

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
) Chapter 11
 PLASTIQ INC., *et al.*,¹)
) Case No. 23-10671 (BLS)
 Debtors.)
) (Joint Administration Requested)
)
) **Bidding Procedures Objection**
) **Deadline: June 9, 2023 at 4:00 p.m.**
) **(ET)**
)
) **Proposed Bidding Procedures**
) **Hearing Date: June 16, 2023,**
) **subject to availability of the Court**
)
) **Proposed Sale Objection Deadline:**
) **July 14, 2023 at 4:00 p.m. (ET)**
)
) **Proposed Sale Hearing Date:**
) **July 24, 2023, subject to availability**
) **of the Court**

**DEBTORS’ MOTION FOR ENTRY OF
 (A) AN ORDER (I) APPROVING BIDDING PROCEDURES
 IN CONNECTION WITH THE 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;
 AND (B) AN ORDER (I) APPROVING THE PURCHASE AGREEMENTS, AND
 (II) AUTHORIZING A SALE FREE AND CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES, AND OTHER INTERESTS**

The above-captioned debtors and debtors in possession (each, a “Debtor” and, collectively, the “Debtors”) hereby file this motion (the “Motion”) for entry of: (a) an order, substantially in the form attached hereto as Exhibit A (the “Bidding Procedures Order”),

¹ 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.



(i) approving bidding procedures, substantially in the form attached as Annex 1 to the Bidding Procedures Order (the “**Bidding Procedures**”), to govern the marketing and sale of all or substantially all of the Debtors’ assets (the “**Assets**”), and approving certain bid protections in connection therewith, (ii) authorizing the Debtors to schedule an auction to sell the Assets (the “**Auction**”) and scheduling the hearing to approve a sale of the Assets (the “**Sale Hearing**”), (iii) approving the form and manner of notice of the proposed sale transactions, the Bidding Procedures, the Auction, the Sale Hearing, and related dates and deadlines, (iv) authorizing procedures governing the assumption and assignment of certain executory contracts and unexpired leases (the “**Assumed Contracts**”) to the prevailing bidder(s) acquiring the Assets (a “**Successful Bidder**”), and (v) granting related relief; and (b) one or more orders (collectively, the “**Sale Order**”) (i) approving the purchase agreement between the Debtors and the Stalking Horse Bidder (as defined below), or such other Successful Bidder and (ii) authorizing the sale(s) (collectively, the “**Sale**”) of the Assets and the assumption and assignment of the Assumed Contracts to the Stalking Horse Bidder or such other Successful Bidder free and clear of all liens, claims, encumbrances, and other interests (collectively, the “**Encumbrances**”), other than any assumed liabilities and permitted Encumbrances.

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a), 363, 365, 503, and 507 of title

11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”).

GENERAL BACKGROUND

2. On the date hereof (the “**Petition Date**”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committees have been appointed in the chapter 11 cases and no request has been made for the appointment of a trustee or examiner.

3. Additional information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the filing of the chapter 11 cases is set forth in the *Declaration of Vladimir Kasparov in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”), which is being filed contemporaneously herewith and is incorporated by reference.²

THE DEBTORS’ MARKETING PROCESS

4. In January 2023, after considering their outstanding debt obligations and ongoing operational and liquidity needs, the Debtors determined to retain 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. In this role, Portage Point has, among other things, explored a potential sale of the Debtors’ assets.

² Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the First Day Declaration, Bidding Procedures, or Stalking Horse Agreement (as defined below), as applicable.

5. 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 confidential electronic data room (the "**Data Room**") and a confidential information memorandum (the "**CIM**") with the assistance of the Debtors and their other professional advisors. The Debtors and their advisors contacted approximately 15 prospective buyers.

6. 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.

7. As described more fully in the First Day Declaration, on March 9, 2023, the Debtors received a non-binding letter of intent (the "**LOI**") from Priority Holdings, Inc. ("**Priority**"). Over the following two weeks, the Debtors, Blue Torch Finance LLC, as agent for the Debtors' prepetition secured lenders ("**Blue Torch**"), and Priority negotiated the terms and conditions of the LOI. On March 28, 2023, the LOI with Priority was executed by the necessary parties.

8. 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. Following termination of the LOI, the Debtors continued discussions with

Priority regarding a potential stalking horse bid. In addition, on April 24, 2023, the Debtors re-initiated their marketing efforts. In particular, the Debtors, with the assistance of Portage Point, identified a broad universe of 107 potential strategic buyers and 79 potential financial buyers. As of the Petition Date, the Debtors and their advisors have contacted 79 financial buyers and 101 strategic buyers. Of these, 20 financial buyers and 12 strategic buyers have signed NDAs and have access to the Data Room.

9. On May 23, 2023, the Debtors and PlastiQ, Powered by Priority, LLC (the “**Stalking Horse Bidder**”), an acquisition vehicle formed by Priority, agreed on the terms of a stalking horse bid, and executed the asset purchase agreement, attached hereto as Exhibit B (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 the Assumed Liabilities:

- a. a cash payment to the Debtors equal to \$27.5 million (the “**Cash Payment**”);
- b. 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
- c. pay to Colonnade Acquisition Corp. II (“**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.

10. The Stalking Horse Agreement will serve 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.

11. The Debtors now seek to promptly effectuate a Sale of their Assets, subject to a competitive bidding process that is consistent with both the timing of the chapter 11 cases and

the Debtors' fiduciary duties to maximize value for their estates, stakeholders, and parties in interest. Upon the Court's entry of the Bidding Procedures Order, the Debtors intend to provide notice of the Bidding Procedures, the Auction date, the deadline to object to the proposed Sale, and the Sale Hearing to all prospective buyers of the Assets that have contacted or been contacted by the Debtors or their advisors during the marketing process to date as well as any additional prospective buyers of the Assets that will be contacted by the Debtors or their advisors following the Petition Date.

THE ASSETS AND THE STALKING HORSE AGREEMENTS

A. The Assets

12. The Debtors' Assets consist of, without limitation, certain cash, inventory, accounts receivable, executory contracts and unexpired leases, intellectual property, permits, licenses, customer lists, books and records, claims and causes of action, and other related personal property. Subject to the terms of the Bidding Procedures, interested parties may bid on the Assets (i) in individual lots; (ii) as a collective whole; or (iii) in any combination.

B. The Stalking Horse Agreement

13. The following table sets forth a summary of the material terms and conditions of the Stalking Horse Agreement, including required disclosures under Local Rule 6004-1(b)(iv).³

³ If there are any inconsistencies between the summary set forth herein and the Stalking Horse Agreement, the terms and conditions of the Stalking Horse Agreement shall govern. Capitalized terms used in the following disclosures shall have the meaning ascribed to them in the Stalking Horse Agreement.

Term (Agreement Citation)	Detail
Seller	Plastiq, Inc. and its affiliated Debtors
Stalking Horse Bidder (Recitals) Local Rule 6004-1(b)(iv)(A)	Plastiq, Powered by Priority, LLC The Stalking Horse Bidder is not an insider, as defined in section 101(31) of the Bankruptcy Code.
Consideration (Art. 2.5 and 8.3) Local Rule 6004-1(b)(iv)(N)	<p><u>Purchase Price:</u></p> <p>As consideration for the sale and transfer of the Purchased Assets, in addition to the assumption by Buyer of the Assumed Liabilities, Buyer shall: (a) make a cash payment to Sellers equal to \$27.5 million (the “Cash Payment”); (b) pay Blue Torch the consideration as described in the Exchange Agreement Terms attached to the Stalking Horse Agreement as <u>Exhibit A</u>, in accordance with the terms and conditions of the Exchange Agreement; and (c) pay Colonnade the consideration as described in the Letter Agreement Terms attached to the Stalking Horse Agreement as <u>Exhibit B</u>, in accordance with the terms and conditions of the Letter Agreement.</p> <p><u>Credit Bidding:</u></p> <p>Blue Torch is permitted to make a credit bid of its Secured Debt and any amounts owing under the DIP Agreement (each as defined in the Stalking Horse Agreement).</p>
Agreements with Management Local Rule 6004-1(b)(iv)(B)	N/A
Releases (art 6.7) Local Rule 6004-1(b)(iv)(C)	Effective upon the Closing, Sellers, on behalf of themselves and their respective past, present and future subsidiaries, parents, divisions, Affiliates, agents, representatives, insurers, attorneys, successors and assigns (collectively, the “ Seller Releasing Parties ”), hereby release, remise, acquit and forever discharge (i) the Buyer and its past, present and future subsidiaries, parents, divisions, Affiliates, agents, representatives, insurers, attorneys, successors and assigns, and each of its and their respective directors, managers, officers, employees, attorneys, contractors, subcontractors, independent contractors, owners and insurance companies (collectively, the “ Buyer Released Parties ”), from any and all claims, demands, causes of action, disputes, controversies, suits, cross-claims, torts, losses, attorneys’ fees and expenses, obligations, agreements, covenants, damages, Liabilities, costs and expenses arising on or prior to the Closing Date, whether known or unknown, whether anticipated or unanticipated, whether claimed or suspected, whether fixed or contingent, whether yet accrued or not, whether damage has resulted or not, whether at law or in equity, whether arising out of agreement or imposed by statute, common law of any kind, nature, or description, including, without limitation as to any of the foregoing, any claim by way of indemnity or contribution, which any

Term (Agreement Citation)	Detail
	Seller Releasing Party has, may have had or may hereafter assert against any Buyer Released Party and (ii) any claim, right or interest of Sellers (whether known or unknown, whether anticipated or unanticipated, whether claimed or suspected, whether fixed or contingent, whether yet accrued or not, whether at law or in equity, whether arising out of agreement or imposed by statute, common law of any kind, nature, or description) in the Purchased Assets; provided, that notwithstanding the foregoing, Seller Releasing Parties do not in any event release Buyer from its obligations under the Stalking Horse Agreement, including the Assumed Liabilities, or from acts or omissions constituting gross negligence or willful misconduct. In addition, if Sellers file a Chapter 11 plan, such plan shall be consistent with the Stalking Horse Agreement in all respects and will include releases and exculpation provisions in favor of Buyer Released Parties to the maximum extent permitted by law.
Private Sale/No Competitive Bidding Local Rule 6004- 1(b)(iv)(D)	The Debtors are proposing, and the Stalking Horse Agreement contemplates, an open marketing and auction process, subject to receiving a higher or better offer on or before the Bid Deadline.
Closing Deadlines (Art.8.1) Local Rule 6004- 1(b)(iv)(E)	The Stalking Horse Agreement may be terminated by the Stalking Horse Bidder if the Sale of the Assets does not close by July 31, 2023.

Term (Agreement Citation)	Detail
<p>Good Faith Deposit (Art. 2.10) Local Rule 6004-1(b)(iv)(F)</p>	<p>Within two (2) Business Days as of the date of the Stalking Horse Agreement, Buyer will make an earnest money deposit in the amount of \$5,200,000 (the “Deposit”) to the Escrow Agent pursuant to the terms of the Escrow Agreement. If the Closing occurs, the Deposit shall be applied against payment of the Purchase Price on the Closing Date. If the Stalking Horse Agreement is terminated pursuant to Sections 8.1(a)-(e) or Sections 8.1(h)-(l) of the Stalking Horse Agreement, or in the event that any Person other than Buyer purchases all or any material portion of the Purchased Assets, then the Deposit shall be returned to Buyer promptly, and in no event later than two (2) Business Days after such termination, and the Parties agree that they will promptly execute joint written instructions to the Escrow Agent pursuant to the Escrow Agreement to effect such return of the Deposit. If the Stalking Horse Agreement shall be terminated by the Sellers pursuant to Section 8.1(f) or (g) of the Stalking Horse Agreement, then Plastiq shall retain the Deposit, and the parties agree that they will promptly execute joint written instructions to the Escrow Agent pursuant to the Escrow Agreement to effect such retention of the Deposit. The Parties agree that the Sellers’ right to retain the Deposit, as set forth herein, is not a penalty, but rather is liquidated damages in a reasonable amount that will compensate the Sellers for their respective efforts and resources expended and the opportunities foregone while negotiating the Stalking Horse Agreement and in reliance on the Stalking Horse Agreement and on the expectation of the consummation of the transactions contemplated hereby, which amount would otherwise be impossible to calculate with precision. Notwithstanding anything to the contrary in the Stalking Horse Agreement, the Parties agree that if the Stalking Horse Agreement is terminated under circumstances in which Sellers are entitled to the Deposit, except in the case of fraud, the delivery of the Deposit is the sole and exclusive remedy available to Sellers with respect to the Stalking Horse Agreement and the Contemplated Transactions, and, upon delivery of the Deposit, none of the Buyer or any of its former, current or future equity holders, directors, officers, Affiliates, agents or Representatives (collectively, the “Buyer Releasees”) shall have any further liability or obligation relating to or arising out of the Stalking Horse Agreement or the transactions contemplated by the Stalking Horse Agreement.</p>
<p>Interim Arrangements Local Rule 6004-1(b)(iv)(G)</p>	<p>N/A</p>
<p>Use of Proceeds (Art. 2.8(b)(i)) Local Rule 6004-1(b)(iv)(H)</p>	<p>At the Closing, Buyer shall deliver to Sellers the Cash Payment less the Deposit, by wire transfer of immediately available funds to such bank account as shall be designated in writing by the applicable party to (or for the benefit of) whom such payment is to be made at least two (2) Business Days prior to the date such payment is to be made.</p>
<p>Tax Exemptions (Art. 6.6)</p>	<p>To the extent not exempt under section 1146 of the Bankruptcy Code, Buyer shall pay any and all sales, use, stamp, documentary, registration, transfer (including real estate transfer tax), stock transfer, registration, gross receipts,</p>

Term (Agreement Citation)	Detail
Local Rule 6004-1(b)(iv)(I)	duty, securities transactions, stamp, documentary, registration, transfer, added value or similar Tax (each, a “ <u>Transfer Tax</u> ”) imposed under any applicable Law in connection with the transactions contemplated by the Stalking Horse Agreement, regardless of the Person liable for such Transfer Taxes under applicable Law. Sellers and Buyer shall cooperate to prepare any Tax Returns required to be filed in connection with Transfer Taxes described in the immediately preceding sentence. The Party that is responsible under applicable law to file such Tax returns, shall timely file such returns.
Record Retention (Art. 6.3) Local Rule 6004-1(b)(iv)(J)	From and after the Closing, Buyer shall promptly provide to Sellers and their respective Representatives (after reasonable notice and during normal business hours and without charge to Sellers) access to all Records included in the Purchased Assets for periods prior to the Closing and reasonable access to Transferred Employees to the extent such access is necessary in order for Sellers (as applicable) to comply with applicable Law or any contract to which it is a party, for liquidation, winding up, Tax reporting or other proper purposes and so long as such access is subject to an obligation of confidentiality, and shall preserve such Records until the latest of (i) seven (7) years after the Closing Date, (ii) the required retention period for all government contact information, records or documents, (iii) the conclusion of all bankruptcy proceedings relating to the Chapter 11 Cases or (iv) in the case of Records related to Taxes, the expiration of the statute of limitation applicable to such Taxes. Such access shall include access to any information in electronic form to the extent reasonably available. Buyer acknowledges that Sellers have the right to retain originals or copies of all Records included in the Purchased Assets for periods prior to the Closing. Prior to destroying any Records included in the Purchased Assets for periods prior to the Closing, Buyer shall notify Sellers thirty (30) days in advance of any such proposed destruction of its intent to destroy such Records, and Buyer shall permit Sellers to retain such Records, at Sellers’ cost and expense. With respect to any Litigation and claims that are Excluded Liabilities, Buyer shall render all reasonable assistance that Sellers may request in defending or prosecuting such Litigation or claim and shall make available to Sellers such personnel as are most knowledgeable about the matter in question, all without charge. Without limitation of any of the foregoing, such assistance by Buyer to Sellers shall include reasonable assistance to Sellers by the Transferred Employees after the Closing with respect to the wind down of the Chapter 11 Cases, which shall include during the pendency of the Chapter 11 Cases, maintaining the accounting infrastructure and assisting in the compilation of the monthly operating reports and other reporting and filings that are required to be filed with the Bankruptcy Court.

Term (Agreement Citation)	Detail
Sale of Avoidance Actions (Art. 2.1) Local Rule 6004- 1(b)(iv)(K)	Purchased Avoidance Actions are included within the Purchased Assets.
No Successor Liability (Art. 5.3(b)(ii)) Local Rule 6004- 1(b)(iv)(L)	If the Stalking Horse Bidder is the Successful Bidder, the Debtors intend to seek entry of a Sale Order that provides, among other things, that the Stalking Horse Bidder is a good faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Code and is not a successor to the Debtors.
Free and Clear of Unexpired Leases or Other Rights (Art. 5.3(b)(ii)) Local Rule 6004- 1(b)(iv)(M)	The Debtors intend to seek entry of a Sale Order that provides, among other things, Court approval of the sale of the Assets free and clear of all Liens, Claims, and encumbrances, pursuant to (among other provisions) sections 105, 363, and 365 of the Bankruptcy Code.
Relief from Bankruptcy Rule 6004(h) Local Rule 6004- 1(b)(iv)(O)	As noted below, the Debtors are seeking a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h).

THE PROPOSED SALE TIMELINE AND BIDDING PROCEDURES

14. To ensure that the highest or otherwise best offer is received for the Assets, the Debtors crafted the proposed Bidding Procedures to govern the submission of competing bids at an Auction, all of which are contemplated and expressly permitted under the Stalking Horse Agreement. Accordingly, the Debtors seek the Court's approval of the Bidding Procedures set forth as Annex 1 to the Bidding Procedures Order and incorporated herein in their entirety by this reference.

15. The Debtors' proposed timeline with respect to the Bidding Procedures, the Auction, the Sale Hearing, and the Sale is as follows:⁴

Event	Date
Hearing to Consider Approval of Bidding Procedures	June 16, 2023, subject to the availability of the Court
Service of Sale Notice and Cure Notice (as defined below)	Three (3) business days after the entry of the Bidding Procedures Order
Sale Objection Deadline (as defined below)	July 14, 2023 at 4:00 p.m. (ET)
Bid Deadline	July 14, 2023 at 4:00 p.m. (ET)
Auction (if applicable)	July 18, 2023 at 10:00 a.m. (ET)
Sale Hearing	July 24, 2023, subject to the availability of the Court
Sale Closing	No later than July 31, 2023

16. The Debtors propose the following notice and objection timeline as it relates to the Sale, the Auction, and the Sale Hearing (the "**Sale Notice Procedures**"), and request notice of the Sale, the Auction, the Sale Hearing, and the Bidding Procedures Order be deemed adequate and sufficient if:

No later than three (3) business days after the entry of the Bidding Procedures Order, the Debtors (or their agent) shall serve by email or, if email is unavailable, by first class mail, a notice regarding the Sale (the "**Sale Notice**"), substantially in the form attached hereto as Exhibit C, on the following entities; *provided, however*, that the Debtors need not serve the Sale Notice on any party for whom the Debtors are unable to obtain, after reasonable diligence, an email or physical address as of the entry of the Bidding Procedures Order; *provided, further* that the Debtors shall not be obligated to provide supplemental service of the Sale Notice with respect to any Sale Notice that is returned to the Debtors as undeliverable so long as the Debtors have confirmed that any such Sale Notice was sent to the applicable email or physical address on file in the Debtors' books and records and no other email or physical address could be obtained after reasonable diligence:

- (a) the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**");

⁴ The dates in this timeline are subject to the terms of the Bidding Procedures Order and the Bidding Procedures.

- (b) proposed counsel for any official committee appointed in the chapter 11 cases;
- (c) counsel to the Prepetition Secured Parties and the DIP Lender;
- (d) counsel to the Stalking Horse Bidder;
- (e) the United States Attorney for the District of Delaware;
- (f) the attorneys general for each of the states in which the Debtors conduct business operations;
- (g) the Internal Revenue Service;
- (h) the Securities and Exchange Commission
- (i) all known taxing authorities for the jurisdictions to which the Debtors are subject;
- (j) all environmental authorities having jurisdiction over any of the Assets;
- (k) all entities known or reasonably believed to have asserted a Lien on any of the Assets;
- (l) counterparties to the Debtors' executory contracts and unexpired leases;
- (m) all persons that have expressed to the Debtors an interest in a transaction with respect to the Assets during the past six (6) months;
- (n) all of the Debtors' other known creditors and equity security holders;
- (o) the office of unclaimed property for each state in which the Debtors conduct business; and
- (p) those parties who have formally filed a request for notice in the chapter 11 cases pursuant to Bankruptcy Rule 2002 at the time of service.

17. In addition, the Debtors will upload an electronic copy of the Sale Notice and the Bidding Procedures Order (which will include the Bidding Procedures) to the Data Room maintained by Portage Point. The Debtors will also post the Sale Notice and the Bidding Procedures Order on the website of the Debtors' claims and noticing agent, Kurtzman Carson Consultants, LLC.

18. The Debtors also request the establishment of an objection deadline prior to the Sale Hearing such that any objections related to the proposed Sale be served upon (so as to be actually received by) the following parties (the “**Objection Notice Parties**”) on or before **4:00 p.m. (prevailing Eastern time) on July 14, 2023** (the “**Sale Objection Deadline**”):

- (a) the Debtors, PlastiQ Inc., *et al.*, 1475 Folsom Street, Suite 400, San Francisco, CA 94103, Attn: Vladimir Kasparov, Chief Restructuring Officer (vkasparov@pppllc.com);
- (b) proposed 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), and Joseph M. Mulvihill, Esq. (jmulvihill@ycst.com);
- (c) the U.S. Trustee, 844 King Street, Room 2207, Wilmington, DE 19801, Attn: Richard L. Schepacarter, Esq. (richard.schepacarter@usdoj.gov);
- (d) counsel to the Prepetition Secured Parties and the DIP Lenders, (i) Schulte Roth & Zabel LLP, 919 Third Avenue, New York, NY 10022, Attn: Adam Harris (adam.harris@srz.com) and Reuben Dizengoff (reuben.dizengoff@srz.com), and (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn. Matthew B. McGuire (mcguire@lrclaw.com);
- (e) counsel to the Stalking Horse Bidder, Troutman Pepper Hamilton Sanders LLP, 600 Peachtree Street, N.E., Suite 3000 Atlanta, GA 30308, Attn: Matthew Brooks (matthew.brooks@troutman.com), Gary Marsh (gary.marsh@troutman.com), , James Stevens (james.stevens@troutman.com), Brenna Sheffield (Brenna.Sheffield@troutman.com) and Kenneth Listwak (ken.listwak@troutman.com),
- (f) proposed counsel to any official committee appointed in the chapter 11 cases.

19. Certain of the key terms of the Bidding Procedures are highlighted below, in accordance with Local Rule 6004-1(c)⁵:

Term	Detail
Qualification of Bidders Local Rule 6004-1(c)(i)(A)	To participate in the bidding process or otherwise be considered for any purpose under these Bidding Procedures, a person or entity (other than the Stalking Horse Bidder) interested in

⁵ If there are any inconsistencies between the summary set forth herein and the Bidding Procedures, the terms and conditions of the Bidding Procedures shall govern. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Bidding Procedures.

Term	Detail
	<p>consummating a Sale (a “Potential Bidder”) must deliver or have previously delivered:</p> <p>(i) an executed confidentiality agreement on terms acceptable to the Debtors (a “Confidentiality Agreement”), to the extent not already executed; and</p> <p>(ii) information demonstrating (in the Debtors’ reasonable business judgment) that the Potential Bidder has the financial capability to consummate the applicable Sale, including, but not limited to, the most current audited and latest unaudited financial statements (the “Financials”) of the Potential Bidder (or such other form of financial disclosure acceptable to the Debtors in their discretion) (or, if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, (x) Financials of the equity holder(s) of the Potential Bidder or such other form of financial disclosure as is acceptable to the Debtors, in consultation with: (a) the DIP Lender, and (b) the advisors to the Committee (collectively, the “Consultation Parties”), and (y) a written funding commitment acceptable to the Debtors and their advisors, in consultation with the Consultation Parties, of the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder’s obligations in connection with the applicable Sale); and</p> <p>(iii) any other evidence the Debtors, in consultation with the Consultation Parties, may reasonably request to evaluate such person’s or entity’s fitness, interest or motives for participating in the bidding process.</p>
<p>Qualification of Bids Local Rule 6004-1(c)(i)(B)</p>	<p>A proposal, solicitation, or offer (each, a “Bid”) by a Qualified Bidder that is submitted in writing, in English, and satisfies each of the following requirements (the “Bid Requirements”) as determined by the Debtors, in consultation with the Consultation Parties,⁶ shall constitute a “Qualified Bid.” The Stalking Horse Bid will be deemed a Qualified Bid for all purposes without any further action required by the Stalking Horse Bidder. Any bid submitted by the DIP Lenders and prepetition secured lenders shall be deemed a Qualified Bid without any further action by the DIP Lenders or prepetition secured lenders; provided, however, that if such bid proposes to credit bit all or a portion of any secured obligations owing by the Debtors, such bid must provide for the escrow of the Bid Protections of the Stalking Horse Purchaser, as provided herein and set forth in the Stalking Horse Agreement.</p> <p>(a) Identification of Bidder. Each Bid must fully</p>

⁶ Notwithstanding anything to the contrary in these Bidding Procedures, the Debtors shall not be required to consult with the DIP Lender or the prepetition secured lenders if they submit a bid for the Assets.

Term	Detail
	<p>disclose the following: (i) the legal identity of each person or entity bidding for the Assets and/or otherwise sponsoring, financing (including through the issuance of debt in connection with such Bid) or participating in (including through license or similar arrangement with respect to the Assets to be acquired in connection with such Bid) the Auction in connection with such Bid and the complete terms of any such participation; and (ii) any past or present agreements or affiliations with the Debtors, the Stalking Horse Bidder, any other known Potential Bidder or Qualified Bidder, or any officer or director of any of the foregoing (including any current or former officer or director of the Debtors).</p> <p>(b) Assets. Each Bid must clearly state which Assets (including any executory contracts and unexpired leases) and liabilities of the Debtors the Qualified Bidder is agreeing to purchase and assume. For the avoidance of doubt, a Bid may be on the Assets in either (i) individual lots, (ii) as a collective whole, or (iii) in any combination. A Bid may also provide for the designation of executory contracts and unexpired leases to be assumed and assigned for a limited period post-closing so long as the Qualified Bidder agrees to pay all costs and expenses incurred by the Debtors during such designation period.</p> <p>(c) Purchase Price. Each Bid must clearly set forth the cash purchase price to be paid in U.S. dollars for the applicable Asset Category (the “Purchase Price”), <i>provided, however</i>, that the DIP Lenders and prepetition secured lenders shall be entitled to credit bid all or any portion of the outstanding secured obligations under the DIP Lender pursuant to section 363(k) of the Bankruptcy Code with respect to any assets on which they hold liens if such credit bid properly complies with the requirement to escrow the Bid Protections in favor of the Stalking Horse Purchaser, as set forth herein and in the Stalking Horse Agreement</p> <p>(d) Minimum Bid. The Minimum Bid is an amount of cash or other consideration offered that exceeds the aggregate sum of the following:</p> <ul style="list-style-type: none"> • the aggregate value of the Purchase Price, as that term is defined in the Stalking Horse Agreement; • the amount of the Breakup Fee and Expense Reimbursement; and • the \$200,000 minimum bid increment. <p>(e) Deposit. Each Bid must be accompanied by a cash deposit in the amount equal to 10% of the Purchase Price of the Bid,</p>

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	<p>to be held in an account to be identified and established by the Debtors (the “Deposit”). The Debtors reserve the right to increase the Deposit requirement.</p> <p>(f) Assumption of Obligations. Each Bid must identify the obligations contemplated to be assumed by such Bid, and be on terms in the aggregate (together with the other consideration contemplated in such Bid) matching or exceeding the Minimum Bid and no less favorable to the Debtors than the Stalking Horse Agreement, as determined in the Debtors’ business judgment, and after consultation with the Consultation Parties. Other than the obligations to be assumed, the Assets shall be sold free and clear of all Encumbrances, and any Encumbrances shall attach to the net proceeds of the Sales after payment of the Bid Protection (defined below).</p> <p>(g) The Same or Better Terms. In addition to meeting or exceeding the applicable Minimum Bid, each Bid must be on terms that are no less favorable in the aggregate (together with the other consideration contemplated in such Bid), in the Debtors’ business judgment and after consultation with the Consultation Parties, than the terms of the Stalking Horse Agreement. Each Bid must include duly executed, non-contingent purchase agreement and other transaction documents necessary to effectuate the transactions contemplated in the Bid and shall include a schedule of assumed contracts to the extent applicable to the Bid. Each Bid should be based on the form of the Stalking Horse Agreement, which is available in Word format in the Data Room, and must include a copy of the Stalking Horse Agreement clearly marked to show all changes requested by the Qualified Bidder, including those relating to the respective Purchase Price and assets to be acquired by such Qualified Bidder, as well as all other material documents integral to such bid, including a form of sale order marked against the applicable sale order (collectively, the “Qualified Bid Documents”).</p> <p>(h) Committed Financing / Adequate Assurance Information. To the extent that a Bid is not accompanied by evidence of the Qualified Bidder’s capacity to consummate the Sale set forth in its Bid with cash on hand, each Bid must include committed financing documents to the satisfaction of the Debtors (in consultation with the Consultation Parties) that demonstrate that the Qualified Bidder has: (i) received sufficient debt and/or equity funding commitments to satisfy the Qualified Bidder’s Purchase Price and other obligations under its Bid; and (ii) adequate working capital financing or resources to finance going concern operations for the Assets and the proposed transactions. Such funding commitments or other financing must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have only those covenants and conditions acceptable to the Debtors, in consultation with the Consultation</p>

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	<p>Parties. In addition to evidence of financial wherewithal to timely consummate the transaction, a Bid must include adequate assurance information with respect to any executory contracts or unexpired leases included or that may be included in the Bid in a form that allows the Debtors to serve such information on any counterparties to any contracts or leases being assumed and assigned in connection with the Sale that have requested, in writing, such information.</p> <p>(i) Contingencies; No Financing or Diligence Outs. A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions, which shall not be more burdensome, in the Debtors' business judgment, and after consultation with the Consultation Parties, than those set forth in the Stalking Horse Agreement (if any).</p> <p>(j) Demonstrated Financial Capacity. A Qualified Bidder must have, in the Debtors' business judgment (in consultation with the Consultation Parties) the necessary financial capacity to consummate the proposed transactions required by its Bid (including, if necessary, to obtain transfer of any of the Debtors' permits and to obtain any necessary surety bonds or other financial assurances) and provide adequate assurance of future performance under all contracts proposed to be assumed by such Bid.</p> <p>(k) Time Frame for Closing. Closing of the Sale as to any Asset related to a Bid by a Qualified Bidder (a "Closing") must be reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid, on or before July 31, 2023.</p> <p>(l) Binding and Irrevocable. Except as provided herein, a Qualified Bidder's Bid for the Assets shall be irrevocable unless and until (i) the Debtors (in consultation with the Consultation Parties) accept a higher Bid for such Assets and such Qualified Bidder is not selected as the Backup Bidder for such Assets, and (ii) the Sale Hearing has been concluded and the Sale Order entered. If selected as Backup Bidder, such Bid shall be irrevocable until the Closing of a Successful Bid for such Assets.</p> <p>(m) Expenses; Disclaimer of Fees. Each Bid must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder other than the Stalking Horse Bidder will be permitted to request, nor be granted by the Debtors, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement,</p>

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	<p>termination fee, or any other similar form of compensation, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.</p> <p>(n) Authorization. Each Bid must contain evidence that the Qualified Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.</p> <p>(o) As-Is, Where-Is. Each Bid must include a written acknowledgement and representation that the Qualified Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Bidder's Bid or accompanying asset purchase agreement.</p> <p>(p) Adherence to Bidding Procedures. By submitting its Bid, each Qualified Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction.</p> <p>(q) Regulatory Approvals and Covenants. A Bid must set forth each regulatory and third-party approval required for the Qualified Bidder to consummate the applicable Sale, if any, and the time period within which the Qualified Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than thirty (30) days following execution and delivery of the asset purchase agreement, those actions the Qualified Bidder will take to ensure receipt of such approvals as promptly as possible) and any undertakings that will be required by the Debtors in connection with such regulatory and third party approvals.</p> <p>(r) Consent to Jurisdiction. The Qualified Bidder must submit to the jurisdiction of and entry of final orders by the Court and waive any right to a jury trial in connection with any disputes relating to Debtors' qualification of bids, the Auction, the construction and enforcement of these Bidding Procedures, the transaction documents related to the Sale, and the Closing, as applicable.</p>

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	<p>(s) Bid Deadline. Each Bid must be transmitted via email (in .pdf or similar format) so as to be <u>actually received</u> on or before 4:00 p.m. (prevailing Eastern Time) on July 14, 2023 (the “Bid Deadline”) by the Notice Parties.</p>
<p>No-Shop or No-Solicitation Provisions Local Rule 6004-1(c)(i)(C)(1)</p>	<p>None.</p>
<p>Breakup Fee and Expense Reimbursement Local Rule 6004-1(c)(i)(C)(2)</p>	<p>The Stalking Horse Agreement contemplates a breakup fee of 3% (the “Breakup Fee”) of the Purchase Price, and an expense reimbursement of reasonable and documented out of pocket expenses associated with diligence of the Sellers in connection with becoming the Stalking Horse Purchaser and negotiation and documentation of the Stalking Horse Agreement and pleadings related thereto (the “Expense Reimbursement” and, together with the Breakup Fee, the “Bid Protections”), provided however that the Bid Protections shall not exceed 5% of the Purchase Price.</p> <p>If Blue Torch, or an entity formed by or affiliated with Blue Torch, the pre-petition secured lenders, or the DIP lender (as the case may be, the “Credit-Bid Party”), submits a Qualified Bid to purchase substantially all of the Assets through a credit bid of its Secured Debt (as defined in the Stalking Horse Agreement) and any amounts owing under the DIP Agreement (as defined in the Stalking Horse Agreement), then Debtors shall cause the Credit Bid Party to deposit cash equal to the Breakup Fee and Expense Reimbursement in escrow for the benefit of the Stalking Horse Bidder in the event such Qualified Bid shall be determined by Debtors and the Court to be Successful Bid, and such escrowed Breakup Fee and Expense Reimbursement shall be paid by Debtors or Credit Bid Party, as applicable, to the Stalking Horse Bidder via wire transfer of immediately available funds to an account designated by the Stalking Horse Bidder within one (1) business day of the closing of such transaction with the Credit Bid Party.</p>
<p>Bidding Increments Local Rule 6004-1(c)(i)(C)(3)</p>	<p>The initial Overbid for the Assets, if any, shall provide for total consideration to the Debtors with a value that exceeds the value of the consideration under the (i) Baseline Bid for the Assets, giving effect to the credit for the Bid Protections for the Stalking Horse Bid, by an incremental amount that is not less than \$200,000 (the “Minimum Overbid Increment”). The Debtors reserve the right, after consultation with the Consultation Parties, to announce reductions or increases in the Minimum Overbid Increment for the Assets at any time during the Auction.</p>
<p>Treatment of Bid Protections at Auction</p>	<p>If any Overbid is made as to the Assets subject to the Stalking Horse Agreement, the Stalking Horse Bidder shall be entitled to a dollar-for-dollar credit against the Minimum Overbid equal to the amount</p>

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Local Rule 6004-1(c)(i)(C)(4)	of the Stalking Horse Bidder's Bid Protections pursuant to the Stalking Horse Agreement to take into account that, if the Stalking Horse Bidder is the Successful Bidder, no payment of the Stalking Horse Bidder's Bid Protections will be required. Conversely, if a Bidder other than the Stalking Horse Bidder is the Successful Bidder as to the Assets subject to the Stalking Horse Agreement, the net proceeds available to the Debtors for any such Assets will be reduced by the amount of the Bid Protections of the Stalking Horse Bidder under the Stalking Horse Agreement and paid to the Stalking Horse Bidder at closing.
Modifications of Bidding Procedures Local Rule 6004-1(c)(i)(D)	The Debtors reserve their rights to modify these Bidding Procedures in their reasonable business judgment, and in consultation with the Consultation Parties, in any manner that will best promote the goals of the bidding process, or impose, at or prior to the Auction, additional customary terms and conditions on the sale of the Assets, including, without limitation: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction at the Auction and/or adjourning the Sale Hearing in open court without further notice; (c) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) cancelling the Auction; and (e) rejecting any or all bids or Bids; <i>provided, however</i> , that any changes to the dates and deadlines set forth herein shall (i) comply with any milestones contained in the Debtors' DIP financing approved by the Bankruptcy Court in these cases or be made with the consent of the Prepetition Secured Parties and DIP Lender and (ii) be consistent with the Stalking Horse Agreement; <i>provided further</i> , that nothing in this Section shall limit any rights or remedies of the Stalking Horse Bidder under the Stalking Horse Agreement with respect to material modifications to these Bidding Procedures, the Bidding Procedures Order or the agreed form of sale order.
Back-Up Bidder Local Rule 6004-1(c)(i)(E)	<p>If an Auction is conducted for the Assets, the Qualified Bidder with the next-highest or otherwise second-best Bid at the Auction for such Assets, as determined by the Debtors in the exercise of their reasonable business judgment, and in consultation with the Consultation Parties (the "Backup Bid"), shall be required to serve as a backup bidder (the "Backup Bidder") for such Assets, and each Qualified Bidder shall agree and be deemed to agree to be the Backup Bidder if so designated by the Debtors.</p> <p>The identity of the Backup Bidder and the amount and material terms of the Backup Bid shall be announced by the Debtors at the conclusion of the Auction at the same time the Debtors announce the identity of the Successful Bidder. The Backup Bidder shall be required to keep its Bid (or if the Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until the closing of the transaction with the applicable Successful Bidder. The Backup Bidder's Deposit shall be held in</p>

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	<p>escrow until the closing of the transaction with the applicable Successful Bidder or as otherwise provided in the Stalking Horse Agreement.</p> <p>If a Successful Bidder fails to consummate the approved transactions contemplated by its Successful Bid, the Debtors may select the applicable Backup Bidder as the Successful Bidder, and such Backup Bidder shall be deemed a Successful Bidder for all purposes. The Debtors will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Bidder without further order of the Court or notice to any party. The defaulting Successful Bidder's Deposit shall be forfeited to the Debtors, and the Debtors specifically reserve the right to seek all remedies available against the defaulting Successful Bidder, including specific performance, if applicable, unless otherwise provided in the Stalking Horse Agreement should the Stalking Horse Bidder be the Successful Bidder.</p>

THE PROPOSED ASSUMPTION PROCEDURES

20. To facilitate and effect the Sale of the Assets, the Debtors seek authority to assume and assign the Assumed Contracts, consistent with the procedures established in the Bidding Procedures Order and the Stalking Horse Agreement (the "**Assumption Procedures**"). The Debtors propose that the Assumption Procedures apply whether the Stalking Horse Bidder or any other party or parties are the Successful Bidders.

21. The proposed Assumption Procedures are as follows:

- (a) Notice. Within three (3) business days from the entry of the Bidding Procedures Order, the Debtors shall file and serve by email or, if email is unavailable, by first class mail, on all counterparties (the "**Counterparties**") to their executory contracts and unexpired leases (the "**Contracts**") a notice, substantially in the form attached hereto as Exhibit D (the "**Cure Notice**"); *provided, however*, that the Debtors need not serve the Cure Notice on any party for whom the Debtors are unable to obtain, after reasonable diligence, an email or address as of the entry of the Bidding Procedures Order; *provided, further* that the Debtors shall not be obligated to provide supplemental service of the Cure Notice with respect to any Cure Notice that is returned to the Debtors as undeliverable so long as the Debtors have confirmed that any such Cure Notice was sent to the applicable email or physical address on file in the Debtors' books and records and no other email or physical address could be obtained after reasonable diligence.

- (b) Content of the Cure Notice. The Cure Notice will include the following information on a schedule attached thereto (the “**Executory Contracts Schedule**”): (a) the potential assumption by the Debtors and assignment to the Successful Bidder(s) of the Contracts, and (b) the proposed amount necessary, under section 365(b)(1) of the Bankruptcy Code, to cure any outstanding monetary defaults and compensate the Counterparties for any pecuniary losses in connection with such assumption and assignment (the “**Proposed Cure Amounts**”).
- (c) Previously Omitted Contracts. If at any time after the issuance of the Cure Notice but prior to the Sale Hearing it is discovered that a Contract should have been listed on the Executory Contracts Schedule but was not (any such Contract, a “**Previously Omitted Contract**”), the Debtors shall promptly following discovery thereof (but in no event later than two (2) Business Days following discovery thereof), file and serve a notice on the non-Debtor counterparty(ies) to such Previously Omitted Contract notifying such counterparties of the Debtors’ intention to assume and assign such Previously Omitted Contract to the Successful Bidder, including the Proposed Cure Amounts relating thereto (the “**Previously Omitted Contract Notice**”).
- (d) Objections. Each Counterparty shall have until 4:00 p.m. (prevailing Eastern time) on the date that is fourteen (14) days after the filing and service by the Debtors to the Counterparty of the Cure Notice or the Previously Omitted Contract Notice (as applicable) (the “**Contract Objection Deadline**”) to object to the assumption and assignment of its Contract on any grounds, including, without limitation, the amount of the Proposed Cure Amounts, but excluding any objection as to adequate assurance of future performance under section 365(b)(1) of the Bankruptcy Code, other than the Stalking Horse Bidder, or on the basis of the identity of the Successful Bidder. Any unresolved objections shall be heard at the Sale Hearing, unless otherwise agreed by the parties; provided that the Debtors shall have the right to adjourn any Sale Hearing without the consent of any objecting party. If any objections to the amount of Proposed Cure Amounts remain unresolved as of the date of the Closing of the Sale, the Debtors may (but are not required to) deposit the disputed amount of Proposed Cure Amounts in a segregated account to hold pending resolution of such objections.

Each Counterparty may raise objections as to adequate assurance of future performance or on the basis of the identity of the Successful Bidder until 4:00 p.m. (prevailing Eastern time) on the date that is three (3) days after the filing and service by the Debtors to the Counterparty of a notice identifying the applicable Successful Bidder, which, for the avoidance of doubt, may be provided with the Cure Notice or the Previously Omitted Contract Notice or at any time thereafter with respect to the Stalking Horse Bidder; provided, however, that objections, if any, on the basis of the identity of the Successful Bidder shall not, in any event, be raised later than one (1) day prior to the commencement of the Sale Hearing (the “**Buyer Specific Objection Deadline**”). Any such objection must be filed and served on the Debtors and their counsel, any committee appointed in the

chapter 11 cases and its counsel, and the applicable Successful Bidder or Stalking Horse Bidder (if any), as applicable, and its counsel, so as to be actually received by the Buyer Specific Objection Deadline. Any such unresolved objections shall be heard at the Sale Hearing, unless otherwise agreed by the parties.

