

*Solicitation Version*

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

In re: )  
 ) Chapter 11  
PLASTIQ INC., *et al.*,<sup>1</sup> )  
 ) Case No. 23-10671 (BLS)  
Debtors. )  
 ) (Jointly Administered)  
 )  
\_\_\_\_\_ )

**COMBINED DISCLOSURE STATEMENT AND CHAPTER 11 PLAN OF  
PLASTIQ INC. AND ITS AFFILIATED DEBTORS**

Dated: July 31, 2023  
Wilmington, Delaware

**YOUNG CONAWAY STARGATT & TAYLOR, LLP**

Michael R. Nestor (No. 3526)  
Matthew B. Lunn (No. 4119)  
Joseph M. Mulvihill (No. 6061)  
Jared W. Kochenash (No. 6557)  
1000 North King Street  
Rodney Square  
Wilmington, Delaware 19801  
Tel.: (302) 571-6600  
Facsimile: (302) 571-1253  
Email: mnestor@ycst.com  
mlunn@ycst.com  
jmulvihill@ycst.com  
jkochenash@ycst.com

*Counsel for Debtors and Debtors in Possession*

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: PlastiQ Inc. (6125), PLV Inc. d/b/a/ PLV TX Branch Inc. (5084), and Nearside Business Corp. (N/A). The corporate headquarters and the mailing address for the Debtors is 1475 Folsom Street, Suite 400, San Francisco, California 94103.



**TABLE OF CONTENTS**

	<b>Page</b>
ARTICLE I DEFINED TERMS AND RULES OF INTERPRETATION .....	2
ARTICLE II CLASSIFICATION OF CLAIMS AND INTERESTS AND ESTIMATED RECOVERIES .....	16
2.1 Classification.....	16
ARTICLE III BACKGROUND AND DISCLOSURES .....	18
3.1 General Background .....	18
3.2 Events Leading to Chapter 11 .....	21
3.3 The Chapter 11 Cases .....	25
ARTICLE IV CONFIRMATION AND VOTING PROCEDURES.....	34
4.1 Confirmation Procedure.....	34
4.2 Procedure for Objections. ....	35
4.3 Requirements for Confirmation. ....	35
4.4 Classification of Claims and Interests.....	35
4.5 Unimpaired Claims and Impaired Claims or Interests.....	37
4.6 Confirmation Without Necessary Acceptances; Cramdown .....	37
4.7 Feasibility.....	38
4.8 Best Interests Test and Liquidation Analysis.....	38
4.9 Acceptance of the Plan.....	39
ARTICLE V CERTAIN RISK FACTORS TO BE CONSIDERED PRIOR TO VOTING.....	40
5.1 The Plan May Not Be Accepted .....	40
5.2 The Plan May Not Be Confirmed .....	41
5.3 Distributions to Holders of Allowed Claims under the Plan May Be Inconsistent with Projections .....	41
5.4 Objections to Classification of Claims .....	41
5.5 Failure to Consummate the Plan .....	42
5.6 Plan Releases May Not Be Approved.....	42
5.7 Reductions to Estimated Creditor Recoveries .....	42
5.8 Certain Tax Considerations.....	43
ARTICLE VI TREATMENT OF UNCLASSIFIED CLAIMS.....	43
6.1 Administrative Claims. ....	43
6.2 DIP Loan Claims.....	44
6.3 Priority Tax Claims.....	45

ARTICLE VII TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS .....	45
7.1 Class 1: Priority Non-Tax Claims.....	45
7.2 Class 2: Other Secured Claims. ....	45
7.3 Class 3: Prepetition Loan Claims.....	45
7.4 Class 4: General Unsecured Claims.....	45
7.5 Class 5: Subordinated Claims. ....	46
7.6 Class 6: Intercompany Claims. ....	46
7.7 Class 7: Interests. ....	46
7.8 Reservation of Rights Regarding Claims and Interests. ....	46
ARTICLE VIII ACCEPTANCE OR REJECTION OF THE PLAN .....	46
8.1 Class Entitled to Vote. ....	46
8.2 Acceptance by Impaired Classes of Claims or Interests. ....	46
8.3 Deemed Acceptance by Unimpaired Classes. ....	46
8.4 Presumed Rejections by Impaired Classes. ....	46
8.5 Confirmation Pursuant to Bankruptcy Code Section 1129(b). ....	47
8.6 Controversy Concerning Impairment. ....	47
8.7 Elimination of Vacant Classes.....	47
ARTICLE IX IMPLEMENTATION OF THE PLAN AND THE LIQUIDATING TRUST .....	47
9.1 Implementation of the Plan.....	47
9.2 Substantive Consolidation .....	47
9.3 Debtors' Directors and Officers.....	49
9.4 Wind-Up and Dissolution of the Debtors. ....	49
9.5 Creation and Governance of the Litigation Trust. ....	49
9.6 Purpose of the Litigation Trust. ....	50
9.7 Litigation Trustee and Litigation Trust Agreement.....	50
9.8 Compensation and Duties of Litigation Trustee. ....	51
9.9 United States Federal Income Tax Treatment of the Litigation Trust, the Debtors, and Holders of Claims .....	51
9.10 Abandonment, Disposal, and Destruction of Records.....	56
9.11 Distributions by Litigation Trustee.....	57
9.12 Cash Investments. ....	57
9.13 Dissolution of the Litigation Trust.....	57
9.14 Control Provisions. ....	57
9.15 Limitation of Liability; Indemnification. ....	57
9.16 Corporate Action.....	58
ARTICLE X PROVISIONS GOVERNING DISTRIBUTIONS .....	58
10.1 Distributions for Allowed Claims.....	58
10.2 Interest of Claims.....	58
10.3 Distributions by Litigation Trustee as Disbursement Agent.....	58
10.4 Limitation of Liability of Potential Director Defendants. ....	59

10.5	Means of Cash Payment.....	59
	Cash payments under the Plan shall be made, at the option, and in the sole discretion, of the Litigation Trustee, by wire, check, or such other method as the Litigation Trustee deems appropriate under the circumstances. ....	59
10.6	Fractional Distributions. ....	59
10.7	De Minimis Distributions. ....	60
10.8	Delivery of Distributions; Unclaimed Distributions.....	60
10.9	Application of Distribution Record Date.....	60
10.10	Withholding, Payment and Reporting Requirements With Respect to Distributions.....	60
10.11	Setoffs. ....	61
10.12	No Distribution in Excess of Allowed Amounts. ....	61
10.13	Allocation of Distributions. ....	61
10.14	Forfeiture of Distributions. ....	61
ARTICLE XI PROVISIONS FOR CLAIMS OBJECTIONS AND ESTIMATION OF CLAIMS .....		62
11.1	Claims Administration Responsibility.....	62
11.2	Claims Objections.....	62
11.3	Estimation of Contingent or Unliquidated Claims.....	62
11.4	Distributions on Account of Disputed Claims.....	62
11.5	Amendments to Claims.....	62
11.6	Claims Paid and Payable by Third Parties.....	63
11.7	Adjustment to Claims Without Objection.....	63
ARTICLE XII EXECUTORY CONTRACTS .....		63
12.1	Executory Contracts Deemed Rejected. ....	63
12.2	Insurance Neutrality.....	63
ARTICLE XIII CONFIRMATION AND CONSUMMATION OF THE PLAN .....		64
13.1	Conditions Precedent to the Effective Date.....	64
13.2	Notice of Effective Date. ....	64
13.3	Waiver of Conditions Precedent to the Effective Date.....	64
13.4	Effect of Non-Occurrence of Effective Date. ....	64
ARTICLE XIV EFFECTS OF CONFIRMATION .....		65
14.1	Exculpation, Releases, and Injunctions .....	65
14.2	Term of Bankruptcy Injunction or Stays. ....	67
ARTICLE XV RETENTION OF JURISDICTION .....		68
15.1	Exclusive Jurisdiction of Bankruptcy Court.....	68

ARTICLE XVI MISCELLANEOUS PROVISIONS.....	70
16.1 Modification of the Plan. ....	70
16.2 Revocation, Withdrawal, or Non-Confirmation of the Plan. ....	70
16.3 Binding Effect. ....	70
16.4 Subordination Rights. ....	70
16.5 Severability of Plan Provisions. ....	71
16.6 Payment of Statutory Fees; Filing of Quarterly Reports. ....	71
16.7 Dissolution of the Committee. ....	71
16.8 Exemption from Section 1146. ....	71
16.9 Closing of Chapter 11 Cases; Caption Change.....	72
16.10 Filing of Additional Documents. ....	72
16.11 Insurance. ....	72
16.12 Successors and Assigns.....	72
16.13 Governing Law. ....	72
16.14 Exhibits and Schedules. ....	72
16.15 Computation of Time.....	72
16.16 Reservation of Rights.....	73

**DISCLAIMER**

THIS COMBINED DISCLOSURE STATEMENT AND PLAN WAS COMPILED FROM INFORMATION OBTAINED FROM NUMEROUS SOURCES BELIEVED TO BE ACCURATE TO THE BEST OF THE DEBTORS' KNOWLEDGE, INFORMATION, AND BELIEF. NO GOVERNMENTAL AUTHORITY HAS PASSED ON, CONFIRMED OR DETERMINED THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED HEREIN.

NOTHING STATED HEREIN SHALL BE (I) DEEMED OR CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, (II) ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY, OR (III) DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE COMBINED DISCLOSURE STATEMENT AND PLAN ON THE DEBTORS OR HOLDERS OF CLAIMS OR INTERESTS. CERTAIN STATEMENTS CONTAINED HEREIN, BY NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL REFLECT ACTUAL OUTCOMES.

THE STATEMENTS CONTAINED HEREIN ARE MADE AS OF THE DATE HEREOF, UNLESS ANOTHER TIME IS SPECIFIED. THE DELIVERY OF THIS COMBINED DISCLOSURE STATEMENT AND PLAN SHALL NOT BE DEEMED OR CONSTRUED TO CREATE ANY IMPLICATION THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AT ANY TIME AFTER THE DATE HEREOF. HOLDERS OF CLAIMS OR INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS COMBINED DISCLOSURE STATEMENT AND PLAN AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. THEREFORE, EACH SUCH HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL, AND TAX ADVISORS AS TO ANY SUCH MATTERS CONCERNING THIS COMBINED DISCLOSURE STATEMENT AND PLAN AND THE TRANSACTIONS CONTEMPLATED HEREBY.

NO PARTY IS AUTHORIZED TO GIVE ANY INFORMATION WITH RESPECT TO THIS COMBINED DISCLOSURE STATEMENT AND PLAN OTHER THAN THAT WHICH IS CONTAINED IN THIS COMBINED DISCLOSURE STATEMENT AND PLAN. NO REPRESENTATIONS CONCERNING THE DEBTORS OR THE VALUE OF THEIR PROPERTY HAVE BEEN AUTHORIZED BY THE DEBTORS OTHER THAN AS SET FORTH IN THIS COMBINED DISCLOSURE STATEMENT AND PLAN. ANY INFORMATION, REPRESENTATIONS OR INDUCEMENTS MADE TO OBTAIN AN ACCEPTANCE OF THIS COMBINED DISCLOSURE STATEMENT AND PLAN OTHER THAN, OR INCONSISTENT WITH, THE INFORMATION CONTAINED HEREIN SHOULD NOT BE RELIED UPON BY ANY HOLDER OF A CLAIM OR INTEREST. THE COMBINED DISCLOSURE STATEMENT AND PLAN HAS BEEN PREPARED IN ACCORDANCE WITH BANKRUPTCY CODE SECTION 1125 AND BANKRUPTCY RULE 3016(b) AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-APPLICABLE BANKRUPTCY LAWS.

SEE ARTICLE V HEREIN, ENTITLED “CERTAIN RISK FACTORS TO BE CONSIDERED PRIOR TO VOTING,” FOR A DISCUSSION OF CERTAIN CONSIDERATIONS IN CONNECTION WITH A DECISION BY A HOLDER OF AN IMPAIRED CLAIM TO ACCEPT THE COMBINED DISCLOSURE STATEMENT AND PLAN.

## **INTRODUCTION<sup>2</sup>**

The Debtors hereby propose the following combined Disclosure Statement and Plan for the liquidation of the Debtors’ remaining Assets and distribution of the proceeds of the Sale and the remaining Assets to the Holders of Allowed Claims against the Debtors as set forth herein. Each Debtor is a proponent of the Plan within the meaning of Bankruptcy Code section 1129.

This combined Disclosure Statement and Plan contains, among other things, a discussion of the Debtors’ history, businesses, properties, operations, the Chapter 11 Cases, risk factors, summary and analysis of the Plan, and certain other related matters.

**ALL HOLDERS OF CLAIMS AGAINST THE DEBTORS ARE ENCOURAGED TO READ THE COMBINED DISCLOSURE STATEMENT AND PLAN IN ITS ENTIRETY, AND TO CONSULT WITH AN ATTORNEY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. SUBJECT TO CERTAIN RESTRICTIONS AND REQUIREMENTS SET FORTH IN BANKRUPTCY CODE SECTION 1127, BANKRUPTCY RULE 3019, AND IN THE PLAN, THE DEBTORS RESERVE THE RIGHT TO ALTER, AMEND, MODIFY, REVOKE OR WITHDRAW THE PLAN, OR ANY PART THEREOF, AT ANY TIME, INCLUDING PRIOR TO ITS SUBSTANTIAL CONSUMMATION.**

**THE DEBTORS BELIEVE THE PLAN IS IN THE BEST INTERESTS OF CREDITORS AND THEREFORE RECOMMEND THAT ALL HOLDERS OF CLAIMS RECEIVING A BALLOT VOTE IN FAVOR OF THE PLAN.**

## **ARTICLE I** **DEFINED TERMS AND RULES OF INTERPRETATION**

### **Defined Terms**

**1.1 “503(b)(9) Claims”** shall mean Claims arising under Bankruptcy Code section 503(b)(9).

**1.2 “Administrative Claim”** shall mean a Claim for costs and expenses of administration of the Chapter 11 Cases allowed under Bankruptcy Code sections 503(b), 507(a)(2), 507(b) or, if applicable, 1114(e)(2), including but not limited to: (a) any actual and necessary costs and expenses incurred after the Petition Date of preserving the Estates and operating the businesses of the Debtors (including, but not limited to, wages, salaries, commissions for services and payments for inventories, leased equipment and premises) and Claims by Governmental Units for taxes (including Claims related to taxes which accrued

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<sup>2</sup> Capitalized terms not defined in this Introduction shall have the meanings ascribed below.

after the Petition Date, but excluding Claims related to taxes which accrued on or before the Petition Date); (b) compensation for legal, financial, advisory, accounting and other services and reimbursement of expenses allowed by the Bankruptcy Court under Bankruptcy Code sections 328, 330, 331, 363 or 503(b) to the extent incurred on or prior to the Effective Date; (c) all fees and charges assessed against the Estates under United States Code title 28 section 1930; (d) any 503(b)(9) Claims; and (e) any Claims that have been designated “Administrative Claims” by Final Order of the Bankruptcy Court.

**1.3 “Affiliate”** shall mean “affiliate” as defined in Bankruptcy Code section 101(2).

**1.4 “Allowed”** shall mean all or a portion of a Claim against the Debtors or an Interest in the Debtors (a) that has been listed by the Debtors in the Schedules as liquidated in amount and not “disputed” or “contingent,” and with respect to which no contrary Proof of Claim or Proof of Interest has been filed, (b) as to which no objection or request for estimation has been Filed on or before the Claims Objection Deadline or the expiration of such other applicable period fixed by the Bankruptcy Court, (c) as to which any objection has been settled, waived, withdrawn or denied by a Final Order, or (d) that is allowed (i) by a Final Order, (ii) pursuant to the terms of the Plan, or (iii) by a Stipulation between the Holder of such Claim or Interest and the Litigation Trustee on or after the Effective Date. For purposes of computing Distributions under the Plan, a Claim or Interest that has been deemed “Allowed” shall not (other than with respect to DIP Loan Claims and Prepetition Loan Claims) include interest, costs, fees or charges on such Claim or Interest from and after the Petition Date.

**1.5 “Assets”** shall mean any and all right, title, and interest of the Debtors and the Estates in and to property of whatever type or nature, including their books and records and any and all rights and benefits under any purchase agreement with respect to the Sale.

**1.6 “Avoidance Actions”** shall mean any and all avoidance or equitable subordination or recovery actions under the Bankruptcy Code, including sections 105(a), 502(d), 510, 542 through 551, and 553, or any similar federal, state, or common law causes of action; provided, however, that any avoidance or equitable subordination or recovery actions sold or otherwise transferred in connection with the Sale shall not constitute Avoidance Actions for the purposes hereof.

**1.7 “Ballot”** shall mean the ballot form distributed to each Holder of a Claim entitled to vote to accept or reject this Plan.

**1.8 “Bankruptcy Code”** shall mean title 11 of the United States Code, 11 U.S.C. §§ 101–1532, and as such title has been, or may be, amended from time to time, to the extent that any such amendment is applicable to the Chapter 11 Cases.

**1.9 “Bankruptcy Court”** shall mean the United States Bankruptcy Court for the District of Delaware.

**1.10 “Bankruptcy Rules”** shall mean the Federal Rules of Bankruptcy Procedure, the Official Bankruptcy Forms, or the Local Rules, and as each has been, or may be, amended



from time to time, to the extent that any such amendment is applicable to the Chapter 11 Cases.

**1.11 “Bar Date”** shall mean, with respect to any particular Claim, the specific date set by the Bankruptcy Court as the last day for Filing Proofs of Claim against the Debtors in the Chapter 11 Cases for that specific Claim.

**1.12 “Bar Date Order”** shall mean that certain *Order (A) Establishing Bar Dates and Related Procedures for Filing Proofs of Claim (Including for Claims Arising Under Section 503(b)(9) of the Bankruptcy Code) and (B) Approving the Form and Manner of Notice Thereof* [D.I. 109].

**1.13 “Beneficiary”** shall mean a holder of a Litigation Trust Interest, whether individually or as agent on behalf of one or more other Entities. To the extent Holders of Allowed Claims are entitled to a Distribution from the Litigation Trust pursuant to the terms of the combined Disclosure Statement and Plan, such Holders are each a Beneficiary.

**1.1 “Bidding Procedures Order”** shall mean that certain *Order (I) Approving Bidding Procedures in Connection with Sale of the Debtors’ Assets and Related Bid Protections; (II) Approving Form and Manner of Notice; (III) Scheduling Auction and Sale Hearing; (IV) Authorizing Procedures Governing Assumption and Assignment of Certain Contracts And Unexpired Leases; And (V) Granting Related Relief* [D.I. 127].

**1.2 “Blue Torch”** shall mean Blue Torch Finance, LLC.

**1.3 “Business Day”** shall mean any day, other than a Saturday, Sunday or a legal holiday (as that term is defined in Bankruptcy Rule 9006(a)).

**1.4 “Cash”** shall mean money that is legal tender of the United States of America.

**1.5 “Causes of Action”** shall mean all Claims, actions, causes of action, choses in action, suits, debts, dues, damages, defenses, judgments, third-party claims, counterclaims, and cross claims that are or may be pending or existing on the Effective Date against any Entity, based in law or equity, including, but not limited to, under the Bankruptcy Code, whether direct, indirect, known or unknown, derivative, or otherwise and whether asserted or unasserted as of the date of entry of the Confirmation Order, and including the unknown Causes of Action that have not been released by the Plan or any order of the Bankruptcy Court.

**1.6 “Chapter 11 Cases”** shall mean the chapter 11 cases commenced by the Debtors and jointly administered under case number 23-10671 (BLS) in the Bankruptcy Court.

**1.7 “Claim”** shall mean a claim against any Debtor, as such term is defined in Bankruptcy Code section 101(5).

**1.8 “Claims Agent”** shall mean the Debtors’ claims agent, Kurtzman Carson Consultants, LLC.

**1.9 “Claims Objection Deadline”** shall mean one hundred eighty (180) days after the Effective Date, or such later date as may be ordered by the Bankruptcy Court; *provided however*, that the Litigation Trustee may seek extensions of this date from the Bankruptcy Court at any time.

**1.10 “Class”** shall mean each category or group of Holders of Claims or Interests that has been designated as a class in Article II of this combined Disclosure Statement and Plan.

**1.11 “Colonnade”** shall mean Colonnade Acquisition Corp. II.

**1.12 “Colonnade Agreement”** shall mean that certain Agreement and Plan of Merger dated August 3, 2022, by and between PlastiQ, Inc., and Colonnade.

**1.13 “Committee”** shall mean the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases [D.I. 65].

**1.14 “Confirmation”** shall mean entry of the Confirmation Order by the Bankruptcy Court on the docket of the Chapter 11 Cases.

**1.15 “Confirmation Date”** shall mean the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases, within the meaning of Bankruptcy Rules 5003 and 9021.

**1.16 “Confirmation Hearing”** shall mean the hearing held by the Bankruptcy Court to consider confirmation of the Plan and final approval of the Disclosure Statement, as such hearing may be adjourned or continued from time to time.

**1.17 “Confirmation Notice”** shall mean the notice of the Confirmation Hearing to be delivered pursuant to Bankruptcy Rules 2002(c)(3) and 2002(f).

**1.18 “Confirmation Order”** shall mean the order of the Bankruptcy Court confirming the Plan pursuant to, among others, Bankruptcy Code section 1129.

**1.19 “Consummation”** shall mean the occurrence of the Effective Date.

**1.20 “Contingent”** shall mean, with reference to a Claim, a Claim that has not accrued or is not otherwise payable and the accrual of which, or the obligation to make payment on which, is dependent upon a future event that may or may not occur.

**1.21 “Creditor”** shall have the meaning ascribed to such term in Bankruptcy Code section 101(10).

**1.22 “Debtors”** shall mean, collectively, PlastiQ Inc.; PLV Inc., d/b/a PLV TX Branch Inc.; and Nearside Business Corp.

**1.23 “Debtor Released Parties”** shall mean, each solely in their capacity as such, (a) the Debtors’ current and former directors, (b) the Debtors’ current and former officers (c) the Debtors’ Professionals, and other advisors, (d) the Prepetition Agent, (e) the Prepetition

Lenders, (f) the DIP Lenders, (g) the DIP Agent, (h) the Colonnade Released Parties, and (i) with respect to each of the foregoing, their Related Parties.

**1.24 “DIP Agent”** shall mean Blue Torch, as administrative agent and collateral agent for the DIP Lenders under the DIP Loan Agreement.

**1.25 “DIP Loan Documents”** shall have the meaning ascribed to it in the Final DIP Order.

**1.26 “DIP Lenders”** shall mean the lenders from time to time party to the DIP Loan Agreement.

**1.27 “DIP Loan Agreement”** shall mean that certain *Debtor In Possession Secured Term Promissory Note*, dated as of May 25, 2023 (as may be modified or amended from time to time).

**1.28 “DIP Loan Claims”** shall mean any DIP Obligations (as defined in the Final DIP Order) or other Claims of the DIP Secured Parties arising under or related to the DIP Loan Agreement, the Final DIP Order, or any other DIP Loan Document.

**1.29 “DIP Secured Parties”** shall mean the DIP Lenders and the DIP Agent.

**1.30 “Disallowed”** shall mean, with respect to any Claim or Interest or portion thereof, any Claim against or Interest in a Debtor which: (i) has been disallowed, in whole or part, by a Final Order; (ii) has been withdrawn, in whole or in part, by the Holder thereof; (iii) is listed in the Schedules as zero or as Disputed, Contingent or Unliquidated and in respect of which a proof of Claim or a proof of Interest, as applicable, has not been timely Filed or deemed timely Filed pursuant to the Plan, the Bankruptcy Code or any Final Order or other applicable law; (iv) has been reclassified, expunged, subordinated or estimated to the extent that such reclassification, expungement, subordination or estimation results in a reduction in the Filed amount of any proof of Claim or proof of Interest; (v) is evidenced by a proof of Claim or a proof of Interest which has been Filed, or which has been deemed to be Filed under applicable law or order of the Bankruptcy Court or which is required to be Filed by order of the Bankruptcy Court but as to which such proof of Claim or proof of Interest was not timely or properly Filed; (vi) is unenforceable to the extent provided in Bankruptcy Code section 502(b); or (vii) where the Holder of a Claim is an Entity from which property is recoverable under Bankruptcy Code sections 542, 543, 550, or 553 or that is a transferee of a transfer avoidable under Bankruptcy Code sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a), unless such Entity or transferee has paid the amount, or turned over any such Property, for which such Entity or transferee is liable under Bankruptcy Code section 522(i), 542, 543, 550, or 553, and if required by the Bankruptcy Code, an Objection or adversary proceeding has been Filed. In each case a Disallowed Claim or a Disallowed Interest is disallowed only to the extent of disallowance, withdrawal, reclassification, expungement, subordination, or estimation.

**1.31 “Disbursing Agent”** shall mean the Litigation Trustee; *provided, however*, that the Litigation Trustee may, in its discretion, retain a third party to act as Disbursing Agent.

**1.32 “Disclosure Statement”** shall mean this combined Disclosure Statement and Chapter 11 Plan, as amended, supplemented, or modified from time to time, that is embodied within the combined Disclosure Statement and Plan and distributed in accordance with, among others, Bankruptcy Code sections 1125, 1126(b), and 1145, Bankruptcy Rule 3018 and other applicable law.

**1.33 “Disputed”** shall mean any Claim or Interest which has not yet been Allowed or Disallowed in accordance with the terms of the Plan.

**1.34 “Disputed Claim Reserve”** shall mean the reserve established and maintained by the Litigation Trustee for payment of Disputed Claims, which reserve shall be established in an amount equal to the face value of all Disputed Administrative Claims, Disputed Priority Tax Claims, Disputed Priority Non-Tax Claims, and Disputed Other Secured Claims, or such other amount as may be ordered by the Bankruptcy Court.

**1.35 “Distribution”** shall mean a delivery of Cash by the Disbursing Agent to the Holders of Allowed Claims pursuant to the Plan.

**1.36 “Distribution Date”** shall mean the date on which a Distribution is made pursuant to the Plan.

**1.37 “Distribution Record Date”** shall mean the date established for determining the Holders of Allowed Claims entitled to Distributions pursuant to the Plan, which shall be the General Bar Date or such other date established by order of the Bankruptcy Court, including the Confirmation Order.

**1.38 “Distribution Proceeds”** shall mean all Cash realizable from the Litigation Trust Assets after Payment in Full or satisfaction of the (i) Administrative Claims (including DIP Loan Claims and Professional Fee Claims), Priority Tax Claims, Priority Non-Tax Claims, Prepetition Loan Claims and Other Secured Claims, and (ii) the payment of, and reserving for, Litigation Trust Expenses in accordance with the Litigation Trust Agreement.

**1.39 “Effective Date”** shall mean the first Business Day after the later of the date on which (a) all conditions in Article XIII of the Plan have been satisfied or waived in accordance with that Article and (b) no stay of the Confirmation Order is in effect.

