt structure and maximizing both the business enterprise value of the Debtors and the recovery to holders of Claims against the Debtors given the circumstances of these cases.

4. The Plan Provides For Bankruptcy Court Approval Of Certain Administrative Payments (Section 1129(a)(4) of the Bankruptcy Code)

The procedures set forth in the Plan for the Court's review and ultimate determination of the fees and expenses to be paid by the Debtors satisfy the objectives of section 1129(a)(4) of the Bankruptcy Code. The Plan complies in all respects with section 1129(a)(4) of the Bankruptcy Code.

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5. The Debtors Have Properly Disclosed the Identity of Proposed Officers and Directors (Section 1129(a)(5) of the Bankruptcy Code)

Pursuant to section 1129(a)(5) of the Bankruptcy Code, the Debtors have disclosed the identity of the proposed directors and officers of the Reorganized Debtors following confirmation of the Plan. In addition, the Debtors have disclosed the directors of the Litigation Entity and Liquidation Entity.

6. The Plan Does Not Contain any Rate Changes Subject to the Jurisdiction of any Governmental Regulatory Commission and will not Require Governmental Regulatory Approval (Section 1129(a)(6) of the Bankruptcy Code)

The Plan does not contain any rate changes subject to the jurisdiction of any governmental regulatory commission and will not require governmental regulatory approval. Accordingly, section 1129(a)(6) of the Bankruptcy Code is not applicable to these Chapter 11 Cases.

7. The Plan is in the Best Interests of All Creditors of and Equity Interest Holders in the Debtors (Section 1129(a)(7) of the Bankruptcy Code)

The Liquidation Analysis annexed to the Disclosure Statement as Exhibit D, and the other evidence related thereto that was proffered or adduced at or prior to, or in affidavits in connection with, the Confirmation Hearing, is reasonable. The methodology used and assumptions made in the liquidation analysis, as supplemented by the evidence proffered or adduced at or prior to, or in affidavits filed in connection with, the Confirmation Hearing, are reasonable.

With respect to each impaired Class, each Holder of an Allowed Claim or equity interest in such Class has accepted the Plan or will receive 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 such Holder would receive if the Debtors were liquidated on the Effective Date under Chapter 7 of the Bankruptcy Code.

8. The Plan Has Not Been Accepted By All Impaired Classes Entitled to Vote (Section 1129(a)(8) of the Bankruptcy Code)

With respect to those impaired Classes entitled to vote to accept or reject a plan, the Debtors have filed the Salcedo Affidavit with this Court, which sets forth the tabulation of votes of impaired Classes and demonstrates that all impaired classes entitled to vote other than Class 7 have accepted the Plan. There were no other rejecting classes, other than the deemed rejections of Classes 10 and 11 (the "Deemed Rejecting Classes" and, with Class 7, the "Rejecting Classes"). Because the requirements of section 1129(a)(8) have not been met, section 1129(b) applies. As demonstrated below, the Plan satisfies the requirements of section 1129(b) with respect to the Rejecting Classes.

9. The Plan Provides for Payment in Full of All Allowed Priority Claims (Section 1129(a)(9))

The treatment of Administrative Expense Claims, Priority Non-Tax Claims and Priority Tax Claims under sections 2.1, 2.2 and 4.2 of the Plan satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code.

10. At Least One Class of Impaired Claims Has Accepted the Plan (Section 1129(a)(10))

Each impaired Class, other than the Rejecting Classes, has voted to accept the Plan. Accordingly, section 1129(a)(10) of the Bankruptcy Code has been satisfied.

11. The Plan Is Not Likely to be Followed by Liquidation or the Need for Further Financial Reorganization (Section 1129(a)(11))

The evidence proffered or adduced at the Confirmation Hearing, including the Thompson Affidavit, (a) is persuasive and credible, (b) has not been contravened by other evidence, and (c) establishes that the Plan is workable and has a reasonable likelihood of success,



thus satisfying the requirements of section 1129(a)(11) of the Bankruptcy Code. Accordingly, the Plan is not likely to be followed by liquidation or the need for further financial reorganization.