RELIEF REQUESTED

22. By this Motion, the Debtors request entry of: (a) the proposed Bidding Procedures Order, (i) approving Bidding Procedures to govern the marketing and sale of the Assets, including approving the Bid Protections in connection therewith, (ii) authorizing the Debtors to schedule the Auction and scheduling the Sale Hearing, (iii) approving the form and manner of notice of the proposed sale transaction, the Bidding Procedures, the Auction, the Sale Hearing, and related dates and deadlines, (iv) authorizing procedures governing the assumption and assignment of the Assumed Contracts to the Successful Bidder(s), and (v) granting related relief; and (b) the Sale Order (i) approving the purchase agreement between the Debtors and the Stalking Horse Bidder (or such other Successful Bidder), and (ii) authorizing the Sale of the Assets and the assumption and assignment of the Assumed Contracts to the Stalking Horse Bidder or such other Successful Bidder free and clear of all Encumbrances, other than any assumed liabilities or permitted Encumbrances as set forth in the applicable form(s) of purchase agreement.

BASIS FOR RELIEF

I. THE SALE OF THE ASSETS REFLECTS A SOUND EXERCISE OF THE DEBTORS' BUSINESS JUDGMENT.

23. Selling the Assets as proposed herein is critical to maximizing value in the chapter 11 cases and, therefore, should be approved as reflecting a sound exercise of the Debtors' business judgment. Section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor "may use, sell, or lease, other than in the ordinary course of business, property of the estate" after notice and a hearing. 11 U.S.C. § 363(b)(1). Generally, the debtor is only

required to “show that a sound business purpose” justifies the proposed use of property. *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *see also In re Phoenix Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring “good business reason” for use under section 363(b) of the Bankruptcy Code). This standard prohibits other parties from second-guessing the debtor’s business judgment if the debtor has shown that the proposed use will benefit the debtor’s estate. *See In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”).

24. The Debtors determined to undertake a sale of substantially all of their Assets after careful consideration of all potential alternatives. Of the available alternatives, the Sale was and remains the most efficient means to obtaining the greatest value for the Assets and distributing that value to the Debtors’ stakeholders in accordance with their legal priorities. The Debtors already have a baseline Stalking Horse Bid and now seek to continue the marketing process with the added benefits of a Court-approved section 363 sale process. As discussed above, Portage Point contacted 179 parties prior to the Petition Date, and will continue to scour the market for potentially interested bidders. At the conclusion of the marketing period, the Debtors, their creditors, and other parties in interest can be confident that the Debtors will have obtained the highest or otherwise best value for the Assets. And, importantly, beyond the consideration the Debtors and their estates will receive in the Sale, the Successful Bidder will be

assuming contracts and other liabilities that otherwise would dilute any recoveries that may be available to creditors.

II. APPROVAL OF THE SALE NOTICE PROCEDURES AND BIDDING PROCEDURES IS APPROPRIATE AND IN THE BEST INTERESTS OF THE DEBTORS' ESTATES.

A. The Proposed Notice of Sale, Bidding Procedures, Auction and Sale Hearing, and the Sale Objection Deadline Are Appropriate.

25. The Debtors submit that the Sale Notice Procedures and the Sale Objection Deadline comply with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the Bidding Procedures, the Auction, the Sale Hearing, and the Sale to the Debtors' creditors and other parties in interest, and, if the Debtors believe that additional entities have a legitimate interest, then also to those who have expressed an interest, or may express an interest, in bidding on the Assets. Based upon the foregoing, the Debtors respectfully request that this Court approve the Sale Notice Procedures and the Sale Objection Deadline proposed above.

B. The Bidding Procedures Are Appropriate and Will Maximize the Value of the Assets.

26. Courts have made clear that a debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling assets from the estate. *See, e.g., In re Efoora, Inc.*, 472 B.R. 481, 488 (Bankr. N.D. Ill. 2012) ("A trustee has considerable discretion when it comes to the sale of estate assets, and that discretion is entitled to great judicial deference as long as a sound business reason is given.") (internal quotations and citations omitted).

27. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., Corp. Assets, Inc. v. Paloian*, 368 F.3d 761, 765 (7th Cir. 2004) (in a bankruptcy sale, the "governing principle . . . is to secure the highest price for the benefit of the estate and creditors").

28. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and, therefore, are appropriate in the context of bankruptcy sales. *See, e.g., Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 537 (3d Cir. 1999); *Official Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re Integrated Res. Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (observing that bidding procedures “encourage bidding and . . . maximize the value of the debtor’s assets.”).

29. The Debtors believe that the Bidding Procedures will establish sound parameters by which the proffered sale price of the Assets under the Stalking Horse Agreement may be tested and evaluated. Such procedures will increase the likelihood that the Debtors will receive the greatest possible consideration for the Assets because they will ensure a competitive and fair bidding process. The Bidding Procedures will also allow the Debtors to undertake the Auction process in an orderly fashion, which the Debtors believe is essential to maintaining and maximizing the value of its estate.

30. The Debtors believe that the Auction and proposed Bidding Procedures will allow the Debtors to conduct the Auction in a controlled, fair, and open fashion that will encourage participation by financially capable bidders who demonstrate the ability to close a transaction. The Debtors also believe that the Bidding Procedures will encourage active bidding for the Assets, are consistent with other procedures previously approved by courts in this and other circuits, and are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings.

31. Thus, the proposed Bidding Procedures are reasonable, appropriate, and within the Debtors' sound business judgment under the circumstances because they will serve to maximize the value that the Debtors will obtain on account of the Sale of the Assets.

III. THE INITIAL AND SUBSEQUENT OVERBID AMOUNTS ARE APPROPRIATE.

32. The Debtors submit that the proposed requirements for a minimum bid and Overbid are appropriate and should be approved. Courts frequently authorize debtors to require bidders to submit minimum initial bids to ensure that the debtors receive the highest and best offers possible in asset sales. In addition, the Debtors intend to conduct the Auction such that each bid at the Auction is higher or otherwise better than the previous bid. To this end, incorporating the concept of overbids in the Bidding Procedures is reasonable under the circumstances and will enable the Debtors to maximize the value for the sale of their assets while limiting any chilling effect on the Sale process. *See, e.g., In re Phasebio Pharm., Inc.*, Case No. 22-10995 (LSS) (Bankr. D. Del. Nov. 28, 2022) (authorizing bidding procedures with an initial overbid increment of \$1,000,000 or 2.5% of purchase price); *In re Avadim Health, Inc.*, Case No. 21-10883 (CTG) (Bankr. D. Del. June 23, 2021) (authorizing bidding procedures with an initial overbid increment of \$250,000); *In re Ruby Pipeline*, Case No. 22-10278 (CTG) (Bankr. D. Del. Sept. 8, 2022) (authorizing bidding procedures requiring minimum overbid amount to be announced by the debtor at auction); *In re Sequential Brands Grp., Inc.*, Case No. 21-11194 (JTD) (Bankr. D. Del. Sept. 24, 2021) (same).

IV. THE BID PROTECTIONS HAVE A SOUND BUSINESS PURPOSE AND SHOULD BE APPROVED.

33. As noted above, the Bid Protections include a breakup fee of 3% of the Purchase Price and an expense reimbursement of reasonable, actual, documented out of pocket expenses, collectively not to exceed 5% of the Purchase Price. Such amounts are only payable if the

conditions applicable to payment of such amounts that are set forth in the Stalking Horse Agreement and the Bidding Procedures are satisfied. Such amounts shall also only be payable to the Stalking Horse Bidder. The Stalking Horse Bidder shall provide the Debtors with an accounting and all required documentation of the Expense Reimbursement two (2) days prior to the Auction so that the Debtors can notify parties of the initial overbid.

34. The Debtors believe that the Bid Protections are necessary for the Stalking Horse Bidder to enter into the Stalking Horse Agreement. In addition, the Debtors believe that the presence of the Stalking Horse Bidder will set a floor for the value of the Assets and attract other potential buyers to bid for such assets, thereby maximizing the realizable value of the Assets for the benefit of the Debtors' estates, their creditors, and all other parties in interest. Further, the Debtors believe that the Bid Protections are reasonable given the terms of the proposed transaction.

35. Approval of the Bid Protections is governed by standards for determining the appropriateness of bid protections in the bankruptcy context. Courts have identified at least two instances in which bid protections may benefit the estate. First, a breakup fee or expense reimbursement may be necessary to preserve the value of a debtor's estate if assurance of the fee "promote[s] more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." *In re O'Brien Envtl. Energy, Inc.*, 181 F.3d 527, 533 (3d Cir. 1999). Second, if the availability of breakup fees and expense reimbursements were to induce a bidder to research the value of the debtor and convert the value to a dollar figure on which other bidders can rely, the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth. *See id.*; *see also In re Reliant Energy Channel View LP*, 594 F.3d 200, 206-08 (3d Cir.

2010) (reasoning that a break-up fee should be approved if it is necessary to entice a party to make the first bid or if it would induce a stalking horse purchaser to remain committed to a purchase).

36. In *O'Brien*, the Third Circuit reviewed the following nine factors set forth by the lower court as relevant in deciding whether to award a break-up fee:

- a. the presence of self-dealing or manipulation in negotiating the break-up fee;
- b. whether the fee harms, rather than encourages, bidding;
- c. the reasonableness of the break-up fee relative to the purchase price;
- d. whether the unsuccessful bidder placed the estate property in a “sale configuration mode” to attract other bidders to the auction;
- e. the ability of the request for a break-up fee to serve to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders or attract additional bidders;
- f. the correlation of the fee to a maximum value of the debtor’s estate;
- g. the support of the principal secured creditors and creditors’ committees of the break-up fee;
- h. the benefits of the safeguards to the debtor’s estate; and
- i. the substantial adverse impact of the break-up fee on unsecured creditors, where such creditors are in opposition to the break-up fee.

See In re O'Brien Envtl. Energy, Inc., 181 F.3d at 536.

37. While no one factor is dispositive, an application of the facts to several of such factors supports the approval of the Bid Protections. In particular, and as is set forth in greater detail above, the Bid Protections are necessary to preserve the value of the Debtors’ estates because they will enable the Debtors to secure an adequate floor for the Assets and to therefore insist that competing bids be materially higher or otherwise better than the Stalking Horse Bidder—a clear benefit to the Debtors’ estates. The Bid Protections were approved by the

Debtors, and were the result of good faith, arms' length negotiations between the Debtors and the Stalking Horse Bidder. While the Debtors sought to minimize the Bid Protections, the Stalking Horse Bidder would not agree to act as a stalking horse without the Bid Protections given the substantial time and expense that would be incurred in connection with entering into definitive documentation and the risk that it will be outbid at the Auction. Without the Bid Protections, the Debtors might lose the opportunity to obtain the highest or otherwise best offer for the Purchased Assets and would certainly lose the downside protection that will be afforded by the existence of the Stalking Horse Bidder. The bid of the Stalking Horse Bidder sends a message to all potential bidders that the Assets are at least worth the Purchase Price. Therefore, without the benefit of the bid of the Stalking Horse Bidder (*i.e.*, a bid providing the floor), the bids received at auction for the Assets could be substantially lower than the bid offered by the Stalking Horse Bidder.

38. “The usual rule is that if break-up fees encourage bidding, they are enforceable; if they stifle bidding, they are not enforceable.” *In re Integrated Res., Inc.*, 147 B.R. at 660. The Debtors do not believe that the Bid Protections will stifle bidding. To the contrary, the Debtors believe that, should the Auction be held, such bid protections will encourage bidding by serving “any of three possible useful functions: (i) to attract or retain a potentially successful bid, (ii) to establish a bid standard or minimum for other bidders to follow, or (iii) to attract additional bidders.” *Id.* at 662.

39. Here, the bid of the Stalking Horse Bidder serves all three functions. First, the Stalking Horse Bidder would not enter into the Stalking Horse Agreement without the Bid Protections. Second, pursuant to the Bidding Procedures, any bidder that wishes to participate in the Auction must submit an offer that is higher or otherwise better than the bid of the Stalking Horse Bidder. Third, the bid of the Stalking Horse Bidders attracts additional bidders because,

among other things, additional bidders will be able to save considerable time and expense because they can use many of the documents that the Stalking Horse Bidder heavily negotiated, including, among other things, the Stalking Horse Agreement and the schedules thereto, in making their bid. In sum, if the Assets are sold to a Successful Bidder other than the Stalking Horse Bidder, the transaction likely will be the result of the Stalking Horse Bidder's crucial role as an initial bidder generating interest in the Assets and establishing a minimum acceptable price and offer against which other parties can bid.

40. In addition, “[a] break-up fee should constitute a fair and reasonable percentage of the proposed purchase price, and should be reasonably related to the risk, effort, and expenses of the prospective purchaser. When reasonable in relation to the bidder's efforts and to the magnitude of the transaction, break-up fees are generally permissible.” *Id.*

41. Here, the Bid Protections contain a breakup fee in an amount equal to 3% of the Purchase Price provided under the Stalking Horse Agreement. When considered together with the Expense Reimbursement, the combined totals of the Bid Protections are consistent with the range of bid protections typically paid in sale transactions that have been approved by this Court. Given the size of the Purchase Price, the Debtors believe that the amount of the Bid Protections is appropriate.

V. THE PROPOSED ASSUMPTION PROCEDURES ARE APPROPRIATE.

42. In connection with the Sale, the Debtors believe it is necessary to establish a process by which: (i) the Debtors and Counterparties can reconcile the Proposed Cure Costs, if any, in accordance with section 365 of the Bankruptcy Code; and (ii) Counterparties can object to the assumption and assignment of the Contracts or related Proposed Cure Costs. As described above, the proposed Assumption Procedures comply with Bankruptcy Rule 2002 and provide all Counterparties with due and adequate notice of the potential assumption and assignment of their

Contracts, the Contract Objection Deadline and the Buyer Specific Objection Deadline, and the time and place for the Sale Hearing. Accordingly, the Debtors request that the Assumption Procedures be approved.

VI. APPROVAL OF THE PROPOSED SALE TRANSACTION IS APPROPRIATE AND IN BEST INTEREST OF THE DEBTORS' ESTATES.

43. In accordance with Bankruptcy Rule 6004(f)(1), sales of property rights outside the ordinary course of business may be by private sale or public auction. The Debtors determined that a public Auction of the Assets will enable the Debtors to obtain the highest or otherwise best offer in a Sale of their Assets at this time and is in the best interests of the Debtors, their estates, and their creditors.

A. The Sale of Assets and Assumed Contracts Free and Clear of Encumbrances Is Authorized by Section 363(f) of the Bankruptcy Code.

44. The Debtors further submit that it is appropriate to sell the Assets and to assign the Assumed Contracts free and clear of all Encumbrances, other than Permitted Liens and Assumed Liabilities, as set forth in the Stalking Horse Agreement or in the purchase agreement with the Successful Bidder(s) pursuant to section 363(f) of the Bankruptcy Code, with any such Encumbrances attaching to the net sale proceeds of the Assets, as and to the extent applicable.

45. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances if:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interests;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in *bona fide* dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

46. The Debtors believe that one or more of the tests of section 363(f) are satisfied with respect to the transfer of the Assets and the assignment of the Assumed Contracts pursuant to the Stalking Horse Agreement or an applicable purchase agreement of another Successful Bidder. In particular, the Debtors believe that at least section 363(f)(2) and (3) of the Bankruptcy Code will be met in connection with the transactions proposed under the Stalking Horse Agreement because the Debtors expect that the DIP Lender and any other party asserting a Lien over the Assets will consent to the Sale, or, alternatively, that the purchase price for the Assets will exceed the value of any such Encumbrances. Moreover, with respect to any other parties asserting a lien, claim, or encumbrance against the Assets, the Debtors anticipate that they will be able to satisfy one or more of the conditions set forth in section 363(f) of the Bankruptcy Code. In particular, known lienholders will receive notice and will be given sufficient opportunity to object to the relief requested. Such lienholders that do not object to the Sale should be deemed to have consented.⁷ Furthermore, the Debtors propose that any Encumbrances asserted against the Assets be transferred to and attach to the proceeds of the Sale.

B. The Stalking Horse Bidder is a Good Faith Purchaser and Is Entitled to the Full Protections of the Bankruptcy Code.

47. The Debtors believe that the Stalking Horse Agreement has been submitted in good faith and has been, and will continue to be, negotiated in good faith and at arm's-length.

⁷ See *FutureSource LLC v. Reuters Ltd.*, 312 F.3d 281, 285-86 (7th Cir. 2002) (“[L]ack of objection (provided of course there is notice) counts as consent. It could not be otherwise; transaction costs would be prohibitive if everyone who might have an interest in the bankrupt’s assets had to execute a formal consent before they could be sold.”) (internal citations omitted); *Hargrave v. Twp. of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (holding that creditor’s failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)); *In re Elliot*, 94 B.R. at 345 (same).

Thus, the Stalking Horse Bidder is entitled to the full protections of section 363(m) of Bankruptcy Code, which provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

48. While the Bankruptcy Code does not define “good faith,” several Circuit Courts have determined that:

The requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

In re Andy Frain Servs., Inc., 798 F.2d 1113, 1125 (7th Cir. 1986) (quoting *In re Rock Indus. Machinery Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986). There has been no fraud, improper insider dealing, or collusion in connection with the negotiation or submission of the Stalking Horse Agreement.

49. The Stalking Horse Bidder or other Successful Bidder(s) should receive the protections afforded good faith purchasers by section 363(m) of the Bankruptcy Code. Accordingly, the Debtors request that the Court make a finding at the Sale Hearing and in the Sale Order that the purchase agreement reached with the Stalking Horse Bidder or any other Successful Bidder(s) was at arm’s-length and is entitled to the full protections of section 363(m) of the Bankruptcy Code.

C. Credit Bidding Should Be Authorized Under Section 363(k) of the Bankruptcy Code.

50. A secured creditor is allowed to “credit bid” the amount of its claim in a sale. Section 363(k) of the Bankruptcy Code provides, in relevant part, that unless the court for cause orders otherwise, the holder of a claim secured by property that is the subject of the sale “may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.” 11 U.S.C. § 363(k). Even if a secured creditor is undersecured as determined in accordance with section 506(a) of the Bankruptcy Code, section 363(k) allows such secured creditor to bid the total face value of its claim and does not limit the credit bid to the claim’s economic value.

51. The Bidding Procedures preserve secured creditors’ rights to credit bid as required under section 363(k) of the Bankruptcy Code, and this aspect of the Bidding Procedures should therefore be approved.

D. Assumption and Assignment of the Assumed Contracts Is Authorized by the Bankruptcy Code.

52. Sections 365(a) and (b) of the Bankruptcy Code authorize a debtor-in-possession to assume, subject to the court’s approval, executory contracts or unexpired leases of the debtor. Under section 365(a) of the Bankruptcy Code, a debtor, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Section 365(b)(1) of the Bankruptcy Code, in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing that:

If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee —

- (A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ;

- (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
- (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

53. The standard applied by courts to determine whether an executory contract or unexpired lease should be assumed is the “business judgment” test, which requires a debtor to determine that the requested assumption or rejection would be beneficial to its estate. *See ReGen Capital I, Inc. v. UAL Corp. (In re UAL Corp.)*, 635 F.3d 312, 319 (7th Cir. 2011) (“The bankruptcy court reviews the debtor’s business judgment with respect to the proposed assumption to determine if it would be beneficial or burdensome to assume the executory contract by evaluating whether assumption would serve the reorganization or whether it would take away funds available to other creditors.”) (citing *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1099 (2d Cir. 1993)); *In re Network Access Sols., Corp.*, 330 B.R. 67, 75 (Bankr. D. Del. 2005).

54. As set forth above, the Sale will yield the maximum value for the Debtors’ estates and the Debtors expect that value may be achieved through the assumption, assignment, and sale of the Assumed Contracts. In addition, under section 365(k) of the Bankruptcy Code, a debtor’s assignment of a contract or lease “relieves the trustee and the estate from any liability for any breach of such contract or lease occurring after such assignment.” 11 U.S.C. § 365(k). Thus, following an assignment to a Successful Bidder of an Assumed Contract, the Debtors will be relieved from any liability for any subsequent breach associated therewith.

55. Furthermore, section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under the Assumed Contracts be cured or that adequate assurance be

provided that such defaults will be promptly cured. 11 U.S.C. § 365(b)(1). The Debtors propose to file with the Court, and serve on each Counterparty to a Contract, a Cure Notice that indicates the Proposed Cure Amount for each such contract. As such, each Counterparty will have the opportunity to object to the proposed assumption and assignment to the Successful Bidder and to the Proposed Cure Amount, if applicable. Moreover, the payment or reserve of the applicable Proposed Cure Amounts, as provided for in the Bidding Procedures, will be a condition to the Debtors' assumption and assignment of any Assumed Contracts.

56. Relatedly, section 365(f)(2) of the Bankruptcy Code provides that a debtor may assign an executory contract or unexpired lease of nonresidential real property if “adequate assurance of future performance by the assignee of such contract or lease is provided.” 11 U.S.C. § 365(f)(2). The words “adequate assurance of future performance” must be given a “practical, pragmatic construction” in light of the facts and circumstances of the proposed assumption.⁸ Specifically, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned.⁹

57. Here, any Successful Bidder will have provided adequate assurance of future performance with respect to any Assumed Contract. For a bid to be deemed a Qualifying Bid, each Qualifying Bidder will be required to provide evidence supporting its ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if

⁸ See *In re Fleming Cos., Inc.*, 499 F.3d 300, 307 (3d Cir. 2007) (internal citation omitted); *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (same); see also *In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (finding that adequate assurance of future performance does not mean absolute assurance that debtor will thrive and profit); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”).

⁹ See *In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (holding that adequate assurance of future performance is given where the assignee of lease has financial resources and expressed a willingness to devote sufficient funding to the business to ensure its success, and that in the leasing context, the chief determinant of adequate assurance is whether rent will be paid).

applicable, section 365(b)(3) of the Bankruptcy Code. Furthermore, given that the Debtors will submit evidence at the Sale Hearing that all requirements for the assumption and assignment of the Contracts have been satisfied, the Court and other interested parties will have the opportunity to evaluate the ability of the Successful Bidder to provide adequate assurance of future performance.

58. Therefore, the Debtors respectfully request that the Court approve the proposed assumption and assignment of the Assumed Contracts.

59. In addition, to assist in the assumption, assignment, and sale of the Assumed Contracts, the Debtors also request that the Sale Order provide that anti-assignment provisions in the Assumed Contracts shall not restrict, limit, or prohibit the assumption, assignment, and sale of the Assumed Contracts and are deemed and found to be unenforceable anti-assignment provisions within the meaning of section 365(f) of the Bankruptcy Code.

BANKRUPTCY RULE 6004 SHOULD BE WAIVED

60. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a), to the extent not satisfied, and of the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary for the Debtors to conduct an efficient sale process to preserve the value of their estates. The Debtors thus submit that the requested waiver of the notice requirements of Bankruptcy Rule 6004(a) and of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

RESERVATION OF RIGHTS

61. Nothing in this Motion shall be deemed: (i) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (ii) a waiver of the Debtors' or any other party in interest's right

to dispute any claim; (iii) a promise or requirement to pay any particular claim; (iv) an implication or admission that any particular claim is of a type specified or defined in this Motion; (v) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (vi) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (vii) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

NOTICE

62. Notice of this Motion has been or will be provided to: (a) the U.S. Trustee (Attn: Richard L. Schepacarter); (b) counsel to the DIP Lender; (c) the holders of the twenty (20) largest unsecured claims on a consolidated basis against the Debtors; (d) all persons known or reasonably believed to have asserted an interest in the Assets within the last six (6) months; (e) all parties who have asserted Encumbrances against the Assets; and (f) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

CONCLUSION

WHEREFORE, the Debtors request that the Court enter the Bidding Procedures Order and the Sale Order, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: May 24, 2023
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

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Proposed Counsel for Debtors and Debtors in Possession

EXHIBIT A

Proposed Bidding Procedures Order

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

In re:)	
	)	Chapter 11
PLASTIQ INC., <i>et al.</i> , ¹)	
	)	Case No. 23-10671 (BLS)
Debtors.)	
	)	(Jointly Administered)
)	
	)	Docket Ref No. _____

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

Upon consideration of the motion (the “**Motion**”)² of the Debtors, for the entry of an order (this “**Order**”): (i) approving bidding procedures, substantially in the form attached as Annex 1 hereto (the “**Bidding Procedures**”), to govern the marketing and sale of all or substantially all of the Debtors’ assets (the “**Assets**”), and approving the Bid Protections in connection therewith; (ii) authorizing the Debtors to schedule an auction to sell the Assets (the “**Auction**”) and scheduling the hearing to approve a sale of the Assets (the “**Sale Hearing**”); (iii) approving the form and manner of notice of the proposed sale transactions, the Bidding Procedures, the Auction, the Sale Hearing, and related dates and deadlines; (iv) authorizing procedures governing the assumption and assignment of certain executory contracts and unexpired leases (the “**Assumed Contracts**”) to the prevailing bidder(s) acquiring the Debtors’

¹ 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.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Stalking Horse Agreement and the Motion, as applicable, and to the extent of any inconsistency in the defined terms, the Stalking Horse Agreement shall govern.

assets (each, a “**Successful Bidder**”); and (v) granting related relief, as more fully described in the Motion; and the Court having reviewed the Motion and the First Day Declaration; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter an order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND CONCLUDED THAT:³

A. The statutory bases for the relief requested in the Motion are sections 105(a), 363, 365, 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), Rules 2002, 3007, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

³ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent, any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. Good and sufficient notice of the Motion was given and no further notice is required except as otherwise provided for herein. A reasonable opportunity to object or be heard regarding the relief granted by this Order has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 2002 and all other interested parties.

C. The Debtors have articulated good and sufficient reasons for the Court to grant the relief requested in the Motion regarding the sales process, including (a) the payment of the Bid Protections, if necessary, to the Stalking Horse Bidder in accordance with the Stalking Horse Agreement; (b) the scheduling of the Auction and the Sale Hearing with respect to the proposed sale of the Assets; (c) the establishment of procedures to fix the Proposed Cure Amounts (as defined below) to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption, assignment, and/or transfer of the Assumed Contracts; and (d) approval and authorization to serve the Sale Notice.

D. The Sale Notice (in substantially the form attached hereto as Annex 2), is reasonably calculated to provide all interested parties with timely and proper notice of the Bidding Procedures, the Auction, the Sale Hearing, and the Sale and any and all objection deadlines related thereto.

E. The Cure Notice (in substantially the form attached hereto as Annex 3) is reasonably calculated to provide all non-Debtor counterparties (the “**Counterparties**”) to the Debtors’ executory contracts and unexpired leases (each, a “**Contract**” and, collectively, the “**Contracts**”) with reasonable and proper notice of the potential assumption and assignment of their Contract and any cure amounts relating thereto, although the mere listing of any Contract on the Cure Notice does not require or guarantee that such Contract will be assumed and assigned and all rights of the Debtors and Stalking Horse Bidder with respect to such Contracts

are reserved (including, but not limited to, with respect to whether any Contract constitutes an executory contract and whether any Contract shall be an Assumed Contract under the Stalking Horse Agreement.

F. The Stalking Horse Agreement was negotiated by the Debtors, their advisors, and the Stalking Horse Bidder in good faith and at arms-length.

G. The Bidding Procedures are reasonably designed to maximize the value to be achieved for the Assets.

H. The Bid Protections, as approved by this Order are fair and reasonable and provide a benefit to the Debtors' estates and stakeholders.

I. If triggered in accordance with the terms of the Stalking Horse Agreement, payment of the Bid Protections, under this Order and upon the conditions set forth in the Stalking Horse Agreement and the Bidding Procedures, is (i) an actual and necessary cost and expense of preserving the Debtors' estates within the meaning of sections 503(b) and 507(a) of the Bankruptcy Code; (ii) reasonably tailored to encourage, rather than hamper, bidding for the Assets; (iii) of substantial benefit to the Debtors' estates and stakeholders; (iv) reasonable and appropriate; (v) a material inducement for, and conditions necessary to, ensure that the Stalking Horse Bidder will continue pursuit of the proposed agreement to purchase the Assets subject to the Stalking Horse Agreement; and (vi) reasonable in relation to the magnitude of the Sale and the Stalking Horse Bidder's lost opportunities resulting from the time and money spent pursuing such transaction.

J. The entry of this Order is in the best interests of the Debtors, their estates, their creditors, and other parties in interest.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. The Debtors are authorized to enter into the Stalking Horse Agreement, subject to higher or otherwise better offers, in accordance with this Order and the Bidding Procedures.

Bidding Procedures

3. The Bidding Procedures, substantially in the form attached hereto as Annex 1, are hereby approved in all respects. The Debtors are authorized, but not directed, to take any and all actions necessary or appropriate to implement the Bidding Procedures.

4. The bid of the Stalking Horse Bidder shall serve as the “stalking horse” bid, which shall be deemed a Qualified Bid under the Bidding Procedures.

5. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled as announced to the Court at the hearing on the Motion or by stipulation filed with the Court, are overruled except as otherwise set forth herein.

Notice Procedures

6. The Sale Notice and Cure Notice, substantially in the form attached hereto as Annex 2 and Annex 3, respectively, are hereby approved in all respects and shall be served within three (3) business days of entry of this Order, upon the Notice Parties identified in the Motion. Service of the Sale Notice as described in the Motion shall be sufficient and proper notice of the Sale and sale process contemplated by this Order with respect to all known interested parties.

Assignment Procedures

7. The Cure Notice shall identify the Contracts of the Debtors that may be assumed and assigned in connection with the sale of the Assets and provide the corresponding cure amounts that the Debtors believe must be paid to cure all defaults under each of the Contracts as

contemplated by section 365 of the Bankruptcy Code (the “**Proposed Cure Amounts**”). No later than three (3) business days after entry of this Order, the Debtors shall serve the Cure Notice on all Counterparties. If at any time after the issuance of the Cure Notice but prior to the Sale Hearing it is discovered that a Contract should have been listed on the Executory Contracts Schedule but was not (any such Contract, a “**Previously Omitted Contract**”), the Debtors shall, promptly following discovery thereof (but in no event later than two (2) business days following discovery thereof), file and serve a notice on the non-Debtor counterparty(ies) to such Previously Omitted Contract notifying such counterparties of the Debtors’ intention to assume and assign such Previously Omitted Contract to the Successful Bidder, including the Proposed Cure Amounts relating thereto (the “**Previously Omitted Contract Notice**”).

Objection Procedures

8. Notwithstanding anything to the contrary in the Motion, any objection to any aspect of the relief requested in the Motion must: (i) be in writing and filed with this Court; (ii) comply with the Bankruptcy Rules; (iii) set forth the name of the objecting party, the nature and amount of any claims or interests held or asserted against the Debtors’ estates or properties, the basis for the objection, and the specific grounds therefor; and (iv) be served upon (so as to be received by) the following parties (collectively, the “**Objection Notice Parties**”) by the applicable deadline established in this Order:

- (a) the Debtors, PlastiQ Inc., et al., 1475 Folsom Street, Suite 400, San Francisco, CA 94103, Attn: Vladimir Kasparov, Chief Restructuring Officer (vkasparov@pppllc.com);
- (b) 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), and Joseph M. Mulvihill, Esq. (jmulvihill@ycst.com);
- (c) the U.S. Trustee, 844 King Street, Room 2207, Wilmington, DE 19801, Attn: Richard L. Schepacarter, Esq. (Richard.schepacarter@usdoj.gov);

- (d) the Debtors' Restructuring Advisor, Triple P RTS, LLC, 1330 Avenue of the Americas, 22nd Floor, New York, NY 10019, Attn: Steve Bremer (sbremer@pppllc.com) and Geoff Schmitz (gschmitz@pppllc.com);
- (e) counsel to the Prepetition Secured Parties and the DIP Lenders, (i) Schulte Roth & Zabel LLP, 919 Third Avenue, New York, NY 10022, Attn: Adam Harris (adam.harris@srz.com) and Reuben Dizengoff (reuben.dizengoff@srz.com), and (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn. Matthew B. McGuire (mcguire@lrclaw.com);
- (f) counsel to the Stalking Horse Bidder, Troutman Pepper Hamilton Sanders LLP, 600 Peachtree Street, N.E., Suite 3000 Atlanta, GA 30308, Attn: Troutman Pepper Hamilton Sanders LLP, 600 Peachtree Street, N.E., Suite 3000 Atlanta, GA 30308, Attn: Matthew Brooks (matthew.brooks@troutman.com), Gary Marsh (gary.marsh@troutman.com), Kenneth Listwak (ken.listwak@troutman.com), James Stevens (james.stevens@troutman.com), and Brenna Sheffield (Brenna.Sheffield@troutman.com); and
- (g) proposed counsel to any official committee appointed in the chapter 11 cases.

9. Objections other than the objections served pursuant to Paragraphs 9 or 10, below, if any, to the relief requested in the Motion shall be considered at the Sale Hearing, other than objections expressly described in Paragraphs 9 or 10 of this Order, and must be served upon (such as to be received by) the Objection Notice Parties, **on or before 4:00 p.m. (prevailing Eastern Time) on July 14, 2023 (the "Sale Objection Deadline")**.

10. Each Counterparty shall have until 4:00 p.m. (prevailing Eastern time) on the date that is fourteen (14) days after the filing and service by the Debtors to the Counterparty of the Cure Notice or the Previously Omitted Contract Notice (as applicable) (the "**Contract Objection Deadline**") to object to the assumption and assignment of its Contract on any grounds, including, without limitation, the amount of the Proposed Cure Amounts, but excluding any objection as to adequate assurance of future performance under section 365(b)(1) of the Bankruptcy Code or, other than the Stalking Horse Bidder, on the basis of the identity of the Successful Bidder. Any unresolved objections shall be heard at the Sale Hearing, unless otherwise agreed by the parties; provided that the Debtors shall have the right to adjourn any Sale Hearing without the consent of

any objecting party. If a Counterparty does not timely file and serve an objection by the Contract Objection Deadline in accordance with this Order, (a) the Proposed Cure Amounts, if any, set forth in the Cure Notice, shall be controlling, and (b) the Counterparty shall be deemed to have consented to the assumption and assignment of the Contract, notwithstanding applicable law that would otherwise condition or prohibit such assumption and assignment.

11. Each Counterparty may raise objections as to adequate assurance of future performance or on the basis of the identity of the Successful Bidder until 4:00 p.m. (prevailing Eastern time) on the date that is three (3) days after the filing and service by the Debtors to the Counterparty of a notice identifying the applicable Successful Bidder, which, for the avoidance of doubt, may be provided with the Cure Notice or the Previously Omitted Contract Notice or at any time thereafter with respect to the Stalking Horse Bidder; *provided, however*, that objections, if any, on the basis of the identity of the Successful Bidder shall not, in any event, be raised later than one (1) hour prior to the commencement of the Sale Hearing (the “**Buyer Specific Objection Deadline**”). Any such objection must be filed and served on the Debtors and their counsel, any statutory committee appointed in the chapter 11 cases and its proposed counsel, and the applicable Successful Bidder or Stalking Horse Bidder, as applicable, and its counsel, so as to be actually received by the Buyer Specific Objection Deadline. Any such unresolved objections shall be heard at the Sale Hearing, unless otherwise agreed by the parties.

12. Unless the Counterparty to any Contract timely files an objection to its Cure Amount or to the assumption and assignment of its Contract and timely serves a copy of such objection in accordance with this Order, such Counterparty shall forever be barred and estopped from objecting (a) to the Cure Amount as the amount to cure all defaults to satisfy section 365 of the Bankruptcy Code and from asserting that any additional amounts are due or defaults exist;

(b) that any conditions to assumption and assignment must be satisfied under such Contract before it can be assumed and assigned or that any required consent to assignment has not been given; or (c) that the Successful Bidder has not provided adequate assurance of future performance as contemplated by section 365 of the Bankruptcy Code.

13. The inclusion of a Contract or other agreement on the Cure Notice shall not constitute or be deemed a determination or admission by the Debtors and their estates or any other party in interest that such Contract or other agreement is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and any and all rights of the Debtors and their estates with respect thereto are hereby reserved.

14. As soon as reasonably practicable after closing the Auction, the Debtors shall cause the Qualified Bid Documents for each Successful Bid and Backup Bid to be filed with the Court.

15. If a Counterparty does not timely object to: (a) the Proposed Cure Amount for its Contracts; (b) the ability of the Successful Bidders(s) (including the Stalking Horse Bidder or such other Successful Bidders(s)) to provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code; or (c) any other matter pertaining to assumption or assignment, then the Proposed Cure Amounts owed to such Counterparty shall be paid as soon as reasonably practicable after the effective date of the assumption and assignment of such Assumed Contract or as the Counterparty and Successful Bidder may otherwise agree.

16. In the event of a timely filed objection by a Counterparty regarding any Cure Amount with respect to any of the Contracts, the Cure Amounts owed to such Counterparty shall be paid as soon as reasonably practicable after the later of (i) the effective date of the assumption

and assignment of such Assumed Contract, and (ii) the entry of a final order that resolves the dispute and approves the assumption and assignment of such Assumed Contract.

Auction and Sale Hearing

17. The Debtors are authorized to conduct the Auction as set forth in the Bidding Procedures.

18. The Debtors are authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

19. Each bidder participating at the Auction shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale.

20. No entity, other than the Stalking Horse Bidder, shall be entitled to any expense reimbursement, break-up fee, “topping,” termination, contribution, or other similar fee or payment.

21. **The Bid Deadline is July 14, 2023 at 4:00 p.m. (Prevailing Eastern Time). The Auction shall commence on July 18, 2023 at 10:00 a.m. (Prevailing Eastern Time). The Sale Hearing will be conducted on July 24, 2023 at ____ (Prevailing Eastern Time).** The Debtors may seek the entry of an order of this Court at the Sale Hearing approving and authorizing the Sale to the Stalking Horse Bidder or, if there is an Auction, the highest or otherwise best offer(s) at the Auction, as applicable, on terms and conditions consistent with the applicable purchase agreement. The Sale Hearing may be adjourned or rescheduled without notice other than a notice filed with the Court or by an announcement of the adjourned date at the Sale Hearing.

Approval of Bid Protections

22. The Bid Protections, consisting of a Breakup Fee of 3% of the Purchase Price, and an Expense Reimbursement of reasonable, actual, and documented out of pocket expenses,

collectively not to exceed 5% of the Purchase Price are approved. The Bid Protections shall be paid pursuant to the terms of the Stalking Horse Agreement. The Stalking Horse Bidder shall provide the Debtors with all required documentation to support the Expense Reimbursement two (2) business days prior to the Auction.

23. The obligation of the Debtors to pay the Bid Protections (i) shall be entitled to administrative expense status under sections 503(b) and 507(a)(2) of the Bankruptcy Code; *provided* that the Bid Protections shall be payable out of the proceeds of an Alternative Transaction; (ii) shall survive the termination of the Stalking Horse Agreement; and (iii) shall be payable in accordance with the terms set forth in the Stalking Horse Agreement.

24. If Blue Torch, or an entity formed by or affiliated with Blue Torch, the pre-petition secured lenders, or the DIP lender (as the case may be, the “**Credit-Bid Party**”), submits a Qualified Bid to purchase substantially all of the Assets through a credit bid of its Secured Debt (as defined in the Stalking Horse Agreement) or any amounts owing under the DIP Agreement (as defined in the Stalking Horse Agreement), then Debtors shall cause the Credit Bid Party to deposit cash equal to the Breakup Fee and Expense Reimbursement in escrow for the benefit of the Stalking Horse Bidder in the event such Qualified Bid shall be determined by Debtors and the Court to be a Successful Bid, and such escrowed Breakup Fee and Expense Reimbursement shall be paid by Debtors or Credit Bid Party, as applicable, to the Stalking Horse Bidder via wire transfer of immediately available funds to an account designated by the Stalking Horse Bidder contemporaneously with the closing of such transaction with Credit Bid Party.

25. The Debtors’ obligations under this Order, the provisions of this Order and the portions of the Stalking Horse Agreement pertaining to the Bidding Procedures, including the Bid Protections, shall survive conversion of the chapter 11 cases to cases under Chapter 7 of the

Bankruptcy Code, confirmation of any plan of reorganization or liquidation, or discharge of claims thereunder and shall remain binding upon the Debtors, any Chapter 7 trustee, the reorganized or reconstituted debtors, as the case may be, after the effective date of a confirmed plan or plans in the Debtors' cases (including any order entered after any conversion of the cases of the Debtors to cases under Chapter 7 of the Bankruptcy Code).

26. The Stalking Horse Bidder shall be deemed a Qualified Bidder at all times and for all purposes with respect to the Assets to which its Bid (the "**Stalking Horse Bid**") relates, and notwithstanding anything in the Bidding Procedures, the Stalking Horse Bid shall be deemed a Qualified Bid for all purposes.

Miscellaneous Provisions

27. Notice of the Motion as provided therein shall be deemed good and sufficient notice, and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice or otherwise deemed waived.

28. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

29. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

30. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

31. Attached hereto as **Schedule A** is a summary of the key dates established by this Order.

32. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

SCHEDULE A

Event	Date
Service of Sale Notice	Three (3) business days after the entry of the Bidding Procedures Order
Sale Objection Deadline	July 14, 2023 at 4:00 p.m. (ET)
Bid Deadline	July 14, 2023 at 4:00 p.m. (ET)
Auction (if applicable)	July 18, 2023 at 10:00 a.m. (ET)
Sale Hearing	July 24, 2023 at _____
Sale Closing	No later than July 31, 2023

Annex 1

Bidding Procedures

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

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

BIDDING PROCEDURES FOR THE SALE OF THE DEBTORS’ ASSETS

On June [], 2023, the United States Bankruptcy Court for the District of Delaware (the “**Court**”) entered the *Order (I) Approving Bidding Procedures in Connection with Sale of Assets of the Debtors 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* [Docket No. [●]] (the “**Bidding Procedures Order**”),² by which the Court approved the following procedures (the “**Bidding Procedures**”). These Bidding Procedures set forth the process by which the Debtors are authorized to conduct an auction (the “**Auction**”) for the sale (the “**Sale**”) of substantially all of the Debtors’ assets (collectively, the “**Assets**”).

Subject to the terms of these Bidding Procedures, interested parties may bid on the Assets (i) in individual lots, (ii) as a collective whole, or (iii) in any combination.

1. Submissions to the Debtors.

All submissions to the Debtors required to be made under these Bidding Procedures must be directed to each of the following persons unless otherwise provided (collectively, the “**Notice Parties**”):

- A. Debtors.** PlastiQ Inc., et al., 1475 Folsom Street, Suite 400, San Francisco, CA 94103, Attn: Vladimir Kasparov, Chief Restructuring Officer (vkasparov@pppllc.com);
- B. Proposed Debtors’ Counsel.** Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Esq. (mnestor@ycst.com); Matthew B. Lunn, Esq. (mlunn@ycst.com); and Joseph M. Mulvihill, Esq. (jmulvihill@ycst.com);

¹ 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.

² All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Bidding Procedures Order.