**1.40 “Effective Date Notice”** shall mean the notice of the Effective Date.

**1.41 “Entity”** shall have the meaning ascribed to such term in Bankruptcy Code section 101(15).

**1.42 “Estate”** shall mean each of the Debtors’ estates created by Bankruptcy Code section 541 upon the commencement of the Chapter 11 Cases on the Petition Date.

**1.43 “Excess Sale Proceeds”** shall mean the portion of the proceeds of the Sale in excess of the value of the cash and non-cash consideration offered by the Stalking Horse Bidder under the Stalking Horse Agreement (as determined by the Debtors in consultation with the Committee, the DIP Secured Parties and the Prepetition Secured Parties in connection

with the Auction (as defined in the Bidding Procedures Order)), which Excess Sale Proceeds are to be allocated to the Prepetition Secured Parties and the Estates in accordance with the Global Settlement and Final DIP Order.

**1.44 “Exculpated Parties”** shall mean each, solely in their capacities as such, (a) the Debtors and their Estates, (b) the Debtors’ officers, directors, and managers; (c) the Professionals retained by the Debtors pursuant to a Final Order of the Bankruptcy Court; (d) the Committee; (e) the present and former members of the Committee; and (f) the Professionals retained by the Committee pursuant to a Final Order of the Bankruptcy Court.

**1.45 “Executory Contract”** shall mean a contract or unexpired lease to which the Debtor is a party that is subject to assumption or rejection under Bankruptcy Code section 365.

**1.46 “File,” “Filed,” or “Filing”** shall mean, respectively, file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

**1.47 “Final Administrative Claim Bar Date”** shall mean the date that is thirty (30) days after the date the Effective Date Notice is Filed and served, which date shall be the deadline for filing requests for payment of Administrative Claims that arose between August 1, 2023 and the Effective Date.

**1.48 “Final Distribution”** shall mean the final Distributions to Holders of Allowed Claims.

**1.49 “Final DIP Order”** shall mean the *Final Order Pursuant To 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 And 507 (I) Authorizing The Debtors To Obtain Senior Secured Superpriority Postpetition Financing; (II) Granting (A) Liens And Superpriority Administrative Expense Claims And (B) Adequate Protection To Certain Prepetition Lenders; (III) Authorizing Use Of Cash Collateral; (IV) Scheduling A Final Hearing; And (V) Granting Related Relief* [D.I. 138].

**1.50 “Final Order”** shall mean an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, that is not subject to stay or appeal, and for which the applicable time within which to take such action has expired, or for which such actions has been adjudicated by the highest court with jurisdiction over the matter.

**1.51 “First Day Declaration”** shall mean the *Declaration of Vladimir Kasparov in Support of Chapter 11 Petitions and First Day Pleadings* [D.I. 2].

**1.52 “General Bar Date”** shall mean 5:00 p.m. (prevailing Eastern Time) on July 26, 2023, as established by the Bar Date Order.

**1.53 “General Unsecured Claim”** shall mean a Claim against a Debtor, but excluding any Administrative Claims (including Professional Fee Claims), Priority Tax Claims, Priority Non-Tax Claims, Other Secured Claims, Prepetition Loan Claims, Intercompany Claims, and Interests.

**1.54 “Global Settlement”** shall mean the settlement by and among the Debtors, the Committee, the DIP Secured Parties and the Prepetition Secured Parties as approved in the Final DIP Order, resolving, among other things, (a) any potential Challenges (as defined in the Final DIP Order) by the Committee, (b) allocation of the Amex Receivable, (c) allocation of certain proceeds from the Sale, and (d) any potential objections to this Plan, which settlement is incorporated into the terms of this Plan.

**1.55 “Governmental Unit”** shall have the meaning ascribed to such term in Bankruptcy Code section 101(27).

**1.56 “Holder”** shall mean any Entity holding a Claim or Interest.

**1.57 “Impaired”** shall mean, when used in reference to a Claim or Interest, a Claim or Interest that is impaired within the meaning of Bankruptcy Code section 1124.

**1.58 “Impaired Class”** shall mean a Class of Claims or Interests that is Impaired.

**1.59 “Insurance Contract”** shall mean all insurance policies that have been issued at any time to or provide coverage to any of the Debtors and all agreements, documents or instruments relating thereto.

**1.60 “Intercompany Claim”** shall mean a Claim held by a Debtor against another Debtor.

**1.61 “Interests”** shall mean the legal interests, equitable interests, contractual interests, equity interests or ownership interests, or other rights of any Entity in the Debtors including all capital stock, stock certificates, common stock, preferred stock, partnership interests, limited liability company or membership interests, rights, treasury stock, options, warrants, contingent warrants, convertible or exchangeable securities, investment securities, subscriptions or other agreements and contractual rights to acquire or obtain such an interest or share in the Debtors, partnership interests in the Debtors’ stock appreciation rights, conversion rights, repurchase rights, redemption rights, dividend rights, preemptive rights, subscription rights and liquidation preferences, puts, calls, awards or commitments of any character whatsoever relating to any such equity, common stock, preferred stock, ownership interests or other shares of capital stock of the Debtors or obligating the Debtors to issue, transfer or sell any shares of capital stock whether or not certificated, transferable, voting or denominated “stock” or a similar security.

**1.62 “Initial Administrative Claim Bar Date”** shall mean the deadline for filing requests for payment of Initial Administrative Claims, as established by the Solicitation Procedures Order.

**1.63 “Initial Administrative Claims”** shall mean Administrative Claims, other than 503(b)(9) Claims and Professional Fee Claims, incurred on or after the Petition Date through and including July 31, 2023.

**1.64 “IRC”** shall mean the Internal Revenue Code of 1986, as amended.

**1.65** “**IRS**” shall mean the Internal Revenue Service.

**1.66** “**Lender AmEx Distribution**” shall mean the portion of the AmEx Deposit Refund in the amount of \$266,000, which shall be distributed to the Prepetition Agent on account of the Class 3 Prepetition Loan Claims in accordance with the Global Settlement and Final DIP Order.

**1.67** “**Lender Colonnade Distribution**” shall mean the Blue Torch portion of the Retained Colonnade Disbursement in accordance with the Global Settlement and Final DIP Order, which shall be distributed to the Prepetition Agent on account of the Class 3 Prepetition Loan Claims in accordance with the Global Settlement and Final DIP Order.

**1.68** “**Lender Excess Sale Proceeds**” shall mean the portion of the Excess Sale Proceeds to be paid or transferred to the Prepetition Secured Parties on account of the Class 3 Prepetition Loan Claims in accordance with the Global Settlement and Final DIP Order.

**1.69** “**Litigation Trust**” shall mean the trust established under the combined Disclosure Statement and Plan and the Liquidation Trust Agreement to hold legal and equitable title to the Litigation Trust Assets.

**1.70** “**Litigation Trust Agreement**” shall mean the trust agreement in the form and substance reasonably satisfactory to the Debtors, the Committee and the DIP Lenders that, together with the terms of the combined Disclosure Statement and Plan, establishes the Litigation Trust and governs the powers, duties, and responsibilities of the Litigation Trustee. The Litigation Trust Agreement shall be filed as part of the Plan Supplement.

**1.71** “**Litigation Trust Assets**” shall consist of the following: (i) all Retained Causes of Action, including the proceeds related thereto, (ii) the Retained Amex Refund; (iii) the Retained Colonnade Disbursement; (iv) the Retained Excess Sale Proceeds; and (v) Assets excluded from the Sale.

**1.72** “**Litigation Trust Budget**” shall mean a budget to be prepared by the Litigation Trustee related to estimated fees and expenses to administer the Plan, wind down the Estates, and operate the Litigation Trust, and which may be amended from time to time following the Effective Date in accordance with the Litigation Trust Agreement.

**1.73** “**Litigation Trustee**” shall mean the Entity designated by the Committee, in consultation with the Debtors, and retained as the trustee to the Litigation Trust, as of the Effective Date or as soon as reasonably practicable thereafter, as the fiduciary responsible for administering the Litigation Trust, and any successor subsequently appointed pursuant to the Litigation Trust Agreement. The identity and compensation of the Litigation Trustee shall be disclosed in the Plan Supplement.

**1.74** “**Litigation Trust Expenses**” shall mean, subject to the Litigation Trust Budget, all reasonable legal and other fees and expenses incurred by the Litigation Trustee on account of administration of the Litigation Trust, including, without limitation, reasonable attorneys’ fees and expenses, insurance costs, taxes, escrow expenses and all other costs of administering

the Litigation Trust in accordance with the combined Disclosure Statement and Plan and the Litigation Trust Agreement.

**1.75 “Litigation Trust Interests”** shall mean the non-transferable interests in the Litigation Trust issued to the Beneficiaries pursuant to the combined Disclosure Statement and Plan.

**1.76 “Local Rules”** shall mean the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

**1.77 “Nearside Transaction”** shall mean the transaction effectuated by that certain Agreement and Plan of Merger dated September 8, 2022, by and between PlastiQ Inc., Nightingale Merger Sub Inc., Nearside Business Corp., and Thomson Nguyen.

**1.78 “OCP Order”** shall mean the *Order Authorizing (A) the Debtors to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Effective as of the Petition Date and (B) Waiving Certain Information Requirements of Local Rule 2016-2* [D.I. 111].

**1.79 “Objection”** shall mean any objection, application, motion, complaint or any other legal proceeding seeking, in whole or in part, to disallow, determine, liquidate, classify, reclassify, or establish the priority, expunge, subordinate or estimate any Claim (including the resolution of any request for payment of any Administrative Claim).

**1.80 “Other Secured Claim”** shall mean any Secured Claim other than a Prepetition Loan Claim or a DIP Loan Claim.

**1.81 “Paid in Full,” “Payment in Full,” or “Pay in Full”** shall mean, with respect to an Allowed Claim, payment in Cash or other consideration in an aggregate amount equal to the Allowed amount thereof.

**1.82 “Petition Date”** shall mean May 24, 2023, the date on which the Debtors commenced the Chapter 11 Cases in the Bankruptcy Court.

**1.83 “Plan”** shall mean this combined Disclosure Statement and Chapter 11 Plan as it may be altered, amended, modified or supplemented from time to time including in accordance with any documents submitted in support hereof and the Bankruptcy Code or the Bankruptcy Rules.

**1.84 “Plan Supplement”** shall mean the ancillary documents necessary to the implementation and effectuation of the Plan, including the Litigation Trust Agreement, which shall be in form and substance satisfactory to the Debtors, the DIP Agent, the Prepetition Agent and the Committee, and Filed on or before the date that is ten (10) days prior to the Voting Deadline, *provided, however*, that the Debtors shall have the right to amend documents contained in, and exhibits to, the Plan Supplement.



**1.85 “Potential Director Defendants”** shall mean, solely in their capacities as such, the officers and directors of the Debtors, other than Jill Frizzley, Matthew Kahn, Richard Travia, Vladimir Kasparov, and Scott Canna.

**1.86 “Prepetition Agent”** shall mean Blue Torch Finance LLC, as administrative agent and collateral agent for the Prepetition Lenders under the Prepetition Financing Documents.

**1.87 “Prepetition Financing Documents”** shall mean the Prepetition Term Loan Agreement together with all other related documents, guarantees, and agreements, including, without limitation, security agreements, mortgages, pledge agreements, assignments, financing statements, and other agreements, documents, instruments, or certificates executed in connection with the Prepetition Term Loan Agreement.

**1.88 “Prepetition Lenders”** shall mean the financial institutions in their capacities as prepetition lenders under the Prepetition Term Loan Agreement.

**1.89 “Prepetition Loan Claims”** shall mean the secured Claims of the Prepetition Agent or the Prepetition Lenders arising under and related to the Prepetition Financing Documents in the Allowed amount of \$43,334,584.39.

**1.90 “Prepetition Secured Parties”** shall mean the Prepetition Agent and the Prepetition Lenders.

**1.91 “Prepetition Term Loan Agreement”** shall mean that certain *Financing Agreement, dated as of November 14, 2022* (as amended, amended, restated, amended and restated, supplemented or otherwise modified, and as the same may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time).

**1.92 “Priority Non-Tax Claim”** shall mean any and all Claims accorded priority in right of payment under Bankruptcy Code section 507(a), other than Priority Tax Claims and Administrative Claims.

**1.93 “Priority Tax Claim”** shall mean a Claim or a portion of a Claim for which priority is asserted under Bankruptcy Code section 507(a)(8).

**1.94 “Professional”** shall mean an Entity (other than Entities retained pursuant to the OCP Order) pursuant to a Final Order in accordance with Bankruptcy Code sections 327, 328, 330, 363, 1103 and to be compensated for services rendered prior to the Confirmation Date, pursuant to Bankruptcy Code sections 327, 328, 329, 330, and 331, or for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to Bankruptcy Code section 503(b)(4).

**1.95 “Professional Fee Claims Bar Date”** shall mean the deadline for Filing all applications for Professional Fee Claims, which shall be forty-five (45) days after the Filing and service of the Effective Date Notice, *provided, however*, for the avoidance of doubt, any Professional retained under section 363 of the Bankruptcy Code shall not be required to file final fee applications unless required by a Final Order.

**1.96 “Professional Fee Claims”** shall mean all fees and expenses (including but not limited to, transaction fees and success fees) for services rendered by Professionals in connection with the Chapter 11 Cases from the Petition Date through and including the Effective Date.

**1.97 “Professional Fee Reserve Account”** shall mean the reserve account held by Young Conaway Stargatt & Taylor, LLP and funded by the Debtors in Cash on the Effective Date pursuant to Section 6.1(e) of the Plan, in an amount equal to the Professional Fee Reserve Amount.

**1.98 “Professional Fee Reserve Amount”** shall mean the aggregate amount of Professional Fee Claims and other unpaid fees and expenses that the Professionals estimate they have incurred or will incur in rendering services to the Debtors or the Committee prior to the Effective Date, which estimates Professionals shall deliver to the Debtors and the Committee as set forth in Section 6.1(e) of the Plan.

**1.99 “Related Parties”** shall mean, with respect to any Person or Entity, such Person’s or Entity’s respective current and former (i) officers, (ii) managers, (iii) directors, (iv) employees, (v) partners, (vi) affiliates and subsidiaries, (vii) professionals, (viii) advisors and advisory board members, (ix) agents, (x) members and shareholders, (xi) owners, (xii) affiliated investment funds or investment vehicles, (xiii) managed, advised or sub-advised accounts, (xiv) funds or other entities, (xv) investment advisors, sub-advisors or managers, and (xvi) other representatives, including, without limitation, attorneys, accountants, consultants, investment bankers and financial advisors and the predecessors, successors, assigns or heirs of such Person or Entity (in each case, in their respective capacities as such).

**1.100 “Release Opt-Out Election”** shall mean the timely election of Holders of General Unsecured Claims to “opt out” of being a Releasing Party by (a) submitting a Ballot by the Voting Deadline that selects the option set forth on the Ballot to not grant the releases set forth in Section 14.1(c) of this Plan, or (b) Filing a written objection to the releases set forth in Section 14.1(c) of this Plan by the deadline to object to Confirmation of the Plan.

**1.101 “Releasing Parties”** shall mean: (a) all Holders of Claims who are Unimpaired that have not Filed an objection to the releases set forth in Section 14.1(c) of this Plan by the deadline to object to Confirmation of the Plan, (b) the Committee, including its members, (c) the Prepetition Lenders, (d) the Prepetition Agent, (e) the DIP Lenders, (f) the DIP Agent, (g) Holders of General Unsecured Claims that have not made a Release Opt-Out Election, (h) the Colonnade Released Parties, and (i) with respect to each of the foregoing, their Related Parties.

**1.102 “Retained AmEx Deposit”** shall mean the portion of the AmEx Deposit Refund in the amount of \$734,000 retained by the Estates pursuant to the Global Settlement.

**1.103 “Retained Causes of Action”** shall mean all Causes of Actions, including, without limitation, the rights and claims described in Exhibit A hereto, but excluding: (i) claims against counterparties with contracts assigned to a purchaser under the Sale, (ii) claims, including Avoidance Actions, sold to a purchaser under the Sale, (iii) claims released or

exculpated pursuant to this Plan, (iv) claims against Blue Torch, the Prepetition Secured Parties and the DIP Secured Parties released pursuant to the Final DIP Order, and (v) claims against the Colonnade Released Parties.

**1.104 “Retained Colonnade Disbursement”** shall mean the portion of the Colonnade Disbursement retained by the Estates pursuant to the Global Settlement.

**1.105 “Retained Excess Sale Proceeds”** shall mean the portion of the Excess Sale Proceeds retained by the Estates pursuant to the Global Settlement.

**1.106 “Sale”** shall mean the sale of substantially all of the Debtors’ Assets to PlastiQ, Powered by Priority, LLC, pursuant to the Successful Bidder Agreement, and as approved by that certain *Order Authorizing (I) the Sale of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests; (II) the Debtors to Enter Into and Perform their Obligations Under the Asset Purchase Agreement and Related Documents; (III) the Debtors to Assume and Assign Certain Contracts and Unexpired Leases; (IV) Waiver of the Stay Periods Under Bankruptcy Rules 6004(h) and 6006(d); and (V) Granting Related Relief* [D.I. 223].

**1.107 “Sale Cash Consideration”** shall mean the cash consideration paid or payable by the Successful Bidder pursuant to the Successful Bidder Agreement.

**1.108 “Sale Consideration”** shall mean, in the aggregate, the Sale Cash Consideration and the Sale Non-Cash Consideration.

**1.109 “Sale Non-Cash Consideration”** shall mean the non-cash consideration paid or payable by the Successful Bidder pursuant to the Successful Bidder Agreement.

**1.110 “Schedules”** shall mean the schedules of assets and liabilities and statements of financial affairs Filed by the Debtors pursuant to Bankruptcy Code section 521 and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified, or supplemented from time to time.

**1.111 “Secured Claim”** shall mean, pursuant to Bankruptcy Code section 506, that portion of a Claim that is (a) secured by a valid, perfected and enforceable security interest, lien, mortgage, or other encumbrance, that is not subject to avoidance under applicable bankruptcy or non-bankruptcy law, in or upon any right, title or interest of the Debtors in and to property of the Estates, to the extent of the value of the Holder’s interest in such property as of the relevant determination date, or (b) Allowed as such pursuant to the terms of the Plan (subject to the Confirmation Order becoming a Final Order). The defined term Secured Claim includes any Claim that is (i) subject to an offset right under applicable law as of the Petition Date, and (ii) a secured claim against the Debtors pursuant to Bankruptcy Code sections 506(a) and 553.

**1.112 “Solicitation Procedures Order”** shall mean that certain Order (I) Approving the Combined Disclosure Statement and Plan on an Interim Basis for Solicitation Purposes Only; (II) Establishing Solicitation and Tabulation Procedures; (III) Approving the Forms of Ballots and Solicitation Materials; (IV) Establishing the Voting Record Date; (V) Fixing the Date,

Time, and Place for the Combined Hearing and the Deadline for Filing Objections Thereto; (VI) Establishing Bar Date for Filing Requests for Allowance of Initial Administrative Claims; and (VII) Granting Related Relief [D.I. 227].

**1.113 “Stalking Horse Bidder”** shall mean PlastiQ, Powered by Priority, LLC, an acquisition vehicle formed by Priority Technology Holdings, Inc.

**1.114 “Stalking Horse Agreement”** shall mean that certain Equity and Asset Purchase Agreement dated as of May 23, 2023, by and among PlastiQ Inc., PLV Inc., and Nearside Business Corp., as sellers, and PlastiQ, Powered by Priority, LLC, as buyer.

**1.115 “Successful Bidder”** shall mean the Stalking Horse Bidder.

**1.116 “Successful Bidder Agreement”** shall mean the Stalking Horse Agreement, as approved by any Final Order approving the Sale.

**1.117 “Taxes”** shall mean all income, gross receipts, sales, use, transfer, payroll, employment, franchise, profits, property, excise, or other similar taxes, estimated import duties, fees, stamp taxes, and duties, value added taxes, assessments, or charges of any kind whatsoever (whether payable directly or by withholding), together with any interest and any penalties, additions to tax, or additional amounts imposed by any taxing authority of a Governmental Unit with respect thereto.

**1.118 “Third-Party Released Parties”** shall mean, each in their capacity as such, (a) the Debtors and the Estates, (b) Vladimir Kasparov and Scott Canna, in their capacities as Chief Restructuring Officer and Deputy Chief Restructuring Officer, respectively, (c) the Prepetition Agent, (d) the Prepetition Lenders, (e) the DIP Agent, (f) the DIP Lenders, (g) the Colonnade Released Parties, and (h) with respect to each of the foregoing, their Related Parties.

**1.119 “Unclassified Claims”** shall mean any Administrative Claims, Professional Fee Claims, and Priority Tax Claims.

**1.120 “Unimpaired”** shall mean, when used in reference to a Claim or Interest, any Claim or Interest that is not impaired within the meaning of Bankruptcy Code section 1124.

**1.121 “U.S. Trustee Fees”** shall mean fees payable pursuant to 28 U.S.C. § 1930.

**1.122 “Voting Deadline”** shall mean **September 1, 2023, at 4:00 p.m. (prevailing Eastern Time)**, the date and time by which ballots to accept or reject the Plan must be received to be counted, as set forth by the Solicitation Procedures Order.

## **Rules of Interpretation**

**1.123** For purposes of the Plan, except as expressly provided or unless the context otherwise requires, (a) any capitalized term used in the combined Disclosure Statement and Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules,

as applicable, (b) whenever the context requires, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in the masculine, feminine, or neuter shall include the masculine, feminine and the neuter, (c) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, (d) any reference in the Plan to an existing document or exhibit means such document or exhibit as it may be amended, modified, or supplemented from time to time, (e) unless otherwise specified, all references in the Plan to sections, articles, schedules, and exhibits are references to sections, articles, schedules, and exhibits of or to the Plan, (f) the words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Plan in its entirety rather than to any particular paragraph, subparagraph, or clause contained in the Plan, (g) captions and headings to articles and sections are inserted for convenience of reference only and shall not limit or otherwise affect the provisions hereof or the interpretation of the Plan, and (h) the rules of construction set forth in Bankruptcy Code section 102 and in the Bankruptcy Rules shall apply.

## **ARTICLE II**

### **CLASSIFICATION OF CLAIMS AND INTERESTS AND ESTIMATED RECOVERIES**

**THE PROJECTED RECOVERIES SET FORTH IN THE TABLE BELOW ARE ESTIMATES ONLY AND ARE THEREFORE SUBJECT TO CHANGE.**

**2.1 Classification.** The information in the table below is provided in summary form for illustrative purposes only and is subject to material change based on certain contingencies, including related to the claims reconciliation process. Actual recoveries may widely vary within these ranges, and any changes to any of the assumptions underlying these amounts could result in material adjustments to recovery estimates provided herein and/or the actual distribution received by Creditors. The projected recoveries are based on information available to the Debtors as of the date hereof and reflect the Debtors’ estimates as of the date hereof only. In addition to the cautionary notes contained elsewhere in the combined Disclosure Statement and Plan, it is underscored that the Debtors make no representation as to the accuracy of these recovery estimates. The Debtors expressly disclaim any obligation to update any estimates or assumptions after the date hereof on any basis (including new or different information received and/or errors discovered).

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim or Interest is also placed in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim in that Class and such Claim or Interest has not been paid, released, or otherwise settled prior to the Effective Date.

All Claims and Interests, except Administrative Claims, Professional Fee Claims, DIP Loan Claims, and Priority Tax Claims, are placed in the Classes set forth below. In accordance with Bankruptcy Code section 1123(a)(1), Administrative Claims (including Professional Fee Claims), and Priority Tax Claims, as described herein, have not been classified, and the respective

treatment of such Unclassified Claims is set forth below in Article VI of the Plan. The categories of Claims and Interests listed below classify Claims and Interests for all purposes, including voting, confirmation and distribution pursuant to the Plan and pursuant to Bankruptcy Code sections 1122 and 1123(a)(1).

<b>Class/ Designation</b>	<b>Plan Treatment</b>	<b>Estimated Amount of Total Claims</b>	<b>Status / Voting Rights</b>	<b>Projecte d Recovery</b>
<b>Class 1:</b> Priority Non-Tax Claims	Each Holder of an Allowed Priority Non-Tax Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Class 1 Claim: (A) Cash equal to the amount of such Allowed Priority Non-Tax Claim; or (B) such other treatment which the Debtors or the Litigation Trustee, as applicable, and the Holder of such Allowed Priority Non-Tax Claim have agreed upon in writing.	\$0	Unimpaired / Deemed to accept Plan	100%
<b>Class 2:</b> Other Secured Claims	Each Holder of an Allowed Class 2 Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Class 2 Claim: (A) return of the collateral securing such Allowed Other Secured Claim; or (B) Cash equal to the amount of such Allowed Other Secured Claim; or (C) such other treatment which the Debtors or the Litigation Trustee, as applicable, and the Holder of such Allowed Other Secured Claim have agreed upon in writing.	\$0	Unimpaired / Deemed to accept Plan	100%
<b>Class 3:</b> Prepetition Loan Claims	Holders of Class 3 Prepetition Loan Claims shall receive in full and final satisfaction, settlement and release of and in exchange for such Allowed Class 3 Claim, (A) the Sale Consideration (net of an amount of cash necessary to pay in full the DIP Loan Claims), (B), to the extent not distributed prior to the Effective Date, the Lender Amex Distribution, (C), to the extent not distributed prior to the Effective Date the Lender Colonnade Distribution, and (D) to the extent applicable, the Lender Excess Sale Proceeds.	\$43,339,959.27	Impaired/ Entitled to vote	100%
<b>Class 4:</b> General Unsecured Claims	Unless the Holder agrees to a different treatment, each Holder of a General Unsecured Claim shall receive such Holder's pro rata share of the liquidated value of the Litigation Trust Assets.	\$27,729,998	Impaired/ Entitled to vote	4.6% to 5.4%

<b>Class/ Designation</b>	<b>Plan Treatment</b>	<b>Estimated Amount of Total Claims</b>	<b>Status / Voting Rights</b>	<b>Projecte d Recovery</b>
<b>Class 5:</b> Subordinated Claims	Allowed Subordinated Claims, if any, shall be cancelled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Allowed Subordinated Claims will not receive any distribution on account of such Allowed Subordinated Claims.	N/A	Impaired/ Deemed to reject Plan	0%
<b>Class 6:</b> Intercompan y Claims	Holders of Intercompany Claims shall receive no Distribution on account of their Intercompany Claims.	N/A	Impaired/ Deemed to reject Plan	0%
<b>Class 7:</b> Interests	On the Effective Date, all Interests shall be extinguished as of the Effective Date, and owners thereof shall receive no Distribution on account of such Interests.	N/A	Impaired/ Deemed to reject Plan	0%

### **ARTICLE III**

#### **BACKGROUND AND DISCLOSURES**

#### **3.1 General Background<sup>3</sup>**

##### ***(a) The Debtors' Business***

Plastiq Inc. (“**Plastiq**”) is at the forefront of digital transformation of the small and medium business economy. The Debtors provide a leading software platform for business-to-business payment automation that powers all aspects of accounts payables and accounts receivables operations for small and medium businesses (“**SMBs**”). Their proprietary software allows clients to automate payments, workflows, and processes, and access new credit sources. Thus, the Debtors’ services solve two primary needs of SMBs: (i) automation at an affordable price; and (ii) assisting with healthy cash flow. In addition to the services aimed towards SMBs, the Debtors facilitate one-time or recurring payments for individuals for bills such as rent, mortgage, utilities, day care, homeowners association fees, and other expenses. To that end, the Debtors operate through five business lines: Plastiq Pay, Plastiq Accept, Plastiq Connect, Plastiq Credit, and in 2023, the Debtors plan to launch Plastiq SmartPay.