12. All Statutory Fees Have Been or Will Be Paid (Section 1129(a)(12))

Section 13.1 of the Plan provides for the payment of all fees payable under 28 U.S.C. §1930(a). The Debtors have adequate means to pay all such fees. The Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code.

13. The Plan Adequately and Properly Treats Retiree Benefits (Section 1129(a)(13) of the Bankruptcy Code)

The Debtors did not, either as of the Commencement Date or at any time during the Chapter 11 Cases, have any plans, funds, or programs providing or reimbursing retired employees and their spouses and dependents for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death. Accordingly, the requirements of section 1129(a)(13) of the Bankruptcy Code are not applicable to the Chapter 11 Cases.

14. The Plan Satisfies The "Cram Down" Requirements Under Section 1129(b) of the Bankruptcy Code

Pursuant to section 1129(b)(1) of the Bankruptcy Code, because all of the impaired Classes entitled to vote have voted to accept the Plan, the Plan may be confirmed notwithstanding the existence of the Rejecting Classes. All of the requirements of section 1129(a) of the Bankruptcy Code other than section 1129(a)(8) have been met. All Classes of Impaired Claims entitled to vote have voted to accept the Plan other than the Rejecting Classes. In light of the evidence presented by the Debtors on valuation and, with respect to Class 7, in light of the Existing Intercreditor Agreement, the Debtors have demonstrated by clear and convincing evidence that applicable standards under section 1129(b) of the Bankruptcy Code have been satisfied.



A. The Plan Does Not Discriminate Unfairly With Respect to Impaired Classes that Have Not Voted to Accept the Plan

The Plan does not discriminate unfairly against any of the Rejecting Classes.

B. The Plan is Fair and Equitable

With respect to the Rejecting Classes, no holders of Claims or equity interests subordinate to the holders of the Claims or equity interests in any of the Rejecting Classes will receive or retain any property under the Plan. Accordingly the requirements of sections 1129(b)(2)(B)(ii) and 1129(b)(2)(C)(ii) are satisfied with respect to the Rejecting Classes, and the Plan is fair and equitable with respect to the Rejecting Classes.

15. Principal Purpose of the Plan Is Not Avoidance of Taxes (Section 1129(d) of the Bankruptcy Code)

No party in interest has requested that the Court not confirm the Plan on grounds that the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933, and the principal purpose of the Plan is not such avoidance. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

h. Successors to the Debtors

Each of the Reorganized Debtors, the Litigation Entity and the Liquidation Entity are and shall be successors to the Debtors for the purposes of section 1145 of the Bankruptcy Code.

i. Treatment of Executory Contracts and Unexpired Leases

The Debtors' assumption or rejection of the executory contracts and unexpired leases to be assumed and rejected, respectively, pursuant to or in connection with the Plan is within the sound business judgment of the Debtors under section 365 of the Code and applicable case law. As set forth herein, the Debtors have provided for appropriate cure of any defaults



under the executory contracts and unexpired leases to be assumed under or in connection with the Plan and have provided adequate assurances of future performance.

II

ORDER

BASED ON THE FOREGOING FINDINGS OF FACT, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The findings of this Court as set forth above shall constitute findings of fact pursuant to Bankruptcy Rule 7052, which is applicable to this case pursuant to Bankruptcy Rule 9014.
2. To the extent that the terms of this Order are inconsistent with the terms of the Plan, the terms of this Order shall control; in all other respects, the terms of the Plan shall remain in full force and effect.
3. The Modification Motion is hereby granted and the "Plan Modifications" (as defined therein) are hereby approved, and the Plan shall be deemed to be amended by the Plan Modifications.
4. The Plan, a copy of which is annexed hereto as Exhibit "A", as modified by the Plan Modifications, be, and it hereby is, confirmed pursuant to § 1129 of the Bankruptcy Code.
5. Without the need for a further order or authorization of the Court, the Debtors, in consultation with the Creditors Committee and SDH, shall be authorized and empowered to make additional non-material modifications to the Plan as in their reasonable business judgment may be necessary. In addition, the exhibits comprising the Plan Supplement may be modified as set forth in the Plan.