- C. **Debtors' Restructuring Advisor.** Triple P RTS, LLC, 1330 Avenue of the Americas, 22nd Floor, New York, NY 10019, Attn: Steve Bremer (sbremer@pppllc.com) and Geoff Schmitz (gschmitz@pppllc.com);
- D. **Counsel for the Prepetition Secured Parties and the DIP Lender.** (i) Schulte Roth & Zabel LLP, 919 Third Avenue, New York, NY 10022, Attn: Adam Harris (adam.harris@srz.com) and Reuben Dizengoff (reuben.dizengoff@srz.com), and (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn. Matthew B. McGuire (mcguire@lrclaw.com);
- E. **Counsel to the Stalking Horse Bidder.** Troutman Pepper Hamilton Sanders LLP, 600 Peachtree Street, N.E., Suite 3000 Atlanta, GA 30308, Attn: Matthew Brooks (matthew.brooks@troutman.com), Gary Marsh (gary.marsh@troutman.com), Kenneth Listwak (ken.listwak@troutman.com), James Stevens (james.stevens@troutman.com), and Brenna Sheffield (Brenna.Sheffield@troutman.com); and
- F. **Proposed counsel to the Committee, if any.**

2. Potential Bidders.

To participate in the bidding process or otherwise be considered for any purpose under these Bidding Procedures, a person or entity (other than the Stalking Horse Bidder) interested in consummating a Sale (a "**Potential Bidder**") must deliver or have previously delivered:

- (i) an executed confidentiality agreement on terms acceptable to the Debtors (a "**Confidentiality Agreement**"), to the extent not already executed; and
- (ii) information demonstrating (in the Debtors' reasonable business judgment) that the Potential Bidder has the financial capability to consummate the applicable Sale, including, but not limited to, the most current audited and latest unaudited financial statements (the "**Financials**") of the Potential Bidder (or such other form of financial disclosure acceptable to the Debtors in their discretion) (or, if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, (x) Financials of the equity holder(s) of the Potential Bidder or such other form of financial disclosure as is acceptable to the Debtors, in consultation with: (a) the Prepetition Secured Parties and DIP Lender, and (b) the advisors to the Committee (collectively, the "**Consultation Parties**"),³ and (y) a written funding commitment acceptable to the Debtors and their advisors, in consultation with the Consultation Parties, of the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder's obligations in connection with the applicable Sale), provided that such written funding commitment may not

³ Notwithstanding anything to the contrary in these Bidding Procedures, the Debtors shall not be required to consult with the DIP Lender or the prepetition secured lenders if they submit a bid for the Assets.

be required to the extent the Potential Bidder's wherewithal is otherwise demonstrated or known to the Debtors; and

- (iii) any other evidence the Debtors, in consultation with the Consultation Parties, may reasonably request to evaluate such person's or entity's fitness, interest or motives for participating in the bidding process.

3. Stalking Horse Bidder.

The Debtors have entered into a purchase agreement (the "**Stalking Horse Agreement**") with Plastiq, Powered by Priority, LLC, an acquisition vehicle formed by Priority Holdings, Inc., who will serve as a stalking horse bidder for substantially all of the Debtors' Assets, as more specifically identified in the Stalking Horse Agreement (the "**Stalking Horse Bidder**").

4. Qualified Bidders.

(a) A "**Qualified Bidder**" is a Potential Bidder whose Financials, or the Financials of its equity holder(s), as applicable, demonstrate the financial capability to consummate the applicable Sale and whose Bid is a Qualified Bid (as defined below), that the Debtors, in consultation with the Consultation Parties, determine should be considered a Qualified Bidder. Prior to the commencement of the Auction, the Debtors' advisors will (i) notify each Potential Bidder in writing whether such Potential Bidder is a Qualified Bidder and (ii) provide to the Qualified Bidders for such Assets copies of all Qualified Bids with respect to such Assets. The Stalking Horse Bidder shall be deemed a Qualified Bidder at all times and for all purposes with respect to the Assets to which its Bid (the "**Stalking Horse Bid**") relates, and notwithstanding anything in these Bidding Procedures, the Stalking Horse Bid shall be deemed a Qualified Bid for all purposes. The Prepetition Secured Parties and the DIP Lender shall be considered a Qualified Bidder to the extent that it submits a Qualified Bid prior to the Bid Deadline.

(b) The Debtors shall provide regular updates to the Consultation Parties on Potential Bidders and shall specifically identify any Potential Bidder who did not qualify to be a Qualified Bidder and the Debtors' basis for such determination. If any Potential Bidder is determined by the Debtors, in consultation with Consultation Parties, not to be a Qualified Bidder, the Debtors will refund such Qualified Bidder's Deposit and all accumulated interest thereon on or within five (5) business days after the Bid Deadline.

(c) Between the date that the Debtors notify a Potential Bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Except as otherwise set forth in the Stalking Horse Agreement, without the written consent of the Debtors, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; *provided that* any Qualified Bid may be improved at the Auction as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures.

5. Due Diligence.

Potential Bidders shall be eligible to receive due diligence information and access to the Debtors' electronic data room (the "**Data Room**") and to additional non-public information regarding the Debtors. In addition, the Debtors will provide to Potential Bidders reasonable due diligence information, as requested by such Potential Bidders in writing, as soon as reasonably practicable after such request, and the Debtors shall post to the Data Room all written due diligence provided to any Potential Bidder. For all Potential Bidders other than the Stalking Horse Bidder, the due diligence period will end on the Bid Deadline, and subsequent to the expiration of the due diligence period, the Debtors shall have no obligation to furnish any due diligence information. The Stalking Horse Bidder's due diligence period with respect to its Stalking Horse Bid has expired; *provided, however*, that the Stalking Horse Bidder shall retain access to the Data Room and shall receive all other due diligence information provided to any Potential Bidders on the same terms and timing that such Data Room access and due diligence information are made available to other Potential Bidders.

The Debtors shall not furnish any confidential information relating to the Assets, liabilities of the Debtors, or a Sale to any person except to the Stalking Horse Bidder, a Potential Bidder or to such Potential Bidder's duly authorized representatives to the extent expressly permitted by the applicable Confidentiality Agreement. The Debtors and their advisors shall coordinate all reasonable requests from Potential Bidders for additional information and due diligence access; *provided* that the Debtors may decline to provide such information to Potential Bidders who, at such time and in the Debtors' reasonable business judgment after consultation with the Consultation Parties, have not established, or who have raised doubt, that such Potential Bidder intends in good faith to, or has the capacity to, consummate the applicable Sale.

The Debtors also reserve the right, subject to the terms of the Stalking Horse Agreement and after consultation with the Consultation Parties, to withhold any diligence materials that the Debtors determine are sensitive after notifying the Potential Bidder requesting such materials of such determination. Neither the Debtors nor their representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Potential Bidder or Qualified Bidder in accordance with these Bidding Procedures.

All due diligence requests must be directed to Triple P RTS, LLC, 1330 Avenue of the Americas, 22nd Floor, New York, NY 10019, Attn: Steve Bremer (sbremer@pppllc.com) and Geoff Schmitz (gschmitz@pppllc.com).

(a) Communications with Potential Bidders.

Notwithstanding anything to the contrary in these Bidding Procedures, all direct communications between and amongst Potential Bidders regarding the Debtors or their Assets shall involve the Debtors and the Debtors' advisors. No Potential Bidder shall communicate with any other Potential Bidder absent prior written consent from the Debtors.

(b) Due Diligence from Potential Bidders.

Each Potential Bidder shall comply with all reasonable requests for additional information and due diligence access requested by the Debtors or their advisors regarding the ability of the

Potential Bidder to consummate the applicable Sale. Failure by a Potential Bidder to comply with such reasonable requests for additional information and due diligence access may be a basis for the Debtors to determine, in consultation with the Consultation Parties, that such bidder is no longer a Potential Bidder or that a bid made by such Potential Bidder is not a Qualified Bid.

The Debtors and each of their respective advisors and representatives shall be obligated to maintain in confidence any such confidential information in accordance with any applicable confidentiality agreement, except as otherwise set forth in these Bidding Procedures or with the prior written consent of such bidder. Each recipient of confidential information agrees to use, and to instruct their advisors and representatives to use, such confidential information only in connection with the evaluation of Bids during the bidding process or in accordance with the terms of any applicable confidentiality agreement.

6. Bid Requirements.

A proposal, solicitation, or offer (each, a “**Bid**”) by a Qualified Bidder that is submitted in writing, in English, and that is determined by the Debtors, in consultation with the Consultation Parties to meet the following applicable requirements, shall constitute a “**Qualified Bid.**” The Stalking Horse Bid will be deemed a Qualified Bid for all purposes without any further action required by the Stalking Horse Bidder.

(a) **Identification of Bidder.** Each Bid must fully disclose the following: (i) the legal identity of each person or entity bidding for the Assets and/or otherwise sponsoring, financing (including through the issuance of debt in connection with such Bid) or participating in (including through license or similar arrangement with respect to the Assets to be acquired in connection with such Bid) the Auction in connection with such Bid and the complete terms of any such participation; and (ii) any past or present agreements with the Debtors, the Stalking Horse Bidder, any other known Potential Bidder or Qualified Bidder, or any officer or director of any of the foregoing (including any current or former officer or director of the Debtors).

(b) **Assets.** Each Bid must clearly state which Assets (including any executory contracts and unexpired leases) and liabilities of the Debtors the Qualified Bidders are agreeing to purchase and assume. For the avoidance of doubt, a Bid may be on the Assets in either (i) individual lots, (ii) as a collective whole, or (iii) in any combination. A Bid may also provide for the designation of executory contracts and unexpired leases to be assumed and assigned for a limited period post-closing so long as the Qualified Bidder agreed to pay all costs and expenses incurred by the Debtors during such designation period.

(c) **Purchase Price.** Each Bid must clearly set forth the purchase price (the “**Purchase Price**”) and the forms of consideration the bidder intends to use to pay the Purchase Price. The DIP Lender and the Prepetition Secured Parties shall be entitled to credit bid all or any portion of the outstanding secured obligations of the DIP Lenders and the Prepetition Secured Parties pursuant to section 363(k) of the Bankruptcy Code with respect to any assets on which they hold liens.

(d) **Minimum Bid.** The Minimum Bid is an amount of cash or other consideration offered that exceeds the aggregate sum of the following:

- the aggregate value of the Purchase Price, as that term is defined in the Stalking Horse Agreement;
- the amount of the Breakup Fee and Expense Reimbursement; and
- the \$200,000 minimum bid increment.

(e) **Deposit.** Each Bid must be accompanied by a cash deposit in the amount equal to 10% of the Purchase Price of the Bid, to be held in an account to be identified and established by the Debtors (the “**Deposit**”). The Debtors reserve the right to increase the Deposit requirement.

(f) **Assumption of Obligations.** Each Bid must identify the obligations contemplated to be assumed by such Bid, and be on terms in the aggregate (together with the other consideration contemplated in such Bid) matching or exceeding the Minimum Bid and no less favorable to the Debtors than the Stalking Horse Agreement (if any), as determined in the Debtors’ business judgment, and after consultation with the Consultation Parties. Other than the obligations to be assumed, the Assets shall be sold free and clear of all liens, claims, interests, and encumbrances (collectively, the “**Encumbrances**”), and any Encumbrances shall attach to the net proceeds of the Sale after payment of any applicable Bid Protections.

(g) **The Same or Better Terms.** In addition to meeting or exceeding the applicable Minimum Bid, each Bid must be on terms that are no less favorable in the aggregate (together with the other consideration contemplated in such Bid), in the Debtors’ business judgment and after consultation with the Consultation Parties, than the terms of the Stalking Horse Agreement. Each Bid must include duly executed, non-contingent purchase agreement and other transaction documents necessary to effectuate the transactions contemplated in the Bid and shall include a schedule of assumed contracts to the extent applicable to the Bid. Each Bid should be based on the form of the Stalking Horse Agreement, which is available in Word format in the Data Room, and must include a copy of the Stalking Horse Agreement clearly marked to show all changes requested by the Qualified Bidder, including those relating to the respective Purchase Price and assets to be acquired by such Qualified Bidder, as well as all other material documents integral to such bid, including a form of sale order marked against the applicable sale order (collectively, the “**Qualified Bid Documents**”).

(h) **Committed Financing / Adequate Assurance Information.** To the extent that a Bid is not accompanied by evidence of the Qualified Bidder’s capacity to consummate the Sale set forth in its Bid with cash on hand, each Bid must include committed financing documents to the satisfaction of the Debtors (in consultation with the Consultation Parties) that demonstrate that the Qualified Bidder has: (i) received sufficient debt and/or equity funding commitments to satisfy the Qualified Bidder’s Purchase Price and other obligations under its Bid; and (ii) adequate working capital financing or resources to finance going concern operations for the Assets and the proposed transactions. Such funding commitments or other financing must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have only those covenants and conditions acceptable to the Debtors, in consultation with the Consultation Parties. In addition to evidence of financial wherewithal to timely consummate the transaction, a Bid must include adequate assurance information with respect to any executory contracts or unexpired leases included or that may be included in the Bid in a form that allows the Debtors to

serve such information on any counterparties to any contracts or leases being assumed and assigned in connection with the Sale that have requested, in writing, such information.

(i) Contingencies; No Financing or Diligence Outs. A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions, which shall not be more burdensome, in the Debtors' business judgment, and after consultation with the Consultation Parties, than those set forth in the Stalking Horse Agreement (if any).

(j) Demonstrated Financial Capacity. A Qualified Bidder must have, in the Debtors' business judgment (in consultation with the Consultation Parties) the necessary financial capacity to consummate the proposed transactions required by its Bid (including, if necessary, to obtain transfer of any of the Debtors' permits and to obtain any necessary surety bonds or other financial assurances) and provide adequate assurance of future performance under all contracts proposed to be assumed by such Bid.

(k) Time Frame for Closing. Closing of the Sale as to any Asset related to a Bid by a Qualified Bidder (a "Closing") must be reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid, on or before July 31, 2023.

(l) Binding and Irrevocable. Except as provided herein, a Qualified Bidder's Bid for the Assets shall be irrevocable unless and until the (i) Debtors (in consultation with the Consultation Parties) accept a higher Bid for such Assets and such Qualified Bidder is not selected as the Backup Bidder for such Assets, and (ii) the Sale Hearing has been concluded and the Sale Order Entered. If selected as Backup Bidder, such Bid shall be irrevocable until the Closing of a Successful Bid for such Assets.

(m) Expenses; Disclaimer of Fees. Each Bid must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder other than the Stalking Horse Bidder will be permitted to request, nor be granted by the Debtors, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.

(n) Authorization. Each Bid must contain evidence that the Qualified Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.

(o) As-Is, Where-Is. Each Bid must include a written acknowledgement and representation that the Qualified Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making

its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Bidder's Bid or accompanying asset purchase agreement.

(p) Adherence to Bid Procedures. By submitting its Bid, each Qualified Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction.

(q) Regulatory Approvals and Covenants. A Bid must set forth each regulatory and third-party approval required for the Qualified Bidder to consummate the applicable Sale, if any, and the time period within which the Qualified Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than thirty (30) days following execution and delivery of the asset purchase agreement, those actions the Qualified Bidder will take to ensure receipt of such approvals as promptly as possible) and any undertakings that will be required by the Debtors in connection with such regulatory and third party approvals.

(r) Consent to Jurisdiction. The Qualified Bidder must submit to the jurisdiction of and entry of final orders by the Court and waive any right to a jury trial in connection with any disputes relating to Debtors' qualification of bids, the Auction, the construction and enforcement of these Bidding Procedures, the transaction documents related to the Sale, and the Closing, as applicable.

(s) Bid Deadline. Each Bid must be transmitted via email (in .pdf or similar format) so as to be actually received on or before 4:00 p.m. (prevailing Eastern Time) on July 14, 2023 (the "**Bid Deadline**") by the Notice Parties.

7. Auction.

If the Debtors receive a Qualified Bid for the Assets, other than the Stalking Horse Bid for such Assets, the Debtors will conduct the Auction to determine the Successful Bidder with respect to such Assets. If the Debtors do not receive a Qualified Bid for the Assets (other than the Stalking Horse Bid for such Assets), the Debtors will not conduct the Auction as to such Assets and shall designate the Stalking Horse Bidder's Bid for such Assets as the Successful Bid for such Assets.

Prior to the commencement of the Auction, the Debtors will notify each Qualified Bidder of the highest or otherwise best Qualified Bid for the Assets for which such Qualified Bidder submitted a Bid, as determined in the Debtors' reasonable business judgment, in consultation with the Consultation Parties (the "**Baseline Bid**"), and provide copies of the applicable Qualified Bid Documents supporting the applicable Baseline Bid to each Qualified Bidder. The Debtors shall consult with the Consultation Parties as to how the Debtors are valuing the Bids made by Qualified Bidders during the Auction.

The Auction shall take place at the offices of Young Conaway Stargatt & Taylor, LLP on July 18, 2023 at 10:00 a.m. (prevailing Eastern Time), or other location (including virtually), later date, or time as selected by the Debtors. For the avoidance of doubt, so long as the Stalking Horse

Bidder has executed the Stalking Horse Agreement and not breached the Stalking Horse Agreement as of the date of the Auction, the Stalking Horse Bidder is deemed to have participated in the Auction for all purposes, whether or not the Stalking Horse Bidder makes a bid at the Auction. The Auction shall be conducted in a timely fashion according to the following procedures:

(a) The Debtors Shall Conduct the Auction.

The Debtors and their advisors shall direct and preside over the Auction. At the start of the Auction, the Debtors shall describe the terms of the Baseline Bid for the Assets. All incremental Bids made thereafter shall be Overbids (defined below) for such Assets and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders who submitted Bids on such Assets. The Debtors shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid, all applicable Overbids, and the Successful Bid.

Only the Debtors, the Qualified Bidders, the DIP Lender, the Prepetition Secured Lender, members of the Committee, and each such parties' respective legal and financial advisors shall be entitled to attend the Auction, along with any other creditor, and any other party the Debtors deem appropriate (*provided, however*, that any party other than the Qualified Bidders, the Prepetition Secured Parties and the DIP Lender, members of the Committee, and each such parties' respective legal and financial advisors shall be required to provide notice to the Debtors at least two (2) days prior to the auction by sending an email to Troy Bollman, paralegal for proposed counsel to the Debtors, at tbollman@ycst.com; the Debtors will provide copies of any such notices to the Qualified Bidders, the Prepetition Secured Parties and the DIP Lender, members of the Committee, and each such parties' respective legal and financial advisors within one (1) day of receipt. The Qualified Bidders shall appear at the Auction in person and may speak or bid themselves or through duly authorized representatives. Only Qualified Bidders shall be entitled to bid at the Auction.

(b) Terms of Overbids.

“Overbid” means any bid made at the Auction by a Qualified Bidder subsequent to the Debtors' announcement of the Baseline Bid and accepted by the Debtors, in consultation with the Consultation Parties, as a higher or otherwise better bid. Each applicable Overbid must comply with the following conditions:

- (i) **Minimum Overbid Increment.** The initial Overbid at the Auction for the Assets, if any, shall provide for total consideration to the Debtors with a value that exceeds the consideration under the Baseline Bid for the Assets by an incremental amount that is not less than \$200,000 (the **“Minimum Overbid Increment”**); *provided however*, that the initial overbid and each subsequent overbid by any Qualified Bidder that is not the Stalking Horse Bidder shall include the Minimum Overbid Increment plus the amount of the Bid Protections. Except as may be otherwise provided in the Stalking Horse Agreement, the Debtors reserve the right, after consultation with the Consultation Parties, to announce reductions or increases in the Minimum Overbid Increment for the Assets at any time during the Auction.

- (ii) **Conclusion of Each Overbid Round.** Upon the solicitation of each round of applicable Overbids, the Debtors may announce a deadline (as may be extended from time to time, the “**Overbid Round Deadline**”) by which time any Overbids must be submitted to the Debtors.
- (iii) **Overbid Alterations.** An applicable Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable in the aggregate to the Debtors’ estates than any prior Bid or Overbid, as determined in the Debtors’ reasonable business judgment, but shall otherwise comply with the terms of these Bidding Procedures.

(c) **Closing the Auction.**

- (i) The Auction shall continue until there is only one Bid for the Assets that the Debtors determine, in their reasonable business judgment, in consultation with the Consultation Parties, to be the highest or otherwise best Bid for such Assets. Such Bid shall be declared the “**Successful Bid,**” for such Assets and such Qualified Bidder, the “**Successful Bidder**” for such Assets at which point the Auction will be closed as to such Assets. Such acceptance by the Debtors of the Successful Bid is conditioned upon approval by the Court of the Successful Bid.
- (ii) The Debtors shall have no obligation to consider any Bids or Overbids submitted after the conclusion of the Auction, and any such Bids or Overbids shall be deemed untimely and shall not constitute a Qualified Bid.
- (iii) As soon as reasonably practicable after closing the Auction, the Debtors shall cause the Qualified Bid Documents for each Successful Bid and Backup Bid to be filed with the Court.

(d) **No Collusion; Good-Faith *Bona Fide* Offer.**

Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the bidding, and (ii) its Bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction on the terms of its Qualified Bid if selected as the Successful Bidder.

8. Backup Bidder.

- (a) Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction is conducted for the Assets, the Qualified Bidder with the next-highest or otherwise second-best Bid at the Auction for such Assets, as determined by the Debtors in the exercise of their reasonable business judgment, and in consultation with the Consultation Parties (the “**Backup Bid**”), shall be required to serve as a backup bidder (the “**Backup Bidder**”)

for such Assets, and each Qualified Bidder shall agree and be deemed to agree to be the Backup Bidder if so designated by the Debtors.

- (b) The identity of the Backup Bidder and the amount and material terms of the Backup Bid shall be announced by the Debtors at the conclusion of the Auction at the same time the Debtors announce the identity of the Successful Bidder. The Backup Bidder shall be required to keep its Bid (or if the Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until the closing of the transaction with the applicable Successful Bidder. The Backup Bidder's Deposit shall be held in escrow until the closing of the transaction with the applicable Successful Bidder or as otherwise provided in the Stalking Horse Agreement.
- (c) If a Successful Bidder fails to consummate the approved transactions contemplated by its Successful Bid, the Debtors may select the applicable Backup Bidder as the Successful Bidder, and such Backup Bidder shall be deemed a Successful Bidder for all purposes. The Debtors will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Bidder without further order of the Court or notice to any party. The defaulting Successful Bidder's Deposit shall be forfeited to the Debtors, and the Debtors specifically reserve the right to seek all remedies available against the defaulting Successful Bidder, including specific performance, if applicable, unless otherwise provided in the Stalking Horse Agreement should the Stalking Horse Bidder be the Successful Bidder.

9. Reservation of Rights.

The Debtors reserve their rights to modify these Bidding Procedures (but not the Bid Protections) in their reasonable business judgment, and in consultation with the Consultation Parties, in any manner that will best promote the goals of the bidding process, or impose, at or prior to the Auction, additional customary terms and conditions on the sale of the Assets, including, without limitation: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction at the Auction and/or adjourning the Sale Hearing in open court without further notice; (c) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) cancelling the Auction; and (e) rejecting any or all bids or Bids; *provided, however*, that any changes to the dates and deadlines set forth herein shall (i) comply with any milestones contained in the Debtors' DIP financing approved by the Bankruptcy Court in these cases or be made with the consent of the DIP Lender and (ii) be consistent with the Stalking Horse Agreement; *provided further*, that nothing in this Section shall limit any rights or remedies of the Stalking Horse Bidder under the Stalking Horse Agreement with respect to material modifications to these Bidding Procedures, the Bidding Procedures Order or the agreed form of sale order.

10. Sale Hearing.

A hearing to consider approval of the Sale of the Assets to the Successful Bidders (or to approve the Stalking Horse Agreement, as applicable, if no Auction is held) (the “**Sale Hearing**”) is currently scheduled to take place at [●] (ET) on July 24, 2023 before the Honorable [●] in the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, [●] Floor, Courtroom No. [●], Wilmington, Delaware 19801.

The Sale Hearing may be continued to a later date by the Debtors, by sending notice prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party (excluding the Stalking Horse Bidder).

At the Sale Hearing, the Debtors shall present the Successful Bids to the Court for approval.

11. Bid Protections.

To provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary and entering into a Stalking Horse Agreement with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Debtors have agreed to pay the Stalking Horse Bidder, under the conditions and in the amount set forth in the Bidding Procedures Order, a reasonable breakup fee in the amount of 3% of the Purchase Price (the “**Breakup Fee**”), and an expense reimbursement of reasonable and documented out of pocket expenses associated with diligence of the Sellers in connection with becoming the Stalking Horse Purchaser and negotiation and documentation of the Stalking Horse Agreement and pleadings related thereto (the “**Expense Reimbursement**” and, together with the Breakup Fee, the “**Bid Protections**”) payable pursuant to the terms of the Stalking Horse Agreement, provided however that the Bid Protections shall not exceed 5% of the Purchase Price,.

The obligation of the Debtors to pay the Bid Protections: (i) shall be entitled to administrative expense status under sections 503(b) and 507(a)(2) of the Bankruptcy Code, *provided, however*, that the Bid Protections shall be payable directly out of the proceeds of, and as a precondition to an alternative transaction; (ii) shall survive the termination of the Stalking Horse Agreement; and (iii) shall be payable in accordance with the terms set forth in the Stalking Horse Agreement.

If Blue Torch (“**Blue Torch**”), or an entity formed by or affiliated with Blue Torch, the pre-petition secured lenders, or the DIP lender (as the case may be, the “**Credit-Bid Party**”), submits a Qualified Bid to purchase substantially all of the Assets through a credit bid of its Secured Debt (as defined in the Stalking Horse Agreement) and any amounts owing under the DIP Agreement (as defined in the Stalking Horse Agreement), then Debtors shall cause the Credit Bid Party to deposit cash equal to the Breakup Fee and Expense Reimbursement in escrow for the benefit of the Stalking Horse Bidder in the event such Qualified Bid shall be determined by Debtors and the Court to be Successful Bid, and such escrowed Breakup Fee and Expense Reimbursement shall be paid by Debtors or Credit Bid Party, as applicable, to the Stalking Horse Bidder via wire

transfer of immediately available funds to an account designated by the Stalking Horse Bidder within one (1) business day of the closing of such transaction with the Credit Bid Party.

12. Return of Deposit; Remedies

The Deposit of the Successful Bidder shall be applied to the respective Purchase Price of such transaction at closing. The Deposits for each Qualified Bidder shall be held in one or more interest-bearing escrow accounts on terms acceptable to the Debtors (in consultation with the Consultation Parties) and shall be returned (other than with respect to the Successful Bidder, and the Backup Bidder) on or within five (5) business days after the Auction, including the Deposit of the Stalking Horse Bidder if it is not the Successful Bidder or Backup Bidder. Upon the return of the Deposits, their respective owners shall receive any and all interest that will have accrued thereon.

If a Successful Bidder fails to consummate a proposed transaction because of a breach by such Successful Bidder, and except as otherwise provided in the Stalking Horse Agreement, the Debtors will not have any obligation to return the Deposit deposited by such Successful Bidder, which may be retained by the Debtors as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors (except, in the case of a Stalking Horse Bidder, as otherwise provided in the Stalking Horse Agreement), and the Debtors shall be free to consummate the proposed transaction with the applicable Backup Bidder without the need for an additional hearing or order of the Court, *provided* that nothing herein shall prohibit any party from seeking an additional hearing or order of the Court.

13. Fiduciary Out.

Nothing in these Bidding Procedures shall require the board of directors or similar governing body of a Debtor to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, to the extent such board of directors or such similar governing body determines, or based on the advice of counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary obligations under applicable law.

14. Contract Procedures.

Within three (3) business days from the entry of the Bidding Procedures Order, the Debtors shall file and serve on all counterparties (each, a “**Counterparty**” and collectively, the “**Counterparties**”) to their executory contracts and unexpired leases (each, a “**Contract**” and collectively, the “**Contracts**”) a notice (the “**Cure Notice**”) of (a) the potential assumption by the Debtors and assignment to the Successful Bidder(s) of the Contracts, and (b) the proposed amount necessary, under section 365(b)(1) of the Bankruptcy Code, to cure any outstanding monetary defaults and compensate the Counterparties for any pecuniary losses in connection with such assumption and assignment (the “**Proposed Cure Amounts**”), which shall be included on a schedule attached to the Cure Notice (the “**Executory Contracts Schedule**”).

If at any time after the issuance of the Cure Notice but prior to the Sale Hearing it is discovered that a Contract should have been listed on the Executory Contracts Schedule but was not (any such Contract, a “**Previously Omitted Contract**”), the Debtors shall (in consultation with

the Consultation Parties), promptly following discovery thereof (but in no event later than two (2) Business Days following discovery thereof), file and serve a notice on the non-Debtor counterparty(ies) to such Previously Omitted Contract notifying such counterparties of the Debtors' intention to assume and assign such Previously Omitted Contract to the Successful Bidder, including the Proposed Cure Amounts relating thereto (the "**Previously Omitted Contract Notice**").

Each Counterparty shall have until 4:00 p.m. (prevailing Eastern time) on the date that is fourteen (14) days after the filing and service by the Debtors to the Counterparty of the Cure Notice or the Previously Omitted Contract Notice (as applicable) (the "**Contract Objection Deadline**") to object to the assumption and assignment of its Contract on any grounds, including, without limitation, the amount of the Proposed Cure Amounts, but excluding any objection as to adequate assurance of future performance under section 365(b)(1) of the Bankruptcy Code or, other than the Stalking Horse Bidder, on the basis of the identity of the Successful Bidder. Any unresolved objections shall be heard at the Sale Hearing, unless otherwise agreed by the parties; *provided that* the Debtors shall have the right to adjourn any Sale Hearing without the consent of any objecting party. If any objections to the amount of Proposed Cure Amounts remain unresolved as of the date of the Closing of the Sale of any Assets, the Debtors may (but are not required to) deposit the disputed amount of Proposed Cure Amounts relating to such Asset(s) in a segregated account to hold pending resolution of such objections.

Each Counterparty may raise objections as to adequate assurance of future performance or on the basis of the identity of the Successful Bidder until 4:00 p.m. (prevailing Eastern time) on the date that is five (5) days after the filing and service by the Debtors to the Counterparty of a notice identifying the applicable Successful Bidder, which, for the avoidance of doubt, may be provided with the Cure Notice or the Previously Omitted Contract Notice or at any time thereafter with respect to the Stalking Horse Bidder; *provided, however*, that objections, if any, on the basis of the identity of the Successful Bidder shall not, in any event, be raised later than one (1) hour prior to the commencement of the Sale Hearing (the "**Buyer Specific Objection Deadline**"). Any such objection must be filed and served on the Debtors and their counsel, the Committee and its counsel and the applicable Successful Bidder or Stalking Horse Bidder (if any), as applicable, and its counsel, so as to be actually received by the Buyer Specific Objection Deadline. Any such unresolved objections shall be heard at the Sale Hearing, unless otherwise agreed by the parties.

EXHIBIT B

Stalking Horse Agreement

EQUITY AND ASSET PURCHASE AGREEMENT

by and among

PLASTIQ INC.,

PLV INC. AND NEARSIDE BUSINESS CORP.,

AS SELLERS,

and

PLASTIQ, POWERED BY PRIORITY, LLC

May 23, 2023

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EQUITY AND ASSET PURCHASE AGREEMENT

This **EQUITY AND ASSET PURCHASE AGREEMENT** (this “Agreement”) is entered into as of May 23, 2023, by and among **PLASTIQ INC., PLV INC., and NEARSHORE BUSINESS CORP.**, (“Sellers”) and **PLASTIQ, POWERED BY PRIORITY, LLC**, a Delaware limited liability company (together with its permitted successors, designees and assigns, “Buyer”). Sellers and Buyer are referred to collectively herein as the “Parties.” Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in Article I.

WHEREAS, Sellers and the PlastiQ Subsidiaries (as defined below) presently conduct the business of operating a software platform for business to business payments automation that powers all aspects of accounts payable and accounts receivable operations for small to medium sized business (collectively, the “Business”);

WHEREAS, on or before May 24, 2023, Sellers intend to file voluntary petitions for relief (the “Chapter 11 Cases”) pursuant to Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended (the “Bankruptcy Code”);

WHEREAS, Sellers desire to sell, transfer and assign to Buyer, and Buyer desires to acquire and assume from Sellers, pursuant to sections 105, 363 and 365 of the Bankruptcy Code, the Purchased Assets, including the Equity Interests of PlastiQ Canada, Inc., and the Assumed Liabilities upon the terms and subject to the conditions set forth herein;

WHEREAS, Sellers intend to seek the entry of the Sale Procedures Order by the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) upon the terms and subject to the conditions set forth herein and in the Sale Procedures Order;

WHEREAS, Sellers intend to seek the entry of the Sale Order by the Bankruptcy Court approving this Agreement and authorizing Sellers to consummate the Contemplated Transactions upon the terms and subject to the conditions set forth herein and in the Sale Order;

WHEREAS, concurrently with the execution of this Agreement, the Buyer will enter into an exchange agreement (the “Exchange Agreement”) with Blue Torch Finance LLC (“Blue Torch”), pursuant to which Buyer will issue Blue Torch preferred equity in Buyer in exchange for Blue Torch’s release of any and all Liens, Claims and encumbrances on the Purchased Assets whether under the Secured Debt, the DIP Agreement or otherwise, following any payments received by Blue Torch upon entry of the Sales Order by the Bankruptcy Court and consummation of the Contemplated Transactions;

WHEREAS, the applicable governing body of each Seller has determined that it is advisable and in the best interests of their respective estates and the beneficiaries of such estates to consummate the Contemplated Transactions provided for herein pursuant to the Sale Procedures Order and the Sale Order and has approved this Agreement, subject to higher and better offers as contemplated by the Sale Procedures Order; and

WHEREAS, the Contemplated Transactions are subject to the approval of the Bankruptcy Court, subject to higher and better offers as contemplated by the Sale Procedures Order, and will be consummated only pursuant to the Sale Order to be entered by the Bankruptcy Court;

NOW, THEREFORE, in consideration of the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, and other good and valuable

consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

**ARTICLE I
DEFINITIONS.**

“503(b)(9) Claims” means any claims against the Sellers under section 503(b)(9) of the Bankruptcy Code timely filed and served in accordance with the Bankruptcy Code.

“Accounts Receivable” means (a) all accounts, accounts receivable, contractual rights to payment, notes, notes receivable, negotiable instruments, chattel paper, and vendor and supplier rebates of Sellers in connection with the Business as conducted by the Sellers, and (b) any security interest, claim, remedy or other right related to any of the foregoing.

“Administrative Claim” means a Claim arising under sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by Contract or otherwise.

“Agreement” has the meaning set forth in the preamble.

“Alternate Transaction” means a transaction or series of related transactions pursuant to which Sellers (a) accept a Qualified Bid, other than that of Buyer, as the highest and best offer, which is approved by order of the Bankruptcy Court and consummated, or (b) sell, transfer, lease or otherwise dispose of, directly or indirectly, including through an asset sale, stock sale, merger, reorganization or other similar transaction (by Sellers or otherwise), including pursuant to a plan or refinancing, all or substantially all of the Purchased Assets in a transaction or series of transactions to a Person or Persons other than Buyer.

“Assignable Contracts” has the meaning set forth in Section 2.6(a).

“Assignment and Assumption Agreement” has the meaning set forth in Section 2.8(a)(ii).

“Assumed Contracts” means those Contracts that have been assumed by Sellers and assigned to Buyer pursuant to Section 2.6 and section 365 of the Bankruptcy Code. For the avoidance of doubt, “Assumed Contracts” shall not include (i) any Lease, (ii) any Non-Real Property Contract that is excluded and rejected pursuant to Section 2.6 or (iii) any Employee Benefit Plan.

“Assumed Liabilities” has the meaning set forth in Section 2.3.

“Assumed Permits” means all Permits relating to the Business that are transferable in accordance with their terms and under applicable Law, but excluding all Permits to the extent related to any Excluded Asset.

“Auction” means the auction for the sale and assignment of the Purchased Assets as specified in the Sale Procedures Order.

“Bankruptcy Code” has the meaning set forth in the recitals

“Bankruptcy Court” has the meaning set forth in the recitals.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure.

“Bill of Sale” has the meaning set forth in Section 2.8(a)(i).

“Blue Torch” has the meaning set forth in the recitals.

“Breakup Fee” has the meaning set forth in Section 8.3.

“Business” has the meaning set forth in the recitals.

“Business Day” means any day other than a Saturday, a Sunday or a day on which banks located in New York, New York shall be authorized or required by Law to close.

“Business IP” has the meaning set forth in Section 3.9(b).

“Buyer” has the meaning set forth in the preamble, provided, however, that (i) subject to the approval of Blue Torch, Buyer reserves the right to designate a different entity or entities owned by or under common control with Buyer, whether currently existing or yet to be formed, to acquire title to any Purchased Assets or assume the Assumed Liabilities in the Contemplated Transactions at anytime prior to Closing and (ii) in the event of any such designation Buyer shall remain liable for all obligations in respect of any such designee.

“Buyer Group” means Buyer, any Affiliate of Buyer and each of their respective former, current or future Affiliates, officers, directors, employees, partners, members, managers, agents, advisors, representatives, successors or permitted assigns.

“Buyer Releasees” has the meaning set forth in Section 2.10.

“Cash Payment” has the meaning set forth in Section 2.5.

“Chapter 11 Cases” has the meaning set forth in the recitals.

“Claim” means a “claim” as defined in section 101(5) of the Bankruptcy Code, whether arising before or after the Petition Date.

“Closing” has the meaning set forth in Section 2.7.

“Closing Date” has the meaning set forth in Section 2.7.

“COBRA” means Part 6 of Subtitle B of Title I of ERISA, section 4980B of the IRC, and any similar state Law.

“Colonnade” means Colonnade Acquisition Corp. II, a Cayman Islands exempted company limited by shares.

“Collective Bargaining Agreement” has the meaning set forth in Section 3.5(a).

“Committee” means any official committee of unsecured creditors appointed in the Chapter 11 Cases.

“Company” means, collectively, the Sellers and the PlastiQ Subsidiaries.

“Confidential Information” means any data or information of the Sellers and the PlastiQ Subsidiaries (including trade secrets, techniques, know-how, processes, equipment, algorithms, Seller Software, design details and specifications, financial information, customer lists, business forecasts, sales and marketing plans as well as all notes, analysis, reports, compilations, studies, interpretations, summaries or other documents) that are valuable to the operation of the Business and not generally known to the public or competitors.

“Consent” means any approval, consent, ratification, permission, clearance, designation, qualification, waiver or authorization, or an order of the Bankruptcy Court that deems or renders unnecessary the same.

“Contemplated Transactions” means the sale by Sellers to Buyer, and the purchase by Buyer from Sellers, of the Purchased Assets and the assumption by Buyer of the Assumed Liabilities contemplated hereby.

“Contract” means any written or oral agreement, contract, lease, sublease, indenture, mortgage, instrument, guaranty, loan or credit agreement, note, bond, customer order, purchase order, sales order, sales agent agreement, supply agreement, development agreement, joint venture agreement, promotion agreement, license agreement, contribution agreement, partnership agreement or other arrangement, understanding, permission or commitment that, in each case, is legally binding.

“Contract Designation Period” has the meaning set forth in Section 2.6(g).

“COVID-19 Measures” means any action taken by any Seller directly in response to COVID-19, including any compliance with any quarantine, “shelter in place,” “stay at home,” social distancing, shut down, closure, sequester, safety or similar applicable Law, directive, guidelines or recommendations promulgated by any Governmental Entity, including the Centers for Disease Control and Prevention and the World Health Organization.

“Cure Amounts” means all amounts that must be paid and all obligations that otherwise must be satisfied by the Buyer, pursuant to Sections 365 of the Bankruptcy Code, to cure all defaults, if any, in connection with the assumption and assignment of the Assumed Contracts to the Buyer as provided herein, unless such other amounts are otherwise agreed upon by the Buyer and the counterparty to such Assumed Contract or determined by the Bankruptcy Court.

“Cure Notice” has the meaning set forth in Section 5.3(l).

“Current Employees” means all individuals employed by Sellers as of the Closing Date, including those on short-term disability, approved leave of absence, paid or unpaid, or long-term disability with, in each case, the legal right to return to employment).

“Decree” means any judgment, decree, ruling, decision, opinion, injunction, assessment, attachment, undertaking, award, charge, writ, executive order, judicial order, administrative order or any other order of any Governmental Entity.

“Deposit” has the meaning set forth in Section 2.10.

“Designation Right Contract” has the meaning set forth in Section 2.6(g).

“DIP Order” means, collectively: (a) the Interim DIP Order; (b) the Final DIP Order; and (c) any other supplemental, interim, or final order entered by the Bankruptcy Court in respect of the post-petition financing that is the subject of the Interim DIP Order and/or the Final DIP Order.

“DIP Agreement” means that certain Debtor-In-Possession Secured Promissory Note (including all exhibits and schedules attached thereto (including any budget)) to be entered into between the Sellers and the DIP Lender as of May 25, 2023.

“DIP Lender” means Blue Torch or its designee.

“Disclosure Schedule” has the meaning set forth in Article III.

“Disputed Amount Contract” has the meaning set forth in Section 2.6(h).

“Employee Benefit Plan” means each “employee benefit plan” (as such term is defined in section 3(3) of ERISA, whether or not subject to ERISA) and each other benefit, retirement, employment, consulting, compensation, incentive, bonus, stock option, restricted stock, restricted stock unit, stock appreciation right, phantom equity, change in control, severance, medical and hospitalization, insurance, life, disability (short and long-term), salary continuation, sick pay, vacation, paid time off, welfare and fringe-benefit or other compensation or benefit plan, program, policy, agreement or arrangement of any kind, in each case, (i) that are for the benefit of or relating to any current or former directors, officers, managers, employees, consultants or other service providers of any Seller or any ERISA Affiliate, or any spouse, dependent or beneficiary thereof, or (ii) that are maintained, sponsored or contributed to or required to be contributed to, by any Seller or any ERISA Affiliate or in which any Seller or ERISA Affiliate participates or participated or (ii) under which Seller or any ERISA Affiliate has or may have any liability, contingent or otherwise, including without limitation as a result of any previously-terminated plan, program, policy, agreement or arrangement.

“Environmental Laws” all applicable Laws or Decrees of any Governmental Entity concerning pollution (or the cleanup thereof) or protection of the environment, human health, and natural resources.

“Environmental Permit” means any License or any other authorization, approval, registration or entitlement required by or issued pursuant to any Environmental Law.

“Equity Interest” means, if a Person is a corporation, shares of capital stock of such corporation and, if a Person is a form of entity other than a corporation, ownership interests in such form of entity, whether membership interests, partnership interests or other securities.

“ERISA” means the United States Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any trade or business or other Person (whether or not incorporated) that, together with any Seller, would be deemed at any relevant time to be a “single employer” within the meaning of section 414 of the IRC or section 4001 of ERISA.

“Escrow Agent” means Truist Bank.

“Escrow Agreement” means that certain Escrow Agreement, to be entered into with the Escrow Agent, Buyer and Sellers on or around the date of this Agreement.

“Exchange Agreement” has the meaning set forth in the recitals.

“Exchange Agreement Terms” means the terms attached hereto as Exhibit A, describing the consideration provided in the Exchange Agreement.

“Excluded Assets” has the meaning set forth in Section 2.2.

“Excluded Claims” means all rights (including rights of set-off and rights of recoupment), refunds, claims, counterclaims, demands, causes of action and rights to collect damages of Sellers against third parties to the extent related to any Excluded Asset or Excluded Liability.

“Excluded Contracts” has the meaning set forth in Section 2.6(c).

“Excluded Liabilities” has the meaning set forth in Section 2.4.

“Excluded Utility Deposits” means any utility deposits related exclusively to Excluded Assets.

“Expense Reimbursement” has the meaning set forth in Section 8.3.

“Final DIP Order” means the Bankruptcy Court’s Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, and 507: (a) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Term Loan Financing; (b) Granting (i) Liens and Superpriority Administrative Expense Claims and (ii) Adequate Protection to Prepetition Term Loan Lenders; (c) Authorizing Use of Cash Collateral; (d) Modifying the Automatic Stay; and (e) Granting Related Relief, in form and substance reasonably acceptable to DIP Lender.