The Debtors’ main business offering is Plastiq Pay, which was launched in 2016. Plastiq Pay enables SMBs and individuals to make payments with credit cards, even if the receiving party does not accept credit card payments. Plastiq Pay provides SMB clients with cash flow management and instant access to working capital, and replaces legacy bill payment platforms, such as checks, bank transfer fees, and paper reconciliation. For providing the ability to pay by credit card, the Debtors collect a fee from the customers for each transaction initiated. In 2022,

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<sup>3</sup> Additional information regarding the Debtors’ business, assets, capital structure, and the circumstances leading to the filing of the Chapter 11 Cases is set forth in detail in the First Day Declaration.

Plastiq Pay facilitated approximately 347,080 transactions in the aggregate amount of approximately \$3.6 billion.

In 2020, the Debtors launched Plastiq Accept. Plastiq Accept allows SMBs to accept any form of digital payment through a single link with no fees owed by the SMB clients to Plastiq and thus providing clients with higher working capital return on investment and revenue by accepting digital payment methods. Plastiq Accept replaces expensive merchant accounts, online gateways, and other cumbersome and expensive payment acceptance methods. In 2022, Plastiq Accept facilitated approximately 179,704 transactions in the aggregate amount of approximately \$300 million.

The Debtors began offering Plastiq Connect in 2021. Plastiq Connect empowers platforms that serve other SMBs to fully embed Plastiq's product offerings into their own customer experience. Plastiq Connect automatically integrates with accounting software, enterprise resource planning systems, and other marketplaces. It allows clients to reduce costs by managing all cash flow and provides new partner opportunities. Plastiq Connect also replaces manual data entry and reconciliation. In 2022, Plastiq Connect facilitated approximately 8,000 transactions in the aggregate amount of approximately \$39 million.

Established in 2022, Plastiq Credit offers clients instant access to short-term financing. Plastiq connect allows clients to preserve cash on hand and increase credit availability by avoiding expensive business loans, early cash depletion, and paper based payments. The Debtors partnered with an alternative lending platform to fund and service the loans. Once a client is approved for a loan offering, the Debtors advance the funds to the client and are repaid by the lender. The lender assumes all responsibility for servicing and collecting on the loan. Importantly, the Debtors do not take on any balance sheet risk through the financing offerings. In its first year, Plastiq Credit facilitated approximately \$67 million in financings through approximately 475,000 loan offerings.

Finally, the Debtors anticipate launching Plastiq SmartPay in 2023. Plastiq SmartPay is an end-to-end payables workflow solution that allows SMBs to automate their account payable and accounts receivables, cash operations, and compliance procedures. It will replace SMB's manual process and legacy accounts receivable and accounts payables, and legacy bank platforms. The Debtors anticipate launching Plastiq SmartPay as a subscription or software as a service plan.

*(b) The Debtors' Equity Ownership and Capital Structure*

*i. Equity Ownership*

The equity interests of Plastiq, a corporation organized under the laws of the State of Delaware, are held by certain institutional investors and certain individuals, including current and former employees who have been awarded equity interests as part of their compensation packages. Plastiq, Inc., in turn, wholly owns (i) PLV Inc., a Delaware corporation; (ii) Nearside Business Corp. ("**Nearside**"), a Delaware Corporation; (iii) Plastiq Canada Inc., a corporation organized under the laws of Canada, Plastiq Canada EP Inc., a Delaware corporation; (iii) P4B Inc., a Delaware corporation; and (iv) PBS Inc., a Delaware Corporation. Nearside wholly owns Nearside Business Software Canada, Inc., a corporation organized under the laws of Canada.



ii. Capital Structure

Pursuant to the Prepetition Term Loan Agreement, the Prepetition Lenders made term loans in the aggregate principal amount of \$40 million, \$35 million of which was funded directly to the Debtors and \$5 million of which was funded into an escrow account, which amounts were to be available to the Borrower upon the satisfaction of certain conditions.

As of the Petition Date, approximately \$43,334,584.39 million of indebtedness under the Prepetition Term Loan Agreement was outstanding, which amount comprises \$41,301,734.15 in principal amount, accrued and unpaid interest in the amount of \$2,032,850.24, and the Applicable Premium (as such term is defined in the Prepetition Term Loan Agreement) in the amount of \$372,713.81 (and, together with any other amounts outstanding under the Prepetition Term Loan Documents, including interest, fees, and expenses, the “**Prepetition Obligations**”). The Prepetition Obligations are secured by first priority security interests in and liens (subject only to certain of the liens permitted under the Prepetition Term Loan Documents) on the Collateral (as such term is defined in the Prepetition Loan Documents) (the “**Prepetition Collateral**” and such liens and security interests on such Prepetition Collateral, the “**Prepetition Liens**”).

To secure the Prepetition Obligations, the Debtors entered into certain guaranty and collateral agreements and certain other security documents governing the Prepetition Secured Parties’ security interests in the Prepetition Collateral (such agreements, as amended, restated, amended and restated, supplemented or otherwise modified from time to time, and together with any ancillary collateral documents, including, without limitation, any related mortgages and deeds of trust, the “**Prepetition Collateral Documents**”). Pursuant to the Prepetition Collateral Documents, and on the terms set forth therein, the Debtors granted to the Prepetition Secured Parties the Prepetition Liens on the Prepetition Collateral.

On February 13, 2023, the Debtors and the Prepetition Lenders entered into that certain Forbearance Agreement (as amended and extended, the “**Forbearance Agreement**”). The Forbearance Agreement expired on March 15, 2023.

Certain of the Prepetition Lenders held warrants to purchase common stock, which contained a put right that could be exercised upon an event of default under the Prepetition Term Loan Agreement. Those put rights were exercised on February 17, 2023, and the warrants were due to be paid on March 6, 2023. The Debtors did not make this payment. On March 8, 2023, the Prepetition Lenders delivered a default and acceleration notice to the Debtors. On March 17, 2023, the Debtors and the Prepetition Lenders entered into an amendment to the Forbearance Agreement, which extended the forbearance period through and including March 24, 2023. The amendment to the Forbearance Agreement also provided that the warrants, in the amount of \$3.5 million, would be considered Prepetition Obligations under the Prepetition Term Loan Agreement. The forbearance period and related deadlines in the Forbearance Agreement were consensually extended multiple times until the Petition Date. In accordance with the Global Settlement, the Prepetition Obligations are Allowed as Secured Claims in the amount of \$43,334,584.39.

### 3.2 Events Leading to Chapter 11

#### (a) *Failed De-SPAC Transactions and Prepetition Sale Process*

The Debtors weathered the COVID-19 pandemic well. Armed with a \$75 million investment that closed in late March of 2020, the Debtors began to deploy their full suite of automated financial products to SMBs. Although they were forced to slightly reduce their headcount, the Debtors otherwise used the pandemic as an opportunity to right-size their business and continued to develop their SMB offerings.

The pandemic provided the Debtors with a unique – and unexpected – opportunity. After an initial pullback, financial markets quickly recovered and de-SPAC transactions were booming. In 2020, SPACs raised \$79.87 billion in gross proceeds, surpassing the previous record of \$13.6 billion in 2019. Many of the de-SPAC transactions driving the 2020 uptick consisted of companies in the technology sector. And by the beginning of 2021, the NASDAQ was nearing, and would eventually hit, an all-time high.

Seeking to capitalize on these favorable market conditions, in early 2021, the Debtors decided that they would pursue a de-SPAC transaction. To that end, they entered into a letter of intent with Colonnade, a special purpose acquisition company. After performing diligence, however, Colonnade decided that the Debtors' businesses were not yet prepared to go public, and the transaction did not advance to the definitive documentation stage.

Undeterred and continuing to seek to make the most of the surging market for tech companies, the Debtors engaged Qatalyst Partners as investment banker in mid-2021 to pursue a sale process. While the Debtors received a \$550 million market valuation and entered into an indication of interest with a potential purchaser, the transaction failed to materialize.

Shortly thereafter, in 2022, Colonnade re-engaged with the Debtors, believing that the businesses were now ready for a public offering. At the same time, the Debtors explored traditional sale transactions with potential purchasers, but eventually determined that a de-SPAC transaction with Colonnade would provide maximum value. On August 3, 2022, PlastiQ, Inc. entered into the Colonnade Agreement. The Colonnade Agreement contemplated that the Debtors would go public through the de-SPAC transaction, and provided an estimated enterprise value of \$480 million. The Debtors intended to use the proceeds from the de-SPAC transaction to fuel the growth of their businesses and continue to expand their product offerings.

In September of 2022, the Debtors completed an acquisition for Nearside and certain subsidiaries, for an aggregate purchase price of \$59.6 million, which consisted primarily of approximately \$57.2 million in shares of common stock of PlastiQ, Inc., \$0.4 million paid in cash, and the assumption of certain liabilities. Founded in 2019, Nearside was an early-stage technology company focused on building software to provide financial products and services to SMBs with free and simple bank accounts and incorporation service. Nearside's suite of financial services targeted towards SMBs provided a potential strategic compliment to the payment services offered by the Debtors. PlastiQ acquired Nearside primarily for its technology, the ability to offer business bank accounts to customers, and the \$21.9 million of cash on Nearside's balance sheet at the time of the transaction. Subsequent to the acquisition, however, the Debtors discovered that Nearside

lacked the technology, security, and controls to sell into PlastiQ's customer base. Given the gaps in the technology and the cost/time it would take to achieve commercial feasibility, the Board ultimately made the decision to completely shut down Nearside in November of 2022.

Around the same time, the Debtors entered into the Prepetition Term Loan Agreement, pursuant to which the Debtors incurred term loans in the aggregate principal amount of \$40 million. In addition, in November of 2022, PlastiQ entered into a Note Purchase Agreement (the "**Note Purchase Agreement**") to sell and issue up to \$15.0 million of convertible promissory notes (the "**Convertible Promissory Notes**") that would convert automatically into shares of preferred stock issued by PlastiQ, Inc. in a qualified financing or into SPAC shares after the closing of a de-SPAC transaction. The issued Convertible Promissory Notes have interest rates of 10% and maturity dates one year from the date of the Note Purchase Agreement. Additionally, a prior \$5 million investment from July 2021 was converted into Convertible Promissory Notes. In total, PlastiQ issued \$9.1 million of Convertible Promissory Notes to new and existing investors in November and December 2022.

The Debtors spent months preparing their businesses for the de-SPAC transaction. In late 2022, however, it was determined that the de-SPAC transaction was not viable. In an attempt to address the viability of the de-SPAC transaction, the Debtors worked to optimize their business.

In December, 2022, the Debtors informed the Prepetition Lenders of a default under the Prepetition Term Loan Agreement for a failure to maintain a minimum cash balance. On December 28, 2022, the Prepetition Lenders and the Borrowers entered into a waiver agreement, waiving this default. However, on January 5, 2023, the Prepetition Lenders informed the Debtors of certain additional alleged defaults under the Prepetition Term Loan Agreement. In an attempt to improve their cash position and increase liquidity, the Debtors conducted a small reduction in force of approximately 15 independent contractors and terminated certain unfavorable vendor agreements and contracts. Unfortunately, these efforts were not sufficient to resolve their liquidity issues.

On February 1, 2023, Colonnade delivered a letter to the Debtors alleging certain breaches of the Colonnade Agreement and threatening litigation. With the Colonnade Agreement unlikely to close, the Debtors pivoted for a second time to a traditional sale process. However, with limited cash on hand, the Debtors were forced into cash-preservation mode. To that end, they conducted a second and more significant reduction in force of approximately 85 employees and contractors, reducing their workforce to approximately 128 employees.

*(b) The Collapse of Silicon Valley Bank*

As set forth more fully in the Cash Management Motion (as defined below), many of the Debtors' operating bank accounts are held at Silicon Valley Bank ("**SVB**"). Prior to its shutdown, the Debtors relied upon SVB's money transmitter license to operate their businesses in the majority of states in which they operate.

On March 8, 2023, SVB announced a \$1.8 billion loss on the sale of securities, including U.S. Treasury and mortgage bonds, which significantly depreciated in value over the previous year

due to an aggressive series of interest rate hikes at the Federal Reserve. The following day, SVB's stock fell 60% in response to investor concern regarding the bank's distressed financial position, and account holders began to withdrawal funds. By March 10, 2023, the rapid withdrawal of funds gained momentum, with approximately \$42 billion withdrawn in a single day, putting SVB on the verge of collapse as it could not generate sufficient cash to meet the needs of depositors. That same day, the California Department of Financial Protection and Innovation shut down SVB and placed it into receivership with the Federal Deposit Insurance Company. All accounts, including the accounts of Plastiq, were frozen. While the accounts were unfrozen the following week and bank operations were subsequently stabilized, Plastiq was unable to operate its businesses during the shutdown.

The Debtors worked quickly to find a solution, and, on March 21, 2023, entered into that certain Passport Master Services Agreement with Priority Technology Holdings, Inc. ("**Priority**"). Priority operates a technology platform which allows its customers, such as Plastiq, to process credit and debit card transactions and business-to-business payments. This allowed Plastiq to eliminate its reliance on SVB's money transmitter license, which was essential given the uncertainty in the wake of the SVB shutdown.

(c) ***Despite Significant and Prolonged Efforts, the Debtors Were Unable to Successfully Restructure Out of Court***

As the Debtors' liquidity challenges persisted, the Debtors' Board of Directors (the "**Board**") began to increasingly consider the need for the Debtors to restructure or otherwise receive a cash infusion to ensure that Plastiq could move forward as a viable business. In furtherance of the restructuring efforts, in January of 2023, the Debtors engaged Triple P RTS, LLC ("**Portage Point**") to provide a chief restructuring officer and other associated personnel, to assist the Debtors in exploring strategic alternatives to maximize value for the benefit of their stakeholders. On January 13, 2023, the Debtors appointed Vladimir Kasparov, a Managing Director at Portage Point, as CRO.

Recognizing the increasing need for Board independence and experienced restructuring professionals, in February of 2023, the Board created a special restructuring committee (the "**Special Committee**") to, among other things, independently evaluate the Debtors' capital structure, and consider, evaluate, and negotiate financing and strategic alternatives to address the Debtors' ongoing liquidity issues. To that end, the Board appointed Jill Frizzley and Matthew Kahn – seasoned restructuring professionals and independent fiduciaries – as independent directors and members of the Board, and appointed them to serve on the Special Committee.

Shortly after their retention, Portage Point began the process of implementing a formal marketing process for the sale of the Debtors' assets. As part of these efforts, Portage Point crafted detailed marketing materials and assembled related diligence information for a confidential electronic data room (the "**Data Room**") and a confidential information presentation (the "**CIM**") with the assistance of the Debtors and their other professional advisors. The Debtors and their advisors contacted approximately 14 prospective buyers. Thereafter, 7 parties executed non-disclosure agreements (each, an "**NDA**"). Parties who executed an NDA were provided with access to the Data Room, which contained diligence information about the Debtors and their assets

and the CIM. Portage Point responded to various inquiries and, together with the Debtors' management team, conducted virtual and in-person meetings with several of the potential buyers who executed NDAs in order to offer them the opportunity to ask questions about the Assets and the Debtors' operations. During this time period, the Debtors and their advisors began negotiating a potential stalking horse bid from Blue Torch which would potentially be effectuated through a chapter 11 proceeding.

On March 9, 2023, the Debtors received a non-binding letter of intent (the "**LOI**") from Priority to pursue a potential out-of-court merger transaction. The Prepetition Lenders extended the Forbearance Agreement multiple times to allow the Debtors to explore the potential transaction contemplated by the LOI. Over the following two weeks, the Debtors, the Prepetition Lenders, and Priority negotiated the terms and conditions of the LOI. On March 27, 2023, the Debtors received a second non-binding letter of intent from a new potential bidder. Following evaluation of this new letter of intent and the LOI by the Debtors, their advisors, and Blue Torch, on March 28, 2023, the LOI with Priority was executed by the necessary parties. The LOI contained certain customary provisions for a merger transaction, including a diligence period of fifteen (15) business days and an exclusivity provision for the duration of the diligence period.

During the diligence period, the Debtors continued to streamline their business operations, canceling certain unprofitable partnerships, contracts, and other relationships. On April 4, 2023, the Debtors conducted a further reduction in force, terminating approximately 40 employees. The Debtors' current employee base consists of approximately 45 full time employees, one hourly employee, and four independent contractors, which is considered the bare minimum to operate their businesses.

On April 22, 2023, after being informed by Priority that it no longer was willing to consummate the proposed transaction outside of a chapter 11 process and that it had not completed its due diligence, the Debtors, after consultation with the Prepetition Secured Parties, terminated the LOI.

(d) ***The Board Determined that, Given the Debtors' Lack of Liquidity and Increasing Vendor Pressure, the Only Viable Path Forward to Preserve the Value of the Debtors' Business and Assets Was a Chapter 11 Filing***

After carefully considering, among other things, the Debtors' cash position, feedback received through the prepetition marketing process and the LOI diligence, the increasing pressure from the Debtors' vendor base, threatened litigation related to the Colonnade Agreement, and the recommendation of the Special Committee, the members of the Board determined that the only viable path to preserving and maximizing the value of the Debtors' assets was to commence these Chapter 11 Cases. Around the same time, the Board determined that it was in the Debtors' best interest to sell some or substantially all of their assets through a Court-approved marketing and sale process (the "**Sale Process**").

On May 23, 2023, the Debtors and the Stalking Horse Bidder agreed on the terms of a stalking horse bid, and executed the Stalking Horse Agreement. The Stalking Horse Agreement provides that the Stalking Horse Bidder will provide the following consideration to acquire

substantially all of Debtors' Assets, in addition to the assumption by Stalking Horse Bidder of certain assumed liabilities:

- i. a cash payment to the Debtors equal to \$27.5 million;
- ii. pay to Blue Torch the consideration as described in the Exchange Agreement Terms attached to the Stalking Horse Agreement as Exhibit A, in accordance with the terms and conditions of the Exchange Agreement; and
- iii. pay to Colonnade the consideration as described in the Letter Agreement Terms attached so the Stalking Horse Agreement as Exhibit B, in accordance with the terms and conditions of the Letter Agreement.

The Stalking Horse Agreement served as the baseline for all prospective bidders to negotiate from and be subject to higher or otherwise better bids for the Assets in accordance with the Bidding Procedures. The Debtors' entry into the Stalking Horse Agreement, together with the liquidity provided under the DIP Facility (as defined below) and consensual use of cash collateral, permitted the Debtors to conduct a value-maximizing Sale Process that was backstopped by the Stalking Horse Bidder.

### **3.3 The Chapter 11 Cases**

#### **(a) *Generally***

On the Petition Date, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. The commencement of a chapter 11 case creates an estate that is composed of all of the legal and equitable interests of the debtor as of that date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession." Prior to the closing of the Sale, the Debtors operated their businesses and managed their properties as debtors and debtors in possession. By Order entered on May 25, 2023, the Chapter 11 Cases are being jointly administered for procedural purposes only. No trustee or examiner has been appointed in the Chapter 11 Cases. On June 7, 2023, the Office of the United States Trustee for the District of Delaware appointed the Committee.

The filing of the Debtors' bankruptcy petitions on the Petition Date triggered the immediate imposition of the automatic stay under Bankruptcy Code section 362, which, with limited exceptions, enjoins all collection efforts and actions by creditors, the enforcement of liens against property of the Debtors and both the commencement and the continuation of prepetition litigation against the Debtors. With certain limited exceptions and/or modifications as permitted by order of the Bankruptcy Court, the automatic stay will remain in effect from the Petition Date until the Effective Date of the Plan.

#### **(b) *"First Day" Motions and Related Applications***

Commencing on the Petition Date, the Debtors filed the following "first-day" motions and applications designed to ease the Debtors' transition into chapter 11, maximize the value of the

Assets, and minimize the effects of the commencement of the Chapter 11 Cases (collectively, the “**First Day Motions**”):

- i. *Debtors’ Motion for an Order, Pursuant to Bankruptcy Rule 1015 and Local Rule 1015-1, Authorizing the Joint Administration of the Debtors’ Chapter 11 Cases [D.I. 3] (“**Joint Administration Motion**”).*
- ii. *Debtors’ Application for the Retention and Appointment of Kurtzman Carson Consultants LLC as Claims and Noticing Agent, Effective as of Petition Date [D.I. 4] (“**Claims Agent Retention Motion**”).*
- iii. *Debtors’ Motion for Interim and Final Orders, Pursuant to Sections 105(a), 363, and 364 of the Bankruptcy Code, (I) Authorizing Payment of Prepetition Obligations Incurred in the Ordinary Course of Business in Connection with Insurance Programs and Bonding Program, Including Payment of Policy Premiums, Costs, and Broker Fees; (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto, (III) Authorizing Maintenance of Postpetition Insurance Coverage and Bonding Program, and (IV) Scheduling a Final Hearing [D.I. 5] (“**Insurance Motion**”).*
- iv. *Debtors’ Motion for Interim and Final Orders, Pursuant to Sections 105(a), 363(b), 507(a)(8), 541, 1107(a), and 1108 of the Bankruptcy Code, (A) Authorizing the Debtors to Pay Certain Prepetition Taxes and Fees and Related Obligations, (B) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto, and (C) Scheduling a Final Hearing [D.I. 6] (“**Taxes Motion**”).*
- v. *Debtors’ Motion for Entry of Interim and Final Orders (A) Authorizing the Debtors to Maintain and Honor Certain Prepetition Customer Programs, (B) Authorizing Banks to Honor and Process Check and Electronic Transfer requests Related Thereto, and (C) Granting Related Relief [D.I. 7] (“**Customer Programs Motion**”).*
- vi. *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Claims of Critical Vendors and Service Providers; (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto; and (III) Granting Related Relief [D.I. 8] (“**Critical Vendors Motion**”).*
- vii. *Debtors’ Motion for Entry of Interim and Final Orders, Pursuant to Sections 105(a), 363(b), 507(a)(4), and 507(a)(5) of the Bankruptcy Code, (A) Authorizing (I) Payment of Prepetition Employee Wages, Salaries, Commissions, and Other Compensation; (II) Payment of Prepetition Employee Business Expenses; (III) Contributions to Prepetition Employee Benefit Programs and Continuation of Such Programs in the Ordinary Course; (IV) Payment of Severance Obligations; (V) Payment of Workers’ Compensation Obligations; (VI) Payment for Which Prepetition Payroll Deductions Were Made; (VII) Payment of All Costs and Expenses Incident to the Foregoing Payments and Contributions; and (VIII) Payment to Third*

*Parties of All Amounts Incident to the Foregoing Payments and Contributions; and (B) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto [D.I. 9] (“**Wage Motion**”).*

- viii. *Debtors’ Motion for Interim and Final Orders, Pursuant to Sections 105(a), 345, 363, 1107(a), and 1108 of the Bankruptcy Code, Bankruptcy Rule 2015, and Local Rule 2015-2, (A) Authorizing and Approving Continued Use of Cash Management System, (B) Approving the Payment of the FBO Account Fees (C) Authorizing Use of Prepetition Bank Accounts and Business Forms, (D) Waiving the Requirements of Section 345(b) on an Interim Basis, and (E) Granting Certain Related Relief [D.I. 10] (“**Cash Management Motion**”).*
- ix. *Debtors’ Motion For Entry Of Interim And Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing, (II) Authorizing Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief [D.I. 11] (the “**DIP Motion**”).*

On May 25, 2023, the Bankruptcy Court entered Orders (i) approving the relief requested in the Joint Administration Motion [D.I. 34], the Claims Agent Retention Application [D.I. 35] on a final basis, and (ii) approving the relief requested in the DIP Motion [D.I. 38], the Insurance Motion [D.I. 39], the Taxes Motion [D.I. 40], the Customer Programs Motion [D.I. 41], the Critical Vendors Motion [D.I. 42], the Wages Motion [D.I. 43], and the Cash Management Motion [D.I. 44] on an interim basis.

On June 19, 2023, the Bankruptcy Court entered Orders approving, on a final basis, the relief requested in the Wages Motion [D.I. 101], the Insurance Motion [D.I. 97], the Taxes Motion [D.I. 98], the Customer Programs Motion [D.I. 99], the Critical Vendors Motion [D.I. 100], and the Cash Management Motion [D.I. 102]. On June 22, 2023, the Bankruptcy Court entered the Final DIP Order.

Pursuant to the Final DIP Order, the Prepetition Secured Parties and the DIP Secured Parties maintain a properly perfected, first priority security interest in substantially all of the Debtors’ assets. That security interest is, as of the date of filing of this Plan, only subject to Challenge (as defined in the Final DIP Order) until the expiration of the Challenge Period (as defined in the Final DIP Order). Once the Challenge Period (as defined in the Final DIP Order) expires, the Prepetition Secured Parties shall have a first priority security interest in all Assets of the Debtors and the Estates, and any proceeds of the Sale constitute the Prepetition Lenders’ collateral.

*(c) Retention of Professional Advisors*

In the wake of their liquidity constraints and operational challenges, as set forth in further detail above, the Board began to increasingly consider the need for the Debtors to restructure or otherwise receive a cash infusion to ensure that the Debtors could move forward as a viable business. In January 2023, the Debtors engaged Portage Point, as restructuring advisor, and in



February 2023, the Debtors engaged Young Conaway Stargatt & Taylor, LLP, as restructuring counsel, and appointed Jill Frizzley and Matthew Kahn – seasoned restructuring professionals and independent fiduciaries – as independent directors and members of the Board, and appointed them to serve on the Special Committee.

Pursuant to Orders entered on June 6, 2023, the Bankruptcy Court authorized the Debtors to retain and employ (i) Young Conaway Stargatt & Taylor, LLP as their bankruptcy counsel [D.I. 107]; (ii) Portage Point, to provide the Debtors with certain management positions, and specifically Vladimir Kasparov as Chief Restructuring Officer, and Scott Canna as Deputy Chief Restructuring Officer [D.I. 112]; and (iii) Kurtzman Carson Consultants LLC as administrative advisor [D.I. 108]. The Bankruptcy Court also authorized the Debtors to retain and employ certain professionals utilized by the Debtors in the ordinary course of business prior to the Petition Date [D.I. 111].