6. Pursuant to section 1141 of the Bankruptcy Code, the Plan, the documents contained in the Plan Supplement and their respective provisions, and this Order shall be binding upon (i) the Debtors, (ii) each entity and person acquiring, receiving or retaining property under the Plan, (iii) each party to an executory contract or unexpired lease of any of the Debtors, (iv) each holder of a Claim against or equity interest in any Debtor, whether or not such Claim or equity interest is impaired under the Plan and whether or not such holder has accepted the Plan, and (v) each of the foregoing's respective heirs, executors, administrators successors and assigns. Without limiting the generality of the foregoing, all of the notes and other debt instruments issued pursuant to the Plan shall be subject to the terms of the New Intercreditor Agreement⁵ whether or not the holder of such note or other debt instrument has signed the New Intercreditor Agreement.

7. Except as provided in the Plan, pursuant to Section 1141 of the Bankruptcy Code, all property, assets and effects of the Debtors, as debtors and debtors in possession, are hereby vested in the Reorganized Debtors free and clear of all liens, claims and encumbrances, but subject to the terms of the Plan and this Order.

8. Except as set forth in the Plan, the Debtors are released and discharged from any and all debts which arose before the date of confirmation of the Plan and any and all debts of a kind specified in §§ 502(g), 502(h) or 502(i) of the Bankruptcy Code whether or not: (a) a proof of claim based on such debt is filed or deemed filed under §501 of the Bankruptcy Code; (b) such claim is allowed under § 502 of the Bankruptcy Code; (c) such claim is listed on the Debtors' Schedules and Statements heretofore filed herein; or (d) the holder of such claim has, or has been deemed to have, accepted the Plan.

⁵ The New Intercreditor Agreement consists of two documents contained in the Plan Supplement, identified in the Index to the Plan Supplement as the New Senior Intercreditor Agreement and the New Junior Intercreditor Agreement.



9. All Existing Common Equity Interests, all Existing Preferred Stock Interests, all existing warrants or options to acquire Existing Common Equity Interests or Existing Preferred Stock Interests, and all notes, certificates or other documents evidencing and Claims against or obligations of any of the Debtors shall be deemed cancelled, annulled, terminated and extinguished as of the Effective Date and as provided for in the Plan.

10. Confirmation of the Plan shall constitute, and all consideration distributed under the Plan shall be in exchange for and in complete satisfaction, settlement, and release of and an injunction against, all as of the Effective Date, any and all Claims, demands, allegations or causes of action, against the Debtors, the Reorganized Debtors, the Creditors' Committee, each of the members of the Creditors' Committee, the Disbursing Agent, SDH, L&P, and each of their respective members, partners, officers, directors, employees and representatives (including any investment bankers, financial advisors, attorneys or other professionals therefor, in such capacities, for any liability for actions taken or omitted to be taken in connection with, or arising out of, the Plan, the Disclosure Statement, the solicitation of votes for and the pursuit of confirmation of the Plan, the formulation, preparation, implementation or consummation of the Plan, including the prepetition negotiations with respect thereto, the administration of the Plan or the property to be distributed under the Plan or the Chapter 11 Cases or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan, or any other act taken or omitted to be taken in connection with the Chapter 11 Cases, except for willful misconduct or gross negligence as determined by a Final Order and, in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan and the Chapter 11 Cases.



11. Except to enforce their rights under the Plan, all persons or entities that have held, currently hold or may hold a Claim or other debt or liability, whether or not a judgment has been entered with respect to such Claim or other debt or liability, or an equity interest or other right of an equity interest holder, that is discharged, released or canceled pursuant to the terms of the Plan and this Order are, except as expressly set forth in the Plan permanently enjoined from taking any of the following actions on account of any such discharged Claims or other debts or liabilities or canceled equity interest against or affecting (i) the Debtors, (ii) the Reorganized Debtors, (iii) the Litigation Entity, (iv) the Liquidating Entity, (v) any direct or indirect successor in interest to the foregoing parties, (vi) any of their property or (vii) any direct or indirect transferee of any such property:

(a) Commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or judicial or non-judicial proceeding;

(b) Enforcing, attaching, collecting or recovering in any manner, directly or indirectly, any judgment, award, decree or order;

(c) Creating, perfecting or enforcing in any manner, directly or indirectly, any Lien or encumbrance;

(d) Asserting a setoff, right of subrogation or recoupment right of any kind, directly or indirectly; and

(e) Commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

12. Unless otherwise specifically provided to the contrary in the Plan, all injunctions or stays provided for in the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code or otherwise in effect on the Confirmation Date shall remain in full force and



effect until the Effective Date. In addition, from and after the Confirmation Date, there shall be in place with regard to the Assets and any Claims, an injunction to the same extent and with the same effect as the stay imposed by sections 362 of the Bankruptcy Code, and such injunction will remain in effect until the Chapter 11 Cases are closed pursuant to section 350 of the Bankruptcy Code, or except as otherwise provided under the Plan.

13. The Debtors are authorized pursuant to section 365(a) of the Bankruptcy Code to assume (i) the executory contracts and unexpired leases set forth on Exhibit B hereto with such assumption to be effective as of, and subject to the occurrence of, the Effective Date, (ii) all executory contracts and unexpired leases to be assumed pursuant to the express provisions of sections 6.8 and 9.1(b) of the Plan and to amend such contracts and pay amounts to be paid in connection therewith, all as and when contemplated by the Plan..

14. The Debtors are authorized pursuant to section 365(b)(1) of the Bankruptcy Code to pay, on the Effective Date, the cure costs identified on Exhibit B hereto.

15. All executory contracts and unexpired leases set forth in the Contract Rejection Schedule are hereby deemed rejected as of the Effective Date and all holders of Claims for damages arising from the rejection of such executory contracts or unexpired leases shall file a proof of claim within twenty (20) days after the Effective Date, or otherwise such Claims shall be forever barred.

16. In accordance with the relevant provisions of the Plan, the Disbursing Agent shall disburse, issue and distribute, or cause to disburse, issue and distribute, distributions to the holders of Allowed Claims in the Debtors' Chapter 11 Cases.

17. Pursuant to section 347(b) of the Bankruptcy Code, any distribution of property (Cash or otherwise) under the Plan which is unclaimed after one (1) year following the



relevant distribution date shall be forfeited, and such distribution together with all interest earned thereon shall become an Asset to be reserved or distributed, as the case may be, in accordance with the provisions of the Plan. Checks issued by the Disbursing Agent in respect of Allowed Claims will be null and void if not cashed within sixty (60) days of the date of issuance. Requests for reissuance of any check shall be made in writing to the Disbursing Agent by the holder of the Allowed Claim with respect to the check originally issued.

18. All distributions under the Plan by check shall be deemed made at the time such check is duly deposited in the United States mail, postage prepaid. All distributions under the Plan by wire transfer shall be deemed made as of the date the Federal Reserve or other wire transfer is made. Except as otherwise agreed with the holder of an Allowed Claim in respect thereof or as provided in the Plan, any property to be distributed on account of an Allowed Claim shall be distributed by mail upon compliance by the holder with the provisions of the Plan to (i) its address set forth in its proof of claim, (ii) the latest mailing address filed for the holder of an Allowed Claim entitled to a distribution, (iii) the latest mailing address filed for a holder of a filed power of attorney designated by the holder of such Allowed Claim to receive distributions, (iv) the latest mailing address filed for the holder's transferee as identified in a filed notice served on the Debtors pursuant to Bankruptcy Rule 3001(e), or (v) if no such mailing address has been filed, the mailing address reflected on the Schedules or in the Debtors' books and records. If any distribution under the Plan is returned as undeliverable, no further distributions to such holder shall be made unless and until the Disbursing Agent is notified of such holder's then current address, at which time all missed distributions shall be made to such holder without interest.