“Final Order” means an order entered by the Bankruptcy Court, the implementation, operation, or effect of which has not been stayed and as to which order (or any revision, modification, or amendment thereof) the time to appeal or seek review or rehearing or writ of certiorari has expired and as to which no appeal or petition for review or rehearing or certiorari has been taken and is pending; provided that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Code, may be filed relating to such order, shall not cause such order not to be a Final Order.

“Financial Statements” has the meaning set forth in Section 3.13.

“Financing Agreement” has the meaning set forth in the definition of Secured Debt below.

“Foreign Subsidiaries” means PlastiQ Canada, Inc., a Canadian corporation formed under the laws of the Province of Ontario; PlastiQ Canada EP Inc., a Canadian corporation formed under the laws of the Province of British Columbia; and Nearside Business Software Canada Inc., a Canadian corporation formed under the laws of British Columbia.

“Former Employees” means all individuals who have been employed at any time by the Sellers (or any of their predecessors) who are not Current Employees.

“Governmental Entity” means any United States federal, state or local or non-United States governmental or regulatory authority, agency, commission, court, body or other governmental entity.

“Hazardous Substance” means any material, substance, chemical, petroleum or petroleum-derived products, radon, radioactive materials or wastes, lead or lead-containing materials, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or man-made, that is defined as hazardous, acutely hazardous, or toxic under Environmental Laws, or that is a per- or polyfluoroalkyl substance.

“Inbound IP License” means each Contract pursuant to which the Sellers obtain any right or license to any Intellectual Property owned by a third party.

“Insurance Policy” has the meaning set forth in Section 3.7.

“Intellectual Property” means all intellectual property in any and all jurisdictions throughout the world (whether arising under statutory or common law), including, without limitation: (a) patents and patent applications, design rights, industrial design registrations and applications therefor, divisions, continuations, continuations-in-part, reissues, substitutes, renewals, registrations, confirmations, reexaminations, extensions and any provisional applications, and any foreign or international equivalent of any of the foregoing, (b) marks, trademarks (whether registered, unregistered or applied-for), service marks, trade names, trade dress, domain names, social media accounts, social media identifiers (such as a Twitter® handle), corporate legal entity names, brand names, logos, product names, slogans, URLs, web sites, works of authorship, together with the goodwill associated exclusively therewith, (c) copyrights, including copyrights in computer software and in databases, website content, moral rights and renewals in connection therewith, (d) rights of publicity (i.e., the right to commercially use the name, likeness, image, voice, or identity of individuals), and (e) trade secrets, algorithms, application programming interfaces, apparatus, circuit designs and assemblies, databases and data collections, diagrams, formulae, gate arrays, IP cores, network configurations and architectures, net lists, photomasks, processes, inventions (whether or not patentable), know-how, and rights in know-how or confidential and proprietary information, including rights in formulae, methods, techniques, processes, assembly procedures, software, software code (in any form, including source code and executable or object code), subroutines, test results, test vectors, user interfaces, protocols, schematics, specifications, drawings, prototypes, molds and models, and other forms of technology (whether or not embodied in any tangible form and including all tangible embodiments of the foregoing).

“Intellectual Property License” means each Inbound IP License and each Outbound IP License.

“Intellectual Property Assignments” has the meaning set forth in Section 2.8(a)(iii).

“Interim DIP Order” means the Bankruptcy Court’s Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, and 507: (a) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Term Loan Financing; (b) Granting (i) Liens and Superpriority Administrative Expense Claims and (ii) Adequate Protection to Prepetition Term Loan Lenders; (c) Authorizing Use of Cash Collateral; (d) Modifying the Automatic Stay; (e) Scheduling a Final Hearing; and (f) Granting Related Relief, in form and substance reasonably acceptable to the DIP Lender.

“IRC” means the United States Internal Revenue Code of 1986, as amended.

“IT Systems” has the meaning set forth in Section 3.9(l).

“Law” means any federal, state, provincial, local, municipal, foreign or international, multinational or other law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, edict, decree, proclamation, treaty, convention, rule, regulation, ruling, directive, pronouncement, determination, decision, opinion or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity.

“Leased Real Property” means all leasehold or sub-leasehold estates and other rights to use or occupy any land, buildings, structures, improvements, fixtures or other interest in real property of Sellers and PlastiQ Subsidiaries which is used in the Business.

“Leases” means all leases, subleases, licenses, concessions and other Contracts, including all amendments, extensions, renewals, guaranties and other agreements with respect thereto, in each case pursuant to which any Seller holds any Leased Real Property.

“Letter Agreement” means that certain Side Letter Agreement to be entered into by and between Colonnade, Buyer and Priority Holdings, LLC a Delaware limited liability company and parent of Buyer.

“Letter Agreement Terms” means the terms attached hereto as Exhibit B, describing the consideration provided in the Letter Agreement

“Liability” means, as to any Person, any debt, adverse claim, liability (including any liability that results from, relates to or arises out of tort or any other product liability claim), duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution, or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred, or asserted or when the relevant events occurred or circumstances existed.

“Lien” means any lien (as defined in section 101(37) of the Bankruptcy Code), encumbrance, claim (as defined in section 101(5) of the Bankruptcy Code), charge, mortgage, deed of trust, option, pledge, security interest or similar interests, title defects, hypothecations, easements, rights of way, rights of use, encroachments, judgments, rights of setoff, conditional sale or other title retention agreements and other similar impositions, imperfections or defects of title or restrictions on transfer or use.

“Litigation” means any action, cause of action, suit, claim, investigation, mediation, audit, grievance, demand, hearing or proceeding, whether civil, criminal, administrative or arbitral, whether at law or in equity and whether before any Governmental Entity or arbitrator.

“Malicious Code” has the meaning set forth in Section 3.9(k).

“Material Adverse Effect” means any change, event, effect, development, condition, circumstance or occurrence (when taken together with all other changes, events, effects, developments, conditions, circumstances or occurrences), that (a) is materially adverse to the financial condition or results of operations of the Purchased Assets (taken as a whole); provided, however, that no change, event, effect, development, condition, circumstance or occurrence related to any of the following shall be deemed to constitute, and none of the following shall be taken into account in determining whether there has been a Material Adverse Effect: (i) national or international business, economic, political or social conditions, including the engagement by the United States of America in hostilities, affecting (directly or indirectly) the industry in which the Business operates, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military, cyber or terrorist attack upon the United States of America or any of its territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States of America, except to the extent that such change has a materially disproportionate adverse effect on the Business relative to the adverse effect that such changes have on other companies in the industry in which the Business operates; (ii) financial, banking or securities markets (including any disruption thereof or any decline in the price of securities generally or any market or index), except to the extent that such change has a materially disproportionate adverse effect on the Business relative to the adverse effect that such changes have on other companies in the industry in which the Business operates; (iii) compliance with this Agreement or any Related Agreement, including the taking of any action required hereby or thereby or the failure to take any action that is not permitted hereby or thereby; (iv) any changes attributable to or arising from or relating to (A) the taking of any action permitted or contemplated by this Agreement or at the request of Buyer or its Affiliates, (B) the failure to

take any action if such action is prohibited by this Agreement, or (C) the negotiation, announcement or pendency of this Agreement or the transactions contemplated hereby or the identity, nature or ownership of Buyer, including the impact thereof on the relationships, contractual or otherwise, of the business of the Company with employees, customers, lessors, suppliers, vendors or other commercial partners; (v) arising from or relating to any existing event, occurrence, or circumstance with respect to which Buyer has knowledge as of the date hereof, including any matter set forth in the schedules hereto, (vi) arising from or relating to changes in Laws or other binding directives or determinations issued or made by or agreements with or consents of any Governmental Entity, (vii) resulting from any act of God or other force majeure event (including natural disasters, disease, epidemics, pandemics (including COVID-19 and COVID-19 Measures) or famine); (viii) in the case of Sellers, the PlastiQ Subsidiaries or the Business, (A) the failure to meet or exceed any projection or forecast, (B) changes in the business or operations of Sellers or any of their respective Affiliates (including changes in credit terms offered by suppliers or financing sources) resulting from the announcement, filing or pendency of the Chapter 11 Cases or Sellers' and their respective Affiliates' financial condition or Sellers' and certain of their respective Affiliates' status as debtors under Chapter 11 of the Bankruptcy Code or (C) changes in the business or operations of the Sellers or any of the respective Affiliates resulting from any reductions in workforce at the Sellers prior to the date of this Agreement; (ix) changes in Law or in GAAP or interpretations thereof; or (x) inaction by Sellers due to Buyer's refusal to consent to a request for consent by Seller under Section 5.4 hereof; or (b) would reasonably be expected to prevent or materially delay the ability of Sellers to consummate the transactions contemplated by this Agreement or the Related Agreements on the terms set forth herein and therein.

“Material Customer” has the meaning set forth in Section 3.17(a).

“Material Supplier” has the meaning set forth in Section 3.17(b).

“Nearside Seller” means Nearside Business Corp.

“Non-Real Property Contracts” means the Contracts to which any Seller is a party other than the Leases.

“Online Accounts” has the meaning set forth in Section 2.1(k).

“Open Source License” shall mean any “free software” license, “software libre” license, “public” license, or open-source software license, including without limitation the GNU General Public License, the GNU Lesser General Public License, the Mozilla Public License, the Apache license, the MIT license, the BSD and any BSD-like license, and any other license that meets the “Open Source Definition” promulgated by the Open Source Initiative.

“Open Source Software” shall mean any Software that is subject to the terms and conditions of an Open Source License.

“Order” means any administrative decision or award, decree, injunction, judgment, order, quasi-judicial decision or award, ruling, or writ of any federal, state local or foreign or other court, arbitrator, mediator, tribunal, administrative agency, or regulatory authority.

“Ordinary Course of Business” means the ordinary course of business of Sellers taken as a whole consistent with past custom and practice and taking into account the commencement of the Chapter 11 Cases.

“Outbound IP License” means each Contract pursuant to which the Sellers have granted to any Person any right or license to any Seller Intellectual Property

“Outside Date” has the meaning set forth in Section 8.1(c).

“Parent Seller” means Plastiq Inc.

“Parties” has the meaning set forth in the preamble.

“Payment Network” means MasterCard International, Inc., VISA U.S.A., Inc., VISA International, Inc., Discover, JCB, American Express, National Automated Clearing House Association, and any other card association, payment network, or similar entity.

“PCI-DSS” means the information security standards maintained by the PCI Security Standards Council and applicable to organizations that handle card payments and/or any payment or card holder information.

“Pension Plan” has the meaning set forth in Section 3.5(b).

“Permit” means any franchise, approval, permit, license, order, registration, certificate, variance, Consent, exemption or similar right issued, granted, given or otherwise obtained from or by any Governmental Entity, under the authority thereof or pursuant to any applicable Law.

“Permitted Liens” means (a) Liens for Taxes not yet delinquent or which are being contested in good faith by appropriate proceedings; (b) with respect to leased or licensed personal property, the terms and conditions of the lease or license applicable thereto to the extent constituting an Assumed Contract; (c) mechanics liens and similar liens for labor, materials or supplies provided with respect to real property incurred in the Ordinary Course of Business for amounts which are not delinquent and which are not material or which are being contested in good faith by appropriate proceedings; (d) with respect to real property, zoning, building codes and other land use Laws regulating the use or occupancy of such real property or the activities conducted thereon which are imposed by any Governmental Entity having jurisdiction over such real property which are not violated by the current use or occupancy of such real property or the operation of the Business, except where any such violation would not, individually or in the aggregate, materially impair the use, operation or transfer of the affected property or the conduct of the Business thereon as it is currently being conducted; and (e) easements, covenants, conditions, restrictions and other similar matters affecting title to real property and other encroachments and title and survey defects that do not or would not materially impair value or the use or occupancy of such real property or materially interfere with the operation of the Business at such real property.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or any other entity, including any Governmental Entity or any group or syndicate of any of the foregoing.

“Petition Date” means the date of the filing of the Chapter 11 Cases.

“PII” means all information (in any form, including paper, electronic and other forms) regarding or capable of being associated with an individual, consumer, household or device, including: (a) information that identifies, could be used to identify or is otherwise identifiable with an individual, including name, physical address, telephone number, email address, financial account number, government-issued identifier (including Social Security number and driver’s license number), medical, health or insurance information, gender, date of birth, educational or employment information, religious or political views or affiliations, marital or other status, photograph, face geometry, or biometric information, and any other data used or intended to be used to identify, contact or precisely locate an individual and (b) any other information that

is considered “personally identifiable information,” “personal information,” “personal data,” and/or similar expressions under applicable Law.

“Plastiq Canada Equity Interests” means the Equity Interests of Plastiq Canada, Inc.

“Plastiq Subsidiary” or “Plastiq Subsidiaries” means, individually or collectively: (a) BPS Inc.; (b) P4B Inc.; (c) Plastiq Canada Inc.; (d) Plastiq Canada EP Inc.; (e) Nearside Business Software Canada Inc.; and (f) Hatch Funding I, LLC (the Plastiq Subsidiaries in clauses (e) and (f) together, the “Nearside Subsidiaries”).

“Privacy Laws” means all applicable Laws relating to: privacy, data security, or the processing, storage, use or transfer of PII (including applicable Laws of jurisdictions where PII was collected, to the extent applicable), data-breach notification, consumer protection, advertising requirements for website and mobile application privacy policies and practices, Social Security number protection, email, text message, or telephone communications, including, as applicable the Federal Trade Commission Act, the Telephone Consumer Protection Act, the CAN-SPAM Act, the Children’s Online Privacy Protection Act, the California Consumer Privacy Act, the Gramm-Leach-Bliley Act and all other similar international, federal, state, provincial, and local laws, in each case as applicable.

“Pre-Closing Tax Period” means (a) any Tax period ending on or before the Closing Date and (b) with respect to a Tax period that commences before but ends after the Closing Date, the portion of such period ending on the Closing Date.

“Post-Closing Tax Period” means (a) any Tax period ending after the Closing Date and (b) with respect to a Tax period that commences before but ends after the Closing Date, the portion of such period beginning on the Closing Date until such period end.

“Professional Services” means any legal services, accounting services, financial advisory services, investment banking services or any other professional services provided by the Sellers’ advisers obtained pursuant to any order of the Bankruptcy Court.

“Purchase Price” has the meaning set forth in Section 2.5.

“Purchased Assets” has the meaning set forth in Section 2.1.

“Purchased Business Information” means all books, financial information and other information, customer lists and customer contact information, mailing lists, correspondence, correspondence (in any format, including emails) with customers, research and development reports, records, files, ledgers, documentation, instruments, research, papers, data, advertising, promotion and marketing materials and information, sales or technical literature or similar information, in any format, that, in each case, is in the possession or control of any Seller; provided, that, if for any reason Buyer is prohibited from obtaining possession of any of the foregoing, Buyer shall have the right to make copies of such Purchased Business Information unless prohibited by applicable Law.

“Purchased Avoidance Actions” means all causes of action, lawsuits, claims, rights of recovery and other similar rights of any Seller, including avoidance claims or causes of action under Chapter 5 of the Bankruptcy Code relating to the Business and the Purchased Assets.

“Qualified Bid” means competing bids qualified for the Auction in accordance with the Sale Procedures Order.

“Records” means the books, records, information, ledgers, files, invoices, documents, work papers, correspondence, lists (including customer lists, supplier lists and mailing lists), plans (whether written, electronic or in any other medium), drawings, designs, specifications, creative materials, advertising and promotional materials, marketing plans, studies, reports, data and similar materials related to the Business.

“Registered” means issued by, registered with, renewed by or the subject of a pending application before any Governmental Entity or domain name registrar.

“Registered IP” has the meaning set forth in Section 3.9(a).

“Related Agreements” means the Bill of Sale, the Assignment and Assumption Agreement and the Intellectual Property Assignments and any other instruments of transfer and conveyance as may be required under applicable Law to convey valid title of the Purchased Assets to Buyer.

“Representative” of a Person means such Person’s Subsidiaries and the officers, directors, managers, employees, advisors, representatives (including its legal counsel and its accountants) and agents of such Person or its Subsidiaries.

“Review Documents” has the meaning set forth in Section 3.20(a).

“Sale Hearing” means the hearing conducted in the Bankruptcy Court to seek approval of the Sale Motion and the Contemplated Transactions.

“Sale Motion” means a combined motion filed by the Sellers with the Bankruptcy Court in connection with the Chapter 11 Cases requesting the entry of the Sale Order.

“Sale Order” has the meaning set forth in Section 5.3(b)(ii).

“Sale Order Deadline” means July 24, 2023.

“Sale Procedures Motion” means a combined motion filed by the Sellers with the Bankruptcy Court in connection with the Chapter 11 Cases requesting the entry of the Sale Procedures Order.

“Sale Procedures Order” has the meaning set forth in Section 5.3(b)(i).

“Sale Procedures Order Deadline” means June 16, 2023.

“Secured Debt” means the senior secured debt of one or more of the Sellers owing to Blue Torch pursuant to that certain Financing Agreement, dated November 14, 2022 (as amended, restated, supplemented, waived or otherwise modified from time to time, the “Financing Agreement”), by and among Plastiq and each of its Subsidiaries listed as “Borrowers” and/or “Guarantors” thereunder, the lenders from time to time party thereto and Blue Torch, as Collateral Agent for the lenders and Administrative Agent.

“Seller” or “Sellers” means, individually or collectively: (a) Plastiq Inc. (“Parent Seller”); (b) PLV Inc.; and (c) Nearside Business Corp. (“Nearside Seller”).

“Seller Intellectual Property” means all Intellectual Property owned or purported to be owned by, or developed by or on behalf of, any Seller or Plastiq Subsidiary, including all Seller Software

“Seller Software” means all Software owned or purported to be owned by, or developed by or on behalf of any Seller or Plastiq Subsidiary, including all Software subject to an Outbound IP License.

“Seller Subsidiaries” has the meaning set forth in the preamble.

“Sellers’ Knowledge” (or words of similar import) means the actual knowledge of Eliot Buchanan, Stoyan Kenderov, Yi Sun and Noah Goldberg after each such individual has made reasonable inquiries with respect to relevant subject matters.

“Software” means all computer programs (including all software implementations of algorithms, models and methodologies, firmware, software design and maintenance tools and all object codes, source codes, versions, releases updates, upgrades, modifications, enhancements, improvements and derivations of the foregoing), databases and compilations, including all data and collections of data, technology supporting the foregoing, and all documentation, including user manuals and training materials, relating to any of the foregoing.

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof (or other persons performing similar functions with respect to such corporation) is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof and for this purpose, a Person or Persons owns a majority ownership interest in such a business entity (other than a corporation) if such Person or Persons shall be allocated a majority of such business entity’s gains or losses or shall be or control any managing director, managing member, or general partner of such business entity (other than a corporation). The term “Subsidiary” shall include all Subsidiaries of such Subsidiary.

“Subsidiary Assets” has the meaning set forth in Section 3.4.

“Subsidiary Contract” has the meaning set forth in Section 3.11(b).

“Tax” or “Taxes” means any United States federal, state or local or non-United States income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under section 59A of the IRC), customs duties, capital stock, franchise, profits, withholding, social security (or similar), social services, national insurance, , unemployment, real property, personal property, ad valorem, sales, use, liquor, cigarette, transfer, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty or addition thereto, whether or not disputed.

“Tax Authority” means any Governmental Entity having jurisdiction over the assessment, determination, collection or other imposition of any Taxes.

“Tax Return” means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Transfer Tax” has the meaning set forth in Section 6.6.

“Transferred Employee” has the meaning set forth in Section 6.4(a).

“Treasury Regulations” means the income Tax Treasury regulations, including temporary regulations, promulgated under the IRC.

“Wind Down Cash” means the cash received from the DIP Lender pursuant to the DIP Agreement to satisfy any and all administrative claims incurred through the Closing Date and to fund the wind-down of the Sellers’ estates and the closure of the Chapter 11 Cases and defined in the DIP Order and DIP Agreement as the Wind Down Cash in the amount of \$1,000,000.

ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of Purchased Assets. Except as expressly provided for in this Agreement, pursuant to sections 105, 363 and 365 of the Bankruptcy Code, on the terms and subject to the conditions set forth in this Agreement, at the Closing, Buyer shall purchase, acquire and accept from Sellers, on an “as is, where is” basis and without any representation or warranty on the part of Sellers as to fitness, merchantability or otherwise, and Sellers shall sell, transfer, assign, convey and deliver to Buyer, all of the Purchased Assets, free and clear of all Liens (other than Permitted Liens and any Liens relating to or included in the Assumed Liabilities), for the consideration specified in Section 2.5. “Purchased Assets” shall mean all of the, direct or indirect, right, title and interest of Sellers in and to the tangible and intangible assets, properties, rights, claims and Contracts used, useful, or held for use in, or related to, the Business (but excluding Excluded Assets) as of the Closing, including:

- (a) subject to the right of Sellers to retain copies, all Purchased Business Information in the possession or reasonable control of any Seller and whether in hard or electronic format;
- (b) all Accounts Receivable of Sellers as of the Closing related to or associated with in any way the Purchased Assets (including, without limitation, any right of any Seller to recover any amount under an agreement with any third party (regardless of whether such agreement constitutes an Assumed Contract));
- (c) all prepaid expenses of Sellers relating to any of the Purchased Assets;
- (d) without duplication, all deposits (including, without limitation, deposits in transit, but excluding any retainers held by advisors to the Sellers, any professional fee escrow established pursuant to the DIP Order and deposits that constitute Excluded Utility Deposits) and other prepaid charges and expenses, credits, advance payments, charges and fees of Sellers that relate to the Purchased Assets;
- (e) all computers and related equipment, servers, machinery, furniture, supplies and other tangible personal property (wherever located, whether held at any location or facility of any Seller, including its Foreign Subsidiaries) (including rights, if any, in any of the foregoing purchased subject to any conditional sales or title retention agreement in favor of any other Person);
- (f) all Assumed Contracts that have been assumed by and assigned to Buyer pursuant to Section 2.6;
- (g) all Seller Intellectual Property;
- (h) Plastiq Canada Equity Interests

(i) all Records (provided that Sellers are entitled to retain copies of all Records and Buyer will make all such Records available to Sellers upon reasonable request and at no charge), but excluding (i) personnel files for Current Employees and Former Employees after the Closing Date and (ii) any materials exclusively related to any Excluded Assets and copies of all information relating solely to the Taxes and Tax Returns of the Business or the Purchased Assets in the possession of Sellers;

(j) all subscriber and customer data, information, analysis and modelling derived from any customer and other similar information including personal information (such as name, address, telephone number, e-mail address, website and any other database information), customer consents and opt-in/opt-outs, product hierarchy, segmentation (life cycle), customer lifetime value, predictive modeling scores and models used, offers, coupons and discount information and data, and customer purchase and transaction history at a transaction level (including dollar amounts, dates, and items purchased, but excluding from the foregoing any personally identifiable information (“PII”) to the extent prohibited by Law for transfer hereunder) relating to customers of, or collected through or used in the operation of (i) the Business, and (ii) any customer lists;

(k) to the extent transferrable, the registrations and rights to any social media, e-commerce and other online, mobile or digital accounts and handles of Sellers (the “Online Accounts”), together with all content stored thereon; provided, that, to the extent transfer is not permissible, the Parties shall enter into such alternative arrangement so as to allow Buyer to access, control and use such Online Accounts (including in connection with any commercial or marketing activities conducted therewith) to the extent administratively feasible;

(l) all goodwill associated with the Business or the Purchased Assets, including all goodwill associated with the Intellectual Property owned by Sellers and all rights under any non-disclosure and confidentiality, noncompete, or nonsolicitation agreements with current or former employees, directors, officers, managers, consultants or other service providers of any Seller or with third parties for the benefit of any Seller, in each case to the extent relating to the Business, the Purchased Assets and/or the Assumed Liabilities (or any portion thereof);

(m) all of the Assumed Permits or all of the rights and benefits accruing under any Permits relating to the Business to the extent transferrable and held by Sellers;

(n) the amount of, and all rights to any, insurance proceeds received by any of Sellers after the date hereof in respect of (i) the loss, destruction or condemnation of any Purchased Assets occurring prior to, on or after the Closing or (ii) any Assumed Liabilities;

(o) except for the Wind Down Cash and any cash received in connection with any of the other Excluded Assets (including any Tax refund), all cash, cash equivalents, bank deposits and similar cash items of Sellers to the extent such amounts exceed the amount of Sellers’ operational expenses, accrued or incurred between the Petition Date and the Closing Date, that remain unpaid following the Closing Date) (such amounts that exceed the amount of such accrued or incurred operating expenses, the “Excess Cash”);

(p) all other rights, demands, claims, credits, allowances, rebates or other refunds (excluding any vendor or supplier rebates) and rights in respect of promotional allowances or rights of setoff and rights of recoupment of every kind and nature (whether or not known or unknown or contingent or non-contingent), other than against Sellers, arising out of or relating to the Purchased Assets or Assumed Liabilities;

(q) except for the Excluded Claims, all causes of action, lawsuits, judgments, claims, refunds, rights of recovery, rights of set-off, recoupment, counterclaims, defenses, demands, warranty claims, rights to indemnification, contribution, advancement of expenses or reimbursement, or similar rights of any Seller (at any time or in any manner arising or existing, whether choate or inchoate, known or unknown, now existing or hereafter acquired, contingent or noncontingent), including, without limitation, the Purchased Avoidance Actions;

(r) all rights under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers, contractors and any other Person to the extent relating to equipment purchased, products sold, or services provided, to Sellers or to the extent affecting any Purchased Assets and/or Assumed Liabilities;

(s) all of the Sellers' telephone numbers, fax numbers, e-mail addresses, websites, URLs and internet domain names related to the Business;

(t) the assets listed on Schedule 2.1(t); and

(u) all other assets that are related to, used in or which could be used in connection with the Purchased Assets or the Business (but excluding all of the Excluded Assets).

Section 2.2 **Excluded Assets**. Notwithstanding Section 2.1, Buyer expressly understands and agrees that Buyer is not purchasing or acquiring, and Seller is not selling or assigning, any of the following assets, properties and rights of Sellers (the "Excluded Assets"):

(a) The Wind Down Cash and any cash received in connection with any of the other Excluded Assets, including any Tax refund;

(b) all bank accounts of Sellers;

(c) all deposits with American Express or deposits that constitute Excluded Utility Deposits;

(d) all of Sellers' certificates of formation or certificates of incorporation and other organizational documents, qualifications to conduct business as a foreign entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, unit certificates and other documents relating to the organization, maintenance and existence of any Seller as a limited liability company, corporation or other entity;

(e) all equity securities of any Seller or securities convertible into, exchangeable, or exercisable for any such equity securities and all net operating losses of any Seller;

(f) all Leases (and related Leased Real Property) and Contracts, in each case, other than the Assumed Contracts;

(g) the Excluded Claims;

(h) any loans or notes payable to any Seller or any of its Affiliates from any employee of any Seller or any of its Affiliates (other than Ordinary Course of Business employee advances and other than loans or notes from any Transferred Employees);

(i) any (1) Records containing confidential personal private information including confidential personnel and medical Records pertaining to any Current Employees or Former Employees to the extent the disclosure of such information to Buyer is prohibited by applicable Law, (2) other Records that Sellers are required by Law to retain and (3) any Records or other documents relating to the Chapter 11 Cases that are protected by the attorney-client privilege; provided that Buyer shall have the right to make copies of any portions of such retained Records (other than the Records referenced in subsection (3)) to the extent that such portions relate to the Business or any Purchased Asset;

(j) all Permits other than the Assumed Permits;

(k) all directors' and officers' liability insurance policies, including any tail insurance policies, and all rights of any nature with respect to any such insurance policies, including any recoveries thereunder and any rights to assess claims seeking any such recoveries;

(l) except as provided in Section 2.3(c), all assets, rights and claims arising from or with respect to Taxes of any Seller, including all rights arising from any refunds due from federal, state and/or local Governmental Entities with respect to Taxes paid by Sellers, all deferred tax assets, Tax deposits, Tax prepayments and estimated Tax payments, in each case for Taxes owed the Sellers for periods ending on or prior to the Closing Date;

(m) all Insurance Policies and any prepaid premiums with respect thereto;

(n) any assets expressly excluded from Purchased Assets pursuant to Section 2.1;

(o) all Employee Benefit Plans and trusts, Insurance Policies, rights and other assets set aside and specifically reserved solely to fund benefits payable under the applicable Employee Benefit Plan;

(p) the assets listed on Schedule 2.2(p); and

(q) the rights of Sellers under this Agreement and the Related Agreements and all cash and non-cash consideration payable or deliverable to Sellers under this Agreement.

Section 2.3 Assumption of Assumed Liabilities. On the terms and subject to the conditions of this Agreement, at the Closing (or, with respect to Assumed Liabilities under Assumed Contracts or Assumed Permits that are assumed by Buyer after the Closing, such later date of assumption as provided in Sections 2.6), Buyer shall assume from Sellers (and from and after the Closing pay, perform, discharge, or otherwise satisfy in accordance with their respective terms), and Sellers shall irrevocably convey, transfer, and assign to Buyer, the following Liabilities, without duplication and only to the extent not paid prior to the Closing and no other Liabilities (collectively, the "Assumed Liabilities"):

(a) the Cure Amounts under any and all Assumed Contracts;

(b) Liabilities under the Assumed Contracts and the Assumed Permits from and after the Closing Date;

(c) all accrued and unpaid payroll, accrued and unused vacation, and accrued and unpaid payroll Taxes, in each case, as of the Closing Date (and not paid by Sellers prior thereto) for all Transferred Employees; provided, however, that the Assumed Liabilities shall not include any unpaid payroll or payroll Taxes which accrued prior to the Petition Date;

- (d) all Transfer Taxes in accordance with Section 6.6; and
- (e) any and all personal property Taxes with respect to the Purchased Assets to the extent that they are not otherwise satisfied under DIP Agreement.

Section 2.4 Excluded Liabilities. Notwithstanding anything herein to the contrary, the Parties expressly acknowledge and agree that Buyer shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of Sellers, whether existing on the Closing Date or arising thereafter, other than the Assumed Liabilities (all such Liabilities that Buyer is not assuming being referred to collectively as the “Excluded Liabilities”). For avoidance of doubt, Excluded Liabilities include but are not limited to (i) any liabilities or obligations under the Employee Benefit Plans, whether arising prior to, on or after the Closing Date, (ii) any Liabilities and obligations relating to any current or former directors, officers, managers, employees, consultants or other service providers of any Seller or any ERISA Affiliate, with respect to their employment or other service and/or termination of employment or other service with any Seller or any ERISA Affiliate, or any spouse, dependent or beneficiary thereof, including, without limitation, any liability or obligation under any Employee Benefit Plan or any other employee benefit plans, programs or arrangements with respect to which any Seller or ERISA Affiliate has or may have any liability, contingent or otherwise, any Liabilities arising prior to the Closing Date for vacation pay, sick pay, holiday pay, paid time off, wages, salary, bonuses, retention, severance or other payments or Liabilities of any kind to any current or former directors, officers, managers, employees, consultants or other service providers of any Seller or any ERISA Affiliate or any contributions, remittances, premiums, or other amounts to be made to or payable with respect to any Employee Benefit Plan) and any liability under any employment agreement, offer letter, consulting agreement or similar agreement between any Seller or any ERISA Affiliate and any current or former directors, officers, managers, employees, consultants or other service providers of any Seller or ERISA Affiliate, including, without limitation, amounts set forth on Schedules 3.5(b)(i) and 3.5(b)(iii); (iii) any Liabilities arising out of any “mass layoff” or “plant closing” by the Sellers as those terms are defined in the Worker Adjustment and Retraining Notification Act or any similar state or local legislation; and (iv) all Liabilities (other than Liabilities attributable to Transfer Taxes and Taxes with respect to the Purchased Assets and the Assumed Liabilities for any Post-Closing Tax Period allocable to the Buyer) of any Seller attributable to: (A) Taxes owed by any Seller; (B) Taxes of any Seller with respect to the Purchased Assets, the Assumed Liabilities for any Pre-Closing Tax period allocable to such Seller; and (C) Taxes of any Seller payable by reason of any Tax allocation, sharing or similar agreement of any Seller or any of its predecessors in interest.

Section 2.5 Consideration. As consideration for the sale and transfer of the Purchased Assets, in addition to the assumption by Buyer of the Assumed Liabilities, Buyer shall:

- (a) make a cash payment to Sellers equal to \$27.5 million (the “Cash Payment”); pay Blue Torch the consideration as described in the Exchange Agreement Terms attached hereto as Exhibit A, in accordance with the terms and conditions of the Exchange Agreement; and
- (c) pay Colonnade the consideration as described in the Letter Agreement Terms attached hereto as Exhibit B, in accordance with the terms and conditions of the Letter Agreement.

The consideration described in this Section 2.5 is collectively referred to herein as the “Purchase Price.”

Section 2.6 Assumption and Assignment of Contracts.

- (a) Schedule 2.6(a) is a list of all material Contracts of the Sellers that are capable of assumption and assignment pursuant to Section 365 of the Bankruptcy Code (the “Assignable Contracts”). At the Sale Hearing (notice of which shall be properly and timely served on all non-

Sellers counterparties to Assignable Contracts by the Sellers), the Sellers shall seek authority to assume and assign to the Buyer those Assignable Contracts that are, or that become (pursuant to the procedures set forth in Section 2.6(f) below), Assumed Contracts.

(b) Subject to Section 2.6(g), the Assumed Contracts shall be assumed by the Sellers and assigned to the Buyer at the Closing pursuant to an order of the Bankruptcy Court pursuant to Section 365 of the Bankruptcy Code.

(c) Schedule 2.6(a) sets forth those Contracts that the Buyer has determined shall not be assigned and assumed to it, which shall be designated as “Excluded Contracts” (the “Excluded Contracts”). Notwithstanding anything in this Agreement to the contrary, the Buyer shall not be liable for any Liabilities in respect of any Contract from and after the time of its designation as an Excluded Contract, and any Liabilities arising under, relating to, or in connection with such Excluded Contract shall be deemed Excluded Liabilities for all purposes under this Agreement.

(d) At the Closing (subject to Section 2.6(g)), Buyer shall pay any Cure Amounts due in connection with the assumption and assignment of the Assumed Contracts as set forth in the Sale Order for which all necessary Consents required by the Bankruptcy Code to transfer have been obtained, and the Buyer will assume and agree to perform and discharge the Assumed Liabilities under the Assumed Contracts or, such other additional or fewer Assumed Contracts as otherwise agreed by the Parties at the time of the Closing.

(e) Notwithstanding the foregoing, a Contract shall not be an Assumed Contract hereunder and shall not be assigned to, or assumed by, Buyer to the extent that such Contract (i) is rejected by a Seller or terminated by a Seller in accordance with the terms hereof or by the other party thereto, or terminates or expires by its terms, on or prior to the Closing and is not continued or otherwise extended upon assumption, or (ii) constitutes an Employee Benefit Plan or an Insurance Policy. In addition, a Permit shall not be assigned to, or assumed by, Buyer to the extent that such Permit requires a Consent of any Governmental Entity or other third party (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Buyer of Sellers’ rights under such Permit, and no such Consent has been obtained prior to the Closing. If any such Consent shall not be obtained, or if any attempted assignment of such Contract or Permit would be ineffective or would impair Buyer’s rights under the such Contract or Permit in question so that Buyer would not in effect acquire the benefit of such rights, such Seller, to the maximum extent permitted by Law and the applicable Contract or Permit (and subject to any approval of the Bankruptcy Court that may be required), at Buyer’s sole cost and expense, and for a period not to exceed the Contract Designation Period, shall act as Buyer’s agent in order to obtain for Buyer the benefits thereunder and shall cooperate, to the maximum extent permitted by Law and the applicable Contract or Permit, with Buyer in any other reasonable arrangement designed to provide such benefits to Buyer; provided, however, that (i) Sellers shall not incur any costs associated with the obligations hereunder (including with respect to the Cure Amounts) and (ii) Sellers’ obligations hereunder shall only continue until the Chapter 11 Cases are closed or dismissed. Buyer shall reasonably cooperate with Sellers in order to enable Sellers to provide to Buyer the benefits contemplated by this Section 2.6(e).

(f) From the date hereof until the expiration of the Contract Designation Period, the Sellers shall not seek Bankruptcy Court approval to reject any Assignable Contract unless and until such Assignable Contract is designated by the Buyer as an Excluded Contract or unless otherwise agreed to in writing by the Buyer. Additionally, the Sellers shall file with the Bankruptcy Court such motions or pleadings as may be appropriate or otherwise as may be reasonably requested by

the Buyer to preserve the Sellers' right or ability to assume and assign any of the Assignable Contracts (including pursuant to Section 365(d)(4) of the Bankruptcy Code) until the expiration of the Contract Designation Period.

(g) Any Assignable Contract not designated by the Buyer as either an Assumed Contract or an Excluded Contract as of Closing shall constitute a "Designation Right Contract". From and after the Closing Date until the date that is the earlier of (i) the entry of an order by the Bankruptcy Court dismissing the Chapter 11 Cases, converting the Chapter 11 Cases to a Chapter 7 of the Bankruptcy Code, or confirming a Chapter 11 plan of the Sellers, and (ii) seventy-five (75) days following the Closing Date (the "Contract Designation Period"), the Buyer shall have the right, by providing the Sellers with written notice, to amend Schedule 2.6(a) to designate any Designation Right Contract as (i) an Assumed Contract, or (ii) an Excluded Contract. Upon receipt of notice of the Buyer's designation of a Designation Right Contract as an Assumed Contract in accordance with this Section 2.6(g) the Sellers shall promptly provide notice to the applicable non-Seller counterparty of such designation. Notwithstanding anything herein to the contrary, the Buyer shall pay and be solely responsible for all amounts that accrue and become due and owing under any Designation Right Contract from and after the Closing Date through the earlier to occur of (A) the expiration of the Contract Designation Period and (B) the date that is two (2) Business Days after written notice from the Buyer designating such Designation Right Contract as an Excluded Contract in accordance with this Section 2.6(g). Notwithstanding anything in this Agreement to the contrary, on the date any Designation Right Contract is designated an Assumed Contract pursuant to this Section 2.6(g), such Contract shall be deemed an Assumed Contract for all purposes under this Agreement and no further consideration shall be required to be paid by the Buyer for such Contract. Sellers shall cooperate in all respects with Buyer to provide a license or other means necessary to access any contract rights under any Designation Right Contract.

(h) If any Contract requires the payment of Cure Amounts in order to be assumed pursuant to Section 365 of the Bankruptcy Code, and such Cure Amounts are undetermined on the Closing Date because a non-Seller counterparty to such Contract proposed Cure Amounts in an amount that is different than the amount of Cure Amounts proposed by the Sellers and such difference will not be resolved prior to the Closing Date (each such Contract, a "Disputed Amount Contract"), then the Sellers shall provide the Buyer, not less than three (3) days prior to the Closing Date, with a schedule that lists each such Disputed Amount Contract and the amount of Cure Amounts that has been proposed by each such non-Seller counterparty; provided that the Sellers shall agree to any Cure Amounts for any Contract irrevocably designated by the Buyer in writing as an Assumed Contract if instructed to do so by the Buyer. If the Sellers, with the Consent of the Buyer, and the non-Seller counterparty with respect to any Disputed Amount Contract, are unable to agree on Cure Amounts for such Disputed Amount Contract within five (5) Business Days following the Closing Date, solely upon the Buyer's written request, the Sellers shall, at the expense of the Buyer, seek to have the amount of Cure Amounts related to such Disputed Amount Contract determined by the Bankruptcy Court by the date that is no later than the end of the Contract Designation Period. Upon final determination of such Cure Amounts, the Buyer may elect to redesignate such Assumed Contract as an Excluded Contract. If such Assumed Contract is not so redesignated, (i) the applicable Sellers shall promptly take such steps as are reasonably necessary, including, if applicable, promptly on delivery of no less than five (5) Business Days' notice to the non-Seller counterparty to such Contract, to cause such Contract to be assumed by the applicable Seller and assigned to the Buyer, including by executing and delivering to the Buyer an Assignment and Assumption Agreement with respect to such Assumed Contract, and (ii) the Buyer shall pay the Cure Amounts with respect to such Assumed Contract either (A) concurrently with the Sellers' assumption and assignment thereof to the Buyer or (B) as agreed in writing by the Buyer and the

applicable counterparty to such Assumed Contract, and execute and deliver to the applicable Sellers an Assignment and Assumption agreement with respect to such Assumed Contract. Notwithstanding the foregoing, if, following the Closing, it is discovered that a Contract that should have been listed on Schedule 2.6(a) was not so listed, the Sellers shall, to the extent the Sellers are still debtors-in-possession in the Chapter 11 Cases, promptly following the discovery thereof, notify the Buyer in writing of any such Contract and the Sellers' good faith estimate of the amount of Cure Amounts applicable to each such Contract (and if no Cure Amount is estimated to be applicable with respect to any such Contract, the amount of such Cure Amount shall be designated for such Contract as "\$0.00"), and upon the Buyer's request, take all actions reasonably required to assume and assign to the Buyer such Contract, provided that the Buyer pay the applicable Cure Amount.

(i) The Parties agree and acknowledge that the covenants set forth in this Section 2.6 shall survive the Closing.

Section 2.7 Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place remotely by electronic exchange of counterpart signature pages commencing at 10:00 a.m. local time on the date (the "Closing Date") that is the first Business Day after the date on which all conditions to the obligations of Sellers and Buyer to consummate the Contemplated Transactions set forth in Article VII (other than conditions with respect to actions Sellers or Buyer will take at the Closing itself, but subject to the satisfaction or waiver of those conditions) have been satisfied or waived, or at such other time or on such other date as shall be mutually agreed upon by Sellers and Buyer prior thereto. The Closing shall be deemed to have occurred at 12:01 a.m. (prevailing Eastern Time) on the Closing Date.

Section 2.8 Deliveries at Closing.

(a) At the Closing, Sellers shall deliver to Buyer the following documents and other items, duly executed by Sellers, as applicable:

- i. one or more Bills of Sale substantially in the form of Exhibit C attached hereto ("Bill of Sale");
- ii. one or more Assignment and Assumption Agreements substantially in the form of Exhibit D attached hereto ("Assignment and Assumption Agreement");
- iii. instruments of assignment substantially in the form of Exhibit E attached hereto for each registered patent, registered copyright and registered trademark, transferred or assigned hereby and for each pending application therefor (collectively, the "Intellectual Property Assignments");
- iv. all assignments, endorsements, membership interest powers and other instruments of transfer necessary to transfer the applicable Sellers' entire interest, legal and beneficial, in the Plastiq Canada Equity Interests owned by such Seller;
- v. any other Related Agreements required to be executed by Sellers;
- vi. a copy of the Sale Order;
- vii. the certificate described in Section 7.1(j);

viii. a joint written instruction to the Escrow Agent to deliver the Deposit to Parent Seller; and

ix. such other bills of sale, assignments and other instruments of transfer or conveyance as Buyer may reasonably request or as may otherwise be necessary to evidence and effect the sale, assignment, transfer, conveyance and delivery of the Purchased Assets to Buyer and assumption of Assumed Liabilities by Buyer.