Pursuant to Orders entered on July 24, 2023, the Bankruptcy Court authorized the Committee to retain and employ (i) DLA Piper LLP (US) as its legal counsel, and (ii) Dundon Advisors, LLC as its financial advisors.

(d) ***The Sale***

i. The Prepetition Sale Process

As part of the consideration of potential strategic alternatives, in February 2023, Portage Point, with assistance from management, undertook a targeted marketing effort and began soliciting indications of interest for the sale of the Debtors' assets. In particular, Portage Point crafted detailed marketing materials and assembled related diligence information for a Data Room and a CIM with the assistance of the Debtors and their other professional advisors.

Parties who executed an NDA were provided the CIM and access to the Data Room, which contained diligence information about the Debtors and their assets. Portage Point responded to various inquiries and, together with the Debtors' management team, conducted virtual and in-person meetings with several of the potential buyers who executed NDAs in order to offer them the opportunity to ask questions about the Assets and the Debtors' operations.

While the marketing process was paused during the term of the LOI as a result of the exclusivity provisions therein, on April 24, 2023, the Debtors re-initiated their marketing efforts. As of the Petition Date, the Debtors, with the assistance of Portage Point, had contacted approximately 101 strategic buyers and 79 financial buyers. Of these, approximately 12 strategic buyers and 20 financial buyers had signed NDAs.

ii. The Postpetition Sale Process

As set forth in the First Day Declaration, the Debtors' paramount goal in the Chapter 11 Cases is to maximize the value of the estates for the benefit of the Debtors' creditor constituencies and other stakeholders through the sale of substantially all of the Assets. On the Petition Date, the Debtors filed a motion (the "**Bidding Procedures Motion**") seeking authority to proceed with a bidding and auction process to consummate the Sale through the Sale Process that the Debtors expect will generate maximum value for their assets. To facilitate the Sale Process, the Debtors,

in consultation with Stephens and their other professional advisors, proposed certain customary bidding procedures (the “**Bidding Procedures**”) to preserve flexibility in the Sale Process, generate the greatest level of interest in the Debtors’ assets, and result in the highest or otherwise best value for those assets. Given the Debtors’ liquidity situation at the outset of the Chapter 11 Cases, the Debtors believed that a timely sale of their assets would maximize value to the greatest extent possible under the circumstances of these Chapter 11 Cases, and generate the highest possible recoveries in the most efficient and expeditious manner possible, which will inure to the benefit of the Debtors’ creditors and other stakeholders. The Debtors also believed that it would ensure, to the benefit of their estates, that the market has certainty around the parameters of the Sale Process.

As set forth in the Bidding Procedures Motion, the Debtors, in consultation with Portage Point and their other professional advisors worked extensively to implement a robust and expeditious Sale Process. On June 21, 2023, the Bankruptcy Court entered the Bidding Procedures Order, approving the Bidding Procedures and establishing, among other things, July 20, 2023, as the bid deadline, July 25, 2023, as the auction date, and July 27, 2023, as the hearing to approve the Sale.

Understanding that time was of the essence, upon the Petition Date, Portage Point commenced the postpetition marketing process for the Assets by engaging or reengaging with 202 prospective buyers, including various parties that had been contacted prior to the Petition Date, regarding the Assets and the Sale. Portage Point prepared and circulated marketing materials, which included a presentation detailing the Assets and the Sale Process, as well as, among other things, process letters, communications and information about these cases and an NDA. For those 45 parties that executed an NDA, Portage Point provided them with the CIM, provided access to the Data Room, and provided all potential parties in interest with access to the management team, if desired.

Throughout the Sale Process, Portage Point supplemented its outreach efforts by sending periodic emails and/or calls to all interested parties with updates on the process, additions to the Data Room, and other supplemental information as the Chapter 11 Cases progressed (including re-engaging with all potential parties in interest after the bid procedures hearing and sending an updated process letter reflecting the additional time available to submit binding bids, among other things). Portage Point spent considerable time, energy, and resources engaging with potential bidders and other parties.

Notwithstanding the foregoing marketing efforts, the Debtors did not receive any bids, other than the Stalking Horse Agreement. Accordingly, the Debtors, after consultation with their advisors and in their business judgment, determined that the Stalking Horse Agreement was the highest and best bid.

On July 31, 2023, the Bankruptcy Court entered the Sale Order approving the Sale to the Stalking Horse Bidder.

(e) *Schedules and Bar Dates*

On June 21, 2023, the Bankruptcy Court entered the Bar Date Order, granting the relief requested in the Bar Date Motion [D.I. 109]. The Bar Date established the General Bar Date as July 26, 2023 at 5:00 p.m. (prevailing Eastern Time).

On June 21, 2023, the Debtors filed the Schedules. Among other things, the Schedules set forth the Claims of known or putative creditors against the Debtors as of the Petition Date, based upon the Debtors' books and records.

On July 31, 2023, the Bankruptcy Court entered the Solicitation Procedures Order that, among other things, established the Initial Administrative Claim Bar Date as September 1, 2023 at 4:00 p.m. (prevailing Eastern Time). As described in detail below, the Plan contemplates the establishment of a Final Administrative Claim Bar Date and Professional Fee Bar Date pursuant to the Confirmation Order.

The projected recoveries set forth herein are based on certain assumptions, including the Debtors' estimates of the Claims that will eventually be Allowed in various Classes. There is no guarantee that the ultimate amount of each of such categories of Claims will correspond to the Debtors' estimates. The Debtors or the Litigation Trustee, as applicable, and their professionals will investigate Claims filed against the Debtors to determine the validity of such Claims. The Debtors or the Litigation Trustee, as applicable, may file objections to Claims that are filed in improper amounts or classifications, or are otherwise subject to objection under the Bankruptcy Code or other applicable law.

(f) *The Global Settlement*

Immediately following the appointment of the Committee, the Debtors produced various documents to the Committee on a consensual basis, and the Committee, the DIP Lenders, and the Debtors engaged in a thorough discussion of the Committee's issues related to the Final DIP Order and the Sale Process. On June 15, 2023, the Committee filed the *Omnibus Objection of the Official Committee of Unsecured Creditors to Approval of Bidding Procedures and Entry of Final Order Approving Postpetition Financing* [D.I. 79] (the "**Committee Objection**").

Notwithstanding the filing of the Committee Objection, the Debtors, the Committee, and the DIP Lenders continued to engage in extensive, detailed good faith and arm's-length negotiations to resolve the Committee Objection, and formulate the terms of a consensual chapter 11 plan. Shortly before the June 23, 2023 hearing, the Debtors, the DIP Lenders, and the Committee finalized those discussions and agreed to the terms of the Global Settlement, the terms were incorporated and approved through the Final DIP Order. As provided in Section 5.29 of the Final DIP Order, the terms of the Global Settlement are as follows:

- (A) First, the Debtors and the Committee will agree to the Wind-Down Budget (as defined in the Final DIP Order) that the Debtors and Committee reasonably believe will be sufficient to propose and seek confirmation of this Plan that provides for the creation of the Litigation Trust for the benefit of General Unsecured Creditors and an effective date distribution to allowed claims of general unsecured creditors (the

**“Effective Date Distribution”**). The Wind-Down Budget and Effective Date Distribution shall be funded by (i) withdrawals under the DIP Loan Agreement in accordance with the Approved Budget, (ii) funds allocated to the Debtors pursuant clauses (c), (d) and/or (e) of Section 5.29 of the Final DIP Order, and (iii) amounts available pursuant to clause (b) of Section 5.29 of the Final DIP Order (but solely for the purpose of paying the Debtors’ professional fees and expenses).

- (B) Second, the Debtors’ professional fees and expenses included in the Wind-Down Budget shall be funded by unused retainers held by the Debtors’ professionals. For the avoidance of doubt, fees and expenses incurred by the Committee’s professionals shall be paid from the unused portion of the Carve-Out Reserve (as defined in the Final DIP Order) established for the benefit of the Committee’s professionals. Notwithstanding the foregoing, to the extent the unused retainers (in the case of the Debtors’ professionals) or the unused portion of the Carve-Out Reserve (in the case of the Committee’s professionals) is insufficient to pay fees and expenses incurred, both the Debtors’ professionals and the Committee’s professionals reserve the right to seek payment from amounts otherwise available to the Debtors under Section 5.29 of the Final DIP Order.
- (C) Third, with respect to the \$1,000,000 deposit refunded by American Express, the following allocation was approved: \$734,000 shall be retained by the Debtors’ estates and \$266,000 will be paid to Blue Torch.
- (D) Fourth, if the \$2,000,000 cash payment and common stock distribution or any portion thereof (collectively, the **“Colonnade Disbursement”**) currently proposed to be paid to Colonnade under the Stalking Horse Agreement (as defined in the Bidding Procedures Order) is re-allocated to the Debtors’ estate in connection with a sale to the Stalking Horse Bidder (as defined in the Bidding Procedures Order), which re-allocation may be agreed to between Colonnade and the Committee or ordered by the Bankruptcy Court at any time prior to or at the sale hearing, then the Committee and Blue Torch agree that: (i) \$750,000 cash (or 37.5%) and 50% of such common stock will be paid to Blue Torch, (ii) \$1,000,000 cash (or 50%) and 50% of such common stock will be utilized to fund the Effective Date Distribution, and (iii) \$250,000 (or 12.5%) cash will be utilized to fund expenses of the Litigation Trust. To the extent the amount of the Colonnade Disbursement re-allocated to the Debtors is less than the full amount thereof, then the amount so re-allocated shall be distributed/applied *pro rata* to Blue Torch, the Effective Date Distribution and the Litigation Trust in accordance with the foregoing.
- (E) Fifth, if a competing bid is submitted that is determined by the Debtors, in consultation with Blue Torch and the Committee, to be a higher and better bid than the Stalking Horse Agreement, then the first \$2,000,000 of the value of such competing bid that exceeds the value of the Stalking Horse Agreement (as agreed among the Committee, Debtors and Blue Torch or, if such agreement cannot be reached, as determined by further order of the Bankruptcy Court), after giving effect to the Expense Reimbursement and Break Up Fee (each as defined in the Bidding Procedures Order), shall be allocated as follows: (i) \$750,000 cash (or 37.5%) and 50% of any stock shall be paid to Blue Torch, (ii) \$1,000,000 cash (or 50%) and 50% of any stock shall be utilized to fund the Effective Date Distribution,

and (iii) \$250,000 cash (or 12.5%) will be utilized to fund expenses of the Litigation Trust. To the extent to amount of competing offer does not result in a full \$2,000,000 of cash being available for distribution pursuant to this clause (e), then the amount available shall be distributed/applied *pro rata* to Blue Torch, the Effective Date Distribution and the Litigation Trust in accordance with the foregoing. For the avoidance of doubt, if the value of the competing bid (which for purposes of this section shall include any increased bid by the Stalking Horse Bidder) exceeds the amounts necessary to satisfy the \$2,000,000 allocation pursuant to this clause (e) the excess shall be paid to Blue Torch until such value satisfies the allowed claims of the DIP Secured Parties and Prepetition Secured Parties in full.

- (F) Sixth, the Committee and the Debtors agree that the Sale Cash Consideration shall, subject to the terms of clause (e) of Section 5.29 of the Final DIP Order, be paid to Blue Torch. Upon Blue Torch's receipt of the Sale Consideration, as more fully set forth in clauses (c), (d), (e) and (f) of Section 5.29 of the Final DIP Order, the allowed claims of the DIP Secured Parties and the Prepetition Secured Parties shall be deemed satisfied, and Blue Torch, on behalf of itself and the other DIP Secured Parties and Prepetition Secured Parties, shall (x) be deemed to have waived any deficiency claim and will not receive any further distributions under the Plan or from the Litigation Trust, and (y) will release all DIP Liens, Prepetition Liens and Prepetition Adequate Protection Liens.
- (G) Seventh, upon confirmation of a Plan, all estate causes of action shall be assigned to the Litigation Trust, other than: (i) claims against counterparties with continuing contracts that are assigned to a purchaser under the sale, (ii) preference actions against trade creditors that are sold to a purchaser under the Sale following consultation with the Committee, (iii) claims against the debtors' directors and officers and other claims to the extent such claims are released by the plan, and (iv) claims against Blue Torch, the Prepetition Secured Parties and the DIP Secured Parties. For the avoidance of doubt, claims against Blue Torch, the Prepetition Secured Parties and the DIP Secured Parties are being released upon entry of this Final Order as provided in Section 5.17 of the Final DIP Order.
- (H) Eighth, the Committee's objections to waivers of the estates' rights under sections 506(c) and 552(b) of the Bankruptcy Code and with respect to marshalling are deemed withdrawn, and the Committee waives the right to pursue a Challenge with respect to Blue Torch, the Prepetition Secured Parties and the DIP Secured Parties and their pre- and post-petition liens and claims. Furthermore, the Committee and the Debtors each agree that they will not, directly or indirectly, support any party in interest in, or encourage or solicit any party in interest to, pursue any Challenge with respect to Blue Torch, the Prepetition Secured Parties or the DIP Secured Parties. The Debtors hereby agree that they will oppose any request or any party in interest seeking standing to pursue a Challenge.
- (I) Ninth, all parties' rights are reserved with respect to issues raised in the Committee Objection related to the proposed Colonnade Disbursements and the proposed Bid Protections, each as more fully set forth in the Bidding Procedures Order.

In the Debtors' judgment—with which the Committee and the DIP Lenders agreed—the Global Settlement was reasonable and in the best interest of the Debtors, their estates, creditors and all parties in interest, including the Holders of Allowed General Unsecured Claims. The Global Settlement was the product of good-faith and arm's-length negotiations between the parties. The Global Settlement settled potential costly litigation threatened by the Committee, including any Challenges and objections to this Plan. As a result of the Global Settlement, the General Unsecured Creditors will receive an assured recovery in Class 4 that would either be unlikely or the result of substantial, costly and time-consuming litigation, absent the Global Settlement. The Debtors reasonably determined that entry into the Global Settlement was in the best interests of the Estates and reflected a fair and reasonable compromise. Furthermore, the Committee and the DIP Lenders supported the Global Settlement.

(g) **Colonnade Settlement**

In connection with the Sale Hearing, the Committee filed the *Limited Objection of Official Committee of Unsecured Creditors to Approval of Sale of Debtors' Assets and Distribution of Sale Proceeds Under Stalking Horse Bid* [D.I. 186] (the “**Committee Objection**”). The Committee Objection, which challenged the making of the Colonnade Disbursement to Colonnade under the Stalking Horse Agreement, was resolved at the Sale Hearing. The resulting settlement (the “**Colonnade Settlement**”), which was set forth on the record at the Sale Hearing, included in the Sale Order, and deemed approved and effective as of the entry of the Sale Order, without objection, provided as follows:

- (a) If, as, and when Colonnade receives from PlastiQ, Powered by Priority, LLC, the Successful Bidder, the initial payment of \$1,000,000 at the closing of the Sale in accordance with the terms of the Letter Agreement (as defined in the Successful Bidder Agreement), Colonnade shall promptly make a cash payment to the Debtors' Estates in the amount of 30% of such \$1,000,000 cash payment actually received from the Successful Bidder (the “**Colonnade Settlement Payment**”), for ratable distribution in accordance with the Final DIP Order and the Plan. No further sums or other forms of consideration, including, but not limited to, any rights or claims in or related to any membership interests or membership units of PlastiQ, Powered by Priority, LLC, will be paid from any of the Colonnade Released Parties (as defined below). Colonnade shall be granted an Allowed claim in the amount of \$9,000,000, which claim shall be classified as a General Unsecured Claim to share ratably with other holders of Allowed Unsecured Claims under the Plan.
- (b) Colonnade fully and forever releases and discharges the Debtors, including their affiliates, subsidiaries, officers, directors, shareholders, agents, attorneys, advisors, and employees, past and present (collectively, the “**Estate Released Parties**”), from any and all claims, demands, liens, agreements, contracts, covenants, suits, actions, causes of action, obligations, controversies, debts, costs, expenses, damages, judgements, orders and liabilities, of any kind and of every nature whatsoever, direct or indirect, whether known or unknown, or whether asserted or unasserted, which Colonnade now has against the

Purchased Assets (as defined in the Successful Bidder Agreement) or the Estate Released Parties.

- (c) Each of the Debtors, their Estates, and the Committee fully and forever release and discharge Colonnade, including its respective affiliates, subsidiaries, officers, directors, shareholders, agents, attorneys, advisors, and employees, past and present (collectively, the “**Colonnade Released Parties**”), from any and all claims, demands, liens, agreements, contracts, covenants, suits, actions, causes of action, obligations, controversies, debts, costs, expenses, damages, judgements, orders and liabilities, of any kind and of every nature whatsoever, direct or indirect, whether known or unknown, or whether asserted or unasserted, which the Debtors, their Estates, and/or the Committee now have against the Colonnade Released Parties.
- (d) As contemplated by the Global Settlement, 37.5% of the Colonnade Settlement Payment shall be paid by the Debtors to Blue Torch.
- (e) For the avoidance of doubt, except as expressly set forth in paragraph 28 of the Sale Order, nothing in paragraph 28 of the Sale Order shall alter, modify or affect any other term or provision of the Letter Agreement (as defined in the Successful Bidder Agreement) including (i) the rights and interests provided therein and (ii) the releases provided by Colonnade in favor of the Buyer Parties (as defined in the Letter Agreement).

(h) ***The Wind-down of the Estates***

Following the closing of the Sale, the Debtors will focus principally on efficiently winding down their businesses, preserving Cash held in the Estates, monetizing their remaining Assets and pursuing confirmation of this Plan. The remaining Assets are expected to consist of, among other things, the Litigation Trust Assets. This combined Disclosure Statement and Plan provides for the Assets, to the extent not already liquidated, to vest in the Litigation Trust and to be liquidated over time and the proceeds thereof to be distributed to Holders of Allowed Claims in accordance with the terms of the Plan and the treatment of Allowed Claims described more fully herein. The Litigation Trustee will effect such liquidation and distributions. The Debtors will be dissolved as soon as practicable after the Effective Date.

## **ARTICLE IV**

### **CONFIRMATION AND VOTING PROCEDURES**

**4.1 Confirmation Procedure.** The Solicitation Procedures Order, among other things, conditionally approves the combined Disclosure Statement and Plan for solicitation purposes only and authorizes the Debtors to solicit votes to accept or reject the Plan. The Confirmation Hearing has been scheduled for September 14, 2023 at 10:00 a.m. (prevailing Eastern Time) at the Bankruptcy Court, 824 North Market Street, 3rd Floor, Courtroom 7 Wilmington, Delaware 19801 to consider (a) final approval of the Disclosure Statement as providing adequate information pursuant to Bankruptcy Code section 1125 and (b) confirmation of the Plan pursuant to Bankruptcy Code section 1129. The Confirmation Hearing may be adjourned from time to time

by the Debtors without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing or by filing a notice with the Bankruptcy Court.

**4.2 Procedure for Objections.** Any objection to final approval of the combined Disclosure Statement and Plan as providing adequate information pursuant to Bankruptcy Code section 1125 or confirmation of the Plan must be made in writing and filed with the Bankruptcy Court and served on (a) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, (Attn: Michael R. Nestor, Esq. (mnestor@ycst.com), Matthew B. Lunn, Esq. (mlunn@ycst.com), Joseph M. Mulvihill, Esq. (jmulvihill@ycst.com), and Jared W. Kochenash, Esq. (jkochenash@ycst.com)); (b) the U.S. Trustee, 844 King Street, Suite 2207, Wilmington, DE, 19801, (Attn: Richard Schepacarter (Richard.Schepacarter@usdoj.gov)); (c) counsel to the DIP Lender, Schulte Roth & Zabel LLP, 919 Third Avenue, New York, NY 10022 (Attn: Adam Harris, Esq. (adam.harris@srz.com) and Reuben E. Dizengoff, Esq. (reuben.dizengoff@srz.com) and Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, DE 19801 (Attn: Matthew B. McGuire, Esq. (mcguire@lrclaw.com)); and (d) proposed counsel to the Committee, DLA Piper LLP (US), 1201 North Market Street, Suite 2100, Wilmington, Delaware 19801 (Attn: Dennis O'Donnell, Esq. (Dennis.ODonnell@us.dlapiper.com), Aaron Applebaum, Esq. (Aaron.Applebaum@us.dlapiper.com), and Nicole McLemore (Nicole.McLemore@us.dlapiper.com); in each case, by no later than September 1, 2023 at 4:00 p.m. (prevailing Eastern Time). Unless an objection is timely filed and served, it may not be considered by the Bankruptcy Court at the Confirmation Hearing.

**4.3 Requirements for Confirmation.** The Bankruptcy Court will confirm the Plan only if it meets all the applicable requirements of Bankruptcy Code section 1129. Among other requirements, the Plan (i) must be accepted by all Impaired Classes of Claims or Interests or, if rejected by an Impaired Class, the Plan must not “discriminate unfairly” against, and be “fair and equitable” with respect to, such Class; and (ii) must be feasible. The Bankruptcy Court must also find that: (i) the Plan has classified Claims and Interests in a permissible manner; (ii) the Plan complies with the technical requirements of chapter 11 of the Bankruptcy Code; and (iii) the Plan has been proposed in good faith.

#### **4.4 Classification of Claims and Interests**

Bankruptcy Code section 1123 provides that a plan must classify the claims and interests of a debtor's creditors and equity interest holders. In accordance with Bankruptcy Code section 1123, the Plan divides Claims and Interests into Classes and sets forth the treatment for each Class (other than those claims which pursuant to Bankruptcy Code section 1123(a)(1) need not be and have not been classified). The Debtors also are required, under Bankruptcy Code section 1122, to classify Claims and Interests into Classes that contain Claims or Interests that are substantially similar to the other Claims or Interests in such Class.

The Bankruptcy Code also requires that a plan provide the same treatment for each claim or interest of a particular class unless the claim holder or interest holder agrees to a less favorable treatment of its claim or interest. The Debtors believe that the Plan complies with such standard. If the Bankruptcy Court finds otherwise, however, it could deny confirmation of the Plan if the



holders of Claims or Interests affected do not consent to the treatment afforded them under the Plan.

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim also is placed in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, or otherwise settled prior to the Effective Date.

The Debtors believe that the Plan has classified all Claims and Interests in compliance with the provisions of Bankruptcy Code section 1122 and applicable case law. It is possible that a Holder of a Claim or Interest may challenge the Debtors' classification of Claims or Interests and that the Bankruptcy Court may find that a different classification is required for the Plan to be confirmed. If such a situation develops, the Debtors intend, in accordance with the terms of the Plan, to make such permissible modifications to the Plan as may be necessary to permit its confirmation. Any such reclassification could adversely affect holders of Claims by changing the composition of one or more Classes and the vote required of such Class or Classes for approval of the Plan.

**EXCEPT AS SET FORTH IN THE PLAN, UNLESS SUCH MODIFICATION OF CLASSIFICATION MATERIALLY ADVERSELY AFFECTS THE TREATMENT OF A HOLDER OF A CLAIM AND REQUIRES RE-SOLICITATION, ACCEPTANCE OF THE PLAN BY ANY HOLDER OF A CLAIM PURSUANT TO THIS SOLICITATION WILL BE DEEMED TO BE A CONSENT TO THE PLAN'S TREATMENT OF SUCH HOLDER OF A CLAIM REGARDLESS OF THE CLASS AS TO WHICH SUCH HOLDER ULTIMATELY IS DEEMED TO BE A MEMBER.**

The amount of any Impaired Claim that ultimately is Allowed by the Bankruptcy Court may vary from any estimated Allowed amount of such Claim and, accordingly, the total Claims that are ultimately Allowed by the Bankruptcy Court with respect to each Impaired Class of Claims may also vary from any estimates contained herein with respect to the aggregate Claims in any Impaired Class. Thus, the actual recovery ultimately received by a particular Holder of an Allowed Claim may be adversely or favorably affected by the aggregate amount of Claims Allowed in the applicable Class. Additionally, any changes to any of the assumptions underlying the estimated Allowed amounts could result in material adjustments to recovery estimates provided herein or the actual Distribution received by Creditors. The projected recoveries are based on information available to the Debtors as of the date hereof and reflect the Debtors' views as of the date hereof only.

The classification of Claims and Interests and the nature of distributions to members of each Class are summarized herein. The Debtors believe that the consideration, if any, provided under the Plan to holders of Claims reflects an appropriate resolution of their Claims taking into account the differing nature and priority (including applicable contractual subordination) of such Claims and Interests. The Bankruptcy Court must find, however, that a number of statutory tests are met before it may confirm the Plan. Many of these tests are designed to protect the interests of holders of Claims or Interests who are not entitled to vote on the Plan, or do not vote to accept

the Plan, but who will be bound by the provisions of the Plan if it is confirmed by the Bankruptcy Court.

#### **4.5 Unimpaired Claims and Impaired Claims or Interests**

Pursuant to the provisions of the Bankruptcy Code, only classes of claims or interests that are “impaired” (as defined in Bankruptcy Code section 1124) under a plan may vote to accept or reject such plan. Generally, a claim or interest is impaired under a plan if the holder’s legal, equitable, or contractual rights are changed under such plan. In addition, if the holders of claims or interests in an impaired class do not receive or retain any property under a plan on account of such claims or interests, such impaired class is deemed to have rejected such plan under Bankruptcy Code section 1126(g) and, therefore, such holders are not entitled to vote on such plan.

Under the Plan, Holders of Claims in Class 3 and Class 4 are Impaired and are entitled to vote on the Plan. Under the Plan, Holders of Claims or Interests in Classes 5, 6 and 7 are Impaired and will not receive or retain any property under the Plan on account of such Claims or Interests and, therefore, are not entitled to vote on the Plan and deemed to reject the Plan.

Under the Plan, Holders of Claims in Classes 1 and 2 are Unimpaired and, therefore, not entitled to vote on the Plan and are deemed to accept the Plan.

**ACCORDINGLY, A BALLOT FOR ACCEPTANCE OR REJECTION OF THE PLAN IS BEING PROVIDED ONLY TO HOLDERS OF CLAIMS IN CLASS 3 AND 4.**

#### **4.6 Confirmation Without Necessary Acceptances; Cramdown**

In the event that any impaired class of claims or interests does not accept a plan, a debtor nevertheless may move for confirmation of the plan. A plan may be confirmed, even if it is not accepted by all impaired classes, if the plan has been accepted by at least one impaired class of claims, and the plan meets the “cramdown” requirements set forth in Bankruptcy Code section 1129(b). Bankruptcy Code section 1129(b) requires that a court find that a plan (a) “does not discriminate unfairly” and (b) is “fair and equitable,” with respect to each non-accepting impaired class of claims or interests. Here, because Holders of Claims and Interests in Classes 5, 6, and 7 are deemed to reject the Plan, the Debtors will seek confirmation of the Plan from the Bankruptcy Court by satisfying the “cramdown” requirements set forth in Bankruptcy Code section 1129(b). The Debtors believe that such requirements are satisfied, as no Holder of a Claim or Interest junior to those in Classes 5, 6, or 7 are entitled to receive any property under the Plan.