19. Without the permission of this Court, no judicial, administrative, arbitration or other action or proceeding shall be commenced against the Disbursing Agent in any forum other than this Court, in either its official capacities or its personal capacities, with respect to their status, duties, powers, acts or omissions as the Disbursing Agent.

20. On or following the Effective Date, Reorganized SAPNA is hereby authorized, empowered, and directed, and shall distribute or issue all securities, notes, instruments, certificates, and other documents required to be issued pursuant to the Plan, including, without limitation, the New Common Stock, the New Convertible Preferred Shares and the interests in the Litigation Entity and Liquidation Entity, which shall be distributed as provided in the Plan. The Reorganized Debtors are hereby authorized, empowered and directed to execute and deliver such other agreements, documents and instruments as are required to be executed pursuant to the terms of the Plan.

21. The distributions under the Plan shall be made to holders of Allowed Claims as of the Distribution Record Date. The Distribution Record Date is June 29, 2004.

22. After the Effective Date, (a) each of the respective Reorganized Debtors shall continue to exist in accordance with the applicable laws in the respective jurisdictions in which they are incorporated and pursuant to their respective certificates of incorporation, articles of formation, or by-laws in effect prior to or as of the Effective Date, except to the extent that such certificates of incorporation, articles of formation, or by-laws are amended or restated under the Plan; (b) each of the Chief Executive Officer, the President, the Secretary and any other officer of each of the Reorganized Debtors, respectively, are authorized to file a restated or amendment to certificate of incorporation with the appropriate entity within their jurisdiction of organization; (c) each of the Reorganized Debtors, respectively, may operate its business and may use, acquire,



and dispose of property and compromise or settle any claims without supervision of or approval by the Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules.

23. Pursuant to section 1145 of the Bankruptcy Code, the offering, issuance, distribution and exercise of the New Common Stock, the New Convertible Preferred Stock, New Warrants and interests in the Litigation Entity and Liquidation Entity pursuant to the Plan are hereby exempt from section 5 of the Securities Act of 1933 and any state or local law requiring registration prior to the offering, issuance, distribution or sale of a security.

24. The Debtors and the Reorganized Debtors and their respective officers, attorneys, agents and representatives are authorized and empowered to perform all actions specified in or otherwise required to consummate the transactions contemplated by the Plan, including, without limitation, executing, delivering and filing with the appropriate governmental authority any and all documents contemplated by, or required to consummate the transactions set forth in, the Plan (including, without limitation, the documents contained in the Plan Supplement as the same may be modified in accordance with the Plan).

25. The Debtors are authorized to pay, on or prior to the Effective Date, any security deposit required by any landlord with respect to non-residential real property to which the Reorganized Debtors will be relocating on or reasonably promptly after the Effective Date.

26. Except as set forth in section 2.1 of the Plan with respect to professionals retained pursuant to section 327 of the Bankruptcy Code, or Administrative Expenses incurred in the ordinary course of business, any person and entity wishing to assert a Administrative Expense Claim against the Debtor shall have thirty (30) days from the Effective Date to file with this Court a request for the payment of such Administrative Expense Claim incurred through the



Effective Date. In the event such request is not timely filed, any Administrative Expense Claim shall be forever barred from receiving any Distribution under the Plan or from any of the Assets.

27. All professionals retained by the Debtors under section 327 of the Bankruptcy Code shall file final fee applications for all fees and expenses incurred through the Confirmation Date within forty-five (45) days after the Effective Date or such later date as this Court may order.

28. Unless a Claim or cause of action against a holder of a Claim or equity interest, or against any other Person is expressly waived, relinquished, released, compromised or settled in the Plan or this Confirmation Order or by any stipulation resolving any objection to the Plan, the Debtors expressly reserve such Claim or cause of action including all causes of action under chapter V of the Bankruptcy Code, for later adjudication by the Debtors or their successors in interest, and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Claims or causes of action upon or after the confirmation or consummation of the Plan based on the Disclosure Statement, the Plan or this Confirmation Order.

29. As set forth in section 6.12 of the Plan, after the Effective Date, the Litigation Entity shall have the exclusive authority to file objections, settle, compromise, withdraw or litigate to judgment any and all Retained Actions.