(b) At the Closing, Buyer shall deliver to Sellers the following documents, cash amounts and other items, duly executed by Buyer, as applicable:

i. the Cash Payment less the Deposit, by wire transfer of immediately available funds to such bank account as shall be designated in writing by the applicable party to (or for the benefit of) whom such payment is to be made at least two (2) Business Days prior to the date such payment is to be made;

ii. a joint written instruction to the Escrow Agent to deliver the Deposit to Parent Seller;

iii. the Bills of Sale;

iv. the Assignment and Assumption Agreement(s);

v. the Intellectual Property Assignments;

vi. all assignments, endorsements, membership interest powers and other instruments of transfer necessary to transfer the applicable Sellers' entire interest, legal and beneficial, in the Plastiq Canada Equity Interests owned by such Seller;

vii. any other Related Agreements required to be executed by Buyer;

viii. the certificate described in Section 7.2(e); and

ix. such other bills of sale, assignments and other instruments of transfer or conveyance as Sellers may reasonably request or as may otherwise be necessary to evidence and effect the sale, assignment, transfer, conveyance and delivery of the Purchased Assets to Buyer and assumption of Assumed Liabilities by Buyer.

Section 2.9 Allocation. No later than forty-five (45) days after Closing or within a reasonable time thereafter as agreed by Sellers and Buyer, Buyer shall prepare and deliver to Sellers a proposed allocation of the Purchase Price (plus the Assumed Liabilities and any other Liabilities deemed assumed by the Buyer for U.S. federal income Tax purposes) among the Purchased Assets which shall be prepared in a manner consistent with section 1060 of the IRC (the "Proposed Allocation Schedule"). After receipt of the Proposed Allocation Schedule from Buyer, the Sellers shall have fifteen (15) days to review the Proposed Allocation Schedule. The Proposed Allocation Schedule will be considered final and binding on the Parties unless Sellers communicate to Buyer objections to the Proposed Allocation Schedule (an "Allocation Dispute Notice"). Sellers and Buyer shall, within ten (10) days (or such longer period as Sellers and Buyer may agree in writing) following delivery of an Allocation Dispute Notice (the "Allocation Resolution Period"), attempt in good faith to resolve their differences and prepare a final allocation schedule that is acceptable to both Sellers and Buyer. If Sellers and Buyer are unable to completely resolve any such differences within such ten (10) day period, then each of Sellers and Buyer shall be permitted to file their

respective Tax Returns (including amended returns and claims for refund) and information reports (including on IRS Form 8594 or in any audit or other examination or proceeding relating to Taxes) in a manner that is inconsistent with the other Party, taking into account the unresolved differences with respect to the Proposed Allocation Schedule.

Section 2.10 Earnest Money Deposit. Within two (2) Business Days as of the date of this Agreement, Buyer will make an earnest money deposit in the amount of \$5,200,000 (the “Deposit”) to the Escrow Agent pursuant to the terms of the Escrow Agreement. If the Closing occurs, the Deposit shall be applied against payment of the Purchase Price on the Closing Date. If this Agreement is terminated pursuant to Sections 8.1(a)-(e) or Sections 8.1(h)-(l) hereof, or in the event that any Person other than Buyer purchases all or any material portion of the Purchased Assets, then the Deposit shall be returned to Buyer promptly, and in no event later than two (2) Business Days after such termination, and the Parties agree that they will promptly execute joint written instructions to the Escrow Agent pursuant to the Escrow Agreement to effect such return of the Deposit. If this Agreement shall be terminated by the Sellers pursuant to Section 8.1(f) or (g) hereof, then Plastiq shall retain the Deposit, and the parties agree that they will promptly execute joint written instructions to the Escrow Agent pursuant to the Escrow Agreement to effect such retention of the Deposit. The Parties agree that the Sellers’ right to retain the Deposit, as set forth herein, is not a penalty, but rather is liquidated damages in a reasonable amount that will compensate the Sellers for their respective efforts and resources expended and the opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated hereby, which amount would otherwise be impossible to calculate with precision. Notwithstanding anything to the contrary in this Agreement, the Parties agree that if this Agreement is terminated under circumstances in which Sellers are entitled to the Deposit, except in the case of fraud, the delivery of the Deposit is the sole and exclusive remedy available to Sellers with respect to this Agreement and the Contemplated Transactions, and, upon delivery of the Deposit, none of the Buyer or any of its former, current or future equity holders, directors, officers, Affiliates, agents or Representatives (collectively, the “Buyer Releasees”) shall have any further liability or obligation relating to or arising out of this Agreement or the transactions contemplated hereby.

Section 2.11 Withholding. Notwithstanding anything in this Agreement to the contrary, Buyer shall be entitled to deduct and withhold from the consideration otherwise payable to any Person pursuant to this Agreement any amount as may be required to be deducted and withheld with respect to the making of such payment under the Code or any other provision of Tax law. In the event Buyer determines that Buyer is required to deduct and withhold and pay Taxes, Buyer shall notify the Seller of such requirement and the basis for such requirement at least five (5) days prior to any deduction and withholding. Buyer and Seller shall cooperate, as reasonably requested by the Seller to reduce the amount of deduction and withholding Taxes imposed in respect of the payment of the Purchase Price. To the extent that amounts are so withheld or deducted by Buyer, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to such Person in respect of which such deduction and withholding was made by Buyer.

ARTICLE III SELLERS’ REPRESENTATIONS AND WARRANTIES

Sellers hereby represent and warrant to Buyer as of the date hereof and as of the Closing Date that, except as set forth in the disclosure schedule accompanying this Agreement (the “Disclosure Schedule”), the statements contained in this Article III are true and correct.

Section 3.1 Organization. The Sellers and Plastiq Subsidiaries are either corporations or limited liability companies duly incorporated or organized and validly existing under the Laws of the

jurisdiction of organization set forth in Schedule 3.1 and have all requisite power and authority to own, lease and operate their properties and to carry on their businesses as now being conducted.

Section 3.2 Authorization. Subject to the entry of the Sale Order in the Chapter 11 Cases, the Sellers (and, if applicable, the PlastiQ Subsidiaries) have full corporate or limited liability company power and authority to execute and deliver this Agreement and Related Agreements and to perform their obligations hereunder and thereunder and to consummate the Contemplated Transactions. Subject to the entry of the Sale Order in the Chapter 11 Cases, the execution and delivery of this Agreement and the Related Agreements by the Sellers and the performance by the Sellers (and, if applicable, the PlastiQ Subsidiaries) of their obligations hereunder and thereunder and the consummation of the Contemplated Transactions provided for herein and therein have been duly and validly authorized by all necessary corporate or similar action on the part of the Sellers (and, if applicable, the PlastiQ Subsidiaries). Subject to the entry of the Sale Order in the Chapter 11 Cases, the respective governing bodies of the Sellers (and, if necessary, the PlastiQ Subsidiaries) have approved the execution, delivery and performance of this Agreement and the Related Agreements and the consummation of the Contemplated Transactions. This Agreement has been, and the Related Agreements will be as of the Closing Date, duly executed and delivered by the Sellers (and, if applicable, the PlastiQ Subsidiaries) and do or will, as the case may be, constitute (subject to the entry of the Sale Order in the Chapter 11 Cases) the valid and binding agreements of the Sellers (and, if applicable, the PlastiQ Subsidiaries), enforceable against the Sellers (and, if applicable, the PlastiQ Subsidiaries) in accordance with their respective terms (assuming that this Agreement constitutes a valid and legally binding obligation of the Buyer).

Section 3.3 Real Property.

(a) No Seller or PlastiQ Subsidiary owns, or has ever owned, any real property.

(b) Schedule 3.3(b) sets forth an accurate and complete list of all Leased Real Property leased by the Sellers and PlastiQ Subsidiaries. The Sellers have made available true and complete copies of all Leases to the Buyer. Other than as a result of the Chapter 11 Cases, the neither the Sellers nor the PlastiQ Subsidiaries are in breach of any term or in “default” under any Lease and no party to any Lease has given Sellers or the PlastiQ Subsidiaries any written notice of or made a claim with respect to any breach or default thereunder. To the Sellers’ Knowledge, there are no conditions that currently exist or with the passage of time will result in a default or breach of any material term by any party to a Lease. To the Sellers’ Knowledge, none of the Leased Real Property are subject to any sublease or grant to any Person of any right to the use, occupancy or enjoyment of the Leased Real Property or any portion thereof that would materially impair the use of such Leased Real Property in the operation of the Business. To the Sellers’ Knowledge, the Leased Real Property are not subject to any Liens (other than Permitted Liens) that were placed on any Leased Real Property through the action or inaction of the Sellers or the PlastiQ Subsidiaries and materially impact the Business’ use of such Leased Real Property. The Leased Real Property are not subject to any use restrictions, exceptions, reservations or limitations which in any material respect interfere with or impair the present and continued use thereof in the ordinary course of business. To the Sellers’ Knowledge, there are no pending or threatened condemnation or other proceedings or claims relating to any of the Leased Real Property. To the Sellers’ Knowledge, the Leases will continue to be legal, valid, binding, enforceable and in full force and effect on the same material terms immediately following the consummation of the Contemplated Transactions.

Section 3.4 Sufficiency of Assets; Title to Assets. Subject to entry of the Sale Order, (a) the Sellers own the Purchased Assets and at Closing shall deliver free and clear of all Liens (other than Permitted Liens) and (b) the material tangible and intangible assets owned, licensed or leased by the PlastiQ

Subsidiaries (the “Subsidiary Assets”), together with the Purchased Assets, constitute all of the assets used by Sellers and PlastiQ Subsidiaries to conduct the Business as currently conducted and the Subsidiary Assets are owned by the PlastiQ Subsidiaries free and clear of all Liens (other than Permitted Liens). Upon consummation of the Contemplated Transactions, the Purchaser will have acquired good and marketable title in and to, or a valid leasehold interest in, each of the Purchased Assets, free and clear of all Liens, other than Assumed Liabilities and Permitted Liens.

Section 3.5 Employees. Sellers have provided to Buyer a schedule that contains a complete and accurate list of all the Employees as of the most recent practicable date, as specified on such list, showing for each Employee the position held and annual base compensation and target bonus opportunity for the Sellers and the PlastiQ Subsidiaries’, as applicable, last fiscal year, such Employee’s service recognized by such Seller or PlastiQ Subsidiary for purposes of the Employee Benefit Plans (including service with predecessor employers, if applicable, and any prior unbridged service with any Seller, PlastiQ Subsidiary or an Affiliate), and which collective bargaining unit, if any, represents such Employee. Except as set forth on Schedule 3.5(a), none of the Employees are covered by any union, collective bargaining or other similar labor agreements. The Sellers have delivered to Purchaser a true, correct and complete copy of all collective bargaining agreements and other similar labor agreements covering Employees (including all amendments, side letters and similar documents relating thereto) (collectively, the “Collective Bargaining Agreements”). Schedule 3.5(b)(i) contains a complete and accurate list of all material Employee Benefit Plans; provided, that Schedule 3.5(b)(i) need not identify any offer letter or employment agreement if such offer letter or employment agreement (i) relates to an Employee or other service provider who is not an officer or director of a Seller or PlastiQ Subsidiary or (ii) does not provide any severance or notice period in excess of such period required by applicable Laws. With respect to each of the Employee Benefit Plans identified on Schedule 3.5(b)(i), the Sellers have made available to the Buyer true and complete copies of the most recent summary plan description or, if no summary plan description exists, a written description of all material terms and conditions of such Employee Benefit Plan. Each Employee Benefit Plan has been operated in material compliance with applicable Laws, including ERISA. Each Employee Benefit Plan which is a “pension benefit plan” within the meaning of Section 3(2) of ERISA (“Pension Plan”), and which is intended to be qualified under Section 401(a) of the IRC, has received a favorable determination letter from the IRS or has been established under a preapproved plan for which a favorable opinion letter from the IRS has been obtained by the plan sponsor, and there are no existing circumstances, and no events have occurred, that could reasonably be expected to adversely affect the tax-qualified status of any Pension Plan or the related trust. With respect to each Pension Plan, the Sellers have delivered to Buyer a true, correct and complete copy of: (A) each writing constituting a part of such Pension Plan, including all plan documents, employee communications, benefit schedules, trust agreements, and insurance contracts and other funding vehicles; (B) the most recent Annual Report (Form 5500 Series) and accompanying schedule, if any; (C) the current summary plan description and any material modifications thereto, if any (in each case, whether or not required to be furnished under ERISA); (D) the most recent annual financial report, if any; (E) the most recent actuarial report, if any; and (F) the most recent determination letter or opinion letter from the IRS. Except as disclosed on Schedule 3.5(b)(i), none of the Sellers or the PlastiQ Subsidiaries have any obligations for retiree health, life or other welfare benefits under any Employee Benefit Plan (other than as required under Section 4980B of the IRC or Part 6 of Title I of ERISA or other applicable Law) and Sellers have provided to Buyer a schedule that sets forth a complete and accurate list of the amounts payable to each such Person set forth on Schedule 3.5(b)(i). None of the Sellers, PlastiQ Subsidiaries nor any trade or business that, together with any Seller or PlastiQ Subsidiary, would be deemed to be a single employer within the meaning of Section 414(b), (c), (m) or (o) of the IRC or Section 4001(b)(1) of ERISA, maintains, contributes to, or sponsors (or has in the past six years maintained, contributed to or sponsored) or otherwise has any Liability in respect of, a “multiemployer plan” (as defined in Section 3(37) of ERISA) or a plan subject to Title IV of Section 302 of ERISA or Section 412 of the IRC. Schedule 3.5(b)(iii) sets forth a complete list of employees that would be entitled to receive compensation or benefit payments and amounts

as a result of the consummation of the Contemplated Transactions by any officer, director, Employee, former employee or independent contractor of any Seller or PlastiQ Subsidiary and Sellers have provided to Buyer a schedule that sets forth a complete and accurate list of the amounts payable to each such Person. There is not presently pending or existing, and to the Sellers' Knowledge, there is not threatened, (i) any strike, slowdown, picketing or work stoppage, or (ii) any application for certification of a collective bargaining agent. With respect to the Business: (A) no labor organization or group of employees of any Seller or PlastiQ Subsidiary has made a pending demand for recognition or certification, and there are and have been no representation or certification proceedings or petitions seeking a representation proceeding, with the National Labor Relations Board or any other labor relations tribunal or authority, nor have any such demands, proceedings or petitions been brought or filed or threatened to be brought or filed within the past three (3) years; (B) there are not now, nor have there been at any time within the last three (3) years, any actual or threatened organizing activities, strikes, work stoppages, slowdowns, lockouts, material arbitrations or material grievances, or other material labor disputes against or involving any Seller or PlastiQ Subsidiary; and (C) each PlastiQ Company is in compliance in all material respects with all Collective Bargaining Agreements and with all applicable Laws respecting employment and employment practices, terms and conditions of employment, wages and hours and occupational safety and health. **Environmental Matters.** Except as would not reasonably be expected to be material to the Business or the Purchased Assets, taken as a whole: (a) the Sellers and the PlastiQ Subsidiaries are and, since December 31, 2021, have operated the Business in compliance with all applicable Environmental Laws; (b) the Sellers and PlastiQ Subsidiaries have obtained and are in compliance with all Environmental Permits required for the operation of the Business; (c) there are no claims under Environmental Law pending or, to the Sellers' Knowledge, threatened against the Sellers and the PlastiQ Subsidiaries and, to the Sellers' Knowledge, no claims under Environmental Law have been threatened in writing against the Sellers and PlastiQ Subsidiaries with respect to the operation of the Business or the Purchased Assets; (d) there has been no release of Hazardous Material that could reasonably be expected to result in a Liability for the Sellers or the PlastiQ Subsidiaries under Environmental Law or result in a claim against the Sellers or the PlastiQ Subsidiaries under Environmental Law or require cleanup or remedial action at, on, under or migrating from real property owned or operated or formerly owned or operated by the Sellers or PlastiQ Subsidiaries or at, on, under or migrating from any other property to which the Sellers or PlastiQ Subsidiaries sent Hazardous Material for treatment, storage or disposal; (e) the Sellers and PlastiQ Subsidiaries are not subject to any Order relating to compliance with Environmental Law, Environmental Permits or the investigation, remediation, removal or cleanup of Hazardous Material; (f) there are no underground storage tanks on any Leased Real Property; and (g) the Sellers have provided the Buyer with true and complete copies of all environmental reports, site assessments and audits in the possession, custody or control of the Sellers and PlastiQ Subsidiaries.

Section 3.7 Insurance Policies. Schedule 3.7 sets forth an accurate and complete list of all insurance policies maintained by the Sellers and PlastiQ Subsidiaries in connection with the Business or the Purchased Assets, including any bonds and surety arrangements (collectively, the "**Insurance Policies**"), including the name of each policy, policy number, insurance carrier, term, type and amount of coverage, deductible or self-insured retention. The Sellers have made available to the Purchaser true and correct copies of the Insurance Policies. The Insurance Policies are in full force and effect, the limits of the Insurance Policies have not been materially eroded or exhausted and all premiums due with respect to the Insurance Policies have been paid in full. Neither Sellers nor the PlastiQ Subsidiaries are in material breach or default under the Insurance Policies. The Sellers and PlastiQ Subsidiaries have not received written notice of cancellation, termination or material premium increase with respect to any of the Insurance Policies. There are no material claims submitted in connection with the Insurance Policies as to which coverage has been denied, rejected or disputed by the applicable insurers. As of the date of this Agreement, to Sellers' Knowledge, all claims and circumstances likely to give rise to a material claim in respect of any Purchased

Asset covered by any of the Insurance Policies have been properly reported to the applicable insurers. All such Insurance Policies shall remain in effect through the Closing.

Section 3.8 Legal Proceedings. Other than the Chapter 11 Cases and except as set forth on Schedule 3.8, there is no Litigation pending or, to the Sellers' Knowledge, threatened against, relating to or involving the Sellers or the PlastiQ Subsidiaries (whether as a plaintiff or a defendant), the Contemplated Transactions, the Business or the Purchased Assets before any Governmental Entity.

Section 3.9 Intellectual Property; Data Privacy.

(a) Schedule 3.9(a) sets forth a true, correct and complete list of all (i) patents, patent applications, registered trademarks and copyrights, applications for trademarks and copyright registrations, and domain names included in the Seller Intellectual Property, and any other forms of Seller Intellectual Property that is issued, registered, or subject to an application for registration (the "Registered IP"), including the applicable filing or registration number, title, jurisdiction and registered applicant(s) or owner(s), as applicable, (ii) Seller Software, (iii) unregistered trademarks included in the Seller Intellectual Property and any other Seller Intellectual Property that is material to the Business, taken as a whole, and (iv) Intellectual Property exclusively licensed to any Seller or PlastiQ Subsidiary. Sellers and the PlastiQ Subsidiaries exclusively own all Seller Intellectual Property and have valid rights to assign, transfer and convey all rights, title and interest associated therewith pursuant to this Agreement. Except as set forth on Schedule 3.9(a), all Registered IP remains pending or in full force and effect and has not expired or been abandoned or cancelled, and is in compliance in all material aspects with all applicable Laws. The Registered IP is subsisting, valid and enforceable. With respect to each item of Registered IP, all registration, issuance, renewal, maintenance and other payments that are or have become due with respect thereto have been timely paid by or on behalf of the Sellers and the PlastiQ Subsidiaries. No interference, opposition, reissue, reexamination, or other proceeding is or has been pending or, to Sellers' Knowledge, threatened, in which the scope, validity, or enforceability of any Seller Intellectual Property is being, has been, or could reasonably be expected to be contested or challenged. To Seller's Knowledge, there is no basis for a claim that any Seller Intellectual Property is invalid or unenforceable.

(b) Sellers and the PlastiQ Subsidiaries own, or have a valid and enforceable right to use, all Intellectual Property used in the operation of the Business as currently conducted (collectively, "Business IP"), and upon the consummation of the Contemplated Transactions, Buyer will own, or, subject to any required Consents, have a valid and enforceable right to use, all Business IP in the same manner and on the same terms as owned or used by Sellers and the PlastiQ Subsidiaries as of the date hereof.

(c) Schedule 3.9(c) identifies (i) each Outbound IP License, and (ii) each Inbound IP License, excluding non-customized Software subject to customary "shrinkwrap" or "click-through" type contracts with annual or one-time payments of less than \$20,000. Neither Sellers nor the PlastiQ Subsidiaries are in default under any Intellectual Property License, to the Sellers' Knowledge, no licensee is in default under any license agreement, and no Intellectual Property License will expire prior to the Closing Date. The Seller Intellectual Property, together with all Intellectual Property licensed to the Sellers and the PlastiQ Subsidiaries pursuant to an Inbound IP License, constitute all of the Intellectual Property used in the operation of the Business as currently conducted.

(d) Schedule 3.9(d) identifies any Business IP which is owned by any current or former employees, contract workers, directors or officers of Sellers and the PlastiQ Subsidiaries.

(e) To Sellers' Knowledge, the operation of the Business does not infringe, misappropriate, or otherwise violate, and has not in the past six (6) years infringed, misappropriated or violated, any Intellectual Property of any other Person or constituted unfair competition or unfair or deceptive trade practices under any applicable Law. To Sellers' Knowledge, no Person is infringing, misappropriating or otherwise violating any Seller Intellectual Property. Schedule 3.9(e) accurately identifies (and Seller has provided to Buyer a complete and accurate copy of) each letter or other written or electronic communication or correspondence that has been sent or otherwise delivered by or to any Seller, any PlastiQ Subsidiary, or any representative of any Seller or PlastiQ Subsidiary regarding any actual, alleged, or suspected infringement or misappropriation of any Intellectual Property, and provides a brief description of the current status of the matter referred to in such letter, communication, or correspondence.

(f) Sellers and the PlastiQ Subsidiaries require all Persons, including all current and former employees, consultants, and independent contractors having access to any trade secrets, know-how, or other confidential or proprietary information of the Sellers and the PlastiQ Subsidiaries to execute written non-disclosure agreements. Sellers and the PlastiQ Subsidiaries have taken commercially reasonable steps to protect and maintain all trade secrets, know-how, and other confidential or proprietary information included in the Business IP, including the source code of Seller Software, and to Sellers' Knowledge, there have been no unauthorized uses or disclosures of any such trade secrets, know-how, or other confidential or proprietary information, including the source code of Seller Software.

(g) No royalties, honoraria or other fees are payable to any third parties for the use of or right to use any Business IP. Each Person, including current and former employees, consultants, and independent contractors, that has developed any Seller Intellectual Property has executed a valid and enforceable written agreement providing for a present assignment in favor of the Sellers of such Seller Intellectual Property. Except as set forth on Schedule 3.9(g), and to the Seller' Knowledge, none of the Seller Intellectual Property is involved in any inventorship challenge, interference, reexamination, conflict, nullity or opposition proceeding.

(h) Sellers and the PlastiQ Subsidiaries are in actual possession and control of the applicable source code, object code, code writes, notes, documentation, programmers' notes, source code annotations, user manuals and know-how to the extent required for use, distribution, development, enhancement, maintenance and support of all Seller Software. Except as set forth on Schedule 3.9(h), (i) no source code of any Seller Software has been disclosed or made available to any third party (including any escrow agent) other than to employees and contractors of the Sellers involved in the development of Seller Software; (ii) there has been no release of any such source code from escrow; and (iii) no event has occurred that would require, and the consummation of the Contemplated Transactions hereunder shall not result in, the release of any such source code to any Person.

(i) Schedule 3.9(i) sets forth a list of all Open Source Software that has been used in, incorporated into, integrated or bundled with any Seller Software, and for each such item of Open Source Software identifies the applicable Open Source License. No Seller Software is subject to any license that: (i) requires, or conditions the use or distribution of such Seller Software on the disclosure, licensing or distribution of any source code for any portion of such Seller Software; or (ii) otherwise imposes any limitation, restriction or condition on the right or ability of any Seller or PlastiQ Subsidiary to use, transfer or distribute any such Seller Software. Sellers and the PlastiQ Subsidiaries have complied in all material respects with the obligations set forth in the Open Source Licenses used in the Business under which it has received any Open Source Software. Sellers and

the Plastiq Subsidiaries have not used, modified, distributed, or otherwise undertaken any act or omission with respect to any Open Source Software that would be likely to result in any claim that any Seller Software, in whole or in part, is (A) required to be made available to any third party in source code form; (B) required to be licensed to any third party for the purpose of modification or redistribution; (C) required to be licensed to any third party at no charge; or (D) required to be made subject to the terms and conditions of any Open Source License.

(j) The Seller Software is in good working order and is sufficient in all material respects for the purposes for which it is used in the Business as currently conducted. None of the Seller Software or any other Software used, marketed, distributed, licensed, or sold by Seller contains any bug, defect, or error that materially and adversely affects the use, functionality, or performance of such Seller Software or other Software or any product or system containing or used in conjunction with such Seller Software or other Software.

(k) To Sellers' Knowledge, no Seller Software contains any "back door," "drop dead device," "time bomb," "Trojan horse," "virus," or "worm" (as such terms are commonly understood in the software industry) or any other code designed or intended to have, or capable of performing, any of the following functions: (i) disrupting, disabling, harming, or otherwise impeding in any manner the operation of, or providing unauthorized access to, a computer system or network or other device on which such code is stored or installed; or (ii) damaging or destroying any data or file without the user's consent (collectively, "Malicious Code").

(l) The information technology systems owned or controlled by the Sellers and the Plastiq Subsidiaries (the "IT Systems") are maintained in accordance with commercially reasonable standards and practices in all material respects for the operation of the Business as currently conducted. Without limiting the foregoing, (i) the Sellers have taken commercially reasonable steps and implemented commercially reasonable procedures to protect the IT Systems from Malicious Code and (ii) the Sellers and the Plastiq Subsidiaries have implemented commercially reasonable disaster recovery and backup plans, procedures and facilities consistent with industry practices of companies offering similar services, and acts in compliance therewith. The Sellers and the Plastiq Subsidiaries have taken all reasonable measures to ensure the upkeep of the IT Systems, and there has not been any material malfunction with respect to any aspect of the IT Systems that has not been remedied in all material respects. There have been no unauthorized intrusions or breaches of security with respect to the IT Systems. In the past three (3) years, no third party providing services to any Seller or Plastiq Subsidiary with respect to the IT Systems has failed to meet any material service obligations.

(m) The consummation of the Contemplated Transactions will not result in any violation of any Privacy Laws, and neither the Sellers nor the Plastiq Subsidiaries are subject to any contractual obligations that, following the consummation of the Completed Transactions, would prohibit the Buyer from receiving or using PII in a manner that is the same as, or similar to the manner in which the Sellers and the Plastiq Subsidiaries receive and use such PII prior to consummation of the Contemplated Transactions.

(n) The Sellers' and the Plastiq Subsidiaries' data, privacy, and security practices are, and have been for the last three (3) years, in compliance in all material respects with: (i) the Sellers' and the Plastiq Subsidiaries externally facing privacy and data protection policies, (ii) all contractual obligations of the Sellers concerning the privacy, security, or processing of PII from any individuals, including any customers, prospective customers, employees, or other third parties, and (iii) all applicable Privacy Laws. Sellers and the Plastiq Subsidiaries have obtained all

necessary rights from third parties with respect to the Sellers' and the PlastiQ Subsidiaries' collection, use, storage, and processing of PII. Sellers have complied in all material respects with all requests of customers to opt out of receipt of marketing messages. Sellers and the PlastiQ Subsidiaries have commercially reasonable physical, technical, organizational and administrative security measures and backup procedures in place to protect all PII and customer information collected or received by Sellers and the PlastiQ Subsidiaries or on their behalf from and against unauthorized access, use or disclosure in accordance with applicable Laws and contractual obligations.

(o) Sellers, the PlastiQ Subsidiaries and, to Sellers' Knowledge, any third party, have not gained unauthorized access to or engaged in use, collection, disclosure or exploitation of any PII or data or information relating to the Business, including any customer information in Sellers' or the PlastiQ Subsidiaries' possession or control in violation of any applicable Privacy Laws or contractual obligations of Sellers or the PlastiQ Subsidiaries, nor have there been any material investigations, claims, or written notices in connection with the foregoing. The Sellers and the PlastiQ Subsidiaries have not notified, and to the Sellers' Knowledge, there have been no facts or circumstances that would require the Sellers or the PlastiQ Subsidiaries to notify, a Governmental Entity or other Person of any unauthorized access to or disclosure of PII or any use, collection, disclosure, or exploitation of any PII in violation of any Privacy Laws or contractual obligations.

(p) Sellers and the PlastiQ Subsidiaries are and, in the last three (3) years, have been in compliance in all material respects with (i) all applicable by-laws, rules, regulations, and standards of the Payment Networks, and (ii) all applicable PCI-DSS requirements. Sellers and the PlastiQ Subsidiaries have not in the past three (3) years been charged with and, to the Sellers' Knowledge, are not now under investigation with respect to, a violation of any applicable Law, regulation, ordinance, order, or other requirement of a Government Entity or a Payment Network. Sellers and the PlastiQ Subsidiaries have not in the past three (3) years received any written communication from any Governmental Entity or other Person alleging noncompliance in any material respect with any applicable Law or by-laws, rules, regulations, or standards, of any Payment Network.

Section 3.10 Consents. Except to the extent rendered unnecessary through the entry of the Sale Order or as otherwise set forth on Schedule 3.10, and assuming the truth and completeness of the representations and warranties of Buyer contained in this Agreement, no consent, waiver, approval, Order or authorization of, or declaration or filing with, or notification to, any Person or Governmental Entity is required on the part of the Sellers or the PlastiQ Subsidiaries in connection with the execution and delivery of this Agreement or any other agreement, document or instrument contemplated hereby or thereby to which the Sellers or the PlastiQ Subsidiaries are a party, the compliance by the Sellers and the PlastiQ Subsidiaries with any of the provisions hereof or thereof, the consummation of the Contemplated Transactions or the taking by the Sellers and the PlastiQ Subsidiaries of any other action contemplated hereby or thereby (with or without notice or lapse of time, or both), except for the entry of the Sale Order.

Section 3.11 Validity of Contracts.

(a) Schedule 2.6(a) sets forth an accurate list, as of the date hereof, of all material Contracts (including amendments, supplements or modifications thereto) to which a Seller is a party with respect to the Business, Contemplated Transactions, the Purchased Assets or the Assumed Liabilities as of the date hereof (each such Contract, an Assignable Contract or a "Material Contract"), and Sellers have made available to Buyer true and complete copies of all such Material Contracts. As of the date of this Agreement, each Assignable Contract is in full force and

effect and is a valid and binding obligation of the Sellers and, to the Sellers' Knowledge, the other parties thereto in accordance with such Assignable Contract's terms and conditions, except as such validity and enforceability may be limited by (i) bankruptcy, insolvency, or other similar Laws affecting the enforcement of creditors' rights generally, (ii) equitable principles of general applicability (whether considered in a proceeding at law or in equity), and (iii) the obligation to pay Cure Amounts under Section 2.6(d). As of the date of this Agreement, except, in each case, where the occurrence of such breach or default or failure to perform would not be material to the Business, taken as a whole, (i) none of the Sellers has received written notice of termination with respect to any Assignable Contract and (ii) to the Sellers' Knowledge, no event has occurred which, with the passage of time or the giving of notice or both, would constitute a default under or a violation of any such Assignable Contract or would cause the acceleration of any obligation of the Sellers or the creation of a Lien (other than a Permitted Lien) upon any Purchased Asset that is not otherwise cured with the Sales Order. As of the date of this Agreement, each Contract to which any PlastiQ Subsidiary is a party, or by which any of them or any portion of their respective properties or other assets may be bound (each, a "Subsidiary Contract"), is in full force and effect and is a valid and binding obligation of the applicable PlastiQ Subsidiary and, to the Sellers' Knowledge, the other parties thereto in accordance with its terms and conditions, except as such validity and enforceability may be limited by (i) bankruptcy, insolvency, or other similar Laws affecting the enforcement of creditors' rights generally, (ii) equitable principles of general applicability (whether considered in a proceeding at law or in equity), and (iii) the obligation to pay Cure Amounts under Section 2.6(d). As of the date of this Agreement, except, in each case, where the occurrence of such breach or default or failure to perform would not be material to the Business, taken as a whole, (A) none of the Sellers has received written notice of termination with respect to any Subsidiary Contract and (B) to the Sellers' Knowledge, no event has occurred which, with the passage of time or the giving of notice or both, would constitute a default under or a violation of any such Subsidiary Contract or would cause the acceleration of any obligation of the applicable PlastiQ Subsidiary or the creation of a Lien (other than a Permitted Lien) upon any Subsidiary Asset that is not otherwise cured with the Sales Order.

Section 3.12 Financial Advisors. Except for amounts due to Triple P RTS, LLC, no Seller has entered into any Contract to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Buyer could become liable or obligated to pay.

Section 3.13 Financial Statements.

(a) The Sellers have made available to the Buyer the audited consolidated balance sheets and cash flow statements of the Business for the fiscal years ended December 31, 2020 and December 31, 2021 and the unaudited consolidated balance sheets and cash flow statements of the Business for the fiscal year ended December 31, 2022 and three months ended March 31, 2023 (the "Financial Statements"). The Financial Statements have been prepared in accordance with GAAP consistently applied in accordance with the Sellers and the PlastiQ Subsidiaries' past practice except for the absence of footnotes and customary year-end adjustments. The Financial Statements: (i) are true, correct and complete in all material respects; (ii) are in accordance in all material respects with the books and records of the Business; and (iii) fairly present in all material respects the financial position of the Business at the dates specified and the results of their operations for the period covered. The copies of the Financial Statements delivered to the Buyer are true, correct and complete copies.

(b) Except as set forth on Schedule 3.13(b), there are no Liabilities of the Business of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or

otherwise, whether or not required by GAAP to be reflected on a balance sheet of the Business, other than Liabilities, conditions or circumstances, (i) disclosed and provided for in the Financial Statements, or (i) incurred or arising in the Ordinary Course of Business since March 31, 2023 or in connection with the Contemplated Transactions, that are not, individually or in the aggregate, material in amount or nature.

Section 3.14 Compliance with Applicable Laws; Licenses. Except as would not be material to the Business, taken as a whole, the Sellers and the PlastiQ Subsidiaries own and operate, and since December 31, 2021 have owned and operated, the Purchased Assets or the Subsidiary Assets, as applicable, and conduct, and since December 31, 2021 have conducted, the Business in compliance in all material respects with all Orders, Licenses and Law applicable to the Sellers and the PlastiQ Subsidiaries, the Purchased Assets or the Business, except for prior instances of non-compliance that have been fully and finally resolved to the satisfaction of all Governmental Entities with jurisdiction over such matter. The Sellers and the PlastiQ Subsidiaries have not, and to the Sellers' Knowledge, none of their respective Representatives have, received in the past twenty-four (24) months any written notice from a Governmental Entity or third party alleging that any Seller, PlastiQ Subsidiary or the Business is not in compliance in any material respect with applicable Orders, Licenses or Law. Schedule 3.14 sets forth a true, correct and complete list of material Licenses held by the Sellers and the PlastiQ Subsidiaries with respect to the current operation and conduct of the Business, the Purchased Assets or the Assumed Liabilities.

Section 3.15 Taxes.

(a) The Sellers and the PlastiQ Subsidiaries have filed (or have had filed on their behalf) all material Tax Returns that the Sellers and the PlastiQ Subsidiaries were required to file in respect of the Purchased Assets or the Business and all such Tax Returns are correct and complete in all material respects. The Sellers and the PlastiQ Subsidiaries have timely paid (i) all material Taxes (whether or not shown to be due) on any such Tax Returns or pursuant to any assessment received by such Sellers and the PlastiQ Subsidiaries, from any Tax Authority for any period preceding the Closing Date, and (ii) all Taxes attributable to the Purchased Assets and the Business for periods ending on or prior to the Closing Date (whether or not shown as due and payable) on such Tax Returns other than Taxes not due as of the date of the filing of the Chapter 11 Cases as to which subsequent payment was not required by reason of the Chapter 11 Cases. All material Taxes that the Sellers and the PlastiQ Subsidiaries are or were required by Law to withhold, collect or deposit with respect to the Purchased Assets or the Business have been timely withheld and collected and deposited, and to the extent required, paid over to the appropriate Tax Authority. The Sellers and the PlastiQ Subsidiaries have complied in all material respects with any information reporting and withholding requirements in connection with any amounts paid or owing to any Person and all IRS Forms W 2 and Forms 1099 (or any other applicable Tax forms) required with respect thereto have been properly and timely distributed.

(b) No deficiencies for material Taxes or other assessments relating to material Taxes have been claimed, threatened, proposed or assessed (in each case, in writing) with respect to the Purchased Assets or the Business. To the Sellers' Knowledge, there are no ongoing, pending or threatened audits relating to material Taxes with respect to the Purchased Assets or the Business.

(c) There are no outstanding agreements or waivers that would extend the statutory period in which a Tax Authority may assess or collect a material Tax that could result in (i) a material Lien upon the Purchased Assets or (ii) material Liability to the Buyer as a transferee of or a successor to the Purchased Assets.

(d) There are no Liens with respect to Taxes (other Permitted Liens) upon the Purchased Assets or the Subsidiary Assets.

(e) Neither Sellers nor any of the Plastiq Subsidiaries are a party to any Tax indemnity, Tax allocation or Tax sharing agreement, other than any such agreement entered into in the ordinary course of business the principal purpose of which is not related to Tax, that could result in (i) a material Lien upon the Purchased Assets or the Subsidiary Assets or (ii) material Liability for the Buyer as a result of its acquisition or ownership of the Purchased Assets or the Subsidiary Assets.

(f) The Sellers and the Plastiq Subsidiaries have collected or self-assessed and remitted to the appropriate Tax Authority all material sales and use or similar Taxes required to have been collected or self-assessed.

(g) No claim has ever been made by a Governmental Entity in a jurisdiction where the Sellers or the Plastiq Subsidiaries do not file a specific type of Tax Return that any such Seller or Plastiq Subsidiary is or may be subject to taxation by, or required to file Tax Returns in, that jurisdiction, which claim has not been fully resolved.

(h) None of the Sellers and the Plastiq Subsidiaries will be required to include any amounts in income, or exclude any items of deduction, in a taxable period (or portion thereof) beginning after the Closing Date as a result of (i) a change in or incorrect method of accounting occurring prior to the Closing, (ii) an installment sale or open transaction arising in a taxable period (or portion thereof) ending on or before the Closing Date, (iii) a prepaid amount received, or paid, or deferred revenue accrued, prior to the Closing, (iv) a “closing agreement” as described in Section 7121 of the IRC (or any corresponding or similar provision of state or local income Tax Law) executed on or prior to the Closing Date, (v) any intercompany transactions or any excess loss account described in Treasury Regulations under Section 1502 of the IRC (or any corresponding or similar provision of state or local income Tax Law) or (vi) an election under Section 965(h) of the IRC.

(i) None of the Sellers or the Plastiq Subsidiaries (i) has participated in or has any Liability or obligation with respect to any “listed transaction” within the meaning of Treas. Reg. § 1.6011-4, (ii) has deferred any payroll or employment Taxes or claimed any other benefit or relief pursuant to the CARES Act or (iii) has a permanent establishment (within the meaning of an applicable Tax treaty) or an office or fixed place of business in, or is tax resident in, a country other than the country in which it is organized.

(j) All related party transactions between any of the Sellers and the Plastiq Subsidiaries, on the one hand, and their respective Affiliates, on the other hand, have been, in all respects, on an arms’ length basis in accordance with Section 482 of the IRC, or any state or foreign law equivalent, and is supported by contemporaneous transfer pricing documentation.

(k) None of the Sellers or the Plastiq Subsidiaries has been a party to any transaction intended to qualify under Section 355 of the IRC (or under so much of Section 356 of the IRC as relates to Section 355 of the IRC).

(l) None of the Plastiq Subsidiaries has ever been a “passive foreign investment company” within the meaning of Section 1297 of the Internal Revenue Code or a “controlled foreign corporation” within the meaning of Section 957 of the Internal Revenue Code.

(m) None of the Sellers and the Plastiq Subsidiaries (i) has ever been a member of an affiliated, consolidated, joint, unitary, combined or similar Tax group for Tax purposes and (ii) has any Liability for the Taxes of any other Person under Treas. Reg. § 1.1502-6 (or any similar provision of state, local or foreign Law), as a transferee or successor, or otherwise as a matter of Law.

(n) There are no requests for rulings pending between any Seller or Plastiq Subsidiary and any Tax Authority in respect of any Tax that could result in (i) a Lien upon the Purchased Assets or the Subsidiary Assets or (ii) Liability to the Buyer as a transferee of or successor to the Purchased Assets

Section 3.16 Accounts Receivable. All accounts receivable arising out of or relating to the Business were acquired or arose from sales actually made or services actually performed in the Ordinary Course of Business that represent bona fide transactions and valid and enforceable claims, are not subject to any setoff, counterclaim or legal action or proceeding and are collectible in accordance with their terms.

Section 3.17 Customers; Suppliers.

(a) Schedule 3.17(a) sets forth an accurate and complete list of the twenty (20) largest customer accounts of the Business (each, a “Material Customer”), based on revenue generated by such customers during the years ended December 31, 2021 and December 31, 2022, showing the aggregate sales to each such Material Customer during each such period. For the past three (3) years, except as set forth on Schedule 3.17(b), none of the Sellers or the Plastiq Subsidiaries or the Business have been, or are currently engaged in any material dispute with any Material Customer. Except with respect to Contracts that are expiring in the ordinary course in accordance with their terms, no Seller or Plastiq Subsidiaries has received any written communication from any Material Customer of any intention or threat to terminate or materially reduce purchases from, or otherwise change in any material respect their relationship with, the Company or the Business, and to the Sellers’ Knowledge, no such action is being considered.

(b) Schedule 3.17(b) sets forth an accurate and complete list of the twenty (20) largest suppliers of the Business (each, a “Material Supplier”), based on expenditures incurred by or on behalf of the Business during the years ended December 31, 2021 and December 31, 2022, showing aggregate amount invoiced by each such Material Supplier during each such period. For the past three years, except as set forth on Schedule 3.17(b), none of the Sellers or the Plastiq Subsidiaries or the Business has been, or is currently, engaged in any material dispute with any Material Supplier. No Seller or Plastiq Subsidiary has received any written communication from any Material Supplier of any intention or threat to terminate or materially reduce its provision of goods or services to, or otherwise change in any material respect their relationship with, the Sellers or Plastiq Subsidiary or the Business, and to Sellers’ Knowledge, no such action is being considered.

Section 3.18 Capitalization of Plastiq Subsidiaries.

(a) No Seller has any subsidiary other than the Plastiq Subsidiaries. Other than the Nearside Subsidiaries, Parent Seller owns of record and beneficially all of the issued and outstanding Equity Interests of the Plastiq Subsidiaries free and clear of all Liens, other than Permitted Liens. Nearside Seller owns of record and beneficially all of the issued and outstanding Equity Interests of the Nearside Subsidiaries free and clear of all Liens, other than Permitted Liens. None of the Subsidiary Equity Interests was issued in violation of any preemptive rights (whether statutory, contractual or otherwise), subscription rights, rights of first refusal or similar rights or any Laws. There are no outstanding (i) securities convertible or exchangeable into any Equity

Interests of any PlastiQ Subsidiary, (ii) options, warrants, purchase rights, subscription rights, preemptive rights, conversion rights, exchange rights, puts, calls, rights of first refusal, convertible securities or other rights, agreements, arrangements or commitments of any character obligating any PlastiQ Subsidiary to issue any Equity Interests, (iii) Contracts to which any PlastiQ Subsidiary is a party that require such PlastiQ Subsidiary to repurchase, redeem or otherwise acquire any Equity Interests or to make any investment (in the form of a loan, capital contribution or otherwise) in any other Person, or (iv) phantom equity, equity appreciation rights, equity-based performance interests, profit participation, profits interest or similar rights or securities in any PlastiQ Subsidiary.