A plan does not “discriminate unfairly” if (a) the legal rights of a nonaccepting class are treated in a manner that is consistent with the treatment of other classes whose legal rights are similar to those of the nonaccepting class and (b) no class receives payments in excess of that which it is legally entitled to receive for its claims or interests. The Debtors believe that, under the Plan, all Impaired Classes of Claims or Interests are treated in a manner that is consistent with the treatment of other Classes of Claims or Interests that are similarly situated, if any, and no Class of Claims or Interests will receive payments or property with an aggregate value greater than the aggregate value of the Allowed Claims or Allowed Interests in such Class. Accordingly, the

Debtors believe that the Plan does not discriminate unfairly as to any Impaired Class of Claims or Interests.

The Bankruptcy Code provides a nonexclusive definition of the phrase “fair and equitable.” To determine whether a plan is “fair and equitable,” the Bankruptcy Code establishes “cramdown” tests for secured creditors, unsecured creditors and equity holders, as follows:

- (a) Secured Creditors. Either (i) each impaired secured creditor retains its liens securing its secured claim and receives on account of its secured claim deferred Cash payments having a present value equal to the amount of its allowed secured claim, (ii) each impaired secured creditor realizes the “indubitable equivalent” of its allowed secured claim or (iii) the property securing the claim is sold free and clear of liens with such liens to attach to the proceeds of the sale and the treatment of such liens on proceeds to be as provided in clause (i) or (ii) above.
- (b) Unsecured Creditors. Either (i) each impaired unsecured creditor receives or retains under the plan property of a value equal to the amount of its allowed claim or (ii) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the plan.
- (c) Interests. Either (i) each holder of an equity interest will receive or retain under the plan property of a value equal to the greatest of the fixed liquidation preference to which such holder is entitled, the fixed redemption price to which such holder is entitled or the value of the interest or (ii) the holder of an interest that is junior to the nonaccepting class will not receive or retain any property under the plan.

As discussed above, the Debtors believe that the distributions provided under the Plan satisfy the absolute priority rule, where required.

#### **4.7 Feasibility**

Bankruptcy Code section 1129(a)(11) requires that confirmation of a plan not be likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or any successor to the Debtors (unless such liquidation or reorganization is proposed in the Plan). Inasmuch as the Assets have been, or will be, liquidated and the Plan provides for the Distribution of all of the Cash proceeds of the Assets to Holders of Claims that are Allowed in accordance with the Plan, for purposes of this test, the Debtors have analyzed the ability of the Litigation Trustee to meet its obligations under the Plan. Based on the Debtors’ analysis, the Litigation Trustee will have sufficient assets to accomplish its tasks under the Plan. Therefore, the Debtors believe that the liquidation pursuant to the Plan will meet the feasibility requirements of the Bankruptcy Code.

#### **4.8 Best Interests Test and Liquidation Analysis**

Even if a plan is accepted by the holders of each class of claims and interests, the Bankruptcy Code requires the Bankruptcy Court to determine that such plan is in the best interests of all holders of claims or interests that are impaired by that plan and that have not accepted the plan. The “best interests” test, as set forth in Bankruptcy Code section 1129(a)(7), requires a court to find either that all members of an impaired class of claims or interests have accepted the plan or

that the plan will provide a member who has not accepted the plan with a recovery of property of a value, as of the effective date of the plan, that is not less than the amount that such holder would recover if the debtor were liquidated under chapter 7 of the Bankruptcy Code. A liquidation analysis is attached hereto as **Exhibit B**.

To calculate the probable distribution to holders of each impaired class of claims and interests if the debtor was liquidated under chapter 7, a court must first determine the aggregate dollar amount that would be generated from a debtor's assets if its chapter 11 cases were converted to cases under chapter 7 of the Bankruptcy Code. To determine if a plan is in the best interests of each impaired class, the present value of the distributions from the proceeds of a liquidation of the debtor's unencumbered assets and properties, after subtracting the amounts attributable to the costs, expenses and administrative claims associated with a chapter 7 liquidation, must be compared with the value offered to such impaired classes under the plan. If the hypothetical liquidation distribution to holders of claims or interests in any impaired class is greater than the distributions to be received by such parties under the plan, then such plan is not in the best interests of the holders of claims or interests in such impaired class.

Because the Plan is a liquidating plan, the "liquidation value" in the hypothetical chapter 7 liquidation analysis for purposes of the "best interests" test is substantially similar to the estimates of the results of the chapter 11 liquidation contemplated by the Plan. However, the Debtors believe that in a chapter 7 liquidation, (i) Holders of General Unsecured Claims may not receive the value greater than the value being provided under this Plan, and (ii) there would be additional costs and expenses that the Estates would incur as a result of liquidating the Estates in a chapter 7 case.

The costs of liquidation under chapter 7 of the Bankruptcy Code would include the compensation of a trustee, as well as the costs of counsel and other professionals retained by the trustee. The Debtors believe such amount would exceed the amount of expenses that would be incurred in implementing the Plan and winding up the affairs of the Debtors. Conversion also would likely delay the liquidation process and ultimate distribution of the Assets. The Estates would also be obligated to pay all unpaid expenses incurred by the Debtors during the Chapter 11 Cases (such as compensation for Professionals) that are allowed in the chapter 7 cases.

Accordingly, the Debtors believe that Holders of Allowed Claims would receive less than anticipated under the Plan if the Chapter 11 Cases were converted to chapter 7 cases, and therefore, the classification and treatment of Claims and Interests in the Plan complies with Bankruptcy Code section 1129(a)(7).

#### **4.9 Acceptance of the Plan**

The rules and procedures governing eligibility to vote on the Plan, solicitation of votes, and submission of ballots are set forth in the Solicitation Procedures Order.

For the Plan to be accepted by an Impaired Class of Claims, a majority in number and two-thirds in dollar amount of the Claims voting in such Class must vote to accept the Plan. At least one Voting Class, excluding the votes of insiders, must actually vote to accept the Plan.

**IF YOU ARE ENTITLED TO VOTE ON THE PLAN, YOU ARE URGED TO COMPLETE, DATE, SIGN, AND PROMPTLY SUBMIT THE BALLOT YOU RECEIVE. PLEASE BE SURE TO COMPLETE ALL BALLOT ITEMS PROPERLY AND LEGIBLY. IF YOU ARE A HOLDER OF A CLAIM ENTITLED TO VOTE ON THE PLAN AND YOU DID NOT RECEIVE A BALLOT, YOU RECEIVED A DAMAGED BALLOT, OR YOU LOST YOUR BALLOT, OR IF YOU HAVE ANY QUESTIONS CONCERNING THE PLAN OR PROCEDURES FOR VOTING ON THE PLAN, PLEASE CONTACT THE SOLICITATION AND CLAIMS AGENT (I) BY TELEPHONE AT: (877) 634-7180 (U.S. AND CANADA), +1 (424) 236-7225 (OUTSIDE THE U.S.) OR (II) BY EMAIL AT: WWW.KCCLLC.NET/PLASTIQ/INQUIRY. THE SOLICITATION AND CLAIMS AGENT IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.**

**HOLDERS OF CLAIMS IN CLASS 4 WHO DO NOT WISH TO PROVIDE THE RELEASES SET FORTH IN SECTION 14.1(c) HEREIN MUST AFFIRMATIVELY INDICATE SO BY CHECKING THE “OPT-OUT” BOX ON THEIR BALLOT OR OBJECT TO THE RELEASES ON OR BEFORE THE DEADLINE TO OBJECT TO CONFIRMATION OF THE PLAN.**

**PLEASE BE ADVISED THAT ALL HOLDERS OF CLAIMS IN CLASS 4 THAT DO NOT MAKE A RELEASE OPT-OUT ELECTION SHALL BE DEEMED TO HAVE CONSENTED TO THE RELEASES SET FORTH IN SECTION 14.1(c).**

**ARTICLE V**  
**CERTAIN RISK FACTORS TO BE CONSIDERED PRIOR TO VOTING**

THE PLAN AND ITS IMPLEMENTATION ARE SUBJECT TO CERTAIN RISKS, INCLUDING, BUT NOT LIMITED TO, THE RISK FACTORS SET FORTH BELOW. HOLDERS OF CLAIMS WHO ARE ENTITLED TO VOTE ON THE PLAN SHOULD READ AND CAREFULLY CONSIDER THE RISK FACTORS, AS WELL AS THE OTHER INFORMATION SET FORTH IN THE PLAN AND THE DOCUMENTS DELIVERED TOGETHER HERewith OR REFERRED TO OR INCORPORATED BY REFERENCE HEREIN, BEFORE DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. THESE FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.

**5.1 The Plan May Not Be Accepted**

The Debtors can make no assurances that the requisite acceptances to the Plan will be received, and the Debtors may need to obtain acceptances to an alternative plan of liquidation for the Debtors, or otherwise, that may not have the support of the Creditors and/or may be required to liquidate the Estates under chapter 7 of the Bankruptcy Code. There can be no assurance that the terms of any such alternative restructuring arrangement or plan would be similar to or as favorable to Creditors as those proposed in the Plan.

## **5.2 The Plan May Not Be Confirmed**

Even if the Debtors receive the requisite acceptances, there is no assurance that the Bankruptcy Court, which may exercise substantial discretion as a court of equity, will confirm the Plan. Even if the Bankruptcy Court determined that the combined Disclosure Statement and Plan and the balloting procedures and results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it finds that any of the statutory requirements for confirmation had not been met. Moreover, there can be no assurance that modifications to the combined Disclosure Statement and Plan will not be required for Confirmation or that such modifications would not necessitate the re-solicitation of votes. If the Plan is not confirmed, it is unclear what distributions Holders of Claims or Interests ultimately would receive with respect to their Claims or Interests in a subsequent plan of liquidation.

If the Plan is not confirmed, the Plan will need to be revised, and it is unclear whether a chapter 11 reorganization or liquidation of the Debtors' assets could be implemented and what distribution the holders of Allowed Claims would receive. If an alternative could not be agreed to, it is possible that the Debtors would have to liquidate their remaining assets in chapter 7, in which case it is likely that the holders of Allowed Claims would receive substantially less favorable treatment than they would receive under the Plan. There can be no assurance that the terms of any such alternative would be similar to or as favorable to the Debtors' creditors as those proposed in the Plan.

## **5.3 Distributions to Holders of Allowed Claims under the Plan May Be Inconsistent with Projections**

Projected Distributions are based upon good faith estimates of the total amount of Claims ultimately Allowed and the funds available for Distribution. There can be no assurance that the estimated Claim amounts set forth in the Plan are correct. These estimated amounts are based on certain assumptions with respect to a variety of factors. Both the actual amount of Allowed Claims in a particular Class and the funds available for distribution to such Class may differ from the Debtors' estimates. If the total amount of Allowed Claims in a Class is higher than the Debtors' estimates, or the funds available for distribution to such Class are lower than the Debtors' estimates, the percentage recovery to Holders of Allowed Claims in such Class will be less than projected.

## **5.4 Objections to Classification of Claims**

Bankruptcy Code section 1122 requires that the Plan classify Claims and Interests. The Bankruptcy Code also provides that the Plan may place a Claim or Interest in a particular Class only if such Claim or Interest is substantially similar to the other Claims or Interests of such Class. The Debtors believe that all Claims and Interests have been appropriately classified in the Plan. To the extent that the Bankruptcy Court finds that a different classification is required for the Plan to be confirmed, the Debtors would seek to (i) modify the Plan to provide for whatever classification might be required for Confirmation and (ii) use the acceptances received from any Holder of Claims pursuant to this solicitation for the purpose of obtaining the approval of the Class or Classes of which such Holder ultimately is deemed to be a member. Any such reclassification of Claims, although subject to the notice and hearing requirements of the Bankruptcy Code, could

adversely affect the Class in which such Holder was initially a member, or any other Class under the Plan, by changing the composition of such Class and the vote required for approval of the Plan. There can be no assurance that the Bankruptcy Court, after finding that a classification was inappropriate and requiring a reclassification, would approve the Plan based upon such reclassification. Except to the extent that modification of classification in the Plan requires re-solicitation, the Debtors will, in accordance with the Bankruptcy Code and the Bankruptcy Rules, seek a determination by the Bankruptcy Court that acceptance of the Plan by any Holder of Claims pursuant to this solicitation will constitute a consent to the Plan's treatment of such Holder, regardless of the Class as to which such Holder is ultimately deemed to be a member. The Debtors believe that under the Bankruptcy Rules, they would be required to resolicit votes for or against the Plan only when a modification adversely affects the treatment of the Claim or Interest of any Holder.

The Bankruptcy Code also requires that the Plan provide the same treatment for each Claim or Interest of a particular Class unless the Holder of a particular Claim or Interest agrees to a less favorable treatment of its Claim or Interest. The Debtors believe that the Plan complies with the requirement of equal treatment. To the extent that the Bankruptcy Court finds that the Plan does not satisfy such requirement, the Bankruptcy Court could deny confirmation of the Plan. Issues or disputes relating to classification and/or treatment could result in a delay in the confirmation and consummation of the Plan and could increase the risk that the Plan will not be consummated.

## **5.5 Failure to Consummate the Plan**

The Plan provides for certain conditions that must be satisfied (or waived) prior to the Confirmation Date and for certain other conditions that must be satisfied (or waived) prior to the Effective Date. As of the date of the Plan, there can be no assurance that any or all of the conditions in the Plan will be satisfied (or waived). Accordingly, there can be no assurance that the Plan will be confirmed by the Bankruptcy Court. Further, if the Plan is confirmed, there can be no assurance that the Plan will be consummated.

## **5.6 Plan Releases May Not Be Approved**

There can be no assurance that the releases, as provided in Article XIV of the Plan, will be granted. Failure of the Bankruptcy Court to grant such relief may result in a plan of liquidation that differs from the Plan or the Plan not being confirmed.

## **5.7 Reductions to Estimated Creditor Recoveries**

The Allowed amount of Claims in any Class could be greater than projected, which, in turn, could cause the amount of distributions to creditors in such Class to be reduced substantially. The amount of Cash realized from the liquidation of the Debtors' remaining Assets could be less than anticipated, which could cause the amount of distributions to creditors to be reduced substantially.

## 5.8 Certain Tax Considerations

There are a number of material income tax considerations, risks, and uncertainties associated with the plan of liquidation of the Debtors described in the combined Disclosure Statement and Plan.

**THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. NOTHING HEREIN SHALL CONSTITUTE TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE UNITED STATES FEDERAL, STATE AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.**

## ARTICLE VI TREATMENT OF UNCLASSIFIED CLAIMS

**6.1 Administrative Claims.** Except as otherwise set forth in this Article VI, or as soon as practicable after the Final Administrative Claim Bar Date, each Holder of an Allowed Administrative Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Administrative Claim: (i) Cash equal to the amount of such Allowed Administrative Claim; or (ii) such other treatment as to which the Debtors or the Litigation Trustee, as applicable, and the Holder of such Allowed Administrative Claim shall have agreed upon in writing.

**(a) Final Administrative Claim Bar Date.** Holders of Administrative Claims, other than Professional Fee Claims, accruing on and after August 1, 2023 through and including the Effective Date (“**Final Administrative Claims**”) shall file with the Claims Agent and serve on the Litigation Trustee requests for payment, in writing, together with supporting documents, substantially complying with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, so as to actually be received on or before the Final Administrative Claim Bar Date. The Effective Date Notice shall set forth the Final Administrative Claim Bar Date and shall constitute notice of such Bar Date. Absent further Court order, any Final Administrative Claim not filed by the Final Administrative Claim Bar Date shall be deemed waived and the Holder of such Final Administrative Claim shall be forever barred from receiving payment on account thereof.

**(b) Objections by the Litigation Trustee.** Objections to requests for payment of Administrative Claims, other than requests for payment of Professional Fee Claims, must be Filed and served on the requesting party by the Claims Objection Deadline.

**(c) Professional Fee Claims.** All applications for allowance and payment of Professional Fee Claims shall be Filed on or before the Professional Fee Claims Bar Date. If an application for a Professional Fee Claim is not Filed by the Professional Fee Claims Bar Date, such Professional Fee Claim shall be deemed waived and the Holder of such Claim shall be forever barred from receiving payment on account thereof. The Effective Date Notice shall set forth the Professional Fee Claims Bar Date and shall constitute notice



of such Professional Fee Claim Bar Date. Objections to any Professional Fee Claims must be Filed and served on the Litigation Trustee and the requesting party by no later than twenty-one (21) days after service of the applicable final application for allowance and payment of Professional Fee Claims. Allowed Professional Fee Claims shall be paid in full, in Cash, in such amounts as are Allowed by the Bankruptcy Court upon the earlier of (i) the Effective Date or (ii) the date upon which an order relating to any such Allowed Professional Fee Claim is entered, and in each case, as soon as reasonably practicable. For the avoidance of doubt, Professionals or Entities retained pursuant to section 363 of the Bankruptcy Code shall not be required to file Professional Fee Claims unless otherwise required by a Final Order of the Bankruptcy Court. Unless required to file an application by the OCP Order, ordinary course professionals are not required to file a Professional Fee Claim.

(d) **U.S. Trustee Fees.** All fees payable on or before the Effective Date, pursuant to United States Code title 28 section 1930, shall be paid by the Debtors on or before the Effective Date. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file a request for Administrative Claims.

(e) **Source of Payment.** All Allowed Administrative Claims and U.S. Trustee Fees shall be paid from the Debtors' Cash or Litigation Trust Assets. With respect to Professional Fee Claims, prior to the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Reserve Amount. The Professional Fee Escrow Account shall be maintained in trust for the Professionals (other than professionals retained pursuant to the OCP Order). Each Holder of an Allowed Professional Fee Claim will be paid by the Debtors or the Litigation Trust in Cash from the Professional Fee Escrow Account. All amounts remaining in the Professional Fee Escrow Account after all Allowed Professional Fee Claims have been paid in full shall vest in the Litigation Trust. If the Professional Fee Escrow Account is insufficient to pay the full amount of all Allowed Professional Fee Claims, remaining unpaid Allowed Professional Fee Claims shall be promptly paid by the Litigation Trust from the Litigation Trust Assets.

**6.2 DIP Loan Claims.** The DIP Loan Claims shall be Allowed in the full amount outstanding under the DIP Loan Agreement as of the Effective Date. All Claims under the DIP Loan Agreement are held by the DIP Secured Parties and/or their affiliates. All Allowed DIP Loan Claims (which shall include fees and interest as provided in the Final DIP Order) shall be satisfied in full from the Sale Cash Consideration in accordance with the Final DIP Order and the DIP Loan Documents upon the closing of the Sale.

(a) The Debtors shall pay in Cash all fees and expenses of the advisors to the Prepetition Secured Parties and the DIP Secured Parties, in each case in accordance with the terms and conditions of any applicable agreement with the Debtors, including the Prepetition Financing Documents, the DIP Loan Documents, and the Final DIP Order, and if any such fees and/or expenses are unpaid as of the Effective Date such fees and/or

expenses shall be paid on the Effective Date without application to or approval of the Bankruptcy Court.

**6.3 Priority Tax Claims.** Within the time period provided in Article X of the Plan, each Holder of an Allowed Priority Tax Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Priority Tax Claim: (i) Cash equal to the amount of such Allowed Priority Tax Claim; or (ii) such other treatment as to which the Debtors or the Litigation Trustee, as applicable, and the Holder of such Allowed Priority Tax Claim shall have agreed upon in writing.

## **ARTICLE VII**

### **TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS**

All Claims and Interests are classified in the Classes set forth below in accordance with section 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date

Unless the Holder of an Allowed Claim and the Debtors or the Litigation Trustee, as applicable, agree to a different treatment, each Holder of an Allowed Claim shall receive the following Distributions in accordance with Article X of the Plan:

**7.1 Class 1: Priority Non-Tax Claims.** Each Holder of an Allowed Priority Non-Tax Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Class 1 Claim: (A) Cash equal to the amount of such Allowed Priority Non-Tax Claim; or (B) such other treatment which the Debtors or the Litigation Trustee, as applicable, and the Holder of such Allowed Priority Non-Tax Claim have agreed upon in writing.

**7.2 Class 2: Other Secured Claims.** Each Holder of an Allowed Other Secured Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Class 2 Claim: (A) return of the collateral securing such Allowed Other Secured Claim; or (B) Cash equal to the amount of such Allowed Other Secured Claim; or (C) such other treatment which the Debtors or the Litigation Trustee, as applicable, and the Holder of such Allowed Other Secured Claim have agreed upon in writing

**7.3 Class 3: Prepetition Loan Claims.** Holders of Class 3 Prepetition Loan Claims shall receive in full and final satisfaction, settlement and release of and in exchange for such Allowed Class 3 Claim, (A) the Sale Consideration (net of an amount of cash necessary to pay in full the DIP Loan Claims), (B), to the extent not distributed prior to the Effective Date, the Lender Amex Distribution, (C), to the extent not distributed prior to the Effective Date the Lender Colonnade Distribution, and (D) to the extent applicable, the Lender Excess Sale Proceeds.

**7.4 Class 4: General Unsecured Claims.** Unless the Holder agrees to a different treatment,

each Holder of a General Unsecured Claim shall receive such Holder's *pro rata* share of the liquidated value of the Litigation Trust Assets.

**7.5 Class 5: Subordinated Claims.** Allowed Subordinated Claims, if any, shall be cancelled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Allowed Subordinated Claims will not receive any distribution on account of such Allowed Subordinated Claims.

**7.6 Class 6: Intercompany Claims.** Holders of Intercompany Claims shall receive no Distribution on account of their Intercompany Claims.

**7.7 Class 7: Interests.** On the Effective Date, all Interests shall be extinguished as of the Effective Date, and owners thereof shall receive no Distribution on account of such Interests.

**7.8 Reservation of Rights Regarding Claims and Interests.** Except as otherwise explicitly provided in the Plan, nothing shall affect the Debtors' rights and defenses, both legal and equitable, with respect to any Claims or Interests, including, but not limited to, all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment.

## **ARTICLE VIII**

### **ACCEPTANCE OR REJECTION OF THE PLAN**

**8.1 Class Entitled to Vote.** Because Claims in Class 3 and Class 4 are Impaired and Holders thereof will receive or retain property or an interest in property under the Plan, only a Holder of Claims in Class 3 and Class 4 shall be entitled to vote to accept or reject the Plan.

**8.2 Acceptance by Impaired Classes of Claims or Interests.** In accordance with Bankruptcy Code section 1126(c), and except as provided in Bankruptcy Code section 1126(e), an Impaired Class of Claims shall have accepted the Plan if the Plan is accepted by the Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims in such Class that have timely and properly voted to accept or reject the Plan. In accordance with Bankruptcy Code section 1126(d) and except as provided in Bankruptcy Code section 1126(e), an Impaired Class of Interests shall have accepted the Plan if such Plan is accepted by Holders of at least two-thirds (2/3) in amount of the Allowed Interests in such Class that have timely and properly voted to accept or reject the Plan.

**8.3 Deemed Acceptance by Unimpaired Classes.** Because Claims in Classes 1 and 2 are Unimpaired pursuant to Bankruptcy Code section 1126(f), Holders of Claims in Classes 1 and 2 are deemed to have accepted the Plan and, therefore, such Holders of Claims are not entitled to vote to accept or reject the Plan.

**8.4 Presumed Rejections by Impaired Classes.** Because Holders of Claims or Interests in Classes 5, 6, and 7 are not entitled to receive or retain any property under the Plan, pursuant to Bankruptcy Code section 1126(g), such Holders of Claims or Interests are presumed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

**8.5 Confirmation Pursuant to Bankruptcy Code Section 1129(b).** To the extent that any Impaired Class rejects the Plan or is deemed to have rejected the Plan, the Debtors reserve the right to request confirmation of the Plan, as it may be modified from time to time, under Bankruptcy Code section 1129(b). The Debtors reserve the right to alter, amend, modify, revoke, or withdraw the Plan, the documents submitted in support thereof or any schedule or exhibit, including to amend or modify it to satisfy the requirements of Bankruptcy Code section 1129(b), if necessary.

**8.6 Controversy Concerning Impairment.** If a controversy arises as to whether any Claim or Interest is Impaired under the Plan, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**8.7 Elimination of Vacant Classes.** Any Class of Claims or Interests that does not contain, as of the date of the commencement of the Confirmation Hearing, a Holder of an Allowed Claim or Interest, or a Holder of a Claim temporarily allowed under Bankruptcy Rule 3018, shall be deemed deleted from the Plan for all purposes, including for purposes of determining acceptance of the Plan by such Class under Bankruptcy Code section 1129(a)(8).

## **ARTICLE IX**

### **IMPLEMENTATION OF THE PLAN AND THE LIQUIDATING TRUST**

**9.1 Implementation of the Plan.** The Plan will be implemented by, among other things, the establishment of the Litigation Trust, the vesting in and transfer to the Litigation Trust of the Litigation Trust Assets, and the making of Distributions by the Litigation Trust in accordance with the Plan, Litigation Trust Agreement, and the Litigation Trust Budget.

**9.2 Substantive Consolidation.** The Debtors analyzed their books and records, intercompany accounting practices, corporate structure, shared staff and services, financial reporting, and cash management practices. Because the Debtors' businesses were operated as one consolidated enterprise, the Plan contemplates entry of an Order substantively consolidating the Estates and the Chapter 11 Cases as set forth below. Absent the substantive consolidation proposed under the Plan, the process of winding down the Estates and administering Distributions would be more time consuming and costly. As such, given the limited amount of funds available for distribution and the expense involved in winding down the Estates and administering Distributions, recoveries will be maximized by consolidating the Assets and liabilities of the Debtors as provided herein.

(a) Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Code sections 105(a) and 1123(a)(5)(C), effective as of the Effective Date, of the substantive consolidation of the Estates of the Debtors for the purposes of confirming and consummating the Plan, including, but not limited to, voting, Confirmation and Distributions.

(b) On and after the Effective Date, (i) all Assets and liabilities of the Debtors shall be treated as though they were pooled, (ii) each Claim filed or to be filed against any Debtor, as to which two or more Debtors are jointly liable as a legal or contractual matter, shall be deemed filed as a single Claim against, and a single obligation of, the Debtors, (iii) all

Claims held by a Debtor against any other Debtor shall be cancelled or extinguished, (iv) no Distributions shall be made under the Plan on account of any Claim held by a Debtor against any other Debtor, (v) all Interests shall be cancelled, (vi) no Distributions shall be made under the Plan on account of any Interest held by a Debtor in any other Debtor, (vii) all guarantees of any Debtors of the obligations of any other Debtor shall be eliminated so that any Claim against any Debtor and any Claim based upon a guarantee thereof executed by any other Debtor shall be treated as one Claim against the substantively-consolidated Debtors, and (viii) any joint or several liability of any of the Debtors shall be one obligation of the substantively consolidated Debtors and any Claims based upon such joint or several liability shall be treated as one Claim against the substantively-consolidated Debtors.