30. Notwithstanding Section 2.2 of the Plan, the Reorganized Debtors shall pay any Priority Tax Claim owed to the Missouri Department of Revenue in full on the later of the Effective Date and the date on which such Claim becomes an Allowed Priority Tax Claim.



31. This Court shall retain jurisdiction over this case pursuant to and for the purposes set forth in § 1127(b) of the Bankruptcy Code and:

(i) To hear and determine pending applications for the assumption or rejection of executory contracts or unexpired leases and the allowance of Claims resulting therefrom.

(ii) To determine any and all adversary proceedings, applications and contested matters including, but not limited to, any matters relating to the Retained Actions.

(iii) To ensure that distributions to holders of Allowed Claims are accomplished as provided herein.

(iv) To hear and determine any timely objections to Administrative Expense Claims or to Claims and equity securities, including, without limitation, any objections to the classification of any Claim or equity security interest, and to allow or disallow any Disputed Claim or Disputed equity security interest, in whole or in part.

(v) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated.

(vi) To issue such orders in aid of execution of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code.

(vii) To consider any amendments to or modifications of the Plan, or to cure any defect or omission, or reconcile any inconsistency, in any order of the Court, including, without limitation, this Confirmation Order.

(viii) To hear and determine all applications under sections 330, 331 and 503(b) of the Bankruptcy Code for awards of compensation for services rendered and reimbursement of expenses incurred prior to the Confirmation Date.



(ix) To hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan, this Confirmation Order, any transactions or payments contemplated hereby or any agreement, instrument or other document governing or relating to any of the foregoing.

(x) To hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code.

(xi) To hear any other matter not inconsistent with the Bankruptcy Code.

(xii) To hear and determine all disputes involving the existence, scope and nature of the discharges granted under section 11.3 of the Plan.

(xiii) To issue injunctions and effect any other actions that may be necessary or desirable to restrain interference by any entity with the consummation or implementation of the Plan.

(xiv) To recover all assets of the Debtors and property of the Debtors' estate, wherever located.

(xv) To enter a final decree closing the Chapter 11 Cases.

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32. In resolution of the Objection of 3680762 Canada Ltee and Normand Ricard to Confirmation of Debtors' First Amended Joint Plan of Reorganization (the "Canadian Objection"), the rights, duties, obligations, defenses, claims or counterclaims of the Debtors, Canada Ltee (as defined in the Canadian Objection) and Ricard (as defined in the Canadian Objection) under the Canadian Shareholders Agreement (as defined in the Canadian Objection) and all documents related thereto are expressly preserved for all of such parties and nothing in the Chapter 11 Cases, including the Disclosure Statement, Plan or in this Order, is meant to, or shall be deemed to, impair or limit in any way any right, duty, obligation, defense, claim or counterclaim that any such party may have under the Canadian Shareholders Agreement and all documents related thereto or at law or equity. The Debtors shall not take any action, either procedural or substantive, whether direct or indirect, with respect to or regarding the dispute between the parties under the Shareholders Agreement and any documents related thereto prior to the occurrence of the Effective Date.

33. The Debtors are authorized to consummate the Plan at any time after the entry of this Confirmation Order subject to satisfaction or waiver (by the required parties) of the conditions precedent to effectiveness set forth in Section 10.1 of the Plan and provided that the documents identified in the Index of Plan Supplement as "3. New Senior Intercreditor Agreement", "4. New Junior Intercreditor Agreement", "5. New Senior Secured Credit Facility", "8. Senior Subordinated Secured Notes" and "9. New Subordinated Secured Note" shall be reasonably satisfactory to SDH, the Creditors' Committee and L&P.

Dated: New York, New York
June 29, 2004

/s/Robert D. Drain

UNITED STATES BANKRUPTCY JUDGE

I hereby attest and certify on September 21st 2004
that this document is a full, true and correct
copy of the original filed on the court's
electronic case filing system.

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Clerk, US Bankruptcy Court, SDNY

Richard Ferguson Deputy Clerk

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