ARTICLE IV BUYER'S REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants to Sellers as follows as of the date hereof and as of the Closing Date:

Section 4.1 Organization. Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware.

Section 4.2 Authorization.

(a) Buyer has full limited liability company power and authority to execute and deliver this Agreement and all Related Agreements to which it is a party and to perform its obligations hereunder and thereunder.

(b) The execution, delivery and performance of this Agreement and all other Related Agreements to which Buyer is a party have been duly authorized by Buyer, and no other limited liability company action on the part of Buyer is necessary to authorize this Agreement or the Related Agreements to which it is a party or to consummate the Contemplated Transactions.

(c) This Agreement has been duly and validly executed and delivered by Buyer, and, upon their execution and delivery in accordance with the terms of this Agreement, each of the Related Agreements to which Buyer is a party will have been duly and validly executed and delivered by Buyer. Assuming that this Agreement constitutes a valid and legally binding obligation of Sellers, this Agreement constitutes a valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity. Assuming, to the extent that they are a party thereto, that each Related Agreement constitutes a valid and legally binding obligation of Sellers, each Related Agreement to which Buyer is a party, when executed and delivered, constituted or will constitute the valid and legally binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 4.3 Noncontravention. Neither the execution and delivery of this Agreement, nor the consummation of the Contemplated Transactions (including the assignments and assumptions referred to in Section 2.6) will (i) conflict with or result in a breach of the certificate of formation, operating agreement, or other organizational documents, of Buyer, (ii) subject to any consents required to be obtained from any Governmental Entity, violate any Law to which Buyer is, or its assets or properties are subject, or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any Contract to which Buyer is a party or by which it is bound, except, in the case of either clause (ii) or (iii), for such conflicts, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the

aggregate, reasonably be expected to prevent, materially delay or materially impair to the ability of Buyer to consummate the transactions contemplated by this Agreement or by the Related Agreements. Buyer is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Entity in order for the Parties to consummate the transactions contemplated by this Agreement or any of the Related Agreement, except where the failure to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair to the ability of Buyer to consummate the transactions contemplated by this Agreement or by the Related Agreements.

Section 4.4 Legal Proceeding. There are no Litigation pending or, to Buyer's knowledge, threatened against or affecting Buyer that will adversely affect Buyer's performance under this Agreement or the consummation of the transactions contemplated by this Agreement.

Section 4.5 Financial Wherewithal; Adequate Assurance. Buyer has, and will have at the Closing, sufficient funds in an aggregate amount necessary to pay the Cash Payment, and otherwise consummate the Contemplated Transactions, and to pay all fees and expenses required to be paid by Buyer hereunder. Buyer acknowledges that its obligations under this Agreement are not subject to any conditions regarding its ability to obtain financing for any portion or all of the Cash Payment. The Buyer has the ability to demonstrate to the Bankruptcy Court adequate assurance of future performance under the Assumed Contracts and shall provide financial information and testimony that is required by the Bankruptcy Court to demonstrate the Buyer's ability to assume, or to take assignment of, the Assumed Contracts.

Section 4.6 No Other Representations or Warranties.

(a) The Buyer acknowledges that, except for the representations and warranties contained in Article III, neither the Sellers nor any other Person on behalf of the Sellers makes any express or implied representation or warranty with respect to the Sellers (including representations and warranties as to the condition of the Purchased Assets) or with respect to any information provided by or on behalf of the Sellers to the Buyer. Neither the Sellers nor any other Person will have or be subject to any Liability or indemnification obligation to the Buyer or any other Person resulting from the distribution to the Buyer, or use by the Buyer, of any such information, including any information, documents, projections, forecasts or other material made available to the Buyer in any "data rooms," "data sites," responses to inquiries, confidential information memoranda or management presentations in expectation of or in connection with the Contemplated Transactions contemplated by this Agreement. Any documents, title information, assessments, surveys, plans, specifications, reports and studies, or other information made available to the Buyer by the Sellers or their Representatives, including any other material made available to the Buyer in any "data rooms," "data sites," responses to inquiries, confidential information memoranda or management presentations (collectively, "Review Documents") are provided as information only. The Buyer shall not rely upon the Sellers' provision of any Review Document(s) in lieu of conducting its own due diligence. Except for the specific representations and warranties contained in this Article III (in each case as modified by the Disclosure Schedules hereto), the Sellers have not made, do not make, and have not authorized anyone else to make any representation as to: (i) the accuracy, reliability or completeness of any of the Review Documents; (ii) the operating condition of the Purchased Assets; (iii) the transferability or assignability of any Contract or License, or (iv) any other matter or thing affecting or relating to the Purchased Assets.

(b) In connection with investigation by the Buyer, the Buyer has received or may receive from the Sellers certain projections, forward-looking statements and other forecasts and certain business plan information. The Buyer acknowledges that there are uncertainties inherent in

attempting to make such estimates, projections and other forecasts and plans, that the Buyer is familiar with such uncertainties, that the Buyer is taking full responsibility for making its own evaluation of the adequacy and accuracy of all estimates, projections and other forecasts and plans so furnished to it (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans), and that the Buyer shall have no claim against anyone with respect thereto. Accordingly, the Buyer acknowledges that the Sellers make no representation or warranty with respect to such estimates, projections, forecasts or plans (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans).

ARTICLE V PRE-CLOSING COVENANTS

The Parties agree as follows with respect to the period between the execution of this Agreement and the Closing (except as otherwise expressly stated to apply to a different period):

Section 5.1 Certain Efforts; Cooperation.

(a) Subject to the terms and conditions of this Agreement, each of the Parties shall use its commercially reasonable efforts, subject to the orders of the Bankruptcy Court, to make effective the transactions contemplated by this Agreement (including satisfaction, but not waiver, of the conditions to the obligations of the Parties to consummate the Contemplated Transactions set forth in Article VII), except as otherwise provided in Section 5.2; provided, however, Sellers shall be entitled to take such actions as are required in connection with the discharge of their fiduciary duties during the Chapter 11 Cases (including, soliciting higher or better offers for the Purchased Assets in any Auction).

(b) On and after the Closing, Sellers and Buyer shall use their commercially reasonable efforts to take, or cause to be taken, all appropriate action, to do or cause to be done by Sellers and Buyer all things necessary under applicable Law, and to execute and deliver such documents, ancillary agreements and other papers as may be required to carry out the provisions of this Agreement and consummate and make effective the Contemplated Transactions, including in order to more effectively vest in Buyer all of Sellers' right, title and interest to the Purchased Assets, free and clear of all Liens (other than Permitted Liens expressly contemplated by the Sale Order); provided, however, that (i) Sellers shall not incur any costs associated with the obligations hereunder and (ii) Sellers' obligations hereunder shall only continue until the Chapter 11 Cases are closed or dismissed.

Section 5.2 Notices and Consents.

(a) To the extent required by the Bankruptcy Code, Bankruptcy Rules, or the Bankruptcy Court, Sellers shall give any notices to third parties, and each Seller shall use its commercially reasonable efforts to obtain any third-party Consents or sublicenses; provided, however, Sellers' obligations hereunder shall only continue until the Chapter 11 Cases are closed or dismissed.

(b) Sellers and Buyer shall cooperate with one another (i) in promptly determining whether any filings are required to be or should be made or consents, approvals, permits or authorizations are required to be or should be obtained under any applicable Law in connection with this Agreement and the Contemplated Transactions and (ii) in promptly making any such filings, furnishing information required in connection therewith and seeking to obtain timely any such consents, permits, authorizations, approvals or waivers; provided, however, that (A) Sellers

shall not incur any costs associated with the obligations hereunder and (B) Sellers' obligations hereunder shall only continue until the Chapter 11 Cases are closed or dismissed.

(c) Subject to the terms and conditions set forth in this Agreement and applicable Law, each of Buyer and Sellers shall (A) promptly notify the other Party of, and if in writing, furnish the other Party with copies of (or in the case of oral communications, advise the other Party of the contents of) any communication to that Party from any Governmental Entity in respect of any filing, investigation or inquiry concerning this Agreement or the Contemplated Transactions, (B) permit the other Party the opportunity to review and discuss in advance all the information relating to Sellers and their respective Subsidiaries or Buyer and its Affiliates, as the case may be, that appears in any filing made with, or written materials submitted to, any third party and/or any Governmental Entity in connection with the Agreement and the transactions contemplated by this Agreement and incorporate the other Party's reasonable comments, (C) not independently participate in any meeting or discussion with any Governmental Entity in respect of any filing, investigation, or inquiry concerning this Agreement and the transactions contemplated by this Agreement unless it consults with the other Party in advance, and, to the extent permitted by such Governmental Entity, gives the other Party the opportunity to attend, and (D) furnish the other Party with copies of all correspondences, filings, and written communications between them and their Subsidiaries and Representatives, on the one hand, and any Governmental Entity or its respective staff, on the other hand, with respect to this Agreement and the Contemplated Transactions, provided, however, that any materials or information provided pursuant to any provision of this Section 5.2(c) may be redacted before being provided to the other Party (i) to remove references concerning the valuation of Buyer, Sellers, or any of their Subsidiaries, (ii) to remove references concerning financing arrangements, (iii) as necessary to comply with contractual arrangements, and (iv) as necessary to address reasonable privilege or confidentiality issues.

(d) Notwithstanding anything herein to the contrary and subject to clause (B) of the following sentence, the Parties understand and agree that commercially reasonable efforts of Buyer hereto shall not be deemed to include: (i) entering into any settlement, undertaking, consent decree, stipulation or agreement with any Governmental Entity in connection with the transactions contemplated hereby or defending against or initiating any lawsuit, action or proceeding, judicial or administrative, challenging this Agreement or the transactions contemplated hereby, or (ii) proposing, negotiating, agreeing to or offering to commit to any sale, divestiture, license, disposition or separation (including by establishing a trust or otherwise) of, or any limitation on any operation or business of, any of its or its Affiliate's businesses, assets or properties. In furtherance, and not in limitation, of the foregoing in this Section 5.2(d), (A) other than in connection with an Alternate Transaction, Sellers shall not, and shall cause their Affiliates not to, propose, negotiate, agree to or offer to commit to any sale, divestiture, license, disposition or separation of any Purchased Asset, without the prior written consent of Buyer, and (B) Buyer shall not be required to agree to any divestiture, sale or other disposition of any of the Purchased Assets or any assets of Buyer or any of Buyer's Affiliates or agree to any limitation on any operation or business of the Buyer or any of its Affiliates.

Section 5.3 Bankruptcy Actions.

(a) [Reserved]

(b) The Sellers shall file the Sale Motion contemporaneously with the commencement of the Chapter 11 Cases, but in no event later than two Business Days after the commencement, which motion shall seek the Bankruptcy Court's:

i. entry of an order on or before the Sale Procedures Order Deadline substantially in the form of Exhibit F, (the “Sale Procedures Order”), among other things, (A) establishing bidding procedures governing the sale of the Purchased Assets, as amended, modified or supplemented in accordance with the Sale Procedures Order (the “Bidding Procedures”) (B) approving payment of the Break-Up Fee and the Expense Reimbursement, to the extent payable by the terms of this Agreement or the Sale Procedures Order, and (C) providing that the Break-Up Fee and the Expense Reimbursement shall constitute administrative expenses of the Sellers with priority over any and all pre-petition creditors and administrative expenses of the kind specified in section 503(b) of the Bankruptcy Code until paid. The Bankruptcy Court must enter the Sale Procedures Order by the Sale Procedures Order Deadline; and

ii. entry of an order on or before the Sale Order Deadline substantially in the form of Exhibit G, authorizing and approving, inter alia, (A) the sale of the Purchased Assets to Buyer on the terms and conditions set forth herein, free and clear of all Liens and Claims (to the extent set forth therein), and (B) the assignment and assumption by Buyer of each Assumed Contract (the “Sale Order”). The Sale Order shall, among other things: (I) approve the sale of the Purchased Assets to the Buyer free and clear of all Liens, Claims, and encumbrances, pursuant to (among other provisions) sections 105, 363, and 365 of the Bankruptcy Code, in each case to the extent set forth in this Agreement; (II) approve the assumption and assignment to the Buyer of the Assumed Contracts pursuant to section 365 of the Bankruptcy Code; (III) contain findings of fact and conclusions of law that the Buyer is a good faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Code and is not a successor to Seller; and (IV) contain such other terms that are otherwise acceptable to Buyer, in its sole discretion.

(c) The Sellers shall also file a motion no later than the filing of the Sale Motion requesting approval of the Bidding Procedures and entry of the Sale Procedures Order.

(d) Sellers shall provide Buyer with a reasonable opportunity to review and comment (but in no event less than twenty-four (24) hours) upon all motions, applications, and supporting papers relating to the transactions contemplated by this Agreement prepared by Sellers or any Affiliates (including forms of orders and notices to interested parties) prior to the filing thereof in the Chapter 11 Cases. All motions, applications, and supporting papers prepared by Sellers and relating to the transactions contemplated by this Agreement to be filed on behalf of Sellers after the date hereof must be reasonably satisfactory in form and substance to Buyer.

(e) If the Sale Procedures Order, Sale Order or any other orders of the Bankruptcy Court relating to this Agreement or the transactions contemplated hereby shall be appealed by any Person (or if any petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacatur, stay, rehearing or reargument shall be filed with respect to the Sale Order, Sale Procedures Order or other such order), and this Agreement has not otherwise been terminated pursuant to Article VIII, the Sellers shall use their commercially reasonable efforts to diligently defend such appeal, petition or motion and shall use its commercially reasonable efforts to obtain an expedited resolution of any such appeal, petition or motion.

(f) Each Seller shall promptly provide Buyer and its counsel with copies of all notices, filings and orders of the Bankruptcy Court that such Seller has in its possession (or receives) pertaining to the Contemplated Transaction, the Sale Order, Sale Procedures Order, or any other order related to any of the transactions contemplated by this Agreement, but only to the extent such

papers are not publicly available on the docket of the Bankruptcy Court or otherwise made available to Buyer and its counsel. No Seller shall seek any modification to the Bidding Procedures, Sale Procedures Order or Sale Order by the Bankruptcy Court or any other Governmental Entity of competent jurisdiction to which a decision relating to the Chapter 11 Cases has been appealed, in each case, without the prior written consent of Buyer.

(g) Each of Buyer and Sellers shall continue to act in good faith and without any improper conduct, including collusion or fraud of any kind.

(h) Each of Buyer and Sellers will promptly take such actions as are reasonably requested by the other party to assist in obtaining entry of the Sale Order and the Sale Procedures Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of providing necessary assurances of performance by Sellers of their obligations under this Agreement and the Related Agreements and demonstrating that Buyer is a good faith buyer under section 363(m) of the Bankruptcy Code.

(i) Pursuant to the terms of the proposed Sale Procedures Order, Buyer shall provide information to the Sellers to be disseminated to counterparties to Assumed Contracts, sufficient to satisfy a finding of adequate assurance of future performance as required in sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assumed Contracts.

(j) [Reserved]

(k) Sellers shall use commercially reasonable efforts to provide appropriate notice of the hearings on the Sale Motion to all Persons entitled to notice, including, but not limited to, all Persons that have asserted Liens on the Purchased Assets, all parties to the Assumed Contracts and all Taxing authorities in jurisdictions applicable to Sellers and as otherwise required by the Bankruptcy Code and bankruptcy rules.

(l) Sellers shall file with the Bankruptcy Court and serve a cure notice (the "Cure Notice") as required by the Sale Procedures Order and provide a copy of the same to Buyer.

Section 5.4 Conduct of Business. Until the earlier of the termination of this Agreement and the Closing, subject to the terms and conditions of the Sale Order, and except as expressly contemplated by this Agreement or as set forth on Schedule 5.4, or required under the Bankruptcy Code or other applicable Law and except to the extent waived by Buyer's prior written consent and except with the prior written consent of Buyer:

(a) Sellers shall use commercially reasonable efforts to maintain, preserve and protect all of the Purchased Assets in the condition in which they exist on the date hereof, except for ordinary wear and tear and except for replacements, modifications or maintenance in the Ordinary Course of Business;

(b) Sellers shall use reasonable best efforts to maintain compliance with the DIP Order and related budgets;

(c) Sellers shall use commercially reasonable efforts not to take, or agree to or commit to assist any other Person in taking, any action (i) that would reasonably be expected to result in a failure of any of the conditions to the Closing or (ii) that would reasonably be expected to impair the ability of Sellers or Buyer to consummate the Closing in accordance with the terms hereof or to materially delay such consummation;

(d) Sellers shall make all undisputed post-petition payments related to the Purchased Assets, including the Assumed Contracts (other than Cure Amounts), that become or became due or payable pursuant to the terms thereof to the extent provided in the budgets in the DIP Order and in connection with such obligations shall make available to Buyer (i) weekly post-petition accounts receivable and accounts payable reporting and (ii) weekly budget variance reports associated with the DIP Agreement and amounts borrowed by the Sellers thereunder;

(e) to the extent the Excess Cash at Closing is zero, Sellers shall ensure that the maximum amount of availability under DIP agreement has been fully drawn and applied to undisputed post-petition accounts payable;

(f) Sellers shall comply in all material respects with all material Laws applicable to them or having jurisdiction over the Business or any Purchased Asset;

(g) not sell, lease, encumber, or otherwise dispose of all or any portion of any Purchased Assets or Subsidiary Assets (other than Seller Intellectual Property), except sales in the Ordinary Course of Business;

(h) not terminate, cancel or make any material changes to the structure, limits or terms and conditions of any of the Insurance Policies, including allowing the Insurance Policies to expire without renewing such Insurance Policies or obtaining comparable replacement coverage, or fail to pay premium or report known claims to an insurance carrier in a timely manner, in each case, except as would not be reasonably likely to be material to the Sellers, the Plastiq Subsidiaries or the Business.

(i) Sellers shall maintain in full force and effect each Assumed Permit held by any Seller as of the date hereof or otherwise obtained by any Seller prior to the Closing (to the any extent that such maintenance does not require the Sellers to incur costs or make any payments), and shall comply with the terms of each such Permit and no Seller shall permit any such Permit to terminate, expire or lapse other than in the Ordinary Course of Business;

(j) Sellers shall not: (i) make, revoke, amend or change any Tax election; (ii) change any annual Tax accounting period or adopt or change any method of Tax accounting; (iii) make, change or rescind a material Tax reporting practice or policy; (iv) file any amended Tax Return; (v) enter into any closing agreement with respect to a material amount of Tax; (vi) settle any material Tax claim or assessment; (vii) extend or waive the application of any statute of limitations regarding the assessment or collection of any material Tax; or (viii) surrender any right to claim a refund of material Taxes;

(k) except as required by applicable Law, Sellers shall not (1) increase in any manner the cash compensation, bonus opportunity, severance or termination pay of any Current Employee, or (2) become a party to, establish, adopt, amend, commence participation in or terminate any Employee Benefit Plan, except for renewals in the Ordinary Course of Business;

(l) Sellers shall (w) conduct the Business in the Ordinary Course of Business, (x) use commercially reasonable efforts to preserve the existing business organization and keep management of the Business intact, (y) use commercially reasonable efforts to keep available the services of the Current Employees, and (z) use commercially reasonable efforts to maintain the existing relations with customers, carriers, suppliers, creditors, business partners, Employees and others having business dealings with the Business; and

(m) Sellers shall not: (i) cancel, compromise, waive or release any right with respect to any Purchased Asset; (ii) enter into or amend, modify, supplement, restate or renew in any respect or cancel or terminate or waive any rights under or with respect to any Assumed Contract or Assumed Permit; or (iii) subject to Section 2.6, except for such Contracts that Sellers shall file a motion with the Bankruptcy Court as of the Petition Date to reject, assume, reject or assign any Contract that may become an Assumed Contract other than through the assumption and assignment of the Assumed Contracts, as contemplated by this Agreement, to Buyer (or to a third party in connection with an Alternate Transaction).

Nothing contained in this Agreement is intended to give Buyer or its Affiliates, directly or indirectly, the right to control or direct the business of Sellers prior to the Closing.

Section 5.5 Access.

(a) Upon reasonable advance written request by Buyer, Sellers shall permit Buyer and its Representatives to have reasonable access during normal business hours, subject to the terms of Leases and in a manner so as not to interfere unreasonably with the normal business operations of Sellers, to all premises, properties, personnel, Records and Contracts related to the Business, in each case, for the sole purpose of evaluating the Business; provided, however, that, for avoidance of doubt, the foregoing shall not require any Party to waive, or take any action with the effect of waiving, its attorney client privilege or any confidentiality obligation to which it is bound with respect thereto or take any action in violation of applicable Law.

(b) As of the date hereof, Seller shall permit Buyer, any member of Buyer Group, or any of their respective Affiliates, to contact and communicate with any (i) Contract counterparty or (ii) customer or supplier of the Sellers for the purpose of retaining such customer or supplier following Closing or evaluating whether to take assignment of such Contract.

Section 5.6 Press Releases; Public Announcements; Communications. Concurrently with the execution and delivery of this Agreement, the Parties shall make a joint press release in form and substance reasonably satisfactory to Sellers and Buyer regarding the transactions contemplated herein. After notice to and consultation with Buyer, Sellers shall be entitled to disclose, if required by applicable Law or by order of the Bankruptcy Court, this Agreement and all information provided by Buyer in connection herewith to the Bankruptcy Court, the Committee, parties in interest in the Chapter 11 Cases and other Persons bidding on assets of Sellers. Other than statements made in the Bankruptcy Court (or in pleadings filed therein), no Party shall issue (prior to, on or after the Closing) any press release or make any public statement or public communication, including communications with Sellers' customers, suppliers and employees that include Buyer's position as a stalking horse bidder (other than as expressly provided in Section 5.5 and this Section 5.6), without the prior written consent of the other Parties, which shall not be unreasonably withheld or delayed, and in the case of Sellers' press releases, public statements or public communications, including communications with Sellers' customers, suppliers and employees that include Buyer's position as a stalking horse bidder, Sellers shall provide Buyer opportunity to review and comment upon, and Sellers shall consider such comments in good faith, all such press releases, public statements or public communications; provided, however, (i) Sellers, without the prior consent of Buyer, may (A) issue such press release or make such public statement as may, upon the advice of counsel, be required by applicable Law or any Governmental Entity with competent jurisdiction and (B) communicate with its and its Affiliates' investors and potential investors relating to the transactions contemplated by this Agreement and (ii) Buyer, without the prior consent of Sellers, may issue such press release or make such public statement, filing or disclosure as may, upon the advice of counsel, be required by applicable Law, including

Securities and Exchange Commission rules and regulations, or any Governmental Entity with competent jurisdiction.

Section 5.7 Risk of Loss. The risk of loss with respect to the Purchased Assets shall remain with the Sellers until the Closing. Until the Closing, the Sellers shall maintain in force the policies of property damage insurance under which any Purchased Asset or Subsidiary Asset is insured. In the event prior to the Closing any Purchased Asset or Subsidiary Asset is lost, damaged or destroyed and such loss, damage or destruction, individually or in the aggregate, has or would reasonably be expected to result in a Material Adverse Effect, then, subject to the rights of the Sellers' lenders pursuant to any debtor in possession financing, the Buyer may require the Sellers and Plastiq Subsidiaries to assign to the Buyer the proceeds of any insurance payable as a result of the occurrence of such loss, damage or destruction.

Section 5.8 Supplements to Schedules. From time to time up to the Closing, the Sellers shall promptly supplement or amend the Schedules that they have delivered with respect to any matter first existing or occurring following the date hereof that (a) if existing or occurring at or prior to the date hereof, would have been required to be set forth or described in the Schedules, or (b) is necessary to correct any information in the Schedules that has been rendered inaccurate thereby; provided, in each case, that the disclosure provided in any such supplemented or amended schedule shall in no way be effective for purposes of the conditions set forth in Article VII or to cure any breach of representation or warranty that otherwise may have existed hereunder by reason of such matter.

ARTICLE VI OTHER COVENANTS

The Parties agree as follows with respect to the period from and after the Closing, provided that (i) Sellers shall not incur any costs associated with the obligations hereunder and (ii) Sellers' obligations hereunder shall only continue until the Chapter 11 Cases are closed or dismissed:

Section 6.1 Cooperation. Each of the Parties shall cooperate with each other, and shall use their commercially reasonable efforts to cause their respective Representatives to cooperate with each other, to provide an orderly transition of the Purchased Assets and Assumed Liabilities from Sellers to Buyer and to minimize the disruption to the Business resulting from the Contemplated Transactions.

Section 6.2 Further Assurances. In case at any time from and after the Closing any further action is necessary or reasonably required to carry out the purposes of this Agreement, subject to the terms and conditions of this Agreement and the terms and conditions of the Sale Order, at any Party's request and sole cost and expense, each Party shall take such further action (including the execution and delivery to any other Party of such other reasonable instruments of sale, transfer, conveyance, assignment, assumption and confirmation and providing materials and information) as another Party may reasonably request as shall be necessary to transfer, convey and assign to Buyer all of the Purchased Assets, to confirm Buyer's assumption of the Assumed Liabilities and to confirm Sellers' retention of the Excluded Assets and Excluded Liabilities. Without limiting the generality of this Section 6.2, to the extent that either Buyer or Sellers discovers any additional assets or properties which the Parties mutually agree should have been transferred or assigned to Buyer as Purchased Assets but were not so transferred or assigned, Buyer and Sellers shall cooperate and execute and deliver any instruments of transfer or assignment necessary to transfer and assign such asset or property to Buyer. Without limiting the generality of this Section 6.2, to the extent that either Buyer or Sellers discovers any assets or properties which the parties mutually agree should have been retained by Sellers as Excluded Assets, Buyer and Sellers shall cooperate and execute and deliver any instruments of transfer or assignment necessary to transfer and assign such asset or property to Sellers. If any Seller, Buyer or any of their respective Subsidiaries, from time to time, identifies any Assumed Liability that was not transferred to Buyer, or any Excluded Liability that was transferred to

Buyer, Sellers and Buyer shall use their commercially reasonable efforts to transfer those Liabilities to the correct party as promptly as reasonably practicable after Closing.

Section 6.3 Availability of Business Records. From and after the Closing, Buyer shall promptly provide to Sellers and their respective Representatives (after reasonable notice and during normal business hours and without charge to Sellers) access to all Records included in the Purchased Assets for periods prior to the Closing and reasonable access to Transferred Employees to the extent such access is necessary in order for Sellers (as applicable) to comply with applicable Law or any contract to which it is a party, for liquidation, winding up, Tax reporting or other proper purposes and so long as such access is subject to an obligation of confidentiality, and shall preserve such Records until the latest of (i) seven (7) years after the Closing Date, (ii) the required retention period for all government contact information, records or documents, (iii) the conclusion of all bankruptcy proceedings relating to the Chapter 11 Cases or (iv) in the case of Records related to Taxes, the expiration of the statute of limitation applicable to such Taxes. Such access shall include access to any information in electronic form to the extent reasonably available. Buyer acknowledges that Sellers have the right to retain originals or copies of all Records included in the Purchased Assets for periods prior to the Closing. Prior to destroying any Records included in the Purchased Assets for periods prior to the Closing, Buyer shall notify Sellers thirty (30) days in advance of any such proposed destruction of its intent to destroy such Records, and Buyer shall permit Sellers to retain such Records, at Sellers' cost and expense. With respect to any Litigation and claims that are Excluded Liabilities, Buyer shall render all reasonable assistance that Sellers may request in defending or prosecuting such Litigation or claim and shall make available to Sellers such personnel as are most knowledgeable about the matter in question, all without charge. Without limitation of any of the foregoing, such assistance by Buyer to Sellers shall include reasonable assistance to Sellers by the Transferred Employees after the Closing with respect to the wind down of the Chapter 11 Cases, which shall include during the pendency of the Chapter 11 Cases, maintaining the accounting infrastructure and assisting in the compilation of the monthly operating reports and other reporting and filings that are required to be filed with the Bankruptcy Court.

Section 6.4 Employee Matters.

(a) Prior to the Closing, Buyer shall offer (or cause a designee of Buyer to offer), by written offer letter outlining the terms and conditions of the offer of employment, to employ certain Current Employees (as determined solely by Buyer prior to Closing), copies of which offers Buyer will deliver to Sellers and Sellers will deliver to the intended Current Employees, in each case prior to Closing. For purposes of this Agreement, each Current Employee who receives and accepts such offer of employment prior to the Closing and commences work with Buyer immediately after the Closing Date shall be referred to herein as a "Transferred Employee"; provided, however, no Current Employee who is on a visa shall become a Transferred Employee, without Buyer's acknowledgement and consent to such Current Employee becoming a Transferred Employee. Except to the extent Sellers fail to comply in any material respects with Section 6.4(c)(i) and Section 6.4(c)(iii), Buyer hereby agrees that the written offer to a Current Employee shall include a level of base salary, wages and annual bonus opportunities (excluding equity-based incentives) that are substantially comparable in the aggregate to the base salary, wages and annual cash bonus opportunities (excluding equity-based incentives) provided to such Current Employee by Sellers as of the Closing Date.

(b) Other than the Assumed Liabilities, Sellers shall bear responsibility for all Liabilities arising out of, relating to, or with respect to any compensation and employee benefits, as well as any other labor or employment-related liability, relating to the employment or other service or termination of employment or other service with the Sellers and their Affiliates of any

current or former directors, officers, managers, employees, consultants or other service providers of any Seller or any ERISA Affiliate, or any spouse, dependent or beneficiary thereof. Following the date of this Agreement:

i. Sellers will allow Buyer and its Representatives reasonable access upon reasonable advance notice to meet with and interview during normal business hours, Current Employees;

ii. Sellers shall not, nor shall any Seller authorize or direct or give express permission to any Affiliate, officer, director, manager, employee, consultant or other service providers of Seller or any Affiliate to, (A) interfere with Buyer's or its Representatives' rights under Section 6.4(a) to make offers of employment to any Current Employee, or (B) solicit or encourage any Current Employee not to accept, or to reject, any such offer of employment;

iii. Sellers shall provide reasonable cooperation and information to Buyer and its Representative as reasonably requested by Buyer or such Representative with respect to its determination of the current terms and conditions of employment for any Current Employee;

iv. Sellers shall provide all information reasonably requested by Buyer to determine the status as full-time employees under the Patient Protection and Affordable Care Act of 2010, as amended of any Current Employee who is offered employment with the Buyer;

v. Sellers shall process the payroll for and pay, or cause to be paid, the base wages, base salary, bonuses and benefits that are due and payable with respect to all Current Employees and Former Employees in connection with their employment or other service with Sellers. Sellers shall withhold and remit all applicable payroll taxes as required by Law, and pay the related employer portion of any such taxes. with respect to all Current Employees and Former Employees of Sellers with respect to such payments; and

vi. None of the foregoing shall be construed as requiring, and neither Sellers nor any of their Affiliates shall take any affirmative action that would have the effect of requiring, Buyer to continue any specific Employee Benefit Plan or to continue the employment of any specific person on or after the Closing Date. Nothing in this Agreement is intended to establish, create or amend, nor shall anything in this Agreement be construed as establishing, creating or amending, any employee benefit plan, practice or program of Buyer, any of its Affiliates or any of the Employee Benefit Plans, nor shall anything in this Agreement create or be construed as creating any contract of employment or as conferring upon any Transferred Employee or upon any other person, other than the parties to this Agreement in accordance with its terms, any rights to enforce any provisions of this Agreement under ERISA or otherwise. This Section shall be binding upon and inure solely to the benefit of each of the parties to this Agreement, and nothing in this Section, express or implied, shall confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Section.

(d) Except for the Assumed Liabilities, Buyer is not assuming nor shall it be liable or have any Liabilities with respect to any Employee Benefit Plan or any other compensation and/or benefits in connection with Sellers' employment of any Current Employee or Former Employees or their spouses, dependents and beneficiaries, and Buyer shall not be obligated to continue or

provide to any Transferred Employees any particular compensation or benefit or component thereof. Except for the Assumed Liabilities, Sellers shall remain liable for all liabilities and obligations and claims incurred under the Employee Benefit Plans, whether arising prior to, on or after the Closing Date. Sellers shall be exclusively responsible for all liabilities and obligations arising from Seller's employment or other service or termination of employment or other service of any Current Employee or Former Employer (including any severance and other similar costs) relating to their employment or other service with Sellers or their predecessors, and all such liabilities will constitute Excluded Liabilities under this Agreement.

Section 6.5 Recording of Intellectual Property Assignments. All of the Intellectual Property Assignments shall be recorded and filed by Buyer (at Buyer's sole cost and expense) with the appropriate Governmental Entities as promptly as practicable following the Closing.

Section 6.6 Transfer Taxes. To the extent not exempt under section 1146 of the Bankruptcy Code, Buyer shall pay any and all sales, use, stamp, documentary, registration, transfer (including real estate transfer tax), stock transfer, registration, gross receipts, duty, securities transactions, stamp, documentary, registration, transfer, added value or similar Tax (each, a "Transfer Tax") imposed under any applicable Law in connection with the transactions contemplated by this Agreement, regardless of the Person liable for such Transfer Taxes under applicable Law. Sellers and Buyer shall cooperate to prepare any Tax Returns required to be filed in connection with Transfer Taxes described in the immediately preceding sentence. The Party that is responsible under applicable law to file such Tax returns, shall timely file such returns.

Section 6.7 Release. Effective upon the Closing, Sellers, on behalf of themselves and their respective past, present and future subsidiaries, parents, divisions, Affiliates, agents, representatives, insurers, attorneys, successors and assigns (collectively, the "Seller Releasing Parties"), hereby release, remise, acquit and forever discharge (i) the Buyer and its past, present and future subsidiaries, parents, divisions, Affiliates, agents, representatives, insurers, attorneys, successors and assigns, and each of its and their respective directors, managers, officers, employees, , attorneys, contractors, subcontractors, independent contractors, owners and insurance companies (collectively, the "Buyer Released Parties"), from any and all claims, demands, causes of action, disputes, controversies, suits, cross-claims, torts, losses, attorneys' fees and expenses, obligations, agreements, covenants, damages, Liabilities, costs and expenses arising on or prior to the Closing Date, whether known or unknown, whether anticipated or unanticipated, whether claimed or suspected, whether fixed or contingent, whether yet accrued or not, whether damage has resulted or not, whether at law or in equity, whether arising out of agreement or imposed by statute, common law of any kind, nature, or description, including, without limitation as to any of the foregoing, any claim by way of indemnity or contribution, which any Seller Releasing Party has, may have had or may hereafter assert against any Buyer Released Party and (ii) any claim, right or interest of Sellers (whether known or unknown, whether anticipated or unanticipated, whether claimed or suspected, whether fixed or contingent, whether yet accrued or not, whether at law or in equity, whether arising out of agreement or imposed by statute, common law of any kind, nature, or description) in the Purchased Assets; provided, that notwithstanding the foregoing, Seller Releasing Parties do not in any event release Buyer from its obligations under this Agreement, including the Assumed Liabilities, or from acts or omissions constituting gross negligence or willful misconduct. In addition, if Sellers file a Chapter 11 plan, such plan shall be consistent with this Agreement in all respects and will include releases and exculpation provisions in favor of Buyer Released Parties to the maximum extent permitted by law.

Section 6.8 Collection of Accounts Receivable.

(a) As of the Closing Date, each Seller hereby (i) authorizes Buyer to open any and all mail addressed to any Seller relating to the Business or the Purchased Assets and delivered to the

offices of the Business or otherwise to Buyer if received on or after the Closing Date and (ii) appoints Buyer or its attorney-in-fact to endorse, cash and deposit any monies, checks or negotiable instruments received by Buyer after the Closing Date with respect to Accounts Receivable that are Purchased Assets or accounts receivable relating to work performed by Buyer after the Closing, as the case may be, made payable or endorsed to any Seller or Sellers' order, for Buyer's own account.

(b) As of the Closing Date, each Seller agrees that any monies, checks or negotiable instruments received by any Seller after the Closing Date with respect to Accounts Receivable that are Purchased Assets or accounts receivable relating to work performed by Buyer after the Closing, as the case may be, shall be held in trust by such Seller for Buyer's benefit and account, and promptly upon receipt by a Seller of any such payment (but in any event within one (1) Business Day of such receipt), such Seller shall pay over to Buyer or its designee the amount of such payments. In addition, Buyer agrees that, after the Closing, it shall hold and shall promptly transfer and deliver to Sellers, from time to time as and when received by Buyer or its Affiliates, any cash, checks with appropriate endorsements, or other property that Buyer or its Affiliates may receive on or after the Closing which properly belongs to Sellers hereunder, including any Excluded Assets.

(c) As of the Closing Date, Buyer shall have the sole authority to bill and collect Accounts Receivable that are Purchased Assets and accounts receivable relating to work performed by Buyer after the Closing.

Section 6.9 Data Privacy Protection. Buyer acknowledges that the Purchased Assets include PII within the meaning of section 363(b) of the Bankruptcy Code, along with associated personal information about the Sellers' customers. In connection with the same, Buyer agrees to: (i) employ appropriate security controls and procedures (technical, operational and managerial) to protect PII and personal information, (ii) abide by all applicable Laws and regulations with respect to PII and (iii) take such further actions with respect to PII as may be agreed between the Parties. Buyer agrees that it shall, absent a customer's express consent received after adequate notice: (a) abide by the Sellers' privacy policies and privacy-related covenants made in Sellers' terms of service that were in effect as of the Petition Date, (b) respect prior requests of customers to opt out of receipt of marketing messages (to the extent Sellers make Buyer aware of such requests; provided that Buyer shall seek to obtain such information from Sellers), and (c) use personal information only for the purposes of continuing Business operations and continuing to provide similar goods and services to customers, including marketing the products and services related to Purchased Assets. Buyer shall require express consent of a customer for any additional use of PII or personal information or before making material changes to the privacy policies that weaken a customer's consumer protection. Furthermore, to the extent PII includes any social security numbers, Buyer shall limit such use to tax reporting purposes, and shall purge such information from its databases when such information is no longer required for that purpose.

Section 6.10 Confidentiality.

(a) Buyer acknowledges that it has had access to and the use of Confidential Information concerning the Business and the Purchased Assets, and that the protection of such Confidential Information is necessary to protect and preserve the value of the Business and the Purchased Assets after the Closing. Until the Closing, Buyer shall not directly or indirectly, without the prior written consent of Sellers, disclose to any third party or use any Confidential Information involving or relating to the Business or the Purchased Assets, except as necessary to fulfill its obligations under this Agreement or the Related Agreements or as is required to be disclosed in the Bankruptcy Case.

(b) Sellers acknowledge that the success of the Business after the Closing depends upon the continued preservation of the Confidential Information possessed by Sellers and their Affiliates, that the preservation of the Confidential Information by Sellers and their Affiliates is an essential premise of the bargain between Sellers, on the one hand, and Buyer, on the other hand, and that Buyer would be unwilling to enter into this Agreement in the absence of this Section 6.10. Accordingly, from and after the Closing Date, Sellers shall not, and shall cause their Affiliates and their Affiliates' Representatives to not, at any time after Closing, directly or indirectly, without the prior written consent of Buyer, disclose to any third party or use any Confidential Information involving or relating to the Business or the Purchased Assets. For the purposes of this Section 6.10.

(c) Should any Party or any of its Affiliates or Representatives be required to disclose any such Confidential Information in response to an Order or as otherwise required by Law or administrative process, to the extent permitted by applicable Law, subpoena or other court process, such Party will inform the other Party in writing of such request or obligation as soon as possible after such Party is informed of it and, if possible, before any information is disclosed, so that a protective order or other appropriate remedy may be obtained by the Party wishing to protect such information.

(d) The provisions of this Section 6.10 shall expressly survive Closing.

ARTICLE VII CONDITIONS TO CLOSING

Section 7.1 Conditions to Buyer's Obligations. Subject to Section 7.3, Buyer's obligation to consummate the Contemplated Transactions in connection with the Closing is subject to satisfaction or waiver of the following conditions:

(a) as of the date hereof and as of the Closing (in each case, except for any representation or warranty that is expressly made as of a specified date, in which case as of such specified date), (i) each representation or warranty contained in Section 3.1, Section 3.2 and Section 3.10 shall be true and correct in all respects other than de minimis exceptions, and (ii) each other representation or warranty set forth in Article III shall be true and correct in all respects, except where the failure of such representations and warranties referred to in this clause (ii) to be true and correct, individually or in the aggregate with other such failures, has not had, and would not reasonably be expected to have, a Material Adverse Effect; provided, however, that for purposes of determining the accuracy of representations and warranties referred to in clause (ii) for purposes of this condition, all qualifications as to "materiality" and "Material Adverse Effect" contained in such representations and warranties shall be disregarded;

(b) Sellers shall have performed and complied with their covenants and agreements hereunder to the extent required to be performed prior to the Closing in all material respects, and Sellers shall have caused the documents and instruments required by Section 2.8(a) to be delivered to Buyer (or tendered subject only to Closing);

(c) no Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Decree that is in effect and that has the effect of making the Closing illegal or otherwise prohibiting the consummation of the Closing;

(d) (i) (A) the Bankruptcy Court shall have entered the Sale Procedures Order by the Sale Procedures Order Deadline and the Sale Order by the Sale Order Deadline, and (B) the Sale Procedures Order and the Sale Order shall each be a Final Order on the Closing Date; and (ii) the

Sale Procedures Orders and the Sale Order, as entered by the Bankruptcy Court, shall not modify the terms and conditions of this Agreement or the transactions contemplated hereby in such a manner as to result in a diminution in the benefits of this Agreement to the Buyer;

(e) the Bankruptcy Court shall not have entered any order (i) appointing a trustee or examiner with respect to the Chapter 11 Cases, (ii) converting the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code or (iii) dismissing the Chapter 11 Cases;

(f) from the date of this Agreement until the Closing Date, there shall not have occurred and be continuing any Material Adverse Effect;

(g) all Consents required under applicable Law, if any, for Buyer to take assignment at Closing of any Assignable Contracts, shall have been obtained;

(h) the Exchange Agreement shall be in full force and effect; and

(i) Sellers shall have delivered a certificate from an authorized officer of Sellers to the effect that each of the conditions specified in Section 7.1(a), Section 7.1(b) and Section 7.1(f) has been satisfied.