(c) The substantive consolidation of the Debtors under the Plan shall not (other than for purposes related to funding Distributions under the Plan) affect (i) the legal and organizational structure of the Debtors, (ii) executory contracts or unexpired leases that were entered into during the Chapter 11 Cases or that have been or will be assumed or rejected, (iii) any agreements entered into by the Litigation Trust on or after the Effective Date, (iv) the Debtors' or the Litigation Trust's ability to subordinate or otherwise challenge Claims on an entity-by-entity basis, (v) any Retained Causes of Action or defenses thereto, which in each case shall survive entry of the Confirmation Order as if there had been no substantive consolidation of the Estates of the Debtors, and (vi) distributions to the Debtors or the Litigation Trust from any insurance policies or the proceeds thereof. Notwithstanding the substantive consolidation called for herein, each and every Debtor shall remain responsible for the payment of U.S. Trustee Fees until its particular case is closed (pursuant to this Plan or otherwise), dismissed or converted.

(d) This combined Disclosure Statement and Plan shall serve as, and shall be deemed to be, a motion for entry of an Order of the Bankruptcy Court approving the substantive consolidation of the Estates and Chapter 11 Cases. If no objection to the Plan is timely filed and served by any Holder of an Impaired Claim affected by the Plan as provided herein on or before the Voting Deadline or such other date as may be established by the Bankruptcy Court, the Plan, including the substantive consolidation of the Estates and Chapter 11 Cases, may be approved by the Bankruptcy Court as part of the Confirmation Order. If any such objections are timely filed and served, the Plan and the objections thereto shall be considered by the Bankruptcy Court at the Confirmation Hearing.

(e) Nothing in this Section 9.2 shall augment or increase the property that constitutes collateral or any offset or similar right securing any Claim or otherwise increase the secured portion of any Claim under Bankruptcy Code section 506(a).

(f) If the Bankruptcy Court determines that the deemed substantive consolidation of any given Debtors is not appropriate, then the Debtors may request that the Bankruptcy Court otherwise confirm the Plan and approve the treatment of and Distributions to the different Classes under the Plan on an adjusted, Debtor-by-Debtor basis. Furthermore, the Debtors reserve their rights: (i) to seek confirmation of the Plan without implementing deemed consolidation of any given Debtor, and, in the Debtors' reasonable discretion, to request that the Bankruptcy Court approve the treatment of and Distributions to any given

Class under the Plan on an adjusted, Debtor-by-Debtor basis; and (ii) to seek deemed consolidation of all Debtors whether or not all Impaired Classes entitled to vote on the Plan vote to accept the Plan.

**9.3 Debtors' Directors and Officers.** On the Effective Date, each of the Debtors' directors and officers shall be terminated automatically without the need for any corporate action or approval and without the need for any corporate filings, and shall have no continuing obligations to the Debtors following the occurrence of the Effective Date. From and after the Effective Date, the Litigation Trustee shall be deemed to be the sole officer and director of each Debtor (and all charters, bylaws, and other organic documents are deemed amended by this combined Disclosure Statement and Plan to permit and authorize such admission and appointment), and the Litigation Trustee shall serve in such capacity through the earlier of the date the applicable Debtor is dissolved in accordance with this combined Disclosure Statement and Plan and the date that such Litigation Trustee resigns, is terminated, or is otherwise unable to serve, *provided that* any successor Litigation Trustee shall serve in such capacities after the effective date of such appointment as the Litigation Trustee.

**9.4 Wind-Up and Dissolution of the Debtors.** On the Effective Date or as soon thereafter as is reasonably practicable, the Litigation Trustee shall wind-up the affairs of the Debtors. Upon completion of the winding-up of the Debtors' affairs and without the need for any corporate action or approval and without the need for any corporate filings, the Litigation Trustee shall dissolve the Debtors and neither the Debtors nor the Litigation Trustee shall be required to pay any taxes or fees to cause such dissolution. The Litigation Trust shall bear the cost and expense of the wind-up of the affairs of the Debtors, if any, and the cost and expense of the preparation and filing of the final tax returns for the Debtors.

**9.5 Creation and Governance of the Litigation Trust.** On the Effective Date, the Debtors and the Litigation Trustee shall execute the Litigation Trust Agreement and shall take all steps necessary to establish the Litigation Trust in accordance with the Plan and the beneficial interests therein, which shall be for the benefit of the Beneficiaries. Additionally, on the Effective Date the Debtors shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Trust all of their rights, title, and interest in and to all of the Litigation Trust Assets, and in accordance with Bankruptcy Code section 1141, except as specifically provided in the Plan or the Confirmation Order, the Litigation Trust Assets shall automatically vest in the Litigation Trust free and clear of all Claims, liens, encumbrances, or interests subject only to the Litigation Trust Interests and the Litigation Trust Expenses, as provided for in the Plan and the Litigation Trust Agreement, and Claims required to be paid by the Litigation Trust pursuant to the Plan with priority over General Unsecured Claims, including, without limitation, Administrative Claims and Professional Fee Claims; and such transfer shall be exempt from any stamp, real estate transfer, other transfer, mortgage reporting, sales, use, or other similar tax. The Litigation Trustee shall be the exclusive trustee of the Litigation Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estates appointed pursuant to Bankruptcy Code section 1123(b)(3)(B). The Litigation Trust shall be governed by the Litigation Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in Section 9 of this Plan. The Litigation Trust shall hold and distribute the Litigation Trust Assets in accordance with

the provisions of the Plan and the Litigation Trust Agreement. Other rights and duties of the Litigation Trustee and the Beneficiaries shall be as set forth in the Litigation Trust Agreement. For the avoidance of doubt, after the Effective Date, the Debtors and the Estates shall have no interest in the Litigation Trust Assets, the transfer of the Litigation Trust Assets to the Litigation Trust is absolute, and the Litigation Trust Assets shall not be held or deemed to be held in trust by the Litigation Trustee on behalf of any of the Debtors or the Estates.

**9.6 Purpose of the Litigation Trust.** The Litigation Trust shall be established for the purpose of: pursuing or liquidating the Litigation Trust Assets; reconciling and objecting to Claims, as provided for in the Plan; and making Distributions to the Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

**9.7 Litigation Trustee and Litigation Trust Agreement.** The Litigation Trust Agreement generally will provide for, among other things: (i) the payment of the Litigation Trust Expenses; (ii) the payment of other reasonable expenses of the Litigation Trust; (iii) the retention of counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; (iv) the investment of Cash by the Litigation Trustee within certain limitations, including those specified in the Plan; (v) the orderly liquidation of the Litigation Trust Assets; (vi) litigation of any Retained Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action; (vii) the prosecution and resolution of objections to Claims; (viii) the establishment of such Disputed Claim Reserves as the Litigation Trustee deems appropriate; and (ix) the appointment of an oversight representative who shall oversee, and have certain approval and/or consultation rights over, the acts of the Litigation Trustee.

The Litigation Trustee, on behalf of the Litigation Trust, may employ, without further order of the Bankruptcy Court, professionals (including those previously retained by the Debtors or the Committee) to assist in carrying out the Litigation Trustee's duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Litigation Trust Assets in accordance with the Plan, the Litigation Trust Agreement, and the Litigation Trust Budget.

The Litigation Trust Agreement provides that the Litigation Trustee shall be indemnified by and receive reimbursement from the Litigation Trust Assets against and from any and all loss, liability, expense (including reasonable attorneys' fees), or damage which the Litigation Trustee incurs or sustains, in good faith and without either willful misconduct, gross negligence or fraud, acting as Litigation Trustee under or in connection with the Litigation Trust Agreement.

On and after the Effective Date, the Litigation Trustee shall have the power and responsibility to do all acts contemplated by the Plan to be done by the Litigation Trustee and all other acts that may be necessary or appropriate in connection with the disposition of the Litigation Trust Assets and the distribution of the proceeds thereof, as contemplated by the Plan and in accordance with the Litigation Trust Agreement. In all circumstances, the Litigation Trustee shall act in its reasonable discretion in the best interests of the Beneficiaries pursuant to the terms of the Plan and the Litigation Trust Agreement.

**9.8 Compensation and Duties of Litigation Trustee.** The salient terms of the Litigation Trustee's employment, including the Litigation Trustee's duties and compensation, shall be set forth in the Litigation Trust Agreement. The Litigation Trustee shall be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases. The Litigation Trustee shall also be reimbursed for all documented, actual, reasonable, and necessary out-of-pocket expenses incurred in the performance of his or her duties under the Litigation Trust Agreement, subject to the Litigation Trust Budget.

**9.9 United States Federal Income Tax Treatment of the Litigation Trust, the Debtors, and Holders of Claims**

*(a) General.* **HOLDERS CONCERNED WITH HOW THE PLAN MAY AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR OWN ACCOUNTANTS, ATTORNEYS, AND ADVISORS. THE BELOW TAX SUMMARY HAS BEEN PROVIDED FOR GENERAL INFORMATIONAL PURPOSES ONLY. THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. NOTHING HEREIN SHALL CONSTITUTE TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S PARTICULAR CIRCUMSTANCES.**

The following discussion summarizes certain United States federal income tax consequences of the Plan to the Debtors and to certain holders of Claims. This discussion is based on the IRC, the Treasury Regulations promulgated thereunder, judicial decisions, and published administrative rulings and pronouncements of the IRS, all as in effect on the date hereof. Legislative, judicial, or administrative changes in law or its interpretation, as well as other events occurring after the date of this Disclosure Statement, and which may be retroactive, could materially alter the tax treatment described below. Furthermore, this discussion is not binding on the IRS or any other tax authority. There is no assurance that a tax authority will not take, or that a court will not sustain, a position with respect to the tax consequences of the Plan that differs from the tax consequences described below. No ruling has been or will be sought from the IRS, no opinion of counsel has been or will be obtained, and no representations are made regarding any tax aspect of the Plan.

The following discussion does not address all aspects of U.S. federal income taxation that may be relevant to a particular Holder in light of such Holder's facts and circumstances, or to certain types of Holders subject to special treatment under the IRC (for example, governmental entities and entities exercising governmental authority, non-U.S. taxpayers, banks and certain other financial institutions, broker-dealers, insurance companies, tax-exempt organizations, real estate investment trusts, regulated investment companies, persons holding a Claim as part of a hedge, straddle, constructive sale, conversion transaction, or other integrated transaction, Holders that are or hold their Claims through a partnership or other pass-through entity, and Persons that have a functional currency other than the U.S. dollar). This summary does not address state, local, or non-United States tax consequences of the Plan, nor does this summary address federal taxes other than income taxes. Furthermore, this discussion generally does not address U.S. federal income



tax consequences to Holders that are unimpaired under the Plan or that are not entitled to receive or retain any property under the Plan or to Persons who are deemed to have rejected the Plan.

(b) *Litigation Trust.*

(i) *Grantor Trust.* It is intended that the Litigation Trust qualify as a grantor trust for federal income tax purposes, and that the Beneficiaries are treated as grantors. As described more fully in the Plan and the Disclosure Statement, the transfer of the Litigation Trust Assets will be treated for federal income tax purposes as a transfer to the Beneficiaries, followed by a deemed transfer from such Beneficiaries to the Litigation Trust, provided, however, that the Litigation Trust Assets will be subject to any post-Effective Date obligations incurred by the Litigation Trust relating to the pursuit of Litigation Trust Assets. Accordingly, the Beneficiaries will be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Litigation Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes. Subject to Section 5.5.5(c)(iv) of the Plan, all items of income, gain, loss, deduction, and credit will be included in the income of the Beneficiaries as if such items had been recognized directly by the Beneficiaries in the proportions in which they own beneficial interests in the Litigation Trust.

(ii) *Reporting.* The Litigation Trustee shall comply with all tax reporting requirements, including, without limitation, filing returns for the Litigation Trust as a grantor trust pursuant to Treasury Regulation § 1.671-4(a) and the guidelines set forth for a “liquidating trust” in Revenue Procedure 94-95, 1994-2 C.B. 684. In connection therewith, the Litigation Trustee may require Beneficiaries to provide certain tax information as a condition to receipt of Distributions, including certification of the Beneficiary’s Taxpayer or Employer Identification Number.

(iii) *Valuation.* Except to the extent definitive guidance from the IRS or a court of competent jurisdiction (including the issuance of applicable Treasury Regulations or the receipt by the Litigation Trustee of a private letter ruling if the Litigation Trustee so requests one) indicates that such valuation is not necessary to maintain the treatment of the Litigation Trust as a liquidating trust for purposes of the IRC and applicable Treasury Regulations, as soon as reasonably practicable after the Litigation Trust Assets are transferred to the Litigation Trust, the Litigation Trustee shall make a good faith valuation of the Litigation Trust Assets. Such valuation shall be made available from time to time to all parties to the Litigation Trust Agreement and to all Beneficiaries, to the extent relevant to such parties for tax purposes, and shall be used consistently by such parties for all United States federal income tax purposes.

(iv) *Tax Returns.* In accordance with the provisions of section 6012(b)(3) of the IRC, the Litigation Trustee shall cause to be prepared, at the cost and expense of the Litigation Trust, the corporate income tax returns (federal, state and local) that the Debtors are required to file (to the extent such returns have not already been filed by the Effective Date). The Litigation Trustee shall timely file each such tax return with the appropriate taxing authority and shall pay out of the Litigation Trust Assets all taxes due with respect to the period covered by each such tax return.

(v) *Disputed Ownership Fund Election.* The Plan permits the Litigation Trustee to establish Disputed Claim Reserves. The Litigation Trustee may, at the Litigation Trustee's sole discretion, file a tax election to treat any such Disputed Claim Reserve as a Disputed Ownership Fund as described in Treasury Regulation § 1.468B-9 or other taxable entity rather than as a part of the Litigation Trust for federal income tax purposes. If such election is made, the Litigation Trust shall comply with all tax reporting and tax compliance requirements applicable to the Disputed Ownership Fund or other taxable entity, including, but not limited to, the filing of separate income tax returns for the Disputed Ownership Fund or other taxable entity and the payment of any federal, state or local income tax due.

(vi) *Attribution of Income.* Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury Regulations, the receipt by the Litigation Trustee of a private letter ruling if the Litigation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Litigation Trustee), attribution of Litigation Trust taxable income or loss shall be by reference to the manner in which any economic gain or loss would be borne immediately after a hypothetical liquidating distribution of the remaining Litigation Trust Assets. The tax book value of the Litigation Trust Assets for purpose of this paragraph shall equal their fair market value on the date the Litigation Trust Assets are transferred to the Litigation Trust, adjusted in accordance with tax accounting principles prescribed by the IRC, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

(vii) *Income Taxed on a Current Basis.* All income of the Litigation Trust will be subject to tax on a current basis. The Plan requires the Debtors, the Litigation Trust, and the Beneficiaries to report consistently with characterization of the Litigation Trust as a grantor trust and requires the Litigation Trustee to file tax returns treating the Litigation Trust as a "grantor trust" pursuant to Treasury Regulation section 1.671-4(a) and to report to each Beneficiary a statement of the Beneficiary's share of Litigation Trust income, gain, loss, deduction, and credit for inclusion in the Beneficiary's U.S. federal income tax return. Beneficiaries therefore may owe tax on Litigation Trust income, without regard to whether cash distributions are made to beneficial owners by the Litigation Trust.

(viii) *Tax Identification Numbers.* Amounts paid to Beneficiaries are subject to generally applicable withholding, information, and backup withholding rules. The Litigation Trustee may require any Beneficiary to furnish to the Litigation Trustee its Employer or Taxpayer Identification Number as assigned by the IRS or certify to the Litigation Trustee's satisfaction that Distributions to the Beneficiary are exempt from backup withholding. The Litigation Trustee may condition any Distribution to any Beneficiary upon receipt of such identification number. If after reasonable inquiry, any Beneficiary fails to provide such identification number to the Litigation Trustee, the Litigation Trustee shall deem such Beneficiary's Claim as Disallowed and no Distribution shall be made on account of such Beneficiary's Claim.

(ix) *Notices.* The Litigation Trustee shall distribute such notices to the Beneficiaries as the Litigation Trustee determines are necessary or desirable.

(x) *Expedited Determination.* The Litigation Trustee may request an expedited determination of taxes of the Debtors or of the Litigation Trust under Bankruptcy Code section

505(b) for all tax returns filed for, or on behalf of, the Debtors and the Litigation Trust for all taxable periods through the dissolution of the Litigation Trust.

(c) *Federal Income Tax Consequences to the Debtors.*

(i) *Sale of Assets.* The Sale will constitute a taxable disposition of the Debtors' assets. The Debtors will recognize gain or loss equal to the difference between the amount received for those assets in the Sale and the Debtors' adjusted tax basis in those assets. The Debtors expect to have tax losses generated from other activities in the current year that may be used to offset gain from the Sale. The Debtors also expect to have net operating losses ("NOLs") from prior taxable years available that may be carried forward to offset a portion of the gain from the Sale. For NOLs arising prior to 2018, such NOLs can generally be carried forward for 20 years to offset taxable income. As a result of the enactment Tax Cuts and Jobs Act of 2017, NOLs arising in 2018 and thereafter can be carried forward indefinitely, but can only offset 80% of taxable income for a taxable year. The Debtors have not done an analysis of the amount of pre-2018 NOLs and NOLs arising in 2018 and thereafter to determine if all taxable income arising from the Debtors' assets sales can be offset with prior NOLs. To the extent current year losses and NOLs and other tax deductions are not available to offset Debtors' gain from the Sale, Debtors will owe tax on such gains. Any such tax will be an Administrative Claim.

(ii) *Cancellation of Indebtedness and Reduction of Tax Attributes.* For U.S. federal income tax purposes, gross income generally includes income from cancellation of indebtedness ("COD"). In general, the Debtors will have COD income equal to the excess of the amount of debt discharged pursuant to the Plan over the adjusted issue price of the debt, less the amount of cash and the fair market value of property distributed to holders of the debt. Various statutory or judicial exceptions limit the incurrence of COD income (such as where payment of the cancelled debt would have given rise to a tax deduction). COD income also includes interest accrued on obligations of the Debtors but unpaid at the time of discharge. An exception to the recognition of COD income applies to a debtor in a chapter 11 bankruptcy proceeding. Bankrupt debtors generally do not include COD in taxable income, but must instead reduce certain tax attributes (such as NOLs, capital losses, certain credits, and the excess of the tax basis of the debtor's property over the amount of liabilities outstanding after discharge) by the amount of COD income that was excluded under the bankruptcy exception. Tax benefits are reduced after the tax is determined for the year of discharge. Existing NOLs will therefore be available to offset gains on asset sales in the year of the discharge regardless of the amount by which NOLs are reduced due to COD income.

(d) *Federal Income Tax Consequences to Holders.*

(i) *Characterization.* The tax treatment of Holders, and the character, amount, and timing of income, gain, or loss recognized as a consequence of the Plan and any Distributions pursuant to the Plan may vary, depending upon, among other things: (A) whether the Claim (or a portion of the Claim) is for principal or interest; (B) the type of consideration the Holder receives for the Claim, (C) whether the Holder receives Distributions under the Plan in more than one taxable year; (D) the manner in which the Holder acquired the Claim; (E) the length of time that the Claim has been held; (vi) whether the Claim was acquired at a discount; (F) whether the Holder of the Claim has taken a bad debt deduction with respect to part or all of the Claim; (G) whether

the Holder of the Claim has previously included in income accrued but unpaid interest on the Claim; (H) the Holder's method of tax accounting; (I) whether the Claim is an installment obligation for U.S. federal income tax purposes; (J) whether the Claim, and any instrument received in exchange for the Claim, is a "security" for U.S. federal income tax purposes; and (K) whether and the manner in which the "market discount" rules of the IRC apply to the holder of the Claim.

(ii) *Gain and Loss Recognition.* Holders that receive cash and property other than stock and securities for their Claim will recognize gain or loss for U.S. federal income tax purposes equal to the difference between the "amount realized" by the Holder and the Holder's tax basis in the Claim. The "amount realized" is the sum of the amount of cash and the fair market value of any other property received under the Plan in respect of the Claim (other than amounts received in respect of a Claim for accrued unpaid interest). The Holder's tax basis in the Claim (other than a Claim for accrued unpaid interest) is generally the Holder's cost, though tax basis could be more or less than cost depending on the specific facts of the Holder. Any gain or loss realized may be capital gain or loss or ordinary gain or loss, depending on the circumstances of the Holder.

(iii) *Interest Issues.* Holders that previously included in income accrued but unpaid interest on a Claim may be entitled to a deductible loss to the extent such interest is not satisfied under the Plan. Conversely, a Holder has ordinary income to the extent of the amount of cash or the fair market value of property received in respect of a Claim for (or the portion of a Claim treated as allocable to) accrued unpaid interest that was not previously included in income by the Holder. The Plan treats all amounts payable to a Holder as principal until the principal amount of the Claim has been paid in full. The Debtors' tax returns will be filed in a manner consistent with this allocation, but it is uncertain whether this allocation will be respected by the IRS. The IRS may take the position that payments should be allocated first to interest or should be pro-rated between principal and interest. If the IRS prevails in this assertion, Holders may be required to recognize ordinary interest income even though they have an overall loss (and possibly a capital loss, the deductibility of which may be limited) with respect to such Holder's Claims. Each Holder is urged to consult such Holder's own tax advisor regarding the amount of such Holder's Claim allocable to accrued unpaid interest and the character of any loss with respect to accrued but unpaid interest that the holder previously included in income.

(iv) *Bad Debt and Worthless Security Deductions.* A Holder who receives, in respect of such Holder's Claim, an amount that is less than such Holder's tax basis in the Claim may be entitled to a bad debt or worthless securities deduction. The rules governing the character, timing, and amount of these deductions depend upon the facts and circumstances of the Holder, the obligor, and the instrument with respect to which the deduction is claimed, including whether (i) the Holder is a corporation or (ii) the Claim constituted (a) a debt created or acquired (as the case may be) in connection with the Holder's trade or business or (b) a debt, the loss from worthlessness of which is incurred in the holder's trade or business. A Holder that has previously recognized a loss or deduction in respect of such Holder's Claim may be required to include in income amounts received under the Plan that exceed the Holder's adjusted basis in its Claim.

(iv) *Installment Obligations.* A Holder if a Claim that is an installment obligation for U.S. federal income tax purposes may be required to recognize any gain remaining

with respect to such obligation if, pursuant to the Plan, the obligation is considered to be satisfied at other than its face value, distributed, transmitted, sold, or otherwise disposed of within the meaning of Section 453B of the IRC.

(v) *Market Discount.* A Holder of a Claim that acquires a Claim at a market discount generally is required to treat any gain realized on the disposition of the Claim as ordinary income to the extent of the market discount that accrued during the period the Claim was held by the Holder and that was not previously included in income by the Holder.

(vi) *Withholding.* Amounts paid to Holders are subject to generally applicable withholding, information, and backup withholding rules. The Plan authorizes the Debtors and the Litigation Trustee, as applicable, to withhold and report amounts required by law to be withheld and reported. Amounts properly withheld from Distributions to a Holder and paid over to the applicable taxing authority for the account of such Holder will be treated as amounts distributed to such Holder. Holders are required to provide the Debtors and the Litigation Trustee, as applicable, with the information necessary to effect information reporting and withholding as required by law. Notwithstanding any other provision of the Plan, holders of Claims that receive a Distribution pursuant to the Plan are responsible for the payment and satisfaction of all tax obligations, including income, withholding, and other tax obligations imposed with respect to the Distribution, and no Distribution shall be made until a Holder has made arrangements satisfactory to the Debtors or the Litigation Trustee, as applicable, for the payment and satisfaction of such obligations.

(vii) *Backup Withholding.* Holders may be subject to backup withholding on payments pursuant to the Plan unless the Holder (A) is not a corporation and is not otherwise exempt from backup withholding and, when required, demonstrates that or (B) provides a correct taxpayer identification and certifies under penalty of perjury that the taxpayer identification number is correct and that the Holder is not subject to backup withholding because of previous failure to report dividend and interest income. Amounts withheld due to backup withholding will be credited against the Holder's federal income tax liability and excess withholding may be refunded if a timely claim for refund (generally, a U.S. federal income tax return) is filed with the IRS.

(viii) *Certain Disclosure Requirements.* Treasury regulations require tax return disclosure of certain types of transactions that result in the taxpayer claiming a loss in excess of specified thresholds. Holders are urged to consult their own tax advisors regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and would require such disclosure.

**9.10 Abandonment, Disposal, and Destruction of Records.** The Litigation Trustee shall be authorized pursuant to Bankruptcy Code section 554, in its sole discretion, without any further notice to any party or action, order or approval of the Bankruptcy Court, to abandon, dispose of, or destroy in any commercially reasonable manner all originals and/or copies of any documents, books and records, including any electronic records, of the Debtors that are transferred to the Litigation Trust and which the Litigation Trustee reasonably concludes are burdensome or of inconsequential value and benefit to the Litigation Trust.

**9.11 Distributions by Litigation Trustee.** Following the transfer of the Litigation Trust Assets to the Litigation Trust, the Litigation Trustee shall make continuing efforts to liquidate all Litigation Trust Assets in accordance with the Plan and the Litigation Trust Agreement, *provided* that the timing of all Distributions made by the Litigation Trustee to Beneficiaries shall be in accordance with the Litigation Trust Agreement.

**9.12 Cash Investments.** Funds in the Litigation Trust shall be invested in demand and time deposits in banks or other savings institutions, or in other temporary, liquid investments, such as Treasury bills, consistent with the liquidity needs of the Litigation Trust as determined by the Litigation Trustee, in accordance with Bankruptcy Code section 345, unless the Bankruptcy Court otherwise requires; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

**9.13 Dissolution of the Litigation Trust.** The Litigation Trustee shall be discharged and the Litigation Trust shall be terminated, at such time as: (a) (i) all Disputed Claims have been resolved; (ii) all of the Litigation Trust Assets have been liquidated; (iii) all duties and obligations of the Litigation Trustee under the Litigation Trust Agreement have been fulfilled; (iv) all Distributions required under the Plan and the Litigation Trust Agreement have been made; and (v) the Chapter 11 Cases have been closed, OR (b) as otherwise provided in the Litigation Trust Agreement. Upon dissolution of the Litigation Trust, any remaining Litigation Trust Assets may be transferred by the Litigation Trustee to a charitable organization(s) or sold as part of a remnant asset sale.

**9.14 Control Provisions.** To the extent there is any inconsistency between the combined Disclosure Statement and Plan as it relates to the Litigation Trust and the Litigation Trust Agreement, the terms of the combined Disclosure Statement and Plan shall control.

**9.15 Limitation of Liability; Indemnification.** The Litigation Trustee and all of its respective designees, employees, agents, representatives or professionals shall not be liable for the act or omission of any other member, designees, agent or representative of the Litigation Trustee, nor shall they be liable for any act or omission taken or omitted to be taken in their respective capacities, other than acts or omission resulting from willful misconduct, gross negligence, or fraud. The Litigation Trustee shall be entitled to enjoy all of the rights, powers, immunities and privileges applicable to a chapter 7 trustee. The Litigation Trustee may, in connection with the performance of their functions, and in their sole and absolute discretion, consult with attorneys, accountants, financial advisors and agents, which consultation may act as a defense for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such persons. Notwithstanding such authority, the Litigation Trustee shall not be under any obligation to consult with attorneys, accountants, financial advisors or agents, and their determination not to do so shall not result in the imposition of liability, unless such determination is based on willful misconduct, gross negligence or fraud. The Litigation Trust shall indemnify and hold harmless the Litigation Trustee and its designees and professionals, and all duly designated agents and representatives thereof (in their capacity as such), from and against and in respect of all liabilities, losses, damages, claims, costs and expenses, including, but not limited to attorneys’ fees and costs arising out of or due to such actions or omissions, or consequences of their actions or omissions with respect or related to the performance of their duties or the implementation or administration of the Plan; provided, however, that no such indemnification

will be made to such persons for such actions or omissions as a result of willful misconduct, gross negligence or fraud.

**9.16 Corporate Action.** On the Effective Date, all matters expressly provided for under this Plan that would otherwise require approval of the equity holders or directors of one or more of the Debtors, including but not limited to, the dissolution or merger of any of the Debtors, shall be deemed to have occurred and shall be in effect upon the Effective Date pursuant to the applicable general corporation law of the states in which the Debtors are incorporated without any requirement of action by the equity holders or directors of the Debtors.

**9.17 Implementation of Global Settlement and Colonnade Settlement.** On the Effective Date, the Debtors and the parties thereto shall implement the Global Settlement and the Colonnade Settlement on the terms set forth in the Final DIP Order and the Sale Order and as described in Section 3.3(f) and 3.3(g) of the Disclosure Statement.

## **ARTICLE X**

### **PROVISIONS GOVERNING DISTRIBUTIONS**

#### **10.1 Distributions for Allowed Claims**

Except as otherwise provided herein or as ordered by the Bankruptcy Court, all Distributions to Beneficiaries as of the applicable distribution date shall be made on or as soon as practicable after the applicable distribution date. Distributions on account of Claims that first become Allowed Claims after the applicable distribution date shall be made pursuant to the terms of this Plan and on the day selected by the Litigation Trustee.

The Litigation Trustee may accelerate any Distribution date with respect to Distributions if the facts and circumstances so warrant and to the extent not inconsistent with the Plan.

Distributions made as soon as reasonably practicable after the Effective Date or such other date set forth herein shall be deemed to have been made on such date.

**10.2 Interest of Claims.** Except to the extent provided in Bankruptcy Code section 506(b), the Plan, or the Confirmation Order, post-petition interest shall not accrue or be paid on Claims, and no Holder of an Allowed Claim shall be entitled to interest accruing on any Claim from and after the Petition Date.

**10.3 Distributions by Litigation Trustee as Disbursement Agent.** From and after the Effective Date, the Litigation Trustee shall serve as the Disbursement Agent under the Plan with respect to Distributions to Holders of Allowed Claims (provided that the Litigation Trustee may hire professionals or consultants to assist with making disbursements or to act as the Disbursement Agent). The Litigation Trustee shall cause to be made all Distributions required to be made to such Holders of Allowed Claims pursuant to the Plan and the Litigation Trust Agreement. The Litigation Trustee shall not be required to give any bond or surety or other security for the

performance of the Litigation Trustee's duties as Disbursement Agent unless otherwise ordered by the Bankruptcy Court.

**10.4 Limitation of Liability of Potential Director Defendants.** The Litigation Trustee may pursue Causes of Action against the Potential Director Defendants subject to with the following limitations and conditions: (i) the Litigation Trustee shall use best efforts to file any complaint under seal and to keep confidential all material documents; (ii) the Potential Director Defendants shall bear no personal liability and shall be indemnified up to the limits of applicable insurance coverage with respect to any claims asserted or assertable against the Potential Director Defendants; (iii) the total recovery by way of settlement or judgment in all such litigation shall not exceed the aggregate total amounts available under any applicable insurance policies of the Debtors, and any award of damages (inclusive of expenses) may be pursued only against any applicable insurers; (iv) the Causes of Action that may be asserted against the Potential Director Defendants shall be limited to claims, solely in their capacities as former directors, employees, and/or officers of the Debtors, related to: (a) the Debtors' failed de-SPAC transaction with Colonnade and the Colonnade Agreement, and (b) the Nearside Transaction; and (v) the claims and Causes of Action against the Potential Director Defendants may not be transferred by the Litigation Trust to any party, and accordingly, to the extent that the Litigation Trust abandons any claims or Causes of Action against any of the Potential Director Defendants, such claims and causes of action shall be deemed released.

#### **10.5 Means of Cash Payment.**

Cash payments under the Plan shall be made, at the option, and in the sole discretion, of the Litigation Trustee, by wire, check, or such other method as the Litigation Trustee deems appropriate under the circumstances. Cash payments to foreign creditors may be made, at the option, and in the sole discretion, of the Litigation Trustee, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction. Pursuant to Section 10.8 of the Plan, cash payments in the form of checks issued by the Litigation Trustee shall be null and void if not cashed within ninety (90) days of the date of the issuance thereof and deemed undeliverable Distributions. Following the expiration of ninety (90) days after issuance of such null and void checks, in accordance with Section 10.14 of the Plan, amounts in respect of these undeliverable Distributions shall be become unrestricted Litigation Trust Assets redistributed to the Beneficiaries after reserving as necessary for payment of Litigation Trust Expenses. Such Holder shall be deemed to have forfeited its right to any reserved and future Distributions from the Litigation Trust and any Litigation Trust Interests held by such Holder shall be deemed cancelled, and the Claims of such Holder shall be forever barred.

For purposes of effectuating Distributions under the Plan, any Claim denominated in foreign currency shall be converted to U.S. Dollars pursuant to the applicable published exchange rate in effect on the Petition Date.

**10.6 Fractional Distributions.** Notwithstanding anything in the Plan to the contrary, no payment of fractional cents shall be made pursuant to the Plan. Whenever any payment of a fraction of a cent under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole penny (up or down), with half cents or more being rounded up and fractions less than half of a cent being rounded down.



**10.7 De Minimis Distributions.** Notwithstanding anything to the contrary contained in the Plan, the Litigation Trustee shall not be required to distribute, and shall not distribute, Cash or other property to the Holder of any Allowed Claim if the amount of Cash or other property to be distributed on account of such Claim is less than \$100. Any Holder of an Allowed Claim on account of which the amount of Cash or other property to be distributed is less than \$100 shall be forever barred from asserting such Claim against Litigation Trust Assets.

**10.8 Delivery of Distributions; Unclaimed Distributions.** All Distributions to Holders of Allowed Claims shall be made at the address of such Holder as set forth in the claims register maintained in the Chapter 11 Cases (subject to any transfer effectuated pursuant to Bankruptcy Rule 3001(e) or, after the Effective Date, a change of address notification provided by a Holder in a manner reasonably acceptable to the Litigation Trustee) or, in the absence of a Filed proof of Claim, the Schedules. The responsibility to provide the Litigation Trustee a current address of a Holder of Claims shall always be the responsibility of such Holder and at no time shall the Litigation Trustee have any obligation to determine a Holder's current address. Nothing contained in the Plan shall require the Litigation Trustee to attempt to locate any Holder of an Allowed Claim. Amounts in respect of undeliverable Distributions made by the Litigation Trustee shall be held in trust on behalf of the Holder of the Claim to which they are payable by the Litigation Trust until the earlier of the date that such undeliverable Distributions are claimed by such Holder and the date ninety (90) days after the date the undeliverable Distributions were made. Following the expiration of ninety (90) days after the date the undeliverable Distributions were made, the amounts in respect of undeliverable Distributions shall become unrestricted Litigation Trust Assets redistributed to the Beneficiaries after reserving as necessary for payment of Litigation Trust Expenses. Such Holder shall be deemed to have forfeited its right to any reserved and future Distributions from the Litigation Trust and any Litigation Trust Interests held by such Holder shall be deemed cancelled, and the Claims of such Holder shall be forever barred.

**10.9 Application of Distribution Record Date.** At the close of business on the Distribution Record Date, the Debtors' claims registers shall be closed, and there shall be no further changes in the record holders of Claims or Interests. Beneficial interests in the Litigation Trust shall be non-transferable except upon death of the interest holder or by operation of law. Except as provided herein, the Litigation Trustee and the Litigation Trustee's respective agents, successors, and assigns shall have no obligation to recognize any transfer of any Claim or Interest occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the claims registers as of the close of business on the Distribution Record Date irrespective of the number of Distributions to be made under the Plan to such Entities or the date of such Distributions.

**10.10 Withholding, Payment and Reporting Requirements With Respect to Distributions.** All Distributions under the Plan shall, to the extent applicable, comply with all tax withholding, payment, and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority, and all Distributions shall be subject to any such withholding, payment, and reporting requirements. The Litigation Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting requirements. The Litigation Trustee may require, in the Litigation Trustee's sole and absolute discretion and as a condition to the receipt of any Distribution, that the Holder of an Allowed Claim complete and return to the Litigation Trust the appropriate Form W-8 or Form W-9, as applicable,

to each Holder. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such Distribution, and including, in the case of any Holder of a Disputed Claim that has become an Allowed Claim, any tax obligation that would be imposed upon the Litigation Trust in connection with such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements reasonably satisfactory to the Litigation Trustee for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Litigation Trust in connection with such Distribution.

**10.11 Setoffs.** The Litigation Trust may, but shall not be required to, set off against any Claim or any Allowed Claim, and the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Debtors or the Litigation Trust may have against the Holder of such Claim; *provided, however*, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Litigation Trust of any such claim that it may have against such Holder.

**10.12 No Distribution in Excess of Allowed Amounts.** Notwithstanding anything to the contrary herein, no Holder of an Allowed Claim shall receive in respect of such Claim any Distribution of a value as of the Effective Date in excess of the Allowed amount of such Claim.

**10.13 Allocation of Distributions.** The Litigation Trustee may, in the Litigation Trustee's sole discretion, make Distributions jointly to any Holder of a Claim and any other Entity who has asserted, or whom the Litigation Trustee has determined to have, an interest in such Claim; *provided, however*, that the Litigation Trust shall provide notice of such Distribution to any Holder of a Claim or other Entity that has asserted an interest in such Claim.

**10.14 Forfeiture of Distributions.** If the Holder of a Claim fails to cash a check payable to it within the time period set forth in Section 10.4, fails to claim an undeliverable Distribution within the time limit set forth in Section 10.8, or fails to complete and return to the Litigation Trust the appropriate Form W-8 or Form W-9 within one hundred twenty (120) days of the request by the Litigation Trust for the completion and return to it of the appropriate form pursuant to Section 10.10, then such Holder shall be deemed to have forfeited its right to any reserved and future Distributions from the Litigation Trust and any Litigation Trust Interests held by such Holder shall be deemed cancelled, and the Claims of such Holder shall be forever barred. The forfeited Distributions shall become unrestricted Litigation Trust Assets and shall be redistributed to the Beneficiaries after reserving as necessary for payment of Litigation Trust Expenses and otherwise in compliance with the Plan and the Litigation Trust Agreement. In the event the Litigation Trustee determines, in the Litigation Trustee's sole discretion, that any such amounts are too small in total to redistribute cost-effectively to the Beneficiaries, the Litigation Trustee may instead donate them to a charitable organization(s) free of any restrictions thereon, notwithstanding any federal or state escheat laws to the contrary.

**ARTICLE XI**  
**PROVISIONS FOR CLAIMS OBJECTIONS AND ESTIMATION OF CLAIMS**

**11.1 Claims Administration Responsibility.** Except as otherwise specifically provided in the Plan and the Litigation Trust Agreement, after the Effective Date, the Litigation Trustee shall have the authority (a) to file, withdraw, or litigate to judgment objections to Claims, (b) to settle, compromise, or Allow any Claim or Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court, (c) to amend the Schedules in accordance with the Bankruptcy Code, and (d) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court. Any agreement entered into by the Litigation Trustee (acting in accordance with the terms of the Litigation Trust Agreement) with respect to the Allowance of any Claim shall be conclusive evidence and a final determination of the Allowance of such Claim.

**11.2 Claims Objections.** All objections to Claims shall be Filed by the Litigation Trustee on or before the Claims Objection Deadline, which date may be extended by the Bankruptcy Court upon a motion filed by the Litigation Trustee on or before the Claims Objection Deadline with notice only to those parties entitled to notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002 as of the filing of such motion. If a timely objection has not been Filed to a proof of Claim or the Schedules have not been amended with respect to a Claim that was scheduled by the Debtors but was not set forth in the Schedules by the Debtors as contingent, unliquidated, and/or disputed, then the Claim to which the proof of Claim or the Claim set forth in the Schedules relates will be treated as an Allowed Claim.

**11.3 Estimation of Contingent or Unliquidated Claims.** The Litigation Trustee may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to Bankruptcy Code section 502(c), regardless of whether the Debtors have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event the Bankruptcy Court so estimates any contingent or unliquidated Claim, that estimated amount shall constitute the Allowed amount of such Claim. All of the aforementioned Claims objection, estimation, and resolution procedures are cumulative and are not necessarily exclusive of one another.

**11.4 Distributions on Account of Disputed Claims.** Distributions may be made on account of an undisputed portion of a Disputed Claim. The Litigation Trustee shall, on the applicable distribution date, make Distributions on account of any Disputed Claim (or portion thereof) that has become an Allowed Claim. Such Distributions shall be based upon the Distributions that would have been made to the Holder of such Claim under the Plan if such Claim had been an Allowed Claim on the Effective Date in the amount ultimately Allowed.

**11.5 Amendments to Claims.** On or after the Effective Date, a Claim may not be filed or amended to increase liability or to assert new liabilities without the prior authorization of the Bankruptcy Court or the Litigation Trustee and any such new or amended Claim filed without prior authorization shall be deemed Disallowed in full without any further action.

**11.6 Claims Paid and Payable by Third Parties.** A Claim shall be Disallowed without an Objection thereto having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not the Debtors, the Litigation Trust, or the Litigation Trustee. Distributions under the Plan shall be made on account of any Allowed Claim that is payable pursuant to one of the Insurance Contract(s) solely up to the amount of the portion of such Allowed Claim that is (i) within the self-insured retention under such Insurance Contract(s) and/or (ii) in excess of any aggregate limits under such Insurance Contract(s). No Entity shall have any other recourse against the Debtors, the Estates, the Litigation Trust, or any of their respective properties or assets on account of a self-insured retention under an Insurance Contract; *provided, however,* that, except as otherwise required under the applicable Insurance Contracts and applicable non-bankruptcy law, an Insurer shall not be obligated to pay amounts within any self-insured retention or other self-insured layer.

**11.7 Adjustment to Claims Without Objection.** Any Claim that has been paid or otherwise satisfied may be designated on the Claims Register as such at the direction of the Litigation Trustee by the Filing of a Notice of Satisfaction by the Litigation Trustee, and without any further notice to or action, order, or approval of the Bankruptcy Court.

## **ARTICLE XII**

### **EXECUTORY CONTRACTS**

**12.1 Executory Contracts Deemed Rejected.** On the Effective Date, all Executory Contracts will be deemed rejected as of the Effective Date in accordance with, and subject to, the provisions and requirements of Bankruptcy Code sections 365 and 1123, except to the extent: (a) the Debtors previously have assumed, assumed and assigned or rejected such Executory Contract, or (b) prior to the Effective Date, the Debtors have Filed a motion to assume, assume and assign, or reject an Executory Contract on which the Bankruptcy Court has not ruled. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of all rejections of Executory Contracts pursuant to this Article and Bankruptcy Code sections 365(a) and 1123. Any and all Claims arising from the rejection of Executory Contracts under this Plan must be filed and served on the Litigation Trustee no later than thirty days after the Effective Date, provided that the foregoing deadline shall apply only to Executory Contracts that are rejected automatically by operation of this Article XII of the Plan.

**12.2 Insurance Neutrality.** Nothing in the Plan or the Confirmation Order, shall in any way operate to, or have the effect of, impairing, altering, supplementing, changing, expanding, decreasing, or modifying (a) the rights or obligations of any insurer, or (b) any rights or obligations of the Debtors or the Litigation Trust arising out of or under any Insurance Contract. The insurers, Debtors, and Creditors Trust, as applicable, shall retain all rights and defenses under such Insurance Contracts, and such Insurance Contracts shall apply to, and be enforceable by and against, the insureds and the Debtors and the Litigation Trust.

**ARTICLE XIII**  
**CONFIRMATION AND CONSUMMATION OF THE PLAN**

**13.1 Conditions Precedent to the Effective Date.** Each of the following is a condition precedent to the occurrence of the Effective Date:

- (a) the Confirmation Order shall have been entered by the Bankruptcy Court and be a Final Order;
- (b) the Professional Fee Escrow Account shall have funded in accordance with the terms of the Plan; and
- (c) the Litigation Trust Agreement shall have been executed.

**13.2 Notice of Effective Date.** On or before five (5) Business Days after the Effective Date, the Litigation Trustee shall mail or cause to be mailed to all Holders of Claims a notice that informs such Entities of (a) the occurrence of the Effective Date, (b) notice of the Final Administrative Claim Bar Date and Professional Fee Claim Bar Date, and (c) such other matters as the Litigation Trustee deems appropriate or as may be ordered by the Bankruptcy Court.

**13.3 Waiver of Conditions Precedent to the Effective Date.** The Debtors, with the prior written consent of the DIP Lenders and the Committee, may at any time, without notice or authorization of the Bankruptcy Court, waive in writing any or all of the conditions precedent to the Effective Date set forth in this Article, whereupon the Effective Date shall occur without further action by any Entity, *provided, however*, that the condition specified in section 13.1(a) may not be waived. The Debtors reserve the right to assert that any appeal from the Confirmation Order shall be moot after the Effective Date of the Plan.

**13.4 Effect of Non-Occurrence of Effective Date.** If each of the conditions specified in this Article have not been satisfied or waived in the manner provided herein within sixty (60) calendar days after the Confirmation Date (or such later date as may be agreed to by the Debtors and the Prepetition Agent), then: (i) the Confirmation Order shall be vacated and of no further force or effect; (ii) no Distributions under the Plan shall be made; (iii) the Debtors and all Holders of Claims against or Interests in the Debtors shall be restored to the status quo as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred; and (iv) all of the Debtors' obligations with respect to Claims and Interests shall remain unaffected by the Plan and nothing contained herein shall be deemed to constitute a waiver or release of any Claims by or against the Debtors or any other Entity or to prejudice in any manner the rights of the Debtors or any Entity in any further proceedings involving the Debtors, and the Plan shall be deemed withdrawn. Upon such occurrence, the Debtors shall File a written notification with the Bankruptcy Court and serve it upon such parties as the Bankruptcy Court may direct.

**ARTICLE XIV**  
**EFFECTS OF CONFIRMATION**

**14.1 Exculpation, Releases, and Injunctions**

The exculpations, releases, and injunctions provided for in Section 14.1 of the Plan shall be effective upon the Effective Date.

(a) **Exculpation and Limitation of Liability.** Notwithstanding any other provision of the Plan, the Exculpated Parties shall not have or incur any liability to, or be subject to any right of action by, any Holder of a Claim or an Interest, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or agents acting in such capacity, or Affiliates, or any of their successors or assigns, for any act or omission relating to, in any way, or arising from the Petition Date through the Effective Date related to: (i) the Chapter 11 Cases, (ii) formulating, negotiating or implementing the combined Disclosure Statement and Plan or any contract, instrument, release or other agreement or document created or entered into in connection with the combined Disclosure Statement and Plan; (iii) the Sale; (iv) any other postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring, sale or liquidation of the Debtors; (v) the solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, the Confirmation of the Plan, the Consummation of the Plan or (vi) the administration of the Plan or the property to be distributed under the Plan, except for their gross negligence or willful misconduct as determined by a Final Order, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations and any other applicable law or rules protecting the Exculpated Parties from liability. The Confirmation Order shall serve as a permanent injunction against any Entity seeking to enforce any claim or cause of action against the Exculpated Parties that has been exculpated pursuant to Section 14.1(a) of the Plan.

(b) **Releases by the Debtors.** Except as otherwise expressly provided in the Plan or the Confirmation Order, on the Effective Date, for good and valuable consideration, each of the Debtors, on their own behalf and as a representative of their respective Estates, shall, and shall be deemed to, completely and forever release, waive, void, extinguish and discharge unconditionally, each and all of the Debtor Released Parties of and from any and all Claims, Causes of Action, obligations, suits, judgments, damages, debts, rights, remedies and liabilities of any nature whatsoever, 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 or may be based in whole or part on any act, omission, transaction, event or other circumstance taking place or existing on or prior to the Effective Date (including prior to the Petition Date) in connection with or related to any of the Debtors, their respective Assets, the Estates, the Chapter 11 Cases, the Prepetition Financing Documents, the DIP Loan Documents, the Final DIP Order, the Global Settlement, the Colonnade Agreement, the Debtors' failed de-SPAC

transaction with Colonnade, any of the Debtors' in- or out-of-court restructuring efforts, the Sale or the combined Disclosure Statement and Plan, that may be asserted by or on behalf of any of the Debtors or their respective Estates, against any of the Debtor Released Parties. Notwithstanding the foregoing release, but subject to Section 10.4 hereof, the Debtors and their Estates are not releasing Claims or Causes of Action against the Potential Director Defendants solely with respect matters related to (i) the Debtors' failed de-SPAC transaction with Colonnade and the Colonnade Agreement, and (ii) the Nearside Transaction.

(c) **Consensual Third-Party Releases by Holders of Claims.** As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Releasing Parties shall be deemed to forever release, waive and discharge the Third-Party Released Parties of all claims, obligations, suits, judgments, damages, demands, debts, rights, remedies, causes of action and liabilities of any nature whatsoever in connection with or related to any of the Debtors, their respective Assets, the Estates, the Chapter 11 Cases, the Prepetition Financing Documents, the DIP Loan Documents, the Final DIP Order, the Global Settlement, any of the Debtors' in- or out-of-court restructuring efforts, the Sale or the combined Disclosure Statement and Plan, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or hereafter arising, in law, equity, or otherwise that are or may be based in whole or in part upon any act, omission, transaction, event, or other occurrence taking place or existing on or prior to the Effective Date (other than the rights of Holders of Allowed Claims to enforce the obligations under the Confirmation Order and the Plan); *provided, however*, that nothing in this section shall be deemed a waiver or release of any right of such Releasing Party to receive a Distribution pursuant to the terms of the Plan or other rights set forth in the Plan or the Confirmation Order; *provide further, however*, nothing in this section shall operate as a release, waiver or discharge of any causes of action or liabilities unknown to such Entity as of the Petition Date arising out of gross negligence, willful misconduct, fraud, or criminal acts of any such Released Party as determined by a Final Order.

The foregoing release provisions in Section 14.1(c) of the Plan shall not operate to waive, release or otherwise impair the rights of Creditors with setoff, subrogation or recoupment rights against the Debtors.

Notwithstanding anything to the contrary in the Plan, the United States is not a Releasing Party under the Plan and is not providing a release.

For avoidance of doubt, unless a Related Party receives notice and elects to be a Releasing Party under the Plan, direct claims of Related Parties against the Released Parties are not released pursuant to Section 14.1(c) of the Plan.

(d) **Non-Discharge of the Debtors; Injunction.** In accordance with Bankruptcy Code section 1141(d)(3), the Plan does not discharge the Debtors. Bankruptcy Code section 1141(c) nevertheless provides, among other things, that the property dealt with by the Plan is free and clear of all Claims and Interests against the Debtors. As

such, no Entity holding a Claim against the Debtors may receive any payment from, or seek recourse against, any assets that are to be distributed under the Plan other than assets required to be distributed to that Entity under the Plan. All parties are precluded from asserting against any property to be distributed under the Plan any Claims, rights, Causes of Action, liabilities, or Interests based upon any act, omission, transaction, or other activity that occurred before the Effective Date except as expressly provided in the Plan or the Confirmation Order.

Except as otherwise expressly provided for in the Plan or in obligations issued pursuant to the Plan, all Entities are permanently enjoined, on and after the Effective Date, on account of any Claim or Interest, from:

- (1) commencing or continuing in any manner any action or other proceeding of any kind against any of the Estates, the Litigation Trust, their successors and assigns, and any of their assets and properties;
- (2) enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against any Estate, the Litigation Trust, their successors and assigns, and any of their assets and properties;
- (3) creating, perfecting or enforcing any encumbrance of any kind against any Estate, the Litigation Trust, their successors and assigns, and any of their assets and properties;
- (4) asserting any right of setoff or subrogation of any kind against any obligation due from any Estate, the Litigation Trust or their successors and assigns, or against any of their assets and properties, except to the extent a right to setoff or subrogation is asserted with respect to a timely filed proof of Claim; or
- (5) commencing or continuing in any manner any action or other proceeding of any kind in respect of any Claim or Interest or Cause of Action released under Article XIV of the Plan.

Any Entity injured by any willful violation of such injunction may seek actual damages and, in appropriate circumstances, may seek punitive damages from the willful violator.

**14.2 Term of Bankruptcy Injunction or Stays.** All injunctions or stays provided for in the Chapter 11 Cases under Bankruptcy Code sections 105 or 362, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the closing of the Chapter 11 Cases.