Section 7.2 Conditions to Sellers' Obligations. Subject to Section 7.3, Sellers' obligation to consummate the Contemplated Transactions in connection with the Closing are subject to satisfaction or waiver of the following conditions:

(a) as of the date hereof and as of the Closing (in each case, except for any representation or warranty that is expressly made as of a specified date, in which case as of such specified date), (i) each representation or warranty contained in Section 4.1, Section 4.2 or Section 4.3 shall be true and correct in all respects other than de minimis exceptions, and (ii) each other representation or warranty set forth in Article IV shall be true and correct in all material respects, except where the failure of such representations and warranties referred to in this clause (ii) to be true and correct, individually or in the aggregate with other such failures, would not reasonably be expected to materially prevent, restrict or delay the consummation of the Contemplated Transactions or by any Related Agreement; provided, however, that for purposes of determining the accuracy of representations and warranties referred to in clause (ii) for purposes of this condition, all qualifications as to "materiality" and "Material Adverse Effect" contained in such representations and warranties shall be disregarded;

(b) Buyer shall have performed and complied with its covenants and agreements hereunder to the extent required to be performed prior to the Closing in all material respects, and Buyer shall have caused the documents, instruments and payments required by Section 2.8(b) to be delivered to Sellers (or tendered subject only to Closing);

(c) no Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Decree that is in effect and that has the effect of making the Closing illegal or otherwise prohibiting the consummation of the Closing;

(d) the Sale Order shall have been entered by the Bankruptcy Court and shall not be subject to a stay pending appeal; and

(e) Buyer shall have delivered a certificate from an authorized officer of Buyer to the effect that each of the conditions specified in Section 7.2(a) and Section 7.2(b) has been satisfied.

Section 7.3 **No Frustration of Closing Conditions.** Neither Buyer nor Sellers may rely on the failure of any condition to its obligation to consummate the Contemplated Transactions set forth in Section 7.1 or Section 7.2, as the case may be, to be satisfied if such failure was caused by such Party's failure to use its commercially reasonable efforts with respect to those matters contemplated by the applicable Sections of this Agreement to satisfy the conditions to the consummation of the Contemplated Transactions or other breach of a representation, warranty or covenant hereunder.

Section 7.4 **Waiver of Conditions.** Upon the occurrence of the Closing, any condition set forth in this Article VII that was not satisfied as of the Closing will be deemed to have been waived for all purposes by the Party having the benefit of such condition as of and after the Closing.

ARTICLE VIII TERMINATION

Section 8.1 **Termination of Agreement.** This Agreement may be terminated in accordance with this Article VIII and the Contemplated Transactions abandoned at any time prior to the Closing:

(a) by the mutual written consent of Buyer, on the one hand, and Sellers, on the other hand;

(b) by written notice of either Buyer or Sellers, upon the issuance by any Governmental Entity of a Decree restraining, enjoining, or otherwise prohibiting the consummation of the Contemplated Transactions or declaring unlawful the transactions contemplated by this Agreement, and such Decree having become final, binding and non-appealable; provided that no termination may be made by a Party under this Section 8.1(b) if the issuance of such Decree was caused by the breach or action or inaction of such Party;

(c) by written notice of either Buyer or Sellers, if the Closing shall not have occurred on or before July 31, 2023 (the "Outside Date"); provided that a Party shall not be permitted to terminate this Agreement pursuant to this Section 8.1(c) if the failure of the Closing to have occurred by the Outside Date was caused by the breach or action or inaction of such Party;

(d) by written notice of either Buyer or Sellers, if the Chapter 11 Cases are dismissed or converted to a case or cases under Chapter 7 of the Bankruptcy Code, or if a trustee or examiner is appointed in the Chapter 11 Cases;

(e) by Buyer by giving written notice to Sellers at any time prior to Closing (i) in the event there has been a breach of or inaccuracy in any representation or warranty made by Sellers in this Agreement or if Sellers have breached any covenant contained in this Agreement in any respect, which breach, inaccuracy or failure to perform (A) gives rise to a failure of the conditions set forth in Sections 7.1(a) or 7.1(b) to be satisfied and (B) (y) is not capable of being cured by the Outside Date or (z) if capable of being cured by the Outside Date, is not cured by the earlier of the Outside Date and fifteen (15) days after delivery by Buyer of written notice to Sellers of such breach, or (ii) in the event that any condition set forth in Section 7.1 shall become incapable of being satisfied by the Outside Date, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants hereof to be performed or complied with by it prior to the Closing, and such condition is not waived by Buyer;

(f) by Sellers by giving written notice to Buyer at any time prior to Closing (i) in the event there has been a breach of or inaccuracy in any representation or warranty made by Buyer in this Agreement or if Buyer has breached any covenant contained in this Agreement in any respect,

which breach, inaccuracy or failure to perform (A) gives rise to a failure of the conditions set forth in Sections 7.2(a) or 7.2(b) to be satisfied and (B) (y) is not capable of being cured by the Outside Date or (z) if capable of being cured by the Outside Date, is not cured by the earlier of the Outside Date and fifteen (15) days after delivery by Sellers of written notice to Buyer of such breach, or (ii) in the event that any condition set forth in Section 7.2 shall become incapable of being satisfied by the Outside Date, unless such failure shall be due to the failure of Sellers to perform or comply with any of the covenants hereof to be performed or complied with by them prior to the Closing, and such condition is not waived by Sellers;

(g) by written notice from Sellers to Buyer, if all of the conditions set forth in Section 7.1 have been satisfied (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing) or waived and Buyer fails to complete the Closing at the time required by Section 2.7;

(h) automatically and without any action or notice by Sellers to Buyer, or Buyer to Sellers, immediately upon the consummation of an Alternate Transaction approved by the Bankruptcy Court; or

(i) by written notice from Buyer to Sellers if: (i) the Bankruptcy Court does not enter the Sale Procedure Order by the Sale Procedures Order Deadline; (ii) the Bankruptcy Court does not enter the Sale Order by the Sale Order Deadline; or (iii) following entry of the Sale Order or the Sale Procedures Order, either the Sale Order or the Sale Procedures Order is stayed, reversed, modified, vacated or amended in any material respect without the prior written consent of Buyer (such consent not to be unreasonably withheld), and such stay, reversal, modification, vacation or amendment is not eliminated within fourteen (14) days of any such stay, reversal, modification, vacation or amendment;

(j) by written notice from Buyer to Sellers if the DIP Agreement matures or is in default (unless otherwise extended or waived by the DIP Lender);

(k) by written notice from Buyer to Sellers if the Bankruptcy Court approves a disclosure statement with respect to a Chapter 11 plan filed by any party other than Sellers; or

(l) by written notice from Buyer to Sellers if Seller files a Chapter 11 plan without the consent of Buyer.

Notwithstanding anything to the contrary contained herein, in no event may Buyer terminate this Agreement under Section 8.1(e) on account of Buyer's failure to satisfy the conditions contained in sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code with respect to any proposed Assumed Contract.

Section 8.2 Procedure upon Termination. In the event of termination and abandonment by Buyer, on the one hand, or Sellers, on the other hand, or both, pursuant to Section 8.1, written notice thereof shall forthwith be given to the other Party or Parties, and this Agreement shall terminate and the Contemplated Transactions shall be abandoned, without further action by Buyer or Sellers. If this Agreement is terminated pursuant to any of Sections 8.1(a)-(e) or Sections 8.1(h)-(l) (regardless of simultaneous occurrence of any other condition set forth in Section 8.1), the Deposit will be returned to Buyer pursuant to procedures in Section 2.10.

Section 8.3 Breakup Fee and Expense Reimbursement. If this Agreement is terminated pursuant to Section 8.1(h), in addition to the return of Deposit pursuant to Section 2.10, Sellers shall immediately pay Buyer from the proceeds of the Alternate Transaction an expense reimbursement of actual,

necessary and documented out of pocket expenses associated with diligence of the Sellers in connection with Buyer becoming the stalking horse bidder and negotiations and documentation of this Agreement and pleadings and papers related thereto (the “Expense Reimbursement”) and, a breakup fee equal to three percent (3.0%) of the Purchase Price (the “Breakup Fee”); provided that the combined Expense Reimbursement and Breakup Fee shall not exceed five percent (5.0%) of the Purchase Price. Sellers’ obligation to pay the Breakup Fee and Expense Reimbursement pursuant to this Section 8.3 shall be subject to Bankruptcy Court approval and shall survive termination of this Agreement and shall constitute an administrative expense of Sellers to be paid solely out of proceeds of an Alternate Transaction; provided, however, that if Blue Torch submits a Qualified Bid to purchase substantially all of the Purchased Assets through a credit bid of its Secured Debt and any amounts owing under the DIP Agreement, then Sellers shall cause Blue Torch to deposit cash equal to the Breakup Fee and Expense Reimbursement in escrow for the benefit of Buyer in the event such Qualified Bid shall be determined by Sellers and the Bankruptcy Court to be winning bidder to acquire the Purchased Assets, and such escrowed Breakup Fee and Expense Reimbursement shall be paid by Sellers to Buyer via wire transfer of immediately available funds to an account designated by Buyer within one (1) Business Day of the closing of such transaction with Blue Torch. If Buyer is entitled to receipt of the Breakup Fee and Expense Reimbursement pursuant to this Section 8.3, the receipt of the Breakup Fee and Expense Reimbursement shall (i) be paid by wire transfer of immediately available funds to an account designated by Buyer within one (1) Business Day of any such termination and (ii) be the liquidated damages of Buyer and Buyer’s sole and exclusive remedy for the breach by Sellers of this Agreement.

Section 8.4 Effect of Termination.

(a) Except as otherwise expressly set forth in this Agreement, nothing herein shall relieve any Party from Liability for any breach of covenant occurring prior to any termination of this Agreement.

(b) No termination of this Agreement pursuant to Section 8.1 shall be effective until written notice thereof is given to the non-terminating Party specifying the provision hereof pursuant to which such termination is made. If the transactions contemplated hereby are not consummated this Agreement shall become null and void and of no further force and effect (except that Article I (Definitions), Section 2.10 (Earnest Money Deposit), Section 6.10 (Confidentiality), Article IX (Miscellaneous), and this Article VIII (Termination) shall survive any such termination).

(c) Nothing herein shall preclude either of the Parties from exercising their remedies under Section 9.1.

**ARTICLE IX
MISCELLANEOUS**

Section 9.1 Remedies. (i) Each Party recognizes that if such Party breaches or refuses to perform any covenant hereunder, monetary damages alone would not be adequate to compensate the non-breaching Party or Parties for their injuries, (ii) the non-breaching Party or Parties shall therefore be entitled, in addition to any other remedies that may be available, to obtain specific performance of, or to enjoin the violation of, the terms of such covenants, (iii) if any action, claim or proceeding is brought by the non-breaching Party to enforce such covenants, the Party in breach shall waive the defense that there is an adequate remedy at law, (iv) each Party agrees to waive any requirement for the security or posting of any bond in connection with any action, claim or proceeding seeking specific performance of, or to enjoin the violation of, such covenants, and (v) each Party agrees that the only permitted objection that it may raise in response to any action for specific performance of such covenants is that it contests the existence of a breach or threatened breach of such covenants.

Section 9.2 Expenses. Except as otherwise provided in this Agreement or a Related Agreement, Sellers and Buyer shall bear their own expenses, including attorneys' fees, incurred in connection with the negotiation and execution of this Agreement, the Related Agreements and each other agreement, document and instrument contemplated by this Agreement and the consummation of the Contemplated Transactions. Notwithstanding the foregoing, in the event of any action or proceeding to interpret or enforce this Agreement, the prevailing Party in such action or proceeding (i.e., the Party who, in light of the issues contested or determined in the action or proceeding, was more successful) shall be entitled to have and recover from the non-prevailing Party such costs and expenses (including, but not limited to, all court costs and reasonable attorneys' fees) as the prevailing Party may incur in the pursuit or defense thereof.

Section 9.3 Entire Agreement. This Agreement and the Related Agreements constitute the entire agreement among the Parties and supersede any prior understandings, agreements or representations (whether written or oral) by or among the Parties, written or oral, with respect to the subject matter hereof.

Section 9.4 Incorporation of Schedules, Exhibits and Disclosure Schedule. The schedules, appendices and exhibits to this Agreement, and the documents and other information made available in the Disclosure Schedule are incorporated herein by reference and made a part hereof.

Section 9.5 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each Party except as expressly provided herein. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend or modify any provision of this Agreement. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent default, misrepresentation or breach of warranty or covenant. No conditions, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this Agreement shall be binding unless this Agreement is amended or modified in writing pursuant to the first sentence of this Section 9.5 except as expressly provided herein. Except where a specific period for action or inaction is provided herein, no delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

Section 9.6 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. None of the Parties may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of all Parties; provided, however, that Buyer shall be permitted to assign any of its rights hereunder to one or more of its Affiliates, as designated by Buyer in writing to Sellers; provided, however, Buyer shall remain jointly and severally liable with such Affiliates for all of its obligations under this Agreement after any such assignment; provided, further, that Sellers shall be permitted to assign any of their rights hereunder pursuant to a confirmed Chapter 11 plan or pursuant to an order of the Bankruptcy Court.

Section 9.7 Notices. All notices, requests, demands, claims and other communications hereunder shall be in writing except as expressly provided herein. Any notice, request, demand, claim or other communication hereunder shall be deemed duly given (i) when delivered personally to the recipient; (ii) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid); (iii) when sent by email (with written confirmation of transmission); or (iv) three (3) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to any Sellers, then to:

Plastiq Inc.
360 9th Street,
San Francisco, CA 94103
Attn: Vladimir Kasparov, Chief Restructuring Officer
Email: vkasparov@pppllc.com

with a copy to:

Young Conaway Stargatt & Taylor, LLP
Rodney Square, 1000 North King Street
Wilmington, DE 19801
Attention: Craig Gear and Matthew Lunn
Email: cggear@ycst.com; mlunn@ycst.com

If to Buyer, then to:

Plastiq, Powered By Priority, LLC
2001 Westside Parkway, Suite 155
Alpharetta, GA 30004
Attention: Brad Miller, General Counsel
Email: brad.miller@prth.com

with copies (which shall not constitute notice) to:

Troutman Pepper Hamilton Sanders, LLP
600 Peachtree Street NE, Suite 3000
Atlanta, GA 30308
Attention: Matthew R. Brooks
Email: matthew.brooks@troutman.com
Attention: James W. Stevens
Email: james.stevens@troutman.com

Any Party may change the mailing address or email address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Party notice in the manner set forth in this [Section 9.7](#).

Section 9.8 Governing Law; Jurisdiction. This Agreement shall in all aspects be governed by and construed in accordance with the internal Laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware, and the obligations, rights and remedies of the Parties shall be determined in accordance with such Laws. The Parties agree that any Litigation one Party commences against any other Party pursuant to this Agreement shall be brought exclusively in the Bankruptcy Court and each of the Parties hereby irrevocably consents to the jurisdiction of the Bankruptcy Court (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in the Bankruptcy Court or that any such suit, action or proceeding which is brought in the Bankruptcy Court has been brought in an inconvenient forum; provided that if the Bankruptcy Court is unwilling or unable to hear any such Litigation, then the courts of the State of Delaware, sitting in New Castle County, Delaware, and

the federal courts of the United States of America sitting in New Castle County, Delaware, shall have exclusive jurisdiction over such Litigation.

Section 9.9 Consent to Service of Process. Each of the Parties hereby consents to process being served by any Party, respectively, in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 9.9.

Section 9.10 WAIVERS OF JURY TRIAL. EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE RELATED AGREEMENTS OR THE CONTEMPLATED TRANSACTIONS OR THEREBY.

Section 9.11 Severability. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability in any one jurisdiction affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

Section 9.12 No Third Party Beneficiaries. Except with respect to Buyer Releasees pursuant to Section 2.10, this Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

Section 9.13 No Survival of Representations, Warranties and Agreements. Each of the representations and warranties and the covenants and agreements (to the extent such covenant or agreement contemplates or requires performance by such party prior to the Closing) of the Parties set forth in this Agreement or in any other document contemplated hereby, or in any certificate delivered hereunder or thereunder, will terminate effective immediately as of the Closing such that no claim for breach of any such representation, warranty, covenant or agreement, detrimental reliance or other right or remedy (whether in contract, in tort or at law or in equity) may be brought with respect thereto after the Closing. Each covenant and agreement that explicitly contemplates performance after the Closing, will, in each case and to such extent, expressly survive the Closing in accordance with its terms, and if no term is specified, then until the close or dismissal of the Chapter 11 Cases, and nothing in this Section 9.13 will be deemed to limit any rights or remedies of any Person for breach of any such surviving covenant or agreement. Buyer and Sellers acknowledge and agree, on their own behalf and, with respect to Buyer, Buyer Group, that the agreements contained in this Section 9.13 (a) require performance after the Closing to the maximum extent permitted by applicable Law and will survive the Closing until the close or dismissal of the Chapter 11 Cases; and (b) are an integral part of the transactions contemplated hereby and that, without the agreements set forth in this Section 9.13, none of the Parties would enter into this Agreement.

Section 9.14 Non-Recourse. This Agreement may only be enforced against, and any Litigation based upon, arising out of or related to this Agreement may only be brought against, the Persons that are expressly named as parties to this Agreement. Except to the extent named as a party to this Agreement, and then only to the extent of the specific obligations of such parties set forth in this Agreement, no past, present or future shareholder, member, partner, manager, director, officer, employee, Affiliate, agent or representative of any party to this Agreement will have any Liability (whether in contract, tort, equity or otherwise) for any of the representations, warranties, covenants, agreements or other obligations or

Liabilities of any of the parties to this Agreement or for any Litigation based upon, arising out of or related to this Agreement.

Section 9.15 No Right of Set-Off. Buyer, on its own behalf and on behalf of Buyer Group and its and their respective successors and permitted assigns, hereby waives any rights of set-off, netting, offset, recoupment, or similar rights that Buyer, any member of Buyer Group or any of its or their respective successors and permitted assigns has or may have with respect to the payment of the Purchase Price or any other payments to be made by Buyer pursuant to this Agreement or any other document or instrument delivered by Buyer in connection herewith.

Section 9.16 Construction. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of names and pronouns shall include the plural and vice versa. The word “including” and “include” and other words of similar import shall be deemed to be followed by the phrase “without limitation.” The words “herein,” “hereto” and “hereby,” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision of this Agreement. Unless expressly stated in connection therewith or the context otherwise requires, the phrase “relating to the Business” and other words of similar import shall be deemed to mean “relating to the operation of the Business as conducted as of the date hereof.” Except as otherwise provided herein, references to Articles, Sections, clauses, subclauses, subparagraphs, Schedules, Exhibits, Appendices and the Disclosure Schedule herein are references to Articles, Sections, clauses, subclauses, subparagraphs, Schedules, Appendices, Exhibits and the Disclosure Schedule of this Agreement. Any reference herein to any Law (or any provision thereof) shall include such Law (or any provision thereof) and any rule or regulation promulgated thereunder, in each case, including any successor thereto, and as it may be amended, modified or supplemented from time to time. Any reference herein to “dollars” or “\$” means United States dollars.

Section 9.17 Computation of Time. In computing any period of time prescribed by or allowed with respect to any provision of this Agreement that relates to Sellers or the Chapter 11 Cases, the provisions of rule 9006(a) of the Federal Rules of Bankruptcy Procedure shall apply.

Section 9.18 Mutual Drafting. Each of the Parties has participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Section 9.19 Disclosure Schedule. The Disclosure Schedule has been arranged for purposes of convenience in separately numbered Sections corresponding to the Sections of this Agreement and each Section of the Disclosure Schedule will be deemed to be an exception to (or, as applicable, a disclosure for purposes of) (a) the representations and warranties (or covenants, as applicable) of the Sellers that are set forth in the corresponding section or subsection of this Agreement; and (b) other representations and warranties of Seller that are set forth in the Agreement only to the extent that it is reasonably apparent on the face of such disclosure that it is an exception to (or, as applicable, a disclosure for purposes of) such representation or warranty. Capitalized terms used in the Disclosure Schedule and not otherwise defined therein have the meaning given to them in this Agreement. The specification of any dollar amount or the inclusion of any item in the representations and warranties contained in this Agreement, the Disclosure Schedule or the attached exhibits is not intended to imply that the amounts, or higher or lower amounts, or the items so included, or other items, are or are not required to be disclosed (including whether such amounts or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary

Course of Business or consistent with past practice, and no party will use the fact of the setting of the amounts or the fact of the inclusion of any item in this Agreement, the Disclosure Schedule or exhibits in any dispute or controversy between the Parties as to whether any obligation, item or matter not set forth or included in this Agreement, the Disclosure Schedule or exhibits is or is not required to be disclosed (including whether the amount or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary Course of Business. In addition, matters reflected in the Disclosure Schedule are not necessarily limited to matters required by this Agreement to be reflected in the Disclosure Schedule. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. No information set forth in the Disclosure Schedule will be deemed to broaden in any way the scope of the parties' representations and warranties. Any description of any agreement, document, instrument, plan, arrangement or other item set forth on any Disclosure Schedule is a summary only and is qualified in its entirety by the terms of such agreement, document, instrument, plan, arrangement, or item which terms will be deemed disclosed for all purposes of this Agreement. The information contained in this Agreement, in the Disclosure Schedule and exhibits hereto is disclosed solely for purposes of this Agreement, and no information contained herein or therein will be deemed to be an admission by any Party to any third party of any matter whatsoever, including any violation of Law or breach of contract.

Section 9.20 Headings; Table of Contents. The Section headings and the table of contents contained in this Agreement and the Disclosure Schedule are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 9.21 Counterparts; Facsimile and Email Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile or email with scan attachment copies, each of which shall be deemed an original.

Section 9.22 Time of Essence. Time is of the essence of this Agreement.

Section 9.23 "AS-IS" TRANSACTION. THE BUYER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN (INCLUDING IN ARTICLE III HEREOF, BUT AS OTHERWISE LIMITED HEREBY), THE SELLERS MAKE NO (AND THE SELLERS EXPRESSLY DISCLAIM AND NEGATE ANY) REPRESENTATIONS OR WARRANTIES OF ANY KIND, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, WITH RESPECT TO THE BUSINESS, THE OPERATION OR CONTINUED OPERATION OF THE BUSINESS, THE PURCHASED ASSETS OR ANY OTHER MATTER WHATSOEVER, INCLUDING INCOME TO BE DERIVED OR EXPENSES TO BE INCURRED IN CONNECTION WITH THE BUSINESS OR THE PURCHASED ASSETS, THE PHYSICAL CONDITION OF ANY PART OF THE PURCHASED ASSETS, THE ENVIRONMENTAL CONDITION OR OTHER MATTER RELATING TO THE PHYSICAL CONDITION OF ANY LEASED REAL PROPERTY, THE ZONING OF ANY SUCH LEASED REAL PROPERTY, THE VALUE OF THE BUSINESS OR THE PURCHASED ASSETS (OR ANY PORTION THEREOF), THE TRANSFERABILITY OF THE PURCHASED ASSETS, THE TERMS, AMOUNT, VALIDITY OR ENFORCEABILITY OF ANY ASSUMED LIABILITIES, THE FUTURE RELATIONSHIP OR STABILITY OF THE CUSTOMERS OR VENDORS OF THE BUSINESS OR OF THE TRANSFERRED EMPLOYEES, THE TITLE OF THE PURCHASED ASSETS (OR ANY PORTION THEREOF), THE MERCHANTABILITY OR FITNESS OF THE PURCHASED ASSETS FOR ANY PARTICULAR PURPOSE, OR ANY OTHER MATTER OR THING RELATING TO THE PURCHASED ASSETS OR THE BUSINESS OR ANY PORTION THEREOF. WITHOUT IN ANY WAY LIMITING THE FOREGOING, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN (INCLUDING IN ARTICLE III HEREOF, BUT AS OTHERWISE

LIMITED HEREBY), THE SELLERS HEREBY DISCLAIM ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE PURCHASED ASSETS. THE BUYER FURTHER ACKNOWLEDGES THAT EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH HEREIN (INCLUDING IN ARTICLE III HEREOF, BUT AS OTHERWISE LIMITED HEREBY), SUBJECT TO THE BUYER'S RIGHTS UNDER THIS AGREEMENT, THE BUYER WILL ACCEPT THE PURCHASED ASSETS AT THE CLOSING "AS IS," "WHERE IS," AND "WITH ALL FAULTS" AND WITHOUT RECOURSE AGAINST THE SELLERS.

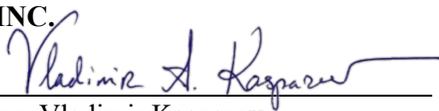
[SIGNATURE PAGES FOLLOW]

**SIGNATURE PAGE TO
ASSET PURCHASE AGREEMENT**

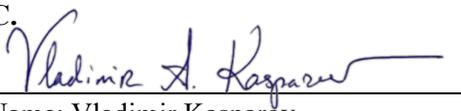
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

SELLERS:

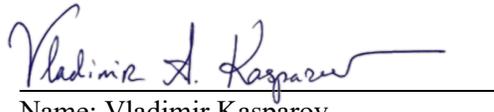
PLASTIQ INC.

By 
Name: Vladimir Kasparov
Title: Chief Restructuring Officer

PLV INC.

By 
Name: Vladimir Kasparov
Title: Chief Restructuring Officer

NEARSIDE BUSINESS CORP.

By 
Name: Vladimir Kasparov
Title: Chief Restructuring Officer

BUYER:

PLASTIQ, POWERED BY PRIORITY, LLC

By _____
Name:
Title:

**SIGNATURE PAGE TO
ASSET PURCHASE AGREEMENT**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

SELLERS:

PLASTIQ INC.

By _____
Name:
Title:

PLV INC.

By _____
Name:
Title:

NEARSIDE BUSINESS CORP.

By _____
Name:
Title:

BUYER:

PLASTIQ, POWERED BY PRIORITY, LLC

By Thomas C. Priore
Name: Thomas Priore
Title: Chief Executive Officer & President

EXHIBIT A

Exchange Agreement Terms

Upon the Closing, Buyer will issue Blue Torch preferred equity in Buyer in exchange for Blue Torch's release of any and all Liens, Claims and encumbrances on the Purchased Assets whether under the Secured Debt, the DIP Agreement or otherwise, to equal an amount of consideration calculated as follows:

The sum of (i) "Obligations" secured by "Collateral" (each as defined under the Financing Agreement) (which amount is estimated to be \$43.3 million as of May 22, 2023 and which shall not be increased by any interest that accrues following the filing of the Chapter 11 Cases, or otherwise), *less* (ii) the Cash Payment (solely to the extent paid to Blue Torch), *plus* (iii) the "DIP Obligations" (as defined in the Final DIP Order) not to exceed \$7.38 million.

EXHIBIT B

Letter Agreement Terms

Upon the Closing, Buyer will (i) issue to Colonnade 5% common equity in Buyer and (ii) pay Colonnade as and when provided in the Letter Agreement \$2 million in exchange for Colonnade's release of any and all liens, claims, encumbrances, demands, or causes of action of any kind and of every nature whatsoever against the Purchased Assets and the Sellers, including their affiliates, subsidiaries, officers, directors, shareholders, agents, attorneys, advisors, and employees, arising from or related to the Agreement and Plan of Merger, by and between Colonnade and PlastiQ, dated as of August 3, 2022, collectively estimated at approximately \$69.7 million (including approximately \$57.5 million in damages and \$12.185 million in out-of-pocket expenditures).

As between the parties to the Letter Agreement, the Letter Agreement not this Agreement shall control.

EXHIBIT C

FORM OF BILL OF SALE

This Bill of Sale, dated as of [_____], 2023 (this “Bill of Sale”), is made and entered into by and among **PLASTIQ INC., PLV INC. AND NEARSIDE BUSINESS CORP.**, (“Sellers”) and **PLASTIQ, POWERED BY PRIORITY, LLC**, a Delaware limited liability company (together with its permitted successors, designees and assigns, “Buyer”). Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Asset Purchase Agreement, dated as of May 23, 2023 (the “Asset Purchase Agreement”), by and among Buyer and Sellers.

WHEREAS, pursuant to sections 105, 363 and 365 of the Bankruptcy Code and the Asset Purchase Agreement, Sellers have, among other things, agreed to sell, transfer, assign, convey and deliver to Buyer and Buyer has agreed to purchase, acquire and accept from Sellers, upon the terms and conditions set forth in the Asset Purchase Agreement, all of the right, title and interest of Sellers in and to the Purchased Assets, free and clear of all Liens (other than Permitted Liens); and

WHEREAS, Sellers desire to deliver to Buyer such instruments of sale, transfer assignment, conveyance and delivery as are required to vest in Buyer all of Sellers’ right, title and interest in and to the Purchased Assets;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the Asset Purchase Agreement, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Each Seller hereby sells, transfers, assigns, conveys and delivers to Buyer all of its right, title and interest in and to the Purchased Assets, free and clear of all Liens (other than Permitted Liens).
2. From time to time after the Closing Date, each party shall, upon the reasonable request of the other, execute and deliver or cause to be executed and delivered such further instruments of sale, conveyance, assignment, transfer and assumption, and take such further action, as may reasonably be requested in order to more effectively carry out the purposes and intent of the Asset Purchase Agreement and this Bill of Sale.
3. This Bill of Sale is being executed by Sellers and Buyer and shall be binding upon each of Sellers and Buyer, their respective successors and assigns, for the respective uses and purposes herein set forth and referred to, and shall be effective as of the date hereof.
4. No provision of this Bill of Sale, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the parties hereto and their respective successors and permitted assigns, any remedy or claim under or by reason of this Bill of Sale or any term, covenant or condition hereof, and all of the terms, covenants, conditions, promises and agreements contained in this Bill of Sale shall be for the sole and exclusive benefit of each of Sellers and Buyer, their respective successors and permitted assigns.
5. None of the provisions of this Bill of Sale may be amended or waived except if such amendment or waiver is in writing and is signed, in the case of an amendment, by Sellers and Buyer, or in the case of a waiver, by the party(ies) against whom the waiver is to be effective.

6. This Bill of Sale is subject in all respects to the terms and conditions of the Asset Purchase Agreement. Nothing contained in this Bill of Sale shall be deemed to supersede, enlarge or modify any of the representations, warranties, covenants or other agreements contained in the Asset Purchase Agreement, all of which survive the execution and delivery of this Bill of Sale as provided by, and subject to the limitations set forth in, the Asset Purchase Agreement. To the extent any provision of this Bill of Sale is inconsistent with the Asset Purchase Agreement, the provisions of the Asset Purchase Agreement shall govern and control.

7. EXCEPT AS AND TO THE EXTENT PROVIDED IN THE ASSET PURCHASE AGREEMENT, SELLERS EXPRESSLY AND SPECIFICALLY DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHETHER ORAL OR WRITTEN, AND WHETHER GIVEN OR MADE OR DEEMED TO HAVE BEEN GIVEN OR MADE AT ANY TIME OR TIMES IN THE PAST, PRESENT OR FUTURE, OF, AS TO, OR CONCERNING THE NATURE OR CONDITION OF THE PURCHASED ASSETS, INCLUDING WITHOUT LIMITATION ANY AND ALL WARRANTIES AS TO THE MERCHANTABILITY OF THE PURCHASED ASSETS OR THE SUITABILITY OR FITNESS OF THE PURCHASED ASSETS FOR ANY PARTICULAR PURPOSE OR FOR ANY PURPOSE.

8. This Bill of Sale shall in all aspects be governed by and construed in accordance with the internal Laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware, and the obligations, rights and remedies of the parties shall be determined in accordance with such Laws.

9. This Bill of Sale may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Bill of Sale or any counterpart may be executed and delivered by facsimile or email with scan attachment copies, each of which shall be deemed an original.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Bill of Sale to be duly executed by their respective authorized officers as of the date first above written.

SELLERS:

PLASTIQ INC.

By _____
Name:
Title:

PLV INC.

By _____
Name:
Title:

NEARSIDE BUSINESS CORP.

By _____
Name:
Title:

BUYER:

PLASTIQ, POWERED BY PRIORITY, LLC

By _____
Name:
Title:

EXHIBIT D

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement, dated as of [____], 2023 (this “Agreement”), is made and entered into by and among **PLASTIQ INC., PLV INC. AND NEARSIDE BUSINESS CORP.**, (“Sellers”) and **PLASTIQ, POWERED BY PRIORITY, LLC**, a Delaware limited liability company (together with its permitted successors, designees and assigns, “Buyer”). Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Asset Purchase Agreement, dated as of May 23, 2023 (the “Asset Purchase Agreement”), by and among Buyer and Sellers.

WHEREAS, pursuant to sections 105, 363 and 365 of the Bankruptcy Code and the Asset Purchase Agreement, Sellers have, among other things, agreed to sell, transfer, assign, convey and deliver to Buyer and Buyer has agreed to purchase, acquire and accept from Sellers, upon the terms and conditions set forth in the Asset Purchase Agreement, all of the right, title and interest of Sellers in and to the Purchased Assets including, without limitation, the Assumed Contracts, free and clear of all Liens (other than Permitted Liens); and

WHEREAS, pursuant to Section 2.3 of the Asset Purchase Agreement, Buyer has agreed to assume, effective as of the Closing, the Assumed Liabilities.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the Asset Purchase Agreement, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Sellers hereby assign and delegate the Assumed Contracts and the Assumed Liabilities to Buyer and Buyer hereby accepts assignment and delegation of and assumes the Assumed Contracts and the Assumed Liabilities as set forth in the Asset Purchase Agreement. Buyer assumes none of the Excluded Liabilities and the parties agree that all such Excluded Liabilities remain the responsibility of Sellers.

2. From time to time after the Closing Date, each party shall, upon the reasonable request of the other, execute and deliver or cause to be executed and delivered such further instruments of sale, conveyance, assignment, transfer and assumption, and take such further action, as may reasonably be requested in order to more effectively carry out the purposes and intent of the Asset Purchase Agreement and this Agreement.

3. This Agreement is being executed by Sellers and Buyer and shall be binding upon each of Sellers and Buyer, their respective successors and assigns, for the respective uses and purposes herein set forth and referred to, and shall be effective as of the date hereof.

4. No provision of this Agreement, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the parties hereto and their respective successors and permitted assigns, any remedy or claim under or by reason of this Agreement or any term, covenant or condition hereof, and all of the terms, covenants, conditions, promises and agreements contained in this Agreement shall be for the sole and exclusive benefit of each of Sellers and Buyer, their respective successors and permitted assigns.

5. None of the provisions of this Agreement may be amended or waived except if such amendment or waiver is in writing and is signed, in the case of an amendment, by Sellers and Buyer, or in the case of a waiver, by the party(ies) against whom the waiver is to be effective.

6. This Agreement is subject in all respects to the terms and conditions of the Asset Purchase Agreement. Nothing contained in this Agreement shall be deemed to supersede, enlarge or modify any of the representations, warranties, covenants or other agreements contained in the Asset Purchase Agreement, all of which survive the execution and delivery of this Agreement as provided and subject to the limitations set forth in the Asset Purchase Agreement. To the extent any provision of this Agreement is inconsistent with the Asset Purchase Agreement, the provisions of the Asset Purchase Agreement shall govern and control.

7. This Agreement shall in all aspects be governed by and construed in accordance with the internal Laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware, and the obligations, rights and remedies of the parties shall be determined in accordance with such Laws.

8. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile or email with scan attachment copies, each of which shall be deemed an original.

[Signature page follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

SELLERS:

PLASTIQ INC.

By _____
Name:
Title:

PLV INC.

By _____
Name:
Title:

NEARSIDE BUSINESS CORP.

By _____
Name:
Title:

BUYER:

PLASTIQ, POWERED BY PRIORITY, LLC

By _____
Name:
Title:

EXHIBIT E

FORM OF TRADEMARK ASSIGNMENT AGREEMENT

This Trademark Assignment Agreement (“Assignment”), dated as of [____], 2023, is made and entered into by and among **PLASTIQ INC., PLV INC. AND NEARSIDE BUSINESS CORP.**, (“Sellers”) and **PLASTIQ, POWERED BY PRIORITY, LLC**, a Delaware limited liability company (together with its permitted successors, designees and assigns, “Buyer”). Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Asset Purchase Agreement, dated as of May 23, 2023 (the “Asset Purchase Agreement”), by and among Buyer and Sellers.

WHEREAS, pursuant to sections 105, 363 and 365 of the Bankruptcy Code and the Asset Purchase Agreement, Sellers have, among other things, agreed to sell, transfer, assign, convey and deliver to Buyer and Buyer has agreed to purchase, acquire and accept from Sellers, upon the terms and conditions set forth in the Asset Purchase Agreement, all of the right, title and interest of Sellers in and to the Purchased Assets including, without limitation, Sellers’ rights and benefits with respect to all trademarks and trademark applications owned by Sellers, each of which are set forth on Exhibit A attached hereto (collectively, the “Marks”), free and clear of all Liens (other than Permitted Liens); and

WHEREAS, Sellers desire to deliver to Buyer such instruments of sale, transfer, assignment, conveyance and delivery as are required to vest in Buyer all of Sellers’ right, title and interest in and to the Purchased Assets, including the Marks.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the Asset Purchase Agreement, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Each Seller hereby sells, transfers, assigns, conveys and delivers to Buyer all of its right, title and interest in and to the Marks, including: (i) the goodwill of the business symbolized by the Marks, (ii) all domestic and foreign registrations therefor, (iii) all renewals and extensions of any such application, registration and filing, (iv) all income, royalties, damages, claims and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages, claims and payments for past and future infringements, misappropriations or violations thereof; (v) all rights to sue for past, present and future infringements, misappropriations or violations of the foregoing, including the right to settle suits involving claims and demands for royalties owing, (vi) all rights corresponding to any of the foregoing throughout the world, (vii) the benefit of all waivers of moral rights secured by Sellers; and (viii) the right to assign the rights conveyed herein, the same to be held and enjoyed by Buyer for its own use and benefit, and for the benefit of its successors, assigns and legal representatives, free and clear of all Liens (other than Permitted Liens). Seller hereby instructs, authorizes and directs the United States Patent and Trademark Office, and the corresponding entity or agency in any applicable foreign country, to record Buyer as assignee and owner of the Marks.

2. From time to time after the Closing Date, each party shall, upon the reasonable request of the other, execute and deliver or cause to be executed and delivered such further instruments of sale, conveyance, assignment, transfer and assumption, and take such further action, as may reasonably be requested in order to more effectively carry out the purposes and intent of the Asset Purchase Agreement and this Assignment.

3. This Assignment is being executed by Sellers and Buyer and shall be binding upon each of Sellers and Buyer, their respective successors and assigns, for the respective uses and purposes herein set forth and referred to, and shall be effective as of the date hereof.

4. No provision of this Assignment, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the parties hereto and their respective successors and permitted assigns, any remedy or claim under or by reason of this Assignment or any term, covenant or condition hereof, and all of the terms, covenants, conditions, promises and agreements contained in this Assignment shall be for the sole and exclusive benefit of each of Sellers and Buyer, their respective successors and permitted assigns.

5. None of the provisions of this Assignment may be amended or waived except if such amendment or waiver is in writing and is signed, in the case of an amendment, by Sellers and Buyer, or in the case of a waiver, by the party(ies) against whom the waiver is to be effective.

6. This Assignment is subject in all respects to the terms and conditions of the Asset Purchase Agreement. Nothing contained in this Assignment shall be deemed to supersede, enlarge or modify any of the representations, warranties, covenants or other agreements contained in the Asset Purchase Agreement, all of which survive the execution and delivery of this Assignment as provided by, and subject to the limitations set forth in, the Asset Purchase Agreement. To the extent any provision of this Assignment is inconsistent with the Asset Purchase Agreement, the provisions of the Asset Purchase Agreement shall govern and control.

7. This Assignment shall in all aspects be governed by and construed in accordance with the internal Laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware, and the obligations, rights and remedies of the parties shall be determined in accordance with such Laws.

8. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Assignment or any counterpart may be executed and delivered by facsimile or email with scan attachment copies, each of which shall be deemed an original.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Assignment to be duly executed by their respective authorized officers as of the date first above written.

SELLERS:

PLASTIQ INC.

By _____
Name:
Title:

PLV INC.

By _____
Name:
Title:

NEARSIDE BUSINESS CORP.

By _____
Name:
Title:

BUYER:

PLASTIQ, POWERED BY PRIORITY, LLC

By _____
Name:
Title:

Exhibit A to Trademark Assignment Agreement

MARKS

EXHIBIT F

Form of Sale Procedures Order

Intentionally Omitted.

EXHIBIT G

Form of Sale Order

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

In re:)	
	)	Chapter 11
PLASTIQ INC., <i>et al.</i> , ¹)	
	)	Case No. 23-_____ (___)
Debtors.)	
	)	(Jointly Administered)
)	
	)	Ref. Docket No. __

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

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (each, a “**Debtor**” and collectively, the “**Debtors**”), for the entry of an order (i) approving bidding procedures (the “**Bidding Procedures**”), substantially in the form attached as Annex 1 to the Bidding Procedures Order (as defined below), to govern the marketing and sale of all or substantially all of the Debtors’ assets (the “**Assets**”), and approving bid protections in connection therewith; (ii) authorizing the Debtors to schedule an auction to sell the Assets (the “**Auction**”) and scheduling the hearing to approve a sale of the Assets; (iii) approving the form and manner of notice of the proposed sale transactions, the Bidding Procedures, the Auction, the Sale Hearing, and related dates and deadlines; (iv) authorizing procedures governing the assumption and

¹ 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.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Purchase Agreement (as defined below), unless otherwise indicated herein.

assignment of certain executory contracts and unexpired leases (the “**Assumed Contracts**”) to the prevailing bidder(s) acquiring the Debtors’ Assets (a “**Successful Bidder**”); and (v) granting related relief (this “**Order**”); and the Court having entered on June, 2023, that certain *Order (I) Approving Bidding Procedures in Connection With the 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* [Docket No. [●]] (the “**Bidding Procedures Order**”); [and the Auction having been conducted in accordance with the Bidding Procedures Order]; and [●] (the “**Purchaser**”) having submitted the highest and best offer for the Debtors’ Assets that are identified in the Purchase Agreement (as defined below); and the Court having conducted a hearing on the Motion commencing on [●], 2023 (the “**Sale Hearing**”) at which time all interested parties were offered an opportunity to be heard with respect to the Motion; and the Court having reviewed and considered the Motion, the Purchase Agreement (as defined below), the Bidding Procedures Order, and the record of the hearing before the Court on [●], 2024 (the “**Bidding Procedures Hearing**”) at which the Bidding Procedures Order was approved and any objections to the Bidding Procedures were withdrawn or overruled; and the appearance of all interested parties and all responses and objections to the Motion having been duly noted in the record of the Sale Hearing; and upon the record of the Sale Hearing, and having heard statements of counsel and the evidence presented in support of the relief requested in the Motion at the Sale Hearing; and upon all of the proceedings held before the Court; and all objections and responses to the relief requested in the Motion having been heard and overruled, withdrawn, or resolved on the terms set forth in this Order; and it appearing that due notice of the Motion, the Sale Hearing, the Purchase Agreement (as defined below), the purchase and sale of the Purchased Assets (as

defined in the Purchase Agreement) pursuant to the terms of the Purchase Agreement (as defined below) (the “**Transaction**”), the Bidding Procedures Order, and the relief requested in this Order has been provided; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their stakeholders, and all other parties in interest; and it appearing that the Court has jurisdiction over this matter; and it further appearing that the legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein; and after due deliberation thereon, it is hereby:

FOUND AND CONCLUDED THAT:³

Findings of Fact, Conclusions of Law, Jurisdiction, Venue, and Final Order

A. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to the Chapter 11 Cases pursuant to Bankruptcy Rule 9014.

B. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent, any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. This Court has jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b) and the Court may enter a final order consistent with Article III of the United States Constitution. Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

³ All findings of fact and conclusions of law announced by the Bankruptcy Court at the Sale Hearing in relation to the Motion are hereby incorporated to the extent not inconsistent herewith.

D. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h), 6006(d), and 7062, and to the extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of this Order as set forth herein which shall not be subject to any stay.