**ARTICLE XV**  
**RETENTION OF JURISDICTION**

**15.1 Exclusive Jurisdiction of Bankruptcy Court.** Pursuant to Bankruptcy Code sections 105(a) and 1142, and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

- (a) allow, disallow, determine, subordinate, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest (whether filed before or after the Effective Date and whether or not Contingent, Disputed or unliquidated or for contribution, indemnification or reimbursement), including the compromise, settlement and resolution of any request for payment of any Claims or Interests, the resolution of any Objections to the allowance or priority of Claims or Interests and to hear and determine any other issue presented hereby or arising hereunder, including during the pendency of any appeal relating to any Objection to such Claim or Interest to the extent permitted under applicable law;
- (b) grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date;
- (c) hear and determine any and all adversary proceedings, motions, applications, and contested or litigated matters, including, but not limited to, all Causes of Action, and consider and act upon the compromise and settlement of any Claim or Interest, or Cause of Action;
- (d) determine and resolve any matters related to the assumption, assumption and assignment or rejection of any Executory Contract to which the Debtors are a party or with respect to which the Debtors may be liable, and to hear, determine and, if necessary, liquidate any Claims arising there from;
- (e) ensure that all Distributions to Holders of Allowed Claims under the Plan and the performance of the provisions of the Plan are accomplished as provided herein and resolve any issues relating to Distributions to Holders of Allowed Claims pursuant to the provisions of the Plan;
- (f) construe, take any action and issue such orders, prior to and following the Confirmation Date and consistent with Bankruptcy Code section 1142, as may be necessary for the enforcement, implementation, execution and Consummation of the Plan and all contracts, instruments, releases, other agreements or documents created in connection with the Plan, including, without limitation, the Disclosure Statement and the Confirmation Order, for the maintenance of the integrity of the Plan in accordance with Bankruptcy Code sections 524 and 1141 following the occurrence of the Effective Date;

- (g) determine and resolve any cases, controversies, suits or disputes that may arise in connection with the Consummation, interpretation, implementation or enforcement of the Plan (and all exhibits and schedules to the Plan) or the Confirmation Order, including the releases and injunction provisions set forth in and contemplated by the Plan or the Confirmation Order, or any entity's rights arising under or obligations incurred in connection therewith;
- (h) modify the combined Disclosure Statement and Plan or the Confirmation Order before or after the Effective Date, pursuant to Bankruptcy Code section 1127, as well as any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, or other agreement or document created in connection with the combined Disclosure Statement and Plan or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan, to the extent authorized by the Bankruptcy Code and the Plan;
- (i) issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with Consummation, implementation or enforcement of the Plan or the Confirmation Order;
- (j) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;
- (k) determine any other matters that may arise in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, or other agreement or document created in connection with the combined Disclosure Statement and Plan or the Confirmation Order;
- (l) determine such other matters and for such other purposes as may be provided in the Confirmation Order;
- (m) hear and determine matters concerning state, local and federal taxes in accordance with Bankruptcy Code sections 346, 505 and 1146;
- (n) enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Cases;
- (o) determine and resolve controversies related to the Estates, the Debtors, or the Litigation Trust from and after the Effective Date;
- (p) hear and determine any other matter relating to the combined Disclosure Statement and Plan; and
- (q) enter a final decree closing any or all the Chapter 11 Cases.

**ARTICLE XVI**  
**MISCELLANEOUS PROVISIONS**

**16.1 Modification of the Plan.** The Debtors may alter, amend, or modify the Plan or any exhibits or schedules hereto under Bankruptcy Code section 1127(a) at any time prior to or after the Confirmation Date but prior to the substantial Consummation of the Plan, provided, however, that any such alteration, amendment or modification does not materially and adversely affect the treatment of Holders of Claims or Interests under the Plan. Any Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, or modified, if the proposed alteration, amendment, or modification does not materially and adversely change the treatment of the Claim of such Holder.

**16.2 Revocation, Withdrawal, or Non-Confirmation of the Plan.** The Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Hearing. If the Plan is revoked or withdrawn prior to the Confirmation Hearing, or if the Plan is not confirmed by the Bankruptcy Court, then:

- (a) the Plan shall be null and void in all respects, and
- (b) nothing contained in the combined Disclosure Statement and Plan shall
  - (i) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtors or any other Entity, (ii) prejudice in any manner the rights of the Debtors or any other Entity, or (iii) constitute an admission of any sort by the Debtors or any other Entity.

**16.3 Binding Effect.** Except as otherwise provided in Bankruptcy Code section 1141(d)(3) and subject to the occurrence of the Effective Date, on and after the Confirmation Date, the provisions of the Plan shall bind any Holder of a Claim against, or Interest in, the Debtors and such Holder's respective successors and assigns, whether or not the Claim or Interest of such Holder is Impaired under the Plan and whether or not such Holder has accepted the Plan.

**16.4 Subordination Rights.** The classification and manner of satisfying all Claims and the respective Distributions and treatments hereunder take into account and/or conform to the relative priority and rights of the Claims in each Class in connection with the contractual, legal and equitable subordination rights relating thereto, whether arising under contract, general principles of equitable subordination, Bankruptcy Code section 510(b) Code or otherwise. All subordination rights that a Holder of a Claim may have with respect to any Distribution to be made under the Plan shall be implemented through the Plan, and all actions by such Holder of a Claim related to the enforcement of such subordination rights shall be enjoined permanently. The provisions of any contractual or structural subordination of Claims shall remain enforceable by the Litigation Trustee on behalf of the Estates after the occurrence of the Effective Date. Without limitation hereunder, the Litigation Trustee, on behalf of the Estates, may likewise enforce any right of the Debtors or the Estates to equitably or otherwise subordinate Claims under Bankruptcy Code section 510, which rights are deemed transferred to, remain and are preserved in the Litigation Trust, except as otherwise expressly set forth herein or as expressly provided in a Final Order of the Bankruptcy Court in the Chapter 11 Cases.

**16.5 Severability of Plan Provisions.** If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may be altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**16.6 Payment of Statutory Fees; Filing of Quarterly Reports.** All fees due and payable pursuant to section 1930 of Title 28 of the U.S. Code, together with the statutory rate of interest set forth in section 3717 of Title 31 of the U.S. Code to the extent applicable (“**Quarterly Fees**”) prior to the Effective Date shall be paid by the Debtors on the Effective Date. After the Effective Date, the Debtors and the Litigation Trust shall be jointly and severally liable to pay any and all Quarterly Fees when due and payable. The Debtors shall file all monthly operating reports due prior to the Effective Date when they become due, using UST Form 11-MOR. After the Effective Date, the Debtors and Litigation Trust shall file with the Bankruptcy Court separate UST Form 11-PCR reports when they become due. Notwithstanding anything called for in the Plan to the contrary, each and every one of the Debtors and the Litigation Trust, as applicable, shall remain obligated to pay Quarterly Fees to the Office of the U.S. Trustee and make such reports until the earliest of any such Debtor case being closed, dismissed, or converted to a case under Chapter 7 of the Bankruptcy Code. The U.S. Trustee shall not be required to file any Administrative Claim in the case and shall not be treated as providing any release under the Plan.

**16.7 Dissolution of the Committee.** The Committee shall dissolve on the Effective Date and the members of such Committee shall be released and discharged from all further rights and duties arising from or related to the Chapter 11 Cases, except with respect to, and to the extent of any applications for Professional Fee Claims or expense reimbursements for members of such Committee. The Committee and its retained Professionals may also participate in any appeal pending as of the Effective Date or filed thereafter, the outcome of which could affect the treatment of prepetition creditors (including Holders of Allowed Priority Claims and 503(b)(9) Claims), including, but not limited to, any cases, controversies, suits or disputes arising in connection with the Consummation, interpretation, implementation or enforcement of the Plan or the Confirmation Order. The Professionals retained by the Committee shall not be entitled to assert any Administrative Claims nor shall they have an Allowed Administrative Claims for any services rendered or expenses incurred after the Effective Date except in respect of the preparation and prosecution of or any objection to any Filed fee application and participation in any appeals.

**16.8 Exemption from Section 1146.** Pursuant to Bankruptcy Code section 1146(a), under the Plan, (i) the issuance, distribution, transfer or exchange of any debt, equity security or other interest in the Debtors; or (ii) the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be taxed under any law imposing

a stamp tax or similar tax. To the extent that the Debtors or Litigation Trustee elect to sell any property prior to or after the Confirmation Date, such sales of property will be exempt from any transfer taxes in accordance with Bankruptcy Code section 1146(c). All subsequent issuances, transfers or exchanges of securities, or the making or delivery of any instrument of transfer by the Debtors in the Chapter 11 Cases shall be deemed to be or have been done in furtherance of the Plan.

**16.9 Closing of Chapter 11 Cases; Caption Change.** Anytime subsequent to the Effective Date, the Litigation Trustee may file a motion to close the Chapter 11 Cases of all of the Debtors except for PlastiQ, Inc., and changing the caption of the Chapter 11 Cases accordingly. Nothing in the Plan shall authorize the closing of any case *nunc pro tunc* to a date that precedes the date any such order is entered. Upon the Filing of a motion to close the Chapter 11 Case of PlastiQ, Inc., the Litigation Trustee shall file a final report with respect to all of the Chapter 11 Cases pursuant to Local Rule 3022-1(c).

**16.10 Filing of Additional Documents.** On or before the Effective Date of the Plan, the Debtors may issue, execute, deliver, and File with the Bankruptcy Court or record any agreements and other documents, and take any action as may be necessary or appropriate to effectuate, consummate and further evidence the terms and conditions of the Plan.

**16.11 Insurance.** Confirmation of the Plan and the occurrence of the Effective Date shall have no effect on insurance policies of the Debtors in which the Debtors are or were insured parties. Each insurance company is prohibited from, and the Confirmation Order shall include an injunction against, denying, refusing, altering, or delaying coverage on any basis regarding or related to the Chapter 11 Cases, the Plan or any provision within the Plan, including the treatment or means of liquidation set out within the Plan for insured Claims.

**16.12 Successors and Assigns.** The rights, benefits and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Entity.

**16.13 Governing Law.** Except to the extent that the Bankruptcy Code or Bankruptcy Rules or other federal laws is applicable, and subject to the provisions of any contract, instrument, release, or other agreement or document entered into in connection with the Plan, the construction, implementation and enforcement of the Plan and all rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to conflicts of law principles which would apply the law of a jurisdiction other than the State of Delaware or the United States of America.**Exhibits and Schedules.** All exhibits and schedules annexed hereto, and all documents submitted in support hereof, are incorporated into and are a part of the Plan as if set forth in full herein. Holders of Claims and Interests may obtain copies of the Filed exhibits and schedules upon written request to the Debtors. Upon their Filing, the exhibits and schedules may be inspected in the Office of the Clerk of the Bankruptcy Court or its designee during normal business hours. The documents contained in the exhibits and schedules shall be approved by the Bankruptcy Court pursuant to the Confirmation Order. To the extent any exhibit or schedule annexed hereto is inconsistent with the Plan, the contents of the Plan shall control.**Computation of Time.** In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

**16.16 Reservation of Rights.** The Filing of the combined Disclosure Statement and Plan, any statement or provision contained in the combined Disclosure Statement and Plan, or the taking of any action by the Debtors with respect to the Plan shall not be, and shall not be deemed to be, an admission or waiver of any rights of the Debtors with respect to the Holders of Claims and Interests.

Dated: July 31, 2023

By: /s/ Vladimir Kasparov

Name: Vladimir Kasparov

Title: Chief Restructuring Officer

**EXHIBIT A**

**Retained Causes of Action**

**(Intentionally Omitted—To be Filed with the Plan Supplement**



**EXHIBIT B**

**Liquidation Analysis**

**A. Introduction**

**NOTHING CONTAINED IN THE FOLLOWING LIQUIDATION ANALYSIS IS INTENDED TO BE OR CONSTITUTES A CONCESSION, ADMISSION OR ALLOWANCE OF THE DEBTORS (OR ANY OTHER PARTY). THE ESTIMATED AMOUNT OF ALLOWED CLAIMS SET FORTH HEREIN SHOULD NOT BE RELIED UPON FOR ANY OTHER PURPOSE, INCLUDING ANY DETERMINATION OF THE VALUE OF ANY DISTRIBUTION TO BE MADE ON ACCOUNT OF ALLOWED CLAIMS OR ALLOWED INTERESTS UNDER THE PLAN. THE ACTUAL AMOUNT OF ALLOWED CLAIMS AND ALLOWED INTERESTS IN THESE CHAPTER 11 CASES COULD DIFFER MATERIALLY FROM THE ESTIMATED AMOUNTS SET FORTH IN THE LIQUIDATION ANALYSIS.**

Under the “best interests” of creditors test, section 1129(a)(7) of the Bankruptcy Code requires that the Bankruptcy Court find, as a condition to confirmation of the Plan, that each Holder of a Claim or Interest in each Impaired Class: (i) has accepted the Plan; or (ii) will receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. To make these findings, the Bankruptcy Court must: (1) estimate the cash proceeds that a chapter 7 trustee would generate if each Chapter 11 Case were converted to a chapter 7 case on the Effective Date and the assets of such Debtor’s estate were liquidated; (2) determine the distribution that each non-accepting Holder of a Claim or Interest would receive from the net estimated liquidation proceeds under the priority scheme dictated in chapter 7 of the Bankruptcy Code; and (3) compare each Holder’s estimated recovery under liquidation to the distribution under the Plan that such Holder would receive if the Plan were confirmed and consummated. To demonstrate that the Plan satisfies the best interests test, the Debtors have prepared this hypothetical liquidation analysis (the “Liquidation Analysis”), which is based upon certain assumptions discussed in the Combined Plan and Disclosure Statement and the accompanying notes to this Liquidation Analysis.

The Debtors believe that the Liquidation Analysis and conclusions set forth herein are fair and represent management’s and the Debtors’ advisors best judgment regarding the results of a liquidation of the Debtors under chapter 7 of the Bankruptcy Code taking into account various factors. The Liquidation Analysis was prepared for the sole purpose of assisting the Bankruptcy Court and Holders of Impaired Claims or Interests in making the determination that the Plan satisfies the best interest of creditors test and should not be used for any other purpose.

NOTHING CONTAINED IN THIS LIQUIDATION ANALYSIS IS INTENDED AS OR CONSTITUTES A CONCESSION, ADMISSION OR ALLOWANCE OF ANY CLAIMS OR INTERESTS BY OR AGAINST THE DEBTORS OR TO BE USED FOR ANY OTHER PURPOSE OTHER THAN THE PRESENTATION OF A HYPOTHETICAL LIQUIDATION ANALYSIS FOR PURPOSES OF THE “BEST INTERESTS” TEST.

## **B. Approach and Purpose of the Liquidation Analysis**

This Liquidation Analysis was prepared by the Debtors for use in connection with the *Combined Disclosure Statement and Chapter 11 Plan of PlastiQ Inc. and its Affiliated Debtors* (the “*Combined Plan and Disclosure Statement*”).<sup>1</sup>

The Liquidation Analysis assumes that the Debtors’ liquidation would commence on or about September 30, 2023 (the “Conversion Date”), which is the anticipated Effective Date. It is assumed that on the Conversion Date, the Bankruptcy Court would appoint a chapter 7 trustee (the “Trustee”) to oversee the liquidation of the Debtors’ estates, during which time all of the Cash proceeds, net of liquidation-related costs, would then be distributed to creditors in accordance with applicable law: (i) first, to pay (a) costs associated with the liquidation, including Trustee fees, Trustee professional fees, accrued and estimated chapter 11 professional fees, outstanding transaction related payments and expenses in connection with the Court-approved sale of substantially all the Debtors’ assets, and other wind down costs, (b) Allowed Administrative Claims, and (c) Allowed Priority Tax Claims; (ii) second, to pay Other Priority Non-Tax Claims; (iii) third, to pay Other Secured Claims; (iv) fourth, to pay creditors holding Allowed General Unsecured Claims; (v) fifth, to pay Subordinated Claims; (vi) sixth, to pay Intercompany Claims; and (vii) seventh, to pay Interests.

The Debtors have not fully evaluated or adjudicated claims that have been or may be asserted against the Debtors. Accordingly, the amount of final Allowed Claims against the Debtors’ estates may differ materially from the claim amounts used in the Liquidation Analysis. Claim amounts reflected herein represent scheduled amounts adjusted for estimated liquidation amounts for certain claims scheduled as unliquidated.

The Liquidation Analysis assumes that the Debtors would be liquidated or wound down in a jointly administered and substantively consolidated proceeding. Therefore, the Liquidation Analysis considers a consolidated company liquidation / wind-down for the Debtors and assumes unsecured intercompany claims arising post-petition and pre-petition between and amongst the Debtors would be settled.

THE DEBTORS BELIEVE THAT ANY ANALYSIS OF A HYPOTHETICAL LIQUIDATION IS NECESSARILY SPECULATIVE. THERE ARE A NUMBER OF ESTIMATES AND ASSUMPTIONS UNDERLYING THE LIQUIDATION ANALYSIS THAT ARE INHERENTLY SUBJECT TO SIGNIFICANT UNCERTAINTIES AND CONTINGENCIES BEYOND THE CONTROL OF THE DEBTORS OR A CHAPTER 7 TRUSTEE. NEITHER THE LIQUIDATION ANALYSIS, NOR THE FINANCIAL INFORMATION ON WHICH IT IS BASED, HAS BEEN EXAMINED OR REVIEWED BY INDEPENDENT ACCOUNTANTS IN ACCORDANCE WITH STANDARDS PROMULGATED BY THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS. NEITHER THE DEBTORS NOR THEIR ADVISORS MAKE ANY REPRESENTATION OR WARRANTY THAT THE ACTUAL RESULTS OF A CHAPTER 7

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<sup>1</sup> Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Combined Disclosure Statement and Plan.

LIQUIDATION OF THE DEBTORS WOULD OR WOULD NOT APPROXIMATE THE ESTIMATES AND ASSUMPTIONS REPRESENTED IN THE LIQUIDATION ANALYSIS.

**C. Assumptions and Analysis**

Under section 704 of the Bankruptcy Code, a trustee must, among other duties, collect and convert the property of the estate as expeditiously (generally in a distressed process) as is compatible with the best interests of parties-in-interest.

In the event of a chapter 7 liquidation, it is likely that a chapter 7 liquidation would (i) incur increased costs and expenses arising from fees payable to the Trustee in bankruptcy and professional advisors to the Trustee, and (ii) result in the potentially substantial increase in Claims that would dilute creditor recoveries.

**1. Dependence on assumptions.** The Liquidation Analysis is based on a number of estimates and assumptions that, although developed and considered reasonable by management and the Debtors' advisors, are inherently subject to significant economic, business, regulatory and competitive uncertainties and contingencies beyond the control of the Debtors. Accordingly, if the Debtors were, in fact, to undergo such a liquidation actual results and conclusions could vary materially and adversely from those contained herein.

**2. Increased fees and expenses.** This Liquidation Analysis assumes that the Debtors' costs of liquidation under chapter 7 would include the fees payable to the Trustee as well as those fees that might be payable to attorneys and other professionals that the Trustee might engage. Other liquidation costs include the expenses incurred during the Chapter 11 Cases that are allowed as administrative priority Claims in the chapter 7 cases, such as compensation for attorneys, financial advisors, appraisers, accountants, and other professionals for the Debtors and the Official Committee of Unsecured Creditors (the "Committee"), and costs and expenses of members of the Committee, as well as other compensation Claims.

**3. Additional claims in a liquidation.** The liquidation itself may trigger certain obligations and priority payments that otherwise would not be due in the ordinary course of business or would otherwise not exist under a chapter 11 plan. Some of these claims could be significant and may be entitled to priority in payment over General Unsecured Claims. Those priority payments would be made in full before any distribution of proceeds to Holders of General Unsecured Claims, Subordinated Claims or Interest Claims.

**4. Litigation claims.** The Liquidation Analysis does not assess any value to potential litigation claims that may belong to the Debtors' estates, including claims to recover potentially avoidable preferential and/or fraudulent transfers.

**5. Chapter 7 liquidation costs.** It is assumed that a period of 360 days would be required to complete the liquidation of the Debtors' estates. The fees and operating expenses incurred during the chapter 7 process are included in the estimate of wind-down costs.

**6. Distribution of Net Liquidation Proceeds.** Chapter 7 and Chapter 11 Administrative Claims, Priority Claims, professional and trustee fees, and other Claims that may arise in a

liquidation or wind-down scenario would be paid in full from the liquidation / wind-down proceeds before the balance of any proceeds will be made available to pay any secured and General Unsecured Claims. Under the absolute priority rule, no junior creditor at a given entity would receive any distribution until all senior creditors are paid in full at such entity, and no equity holder at such entity would receive any distribution until all creditors at such entity are paid in full. The assumed distributions to creditors as reflected in the Liquidation Analysis are estimated in accordance with the absolute priority rule.

#### **D. Conclusion**

Based on the foregoing, the Debtors believe that the value of any distributions to each Class of Allowed Claims in a chapter 7 liquidation would be equal to, or less than, the value of distributions provided to each Class under the Plan, and that the Plan satisfies the “best interests” test.

#### **Specific Notes to the Liquidation Analysis**

##### **1. Unrestricted Cash**

Represents estimated pro-forma cash balance as of the Conversion Date based on the Debtors’ cash flow forecast as of July 6, 2023 adjusted to reflect payment of administrative claims, including Professional Fee Claims budgeted and accrued, through the Conversion Date.

##### **2. Deposits**

Represents potential recoveries of deposits not purchased in the Sale.

##### **3. Amex Receivable**

Represents the portion of the deposit previously held by American Express that will remain with the Debtors’ Estates in accordance with the Global Settlement.

##### **4. Colonnade Settlement**

Represents the Debtors’ Estate’s portion of the Colonnade cash payment pursuant to paragraph 28 of the Revised Proposed Sale Order.

##### **5. Chapter 7 Trustee Fees**

Represent the fees paid to the Trustee in accordance with section 326 of the Bankruptcy Code and assumed to be 3.0% of Total Distributable Value.

##### **6. Estimated UST Fees**

Reflects amounts owed under 28 U.S.C. § 1930 from and after the Effective Date of the Plan.

##### **7. Wind-down Costs**

Includes costs associated with the wind-down of the Debtors' Estates, including, but not limited to, preparing final tax returns, dissolution, reconciling claims, and analysis and pursuit of Causes of Action.

#### **8. Tax Claims**

Represents Tax Claims scheduled by the Debtors in the Schedules of Assets and Liabilities. Tax Claims do not consist of any claims for the purposes of the Liquidation Analysis. The Debtors do not anticipate any administrative post-petition tax claims as of the Effective Date.

#### **9. Class 1: Priority Non-Tax Claims**

Represents Priority Non-Tax claims scheduled by the Debtors in the Schedules of Assets and Liabilities. Priority Non-Tax Claims do not consist of any claims for the purposes of the Liquidation Analysis.

#### **10. Class 2: Other Secured Claims**

Represents Other Secured Claims scheduled by the Debtors in the Schedules of Assets and Liabilities. Other Secured Claims do not consist of any claims for the purposes of the Liquidation Analysis.

#### **11. Class 3: Prepetition Loan Claims**

Represents the secured claim held by the Debtors' Prepetition Secured Parties. The Liquidation Analysis assumes that this claim is satisfied in conjunction with the proposed Sale.

#### **12. Class 4: General Unsecured Claims**

Represents the total amount of General Unsecured Claims scheduled in the Debtors' Schedules of Assets and Liabilities and estimates for claims scheduled as unliquidated or undetermined. The Debtors have not reconciled proofs of claim that have been submitted and therefore, the Allowed General Unsecured Claims balance could vary materially.

#### **13. Class 5: Subordinated Claims**

Represents Subordinated Claims reported by the Debtors in the Schedules of Assets and Liabilities. Subordinated Claims do not consist of any claims for the purposes of the Liquidation Analysis.

#### **14. Class 6: Intercompany Claims**

The Liquidation Analysis assumes that the Debtors would be liquidated or wound down in a jointly administered and substantively consolidated proceeding and as such, unsecured intercompany claims arising post-petition and pre-petition between and amongst the Debtors would be settled.

	Notes	Book Value	Proposed Chapter 11 Plan of Reorganization				Chapter 7 Liquidation			
			Recovery %		Recovery \$		Recovery %		Recovery \$	
			Low	High	Low	High	Low	High	Low	High
Distributable Value Before Plan Administration Costs										
Unrestricted Cash	1	741,200	100%	100%	741,200	741,200	100%	100%	741,200	741,200
Deposits	2	656,838	0%	15%	-	100,000	0%	2%	-	10,000
AMEX Receivable	3	1,000,000	80%	80%	734,000	734,000	80%	80%	734,000	734,000
Colonnade Settlement	4	300,000	63%	63%	187,500	187,500	63%	63%	187,500	187,500
Total Distributable Value Before Plan Administration Costs		\$ 2,698,038			\$ 1,662,700	\$ 1,762,700			\$ 1,662,700	\$ 1,672,700
Plan Administration Costs										
Chapter 7 Trustee Fees	5				\$ -	\$ -			\$ 49,881	\$ 50,181
Estimated UST Fees	6				13,302	14,102			-	-
Wind-Down Expenses	7				375,000	250,000			750,000	500,000
Total Plan Administration Costs					\$ 388,302	\$ 264,102			\$ 799,881	\$ 550,181
Net Liquidation Proceeds Available for Distribution					\$ 1,274,398	\$ 1,498,598			\$ 862,819	\$ 1,122,519

Claims		Claim Amount	Recovery %		Recovery \$		Recovery %		Recovery \$	
			Low	High	Low	High	Low	High	Low	High
<b>Tax Claims</b>	8	\$ -	0.0%	0.0%	\$ -	\$ -	0.0%	0.0%	\$ -	\$ -
<i>Remaining Liquidation Proceeds Available for Distribution</i>					1,274,398	1,498,598			862,819	1,122,519
<b>Class 1: Priority Non-Tax Claims</b>	9	\$ -	0.0%	0.0%	\$ -	\$ -	0.0%	0.0%	\$ -	\$ -
<i>Remaining Liquidation Proceeds Available for Distribution</i>					1,274,398	1,498,598			862,819	1,122,519
<b>Class 2: Other Secured Claims</b>	10	\$ -	0.0%	0.0%	\$ -	\$ -	0.0%	0.0%	\$ -	\$ -
<i>Remaining Liquidation Proceeds Available for Distribution</i>					1,274,398	1,498,598			862,819	1,122,519
<b>Class 3: Prepetition Loan Claims</b>	11	\$ 43,334,584	N/A	N/A	\$ -	\$ -	N/A	N/A	\$ -	\$ -
<i>Remaining Liquidation Proceeds Available for Distribution</i>					1,274,398	1,498,598			862,819	1,122,519
<b>Class 4: General Unsecured Claims</b>	12	\$ 27,729,998	4.6%	5.4%	\$ 1,274,398	\$ 1,498,598	3.1%	4.0%	\$ 862,819	\$ 1,122,519
<i>Remaining Liquidation Proceeds Available for Distribution</i>					-	-			-	-
<b>Class 5: Subordinated Claims</b>	13	\$ -	0.0%	0.0%	\$ -	\$ -	0.0%	0.0%	\$ -	\$ -
<i>Remaining Liquidation Proceeds Available for Distribution</i>					-	-			-	-
<b>Class 6: Intercompany Claims</b>	14	N/A	0.0%	0.0%	\$ -	\$ -	0.0%	0.0%	\$ -	\$ -
<i>Remaining Liquidation Proceeds Available for Distribution</i>					-	-			-	-
<b>Class 7: Interests</b>		N/A	0.0%	0.0%	\$ -	\$ -	0.0%	0.0%	\$ -	\$ -
<i>Remaining Liquidation Proceeds Available for Distribution</i>					-	-			-	-