Notice of the Transaction, the Purchase Agreement, Sale Hearing, Bid Deadline, and Cure Amounts

E. As evidenced by the affidavits or declarations of service previously filed with this Court, [Docket Nos. [●]], proper, timely, adequate, and sufficient notice of the Motion, the Bid Deadline (as defined below), the Sale Hearing, the Purchase Agreement (as defined below), the Transaction, and the proposed form of this Order have been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004, 6006, and 9014. The Debtors have complied with all obligations to provide notice of the Motion, the Bid Deadline, the Sale Hearing, the Purchase Agreement (as defined below), the Transaction, and the proposed form of this Order as required by the Bidding Procedures Order. The aforementioned notices are good, sufficient, and appropriate under the circumstances, and no other or further notice of the Motion, the Bid Deadline, the Sale Hearing, the Purchase Agreement (as defined below), or the Transaction is required for the entry of this Order.

F. A reasonable opportunity to object or to be heard regarding the relief requested in the Motion was afforded to all interested persons and entities.

G. In accordance with the Bidding Procedures Order, and as evidenced by the affidavits or declarations of service and publication previously filed with this Court [Docket Nos.[●]], the Debtors filed and have served the *Notice of Possible Assumption and Assignment of*

Certain Executory Contracts and Unexpired Leases [Docket No. [●]] on [●], 2023 (the “**Cure Notice**”) regarding the potential assumption and assignment of the Assumed Contracts and of the amount necessary to cure any defaults pursuant to section 365(b) of the Bankruptcy Code (all such amounts in connection with any Assumed Contract, the “**Cure Amounts**”) upon the non-Debtor counterparties to the Assumed Contracts. The service of the Cure Notice was good, sufficient, and appropriate under the circumstances and no further notice need be given in respect of assumption and assignment of the Assumed Contracts, including with respect to adequate assurance of future performance or establishing a Cure Amount for the respective Assumed Contracts. All non-Debtor counterparties to each Assumed Contract set forth in the Cure Notice have had an adequate opportunity to object to assumption and assignment of the applicable Assumed Contract and the Cure Amount set forth in the Cure Notice, and including objections related to the adequate assurance of future performance and objections based on whether applicable law excuses the non-Debtor counterparty from accepting performance by, or rendering performance to, the Purchaser for purposes of section 365(c)(1) of the Bankruptcy Code. The deadline to file an objection to the Cure Amounts or to the assumption and assignment to the Purchaser of any Assumed Contract (a “**Contract Objection**”) has expired, and to the extent, any such entity timely filed a Contract Objection, all such Contract Objections have been resolved, withdrawn or overruled. To the extent that any such party did not timely file a Contract Objection by the Contract Objection deadline, such party shall be deemed to have consented to (i) the assumption and assignment of the Assumed Contract, and (ii) the proposed Cure Amount set forth on the Contract Notice.

The Stalking Horse Bid

H. On [●], 2023, the Purchaser and the Debtors entered into that certain Equity and Asset Purchase Agreement that is attached to this Order as Exhibit A (including the schedules,

exhibits, and related agreements and documents, the “**Purchase Agreement**”), which provided for, among other things, (a) a purchase price of \$[●] for the Purchased Assets; and (b) the assumption of Assumed Liabilities (collectively, the “**Stalking Horse Bid**”).

I. As provided in the Bid Procedures, the Stalking Horse Bid constitutes a Qualified Bid (as defined in the Bidding Procedures).

Highest or Otherwise Best Offer

J. As demonstrated by the evidence proffered or adduced at the Sale Hearing and the representations of counsel made on the record at the Sale Hearing, the Debtors have complied in all respects with the Bidding Procedures Order. The sale was duly noticed and conducted in a non-collusive, fair, and good faith manner and the process set forth in the Bidding Procedures Order afforded a full, fair, and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Assets and assume the Assumed Liabilities. The bid deadline was [●], 2023 at [●] (Prevailing Eastern Time) (the “**Bid Deadline**”).

K. The Assets were adequately marketed by the Debtors and their advisors, and the consideration provided by the Purchaser under the Purchase Agreement constitutes the highest and best offer and provides fair and reasonable consideration to the Debtors for the Purchased Assets and the assumption of the Assumed Liabilities. The Stalking Horse Bid presents the best opportunity to maximize and realize the value of the Purchased Assets for the benefit of the Debtors, their estates, and their creditors. The Debtors’ determination that the consideration provided by the Purchaser under the Purchase Agreement constitutes the highest and best offer for the Purchased Assets is a valid and sound exercise of the Debtors’ business judgment.

L. Approval of the Motion and the Purchase Agreement, and the consummation of the Transaction contemplated thereby, are in the best interests of the Debtors, their creditors, their

estates, and other parties in interest. The Debtors have demonstrated good, sufficient, and sound business reasons and justifications for entering into the Transaction and the performance of their obligations under the Purchase Agreement.

M. Entry of this Order approving the Purchase Agreement, and all of the provisions thereof, is a condition precedent to the Purchaser's consummation of the Transaction.

N. The Purchase Agreement was not entered into, and neither the Debtors nor the Purchaser has entered into the Purchase Agreement, or proposes to consummate the Transaction, for the purpose of hindering, delaying, or defrauding the Debtors' present or future creditors. Neither the Debtors nor the Purchaser is entering into the Purchase Agreement, or proposing to consummate the Transaction, fraudulently, for the purpose of statutory or common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

O. The terms and conditions set forth in the Purchase Agreement, including the form and amount of total consideration to be realized by the Debtors pursuant to the Purchase Agreement: (i) are in the best interests of the Debtors' creditors and estates; and (ii) constitute fair value, full and adequate consideration, reasonably equivalent value, and reasonable market value for the Purchased Assets.

P. The Purchaser is the Successful Bidder for the Purchased Assets in accordance with the Bidding Procedures Order. The Purchaser has complied in all respects with the Bidding Procedures Order and any other applicable order of this Court in negotiating and entering into the Purchase Agreement, and the sale and the Purchase Agreement likewise comply with the Bidding Procedures Order and any other applicable order of this Court.

Good Faith of the Debtors and the Purchaser

Q. The sale process conducted by the Debtors, including, without limitation, the Bidding Procedures set forth in the Bidding Procedures Order and the Purchaser's participation in that process, was at arm's length, non-collusive, and in good faith.

R. The Purchase Agreement and the Transaction contemplated thereunder were proposed, negotiated, and entered into by and among the Debtors and the Purchaser without collusion, in good faith, and at arm's length.

S. Neither the Purchaser nor any of its Affiliates, present or contemplated members, officers, directors or shareholders is an "insider" of the Debtors, as the term "insider" is defined in section 101(31) of the Bankruptcy Code. The Purchaser is entering into the Transaction in good faith and is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to the full protection of that provision, and otherwise has proceeded in good faith in all respects in connection with the Chapter 11 Cases and the Transaction. Neither the Debtors, the Purchaser, nor any Affiliate of either have engaged in any action or inaction that would cause or permit the Purchase Agreement or the Transaction to be avoided or impose any costs or damages under section 363(n) of the Bankruptcy Code.

T. The Purchaser is a "good faith purchaser" and is acting in good faith within the meaning of Section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded thereby. The Purchaser has proceeded in good faith in all respects in that, among other things: (i) the Purchaser recognized that the Debtors were free to deal with any other party interested in acquiring the Purchased Assets; (ii) the Purchaser complied with the provisions of the Bidding Procedures Order; (iii) the Purchaser's bid was subjected to an open marketing process and competitive Bidding Procedures as set forth in the Bidding Procedures Order; and (iv) all

payments to be made by the Purchaser and all other material agreements or arrangements entered into by the Purchaser and the Debtors in connection with the Transaction have been disclosed and are appropriate. The sale price in respect of the Purchased Assets was not controlled by any agreement among potential bidders and neither the Debtors nor the Purchaser has engaged in collusion or any conduct that would cause or permit the Purchase Agreement to be avoided or costs and damages to be imposed under Section 363(n) of the Bankruptcy Code.

The Requirements of Section 363 Are Satisfied

U. The Debtors have demonstrated a sufficient basis and compelling circumstances requiring the Debtors to (i) enter into the Purchase Agreement; (ii) sell the Purchased Assets; and (iii) assume and assign the Assumed Contracts, and such actions are appropriate exercises of the Debtors' business judgment and in the best interests of the Debtors, their estates, and their creditors. Such business reasons include, without limitation, the fact that: (i) the Purchase Agreement constitutes the highest and best offer for the Purchased Assets; (ii) the Purchase Agreement presents the best opportunity to maximize and realize the value of the Purchased Assets for the benefit of the Debtors, their estates and their creditors; and (iii) unless the sale is concluded expeditiously, the recoveries to the Debtors' estates and constituencies are likely to be adversely affected and there is a significant risk that a substantial amount of liabilities that will be assumed by the Purchaser under the Purchase Agreement will not be satisfied.

V. The Purchase Agreement and any related documents are valid and binding contracts between the Debtors and the Purchaser and shall be enforceable pursuant to their terms.

W. The Purchased Assets constitute property of the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code and title thereto is presently vested in the Debtors' estates.

X. The sale of all Purchased Assets to the Purchaser under the terms of the Purchase Agreement satisfies the applicable provisions of section 363(f) of the Bankruptcy Code, and except as expressly provided in the Purchase Agreement:(i) the transfer of the Purchased Assets to the Purchaser and (ii) the assumption or assignment to the Purchaser or an Affiliate of the Purchaser of the Assumed Contracts and the Assumed Liabilities, in each case, will be free and clear of any and all Liens, Claims, Excluded Liabilities (each as defined in the Purchase Agreement) and other interests of any kind or nature whatsoever, whether arising prior to or subsequent to the commencement of these Chapter 11 Cases, whether known or unknown, and whether imposed by agreement, understanding, law, equity or otherwise arising under or out of, in connection with, or in any way related to the Debtors, the Purchased Assets, the operation of the Debtors' businesses on or prior to the Closing pursuant to the Purchase Agreement, or the transfer of the Purchased Assets to the Purchaser, because, in each case, one or more of the standards set forth in Section 363(f)(1)-(5) of the Bankruptcy Code have been satisfied, (provided, however, that nothing herein shall be deemed or construed as a ruling or determination that the Assumed Liabilities encumber the Purchased Assets) and will not subject the Purchaser, any Affiliates of Purchaser or any their respective officers, directors, representatives, controlling persons, members, employees, agents, representatives, shareholders, partners, successors and assigns or any of their respective assets (including the Purchased Assets), to any liability for any Liens or Claims whatsoever (including, without limitation, under any theory of equitable law, antitrust, setoff (except with respect to setoffs that were effected prior to the Petition Date), or successor or transferee liability.

Y. The Purchaser would not have entered into the Purchase Agreement and would not consummate the Transaction, thus adversely affecting the Debtors, their estates, their creditors, their employees, and other parties in interest, if the sale of the Purchased Assets was not free and

clear of any and all Liens and Claims (other than Permitted Liens), or if the Purchaser would be, or in the future could be, liable for any Liens or Claims, including, without limitation and as applicable, certain liabilities that expressly are not assumed by the Purchaser as set forth in the Purchase Agreement or in this Order. A sale of the Purchased Assets other than one free and clear of all such Liens and Claims would adversely impact the Debtors and their estates and creditors, and would yield substantially less value for the Debtors' estates, with less certainty than the Transaction.

Z. The transfer of the Purchased Assets to the Purchaser under the Purchase Agreement is a legal, valid, and effective transfer of all of the legal, equitable, and beneficial right, title, and interest in and to the Purchased Assets free and clear of any and all Liens and Claims (other than Permitted Liens and Assumed Liabilities).

AA. The Purchaser is not deemed to be a successor to the Debtors or their estates by reason of any theory of law or equity, and the Purchaser shall not assume or in any way be responsible for any liability or obligation of any of the Debtors or their estates by reason thereof. The Purchaser is not deemed to be a continuation or substantial continuation of the Debtors or their estates, and there is no continuity between the Purchaser and the Debtors. The Purchaser does not have a common identity of incorporators, directors, officers, or equity holders with the Debtors.

BB. There is no legal or equitable reason to delay the Transaction. The Transaction must be approved and consummated promptly to preserve and maximize the value of the Debtors' Assets.

CC. The Debtors have demonstrated both (i) good, sufficient, and sound business purposes and justifications, and (ii) compelling circumstances for the Transaction pursuant to section 363(b) of the Bankruptcy Code prior to, and outside of, a plan of reorganization in that,

among other things, absent the immediate consummation of the Transaction, the value of the Purchased Assets will be harmed. To maximize the value of the Purchased Assets, it is essential that the Transaction occur within the timeframe set forth in the Purchase Agreement. Time is of the essence in consummating the Transaction. Accordingly, there is good cause to waive the stay contemplated by Bankruptcy Rules 6004(h) and 6006(d). In addition, the Court finds that there are no unresolved objections that might form the basis for an appealable issue.

DD. The sale and assignment of the Purchased Assets outside of a Chapter 11 plan pursuant to the Purchase Agreement neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan for the Debtors. Neither the Purchase Agreement nor the Transaction contemplated thereby constitutes a *sub rosa* chapter 11 plan.

Assumption and Assignment of the Assumed Contracts

EE. The assumption and assignment of the Assumed Contracts (as such Assumed Contracts may be amended, supplemented, or otherwise modified as provided in the Purchase Agreement) that are designated for assumption and assignment pursuant to the terms of the Purchase Agreement is integral to the Purchase Agreement, is in the best interests of the Debtors and their estates, creditors, and other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtors.

FF. The Debtors have met all requirements of section 365(b) of the Bankruptcy Code for each of the Assumed Contracts. The Debtors will have (i) cured or provided adequate assurance of cure of any default existing prior to the consummation of the Transaction contemplated by the Purchase Agreement (the "**Closing**") under all of the Assumed Contracts, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code and (ii) provided

compensation or adequate assurance of compensation to any counterparty to an Assumed Contract for actual pecuniary loss to such entity resulting from a default prior to the Closing under any of the Assumed Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. The assignment of each of the Assumed Contracts is free and clear of any and all Liens and Claims, except as expressly permitted in the Purchase Agreement.

GG. The Purchaser has demonstrated adequate assurance of future performance under the relevant Assumed Contracts within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code. Pursuant to section 365(f) of the Bankruptcy Code, the Assumed Contracts to be assumed and assigned under the Purchase Agreement shall be assigned and transferred to the Purchaser (in accordance with the timing specified in the Purchase Agreement), and remain in full force and effect for the benefit of the Purchaser, notwithstanding any provision in the contracts or other restrictions prohibiting or conditioning their assignment or transfer.

HH. No defaults exist in the Debtors' performance under the Assumed Contracts as of the date of this Order other than the failure to pay amounts equal to the Cure Amounts or defaults that are not required to be cured as contemplated in section 365(b)(1)(A) of the Bankruptcy Code.

IT IS HEREBY ORDERED THAT:

General Provisions

1. The Motion is granted and approved as set forth herein. The Debtors are authorized and directed to (a) sell the Purchased Assets to the Purchaser and (b) transfer, assign and convey the Purchased Assets, including the Assumed Contracts to the Purchaser, in each case in accordance with the Purchase Agreement.

2. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled as announced to the Court at the Sale Hearing, or by stipulation filed with the Court, or as resolved in this Order, and all reservations of rights included therein, are

hereby overruled on the merits with prejudice. All non-Debtor counterparties to the Assumed Contracts that failed to timely object thereto are deemed to consent to the relief sought therein. All holders of Liens and Claims who did not object, or withdrew their objections to the Transaction, are deemed to have consented to the Transaction pursuant to section 363(f)(2) of the Bankruptcy Code, and all holders of Liens and Claims are adequately protected – thus satisfying section 363(e) of the Bankruptcy Code.

Approval of the Purchase Agreement

3. The Purchase Agreement, all of the terms and conditions thereof, and the Transaction contemplated therein are approved in all respects. The failure specifically to include any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent that the Purchase Agreement be authorized and approved in its entirety. The transfer of the Purchased Assets by the Debtors to the Purchaser shall be a legal, valid, and effective transfer of the Purchased Assets. The consummation of the Transaction is hereby approved and authorized under section 363(b) and (f) of the Bankruptcy Code. The automatic stay pursuant to section 362 of the Bankruptcy Code, to the extent applicable, is hereby modified to allow the Purchaser to enforce its rights pursuant to the Purchase Agreement and this Order.

4. The Debtors are authorized to (a) take any and all actions necessary or appropriate to perform, consummate, implement, and close the Transaction, including the sale to the Purchaser of the Purchased Assets, in accordance with the terms and conditions set forth in the Purchase Agreement and this Order, including, without limitation, executing, acknowledging, and delivering such deeds, assignments, conveyances, and other assurance, documents, and instruments of transfer and taking any action for purposes of assigning, transferring, granting,

conveying, and confirming to the Purchaser, or reducing to possession, any or all of the Purchased Assets, and entering into any other agreements related to implementing the Transaction, and (b) to assume and assign all Assumed Contracts to the Purchaser in accordance with the timing set forth in the Purchase Agreement.

Sale and Transfer Free and Clear of all Liens and Claims

5. Except as otherwise expressly provided in the Purchase Agreement solely with respect to Assumed Liabilities and Permitted Liens, if any, the Purchased Assets shall be sold to the Purchaser free and clear of all Liens and Claims, liabilities, interests, rights, and encumbrances, including, without limitation, any escheat claims or obligations of the Debtors arising prior to the Closing, rights of setoff (except with respect to setoffs that were validly effected prior to the Petition Date), and all other matters of any kind and nature, whether known or unknown, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, whether arising prior to or subsequent to the commencement of the Chapter 11 Cases (but, for the avoidance of doubt, in each case arising from the ownership or the operation of the Purchased Assets prior to the date of the Closing (the “**Closing Date**”)), and any consensual or nonconsensual lien, statutory lien, real or personal property lien, mechanics’ lien, materialmans’ lien, warehousemans’ lien, tax lien, and any and all “liens” as that term is defined and used in the Bankruptcy Code, including section 101(37) thereof. All Liens and Claims, and interests from which the Purchased Assets are sold free and clear shall attach to the proceeds of the sale of the Purchased Assets to be received by the Debtors in the same order and priority that such Liens and Claims and interests had prior to the Closing.

6. All of the Debtors’ right, title, and interest in and to, and possession of, the Purchased Assets shall be immediately vested in the Purchaser as set forth in the Purchase

Agreement, pursuant to sections 105(a), 363(b), 363(f), and 365 of the Bankruptcy Code free and clear of any and all Liens and Claims except for Assumed Liabilities and Permitted Liens. Such transfer shall constitute a legal, valid, binding, and effective transfer of such Purchased Assets to Purchaser.

7. This Order: (i) shall be effective as a determination that as of the Closing, (a) no Liens or Claims (other than Assumed Liabilities and Permitted Liens) will be capable of being asserted against the Purchaser, any Affiliates of Purchaser or any their respective officers, directors, representatives, controlling persons, members, employees, agents, representatives, shareholders, partners, successors and assigns or any of their respective assets (including the Purchased Assets), (b) the Purchased Assets shall have been transferred to the Purchaser free and clear of any and all Liens and Claims, except for Assumed Liabilities and Permitted Liens, if any, and as provided for in the Purchase Agreement, and (c) the conveyances described herein have been effected; and (ii) is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks, or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title; and each of the foregoing persons and entities is hereby authorized and directed to accept for filing any and all of the documents and instruments necessary or appropriate to consummate the transactions contemplated by the Purchase Agreement.

8. Except as otherwise expressly provided in the Purchase Agreement and with respect to the Assumed Liabilities and Permitted Liens, if any, all persons and entities (and their respective successors and assigns), including, without limitation, all debt security holders, equity security holders, Affiliates, governmental, tax and regulatory authorities, lenders, customers, vendors, employees, trade creditors, litigation claimants, and other creditors holding Liens or Claims arising under or out of, in connection with, or in any way relating to, the Debtors, the Purchased Assets, the ownership, sale, or operation of the Purchased Assets prior to Closing or the transfer of the Purchased Assets to the Purchaser are hereby forever barred and estopped from asserting such Liens and Claims against the Purchaser, any Affiliates of Purchaser or any their respective officers, directors, representatives, controlling persons, members, employees, agents, representatives, shareholders, partners, successors or assigns or any of their respective assets (including the Purchased Assets).

9. If any person or entity that has filed financing statements, mortgages, *lis pendens* or other documents or agreements evidencing Liens or Claims against or in the Purchased Assets shall not have delivered to the Debtors prior to the Closing of the Transaction, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Encumbrances that the person or entity has with respect to the Purchased Assets or otherwise, then only with regard to the Purchased Assets that are purchased by the Purchaser pursuant to the Purchase Agreement and this Order: (i) the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Purchased Assets; (ii) the Purchaser is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Liens and Claims

against the Purchaser and the Purchased Assets; and (iii) the Purchaser may seek in this Court or any other court to compel appropriate parties to execute termination statements, instruments of satisfaction, and releases of all Liens and Claims with respect to the Purchased Assets other than Assumed Liabilities and Permitted Liens, if any. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department, or office. Notwithstanding the foregoing, the provisions of this Order authorizing the sale and assignment of the Purchased Assets free and clear of any and all Liens and Claims shall be self-executing, and neither the Debtors nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments to effectuate, consummate, and implement the provisions of this Order.

10. To the maximum extent permitted by applicable law, the Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration, and governmental authorization or approval (collectively, the “**Licenses**”) of the Debtors with respect to the Purchased Assets, and all Licenses are deemed to have been, and hereby are directed to be, transferred to the Purchaser pursuant to the Purchase Agreement. To the extent any Licenses cannot be transferred to the Purchaser in accordance with the previous sentence, such Licenses: (i) shall be in effect while the Purchaser, with assistance from the Debtors, works promptly and diligently to apply for and secure all necessary government approvals for the transfer or issuance of new Licenses to the Purchaser; and (ii) shall terminate on a license-by-license basis following issuance of a new License to the Purchaser.]

11. Nothing in this Order or the Purchase Agreement releases, nullifies, precludes or enjoins the enforcement of any police or regulatory liability to a governmental unit that any entity would be subject to as owner or operator of property sold or transferred pursuant to this Order after

the occurrence of the Closing Date (with respect to such property), *provided, however*, that the foregoing shall not limit, diminish or otherwise alter the Debtors' or the Purchaser's defenses, claims, causes of action, or other rights under applicable non-bankruptcy law with respect to any liability that may exist to a governmental unit at such owned or operated property. Nothing in this Order or the Purchase Agreement authorizes the transfer or assignment of any governmental (i) license, (ii) permit, (ii) registration, (iv) authorization, or (v) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements and approvals under police or regulatory law. To the extent provided by section 525 of the Bankruptcy Code, a governmental unit may not deny, revoke, suspend, or refuse to renew any permit, license, or similar grant to a person that is or has been a bankrupt or a debtor under the Bankruptcy Code, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a bankrupt or debtor under the Bankruptcy Code, has been insolvent before the commencement of the case under the Bankruptcy Code, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under the Bankruptcy Code or that was discharged under the Bankruptcy Code. Nothing in this Order divests any tribunal of any jurisdiction it may have under police or regulatory law to interpret this Order or to adjudicate any defense asserted under this Order, subject to the Debtors' and the Purchaser's rights to assert in that forum or before this Court that any such laws are not in fact police or regulatory law or that the matter should be heard by the Bankruptcy Court.

12. Unless otherwise provided herein or the Purchase Agreement, all persons and entities that are in possession of some or all of the Purchased Assets as of the Closing Date are directed to surrender possession of such Purchased Assets to the Purchaser on the Closing Date. All persons or entities are prohibited from taking any action to adversely affect or interfere with

the ability of the Debtors to transfer the Purchased Assets to the Purchase in accordance with the Purchase Agreement.

No Successor or Transferee Liability

13. Neither the Purchaser, nor any Affiliate, successor, or assignee of the Purchaser, shall be deemed, as a result of any action taken in connection with the Purchase Agreement, the consummation of the Transaction contemplated by the Purchase Agreement, or the transfer or operation of the Purchased Assets, including the Assumed Contracts, to: (i) be a legal successor, or otherwise be deemed a successor to the Debtors; (ii) have, *de facto* or otherwise, merged with or into the Debtors; (iii) be an alter ego or a mere continuation or substantial continuation of the Debtors including, without limitation, within the meaning of any foreign, federal, state, or local revenue law, pension law, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act (“**COBRA**”), the WARN Act (29 U.S.C. §§ 2101 et seq.) (“**WARN**”), the Comprehensive Environmental Response Compensation and Liability Act (“**CERCLA**”), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended), the National Labor Relations Act, 29 U.S.C. § 151, *et seq.* (the “**NLRA**”); or (iv) be liable for any environmental liabilities, debts, claims, or obligations arising from conditions first existing on or prior to Closing (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including, without limitation, under CERCLA, any liabilities, debts, or obligations of or required to be paid by the Debtors for any taxes of any kind for any period, labor, employment, or other law, rule or regulation (including, without limitation, filing requirements under any such laws, rules, or regulations), any escheat liabilities arising prior to the Closing, or

under any products liability or consumer protection law or doctrine with respect to the Debtors' liability under such law, rule, or regulation or doctrine.

14. Other than as expressly set forth in the Purchase Agreement solely with respect to Assumed Liabilities and Permitted Liens, if any, neither the Purchaser, nor any Affiliate, successor, or assignee of the Purchaser shall have any responsibility for (i) any liability or other obligation of the Debtors or related to the Purchased Assets or (ii) any Liens or Claims against the Debtors, any of their predecessors or Affiliates, or the Purchased Assets. Other than as expressly set forth in the Purchase Agreement solely with respect to Assumed Liabilities and Permitted Liens, if any, neither the Purchaser, nor any Affiliate, successor, or assignee of the Purchaser, shall have any liability whatsoever with respect to the Debtors' (or their predecessors' or Affiliates') businesses or operations or any of the Debtors' (or their predecessors' or Affiliates') obligations based, in whole or part, directly or indirectly, on any theory of successor or vicarious liability of any kind or character, or based upon any theory of antitrust, environmental, successor or transferee liability, *de facto* merger or substantial continuity, labor and employment or products liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including, without limitation, (i) liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the ownership or operation of the Purchased Assets prior to the Closing; (ii) liabilities or obligations under WARN; (iii) escheat liabilities arising prior to Closing; or (iv) liabilities or obligations under CERCLA, or any foreign, federal, state, or local labor, employment, or environmental law whether of similar import or otherwise by virtue of the Purchaser's purchase of the Purchased Assets or assumption of the Assumed Liabilities by the

Purchaser or an Affiliate of the Purchaser (all liabilities described in paragraph [16] and paragraph [17] of this Order, “**Successor or Transferee Liability**”).

15. Effective upon the Closing, except with respect to Assumed Liabilities and Permitted Liens, if any, all persons and entities are forever prohibited from commencing or continuing in any matter any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral, or other proceeding against the Purchaser, any Affiliates of Purchaser or any their respective officers, directors, representatives, controlling persons, members, employees, agents, representatives, shareholders, partners, successors and assigns or any of their respective assets (including the Purchased Assets), with respect to any (i) Lien or Claim or (ii) Successor or Transferee Liability, including, without limitation, the following actions with respect to clauses (i) and (ii): (a) commencing or continuing any action or other proceeding pending or threatened; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (c) creating, perfecting, or enforcing any Lien or Claim; (d) asserting any setoff (except with respect to setoffs that were effected prior to the Petition Date), right of subrogation, or recoupment of any kind; (e) commencing or continuing any action, in any manner or place, that does not comply with, or is inconsistent with, the provisions of this Order or other orders of this Court, or the agreements or actions contemplated or taken in respect hereof; or (f) revoking, terminating, or failing or refusing to renew any license, permit, or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with such Purchased Assets.

16. This Order shall be effective as a determination that, as of Closing, all Liens and Claims (other than Permitted Liens and Assumed Liabilities) have been unconditionally released, discharged, and terminated as to the Purchaser and Purchased Assets.

Good Faith of the Purchaser

17. The Purchaser is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code. The Transaction contemplated by the Purchase Agreement is undertaken by the Purchaser without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code.

18. Neither the Debtors, the Purchaser nor any Affiliate of either the Debtors or the Purchaser have engaged in any collusion with other bidders or other parties or have taken any other action or inaction that would cause or permit the Transaction to be avoided or costs or damages to be imposed under section 363(n) of the Bankruptcy Code or otherwise. The consideration provided by the Purchaser for the Purchased Assets under the Purchase Agreement is fair and reasonable and is not less than the value of such Purchased Assets, and the Transaction may not be avoided under section 363(n) of the Bankruptcy Code.

19. The Purchaser is not an “insider” of any of the Debtors as that term is defined in section 101(31) of the Bankruptcy Code.

Assumption and Assignment of Assumed Contracts

20. To the extent that any entity did not timely file a Contract Objection by the Contract Objection Deadline with respect to any Assumed Contract set forth on the Cure Notice, such entity shall forever be barred and estopped from objecting: (i) to the Cure Amounts as the amount to cure all defaults to satisfy section 365 of the Bankruptcy Code and from asserting that any additional amounts are due or defaults exist; (ii) that any conditions to assumption and assignment must be satisfied under such Contract or Lease before it can be assumed and assigned or that any required

consent to assignment has not been given; or (iii) that the Purchaser has not provided adequate assurance of future performance as contemplated by section 365 of the Bankruptcy Code.

21. The assumption and assignment of the Assumed Contracts is approved, including, for the avoidance of doubt, the timing set forth in the Purchase Agreement. The Debtors are authorized to assume and assign each of the Assumed Contracts to the Purchaser or an Affiliate of the Purchaser upon the Closing of the Transaction (or thereafter, in accordance with the Purchase Agreement and this Order), free and clear of all Liens and Claims, other than Assumed Liabilities and Permitted Liens, if any. The payment of the applicable Cure Amounts, if any, by the Purchaser, in accordance with the Purchase Agreement shall, in accordance with section 365(b) of the Bankruptcy Code, (i) cure all defaults under the Assumed Contracts as contemplated by section 365 of the Bankruptcy Code as of the Closing Date, (ii) compensate for any actual pecuniary loss to such non-Debtor counterparty resulting from such default, and (iii) together with the assumption of the Assumed Contracts by the Debtors and the assignment of the Assumed Contracts to the Purchaser or an Affiliate of the Purchaser, constitute adequate assurance of future performance thereof. The Cure Amounts, if any, and any payments made to the counterparties under the Assumed Contracts prior to the assumption of the Assumed Contracts shall be deemed payments that were required to be made in full as part of the obligation to assume and assign the Assigned Contracts under this Sale Order and the Purchase Agreement.

22. Pursuant to section 365(f) of the Bankruptcy Code, subject to the payment of the applicable Cure Amounts by the Purchaser, if any, the Assumed Contracts to be assumed and assigned under the Purchase Agreement shall be assigned and transferred to, and remain in full force and effect for the benefit of, the Purchaser notwithstanding any provision in the contracts or other restrictions prohibiting or conditioning their assignment or transfer. Any provisions in any

Assumed Contract that prohibit or condition the assignment of such Assumed Contract or allow the counterparty to such Assumed Contract to terminate, recapture, impose any penalty or fee or other financial accommodation to the non-debtor counterparty, accelerate, increase any rate, condition on renewal or extension, or modify any term or condition upon the assignment of such Assumed Contract, constitute unenforceable anti-assignment provisions that are void and of no force and effect. Subject to the payment of the applicable Cure Amounts, if any, by the Purchaser, all other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Purchaser or an Affiliate of the Purchaser of the Assumed Contracts have been satisfied.

23. Upon taking assignment of the Assumed Contracts and the payment of the relevant Cure Amounts, if any, the Purchaser shall be deemed to be substituted for the Debtors as a party to the applicable Assumed Contracts and the Debtors shall be released, pursuant to section 365(k) of the Bankruptcy Code, from any liability under the Assumed Contracts. There shall be no assignment fees, increases, or any other fees charged to the Purchaser or the Debtors as a result of the assumption and assignment of the Assumed Contracts. The failure of the Debtors or the Purchaser to enforce at any time one or more terms or conditions of any Assumed Contract shall not be a waiver of such terms or conditions or of the right of the Debtors or the Purchaser, as the case may be, to enforce every term and condition of such Assumed Contract. The validity of the assumption and assignment of any Assumed Contract to the Purchaser shall not be affected by any existing dispute between the Debtors and any counterparty to such Assumed Contract.

24. The assignments of each of the Assumed Contracts are made in good faith under sections 363(b) and (m) of the Bankruptcy Code and shall be free and clear of any and all Liens and Claims pursuant to section 363(f) of the Bankruptcy Code.

Other Provisions

25. The terms and provisions of the Purchase Agreement, including any ancillary or related documents, and this Order shall be binding in all respects upon the Debtors', the Debtors' estates, their creditors, any affected third parties, all holders of equity interests in the Debtors, all holders of any claims, whether known or unknown, against the Debtors, any holders of Liens against or on all or any portion of the Purchased Assets, including, but not limited to all contract counterparties, leaseholders, governmental units, and any trustees, examiners, administrators, responsible officers, estate representatives, or similar entities for the Debtors, if any, subsequently appointed in any of the Debtors' Chapter 11 Cases or upon a conversion of any of the Debtors' Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, and each of their respective Affiliates, successors and assigns. The Purchase Agreement and this Order shall inure to the benefit of the Debtors, the Debtors' estates, creditors, the Purchaser, and their respective successors or assigns. The Purchase Agreement, the Transaction and this Order shall not be subject to rejection or avoidance by the Debtors, the Debtors' estates, creditors, its equity interest holders, or any trustee, examiner or receiver

26. The Purchase Agreement and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates.

27. The Court shall retain exclusive jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the Purchase Agreement, all amendments thereto, and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtors are a party and to adjudicate, if necessary,

any and all disputes concerning or relating in any way to the Transaction or this Order. This Court retains jurisdiction to compel delivery of the Purchased Assets, to protect the Purchaser (and its assets, including the Purchased Assets) and its Affiliates, designees, assignees, or successors (or their assets), against any and all Liens and Claims and Successor and Transferee Liability and to enter orders, as appropriate, pursuant to sections 105, 363, or 365 of the Bankruptcy Code (or other applicable provisions) necessary to transfer the Purchased Assets and the Assumed Contracts to the Purchaser.

28. The requirements set forth in Bankruptcy Rules 6003(b), 6004, and 6006 have been satisfied or are otherwise hereby waived.

29. As provided by Bankruptcy Rules 7062 and 9014, the terms and conditions of this Order shall be effective immediately upon entry and shall not be subject to the stay provisions contained in Bankruptcy Rules 6004(h) and 6006(d). Time is of the essence in closing the sale and the Debtors and the Purchaser intend to close the sale on or before July 31, 2023.

30. No bulk sales law, bulk transfer law or similar law of any state or other jurisdiction (including those relating to Taxes, other than Transfer Taxes) shall apply in any way to the transactions contemplated by the Purchase Agreement, the Motion or this Order. Except as otherwise expressly provided in the Purchase Agreement, all obligations of the Debtors relating to Taxes, whether arising under any law, by the Purchase Agreement, or otherwise shall be the obligation of and fulfilled and paid by the Debtors. For the avoidance of doubt, and notwithstanding any other provision in this Order, nothing in this Order or the Purchase Agreement shall create a tax exemption under Section 1146(a) of the Bankruptcy Code.

31. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a). In the event that there is a direct conflict between the terms of this Order,

the Purchase Agreement, and any documents executed in connection therewith, the provisions contained in this Order, the Purchase Agreement and any documents executed in connection therewith shall govern, in that order. Nothing contained in any chapter 11 plan hereinafter confirmed in any of these Chapter 11 Cases, any order confirming such plan(s), or in any other order of any type or kind entered in any of these Chapter 11 Cases (including, without limitation, any order entered after any conversion of any of these Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code) or in any related proceeding shall alter, conflict with or derogate from the provisions of the Purchase Agreement, any documents executed in connection therewith, or the terms of this Order.

EXHIBIT C

Sale Notice

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

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

**NOTICE OF SALE, BIDDING PROCEDURES,
AUCTION, SALE HEARING, AND OBJECTION DEADLINE**

PLEASE TAKE NOTICE THAT on May 24, 2023, the above-captioned debtors and debtors in possession (each, a “**Debtor**” and, collectively, the “**Debtors**”) filed with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) their motion (the “**Motion**”)² for entry of (a) an order (i) approving bidding procedures, substantially in the form attached as Annex 1 to the Bidding Procedures Order (the “**Bidding Procedures**”), to govern the marketing and sale of all or substantially all of the Debtors’ assets (the “**Assets**”), (ii) approving bid protections in connection therewith, (iii) authorizing the Debtors to schedule an auction to sell the Assets (the “**Auction**”), (iv) scheduling the hearing to approve a sale of the Assets (the “**Sale Hearing**”) for a date that is on or before [●], 2023, (v) approving the form and manner of notice of the proposed sale transactions, the Bidding Procedures, the Auction, the Sale Hearing, and related dates and deadlines, and (vi) authorizing procedures governing the assumption and assignment of certain executory contracts and unexpired leases (the “**Assigned Contracts**”) to the prevailing bidder(s) acquiring the Debtors’ assets (each, a “**Successful Bidder**”); and (b) one or more orders (collectively, the “**Sale Order**”) (i) approving the applicable form(s) of purchase agreement between the Debtors and the Stalking Horse Bidder or any other Successful Bidder(s), and (ii) authorizing the sale(s) (collectively, the “**Sale**”) of the Assets and the assumption and assignment of the Assigned Contracts to the Stalking Horse Bidder or such other Successful Bidder free and clear of all liens, claims, encumbrances, and other interests (collectively, “**Encumbrances**”), other than any permitted Encumbrances as set forth in the applicable form(s) of purchase agreement.

PLEASE TAKE FURTHER NOTICE THAT on [●], 2023, the Bankruptcy Court entered the *Order (I) Approving Bidding Procedures in Connection with the Sale of the Debtors’ Assets and Related Bid Protections, (II) Approving Form and Manner of Notice, (III) Scheduling*

¹ 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.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures. Any summary of the Bidding Procedures Order or the Bidding Procedures contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any conflict between any such summary and such actual terms and conditions, the actual terms and conditions shall control.

Auction and Sale Hearing, (IV) Authorizing Procedures Governing Assumption and Assignment of Certain Contracts and Unexpired Leases, and (V) Granting Related Relief [Docket No. [●]] (the “**Bidding Procedures Order**”) and the Bidding Procedures attached thereto as Annex 1. Pursuant to the Bidding Procedures Order, if the Auction goes forward, it shall be held at the offices of Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, on [●], 2023 at [●] (prevailing Eastern Time). Only Qualified Bidders and the Stalking Horse Bidder shall be entitled to make any bids.

PLEASE TAKE FURTHER NOTICE THAT to participate in the bidding process or otherwise be considered for any purpose under the Bidding Procedures, a person or entity (other than the Stalking Horse Bidder) interested in consummating a Sale (a “**Potential Bidder**”) must deliver or have previously delivered to counsel for the Debtors, their Restructuring Advisor, their counsel, and counsel to the Prepetition Secured Parties and DIP Lender], and proposed counsel to the Committee:

- (i) an executed confidentiality agreement on terms acceptable to the Debtors, to the extent not already executed; and
- (ii) information demonstrating (in the Debtors’ reasonable business judgment) that the Potential Bidder has the financial capability to consummate the applicable Sale, including, but not limited to, the most current audited and latest unaudited financial statements (the “**Financials**”) of the Potential Bidder (or such other form of financial disclosure acceptable to the Debtors in their discretion) (or, if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, (x) Financials of the equity holder(s) of the Potential Bidder or such other form of financial disclosure as is acceptable to the Debtors, in consultation with counsel for the Prepetition Secured Parties and the DIP Lender, and the advisors to the Committee (collectively, the “**Consultation Parties**”);³ and (y) a written funding commitment acceptable to the Debtors and their advisors, in consultation with the Consultation Parties, of the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder’s obligations in connection with the applicable Sale).

For the avoidance of doubt, in the event of a Joint Bid, each person or entity party to such Joint Bid must submit the above information in accordance with the terms thereof and meet the above requirements in order to qualify as a Potential Bidder.

Each Bid must be transmitted in writing so as to be actually received by the Notice Parties on or before [●] (prevailing Eastern Time) on [●], 2023 (the “**Bid Deadline**”).

The prevailing Bid will be subject to Bankruptcy Court approval. The Sale Hearing to approve the Sale to one or more Successful Bidders, free and clear of all liens, claims, interests, charges, and encumbrances (with any such liens, claims, interests, charges, and encumbrances attaching to the net proceeds of the Sale with the same rights and priorities therein as in the sold

³ Notwithstanding anything to the contrary in these Bidding Procedures, the Debtors shall not be required to consult with the DIP Lender or the prepetition secured lenders if they submit a bid for the Assets.

Assets), shall take place at **[●] (prevailing Eastern Time) on [●], 2023**, or as soon thereafter as the Debtors may be heard, before the Honorable [●] in the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, [●] Floor, Courtroom No. [●], Wilmington, Delaware 19801.

The Sale Hearing may be adjourned by the Debtors from time to time without further notice to creditors or other parties in interest, except as may be required by the Bidding Procedures, other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a notice on the docket of the chapter 11 cases.

PLEASE TAKE FURTHER NOTICE THAT any objections to the Sale or the relief requested in connection with the Sale (a “**Sale Objection**”) must: (a) be in writing; (b) comply with the Bankruptcy Rules; (c) set forth the specific basis for the Sale Objection; and (d) be served upon (such as to be actually received by) the following parties (the “**Objection Notice Parties**”) on or before **4:00 p.m. (prevailing Eastern Time) on [●], 2023** (the “**Sale Objection Deadline**”).

- A. Debtors.** PlastiQ Inc., et al., 1475 Folsom Street, Suite 400, San Francisco, CA 94103, Attn: Vladimir Kasparov, Chief Restructuring Officer (vkasparov@pppllc.com);
- B. Proposed Debtors’ Counsel.** Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Esq. (mnestor@ycst.com); Matthew B. Lunn, Esq. (mlunn@ycst.com); and Joseph M. Mulvihill, Esq. (jmulvihill@ycst.com);
- C. Debtors’ Restructuring Advisor.** Triple P RTS, LLC, 1330 Avenue of the Americas, 22nd Floor, New York, NY 10019, Attn: Steve Bremer (sbremer@pppllc.com) and Geoff Schmitz (gschmitz@pppllc.com);
- D. Counsel for the Prepetition Secured Parties and the DIP Lender.** (i) Schulte Roth & Zabel LLP, 919 Third Avenue, New York, NY 10022, Attn: Adam Harris (adam.harris@srz.com) and Reuben Dizengoff (reuben.dizengoff@srz.com), and (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn. Matthew B. McGuire (mcguire@lrclaw.com);
- E. Counsel to the Stalking Horse Bidder.** Troutman Pepper Hamilton Sanders LLP, 600 Peachtree Street, N.E., Suite 3000 Atlanta, GA 30308, Attn: Matthew Brooks (matthew.brooks@troutman.com), Gary Marsh (gary.marsh@troutman.com), , Kenneth Listwak (ken.listwak@troutman.com), James Stevens (james.stevens@troutman.com), Brenna Sheffield (Brenna.Sheffield@troutman.com), and
- F. Proposed counsel to the Committee, if any.**

If a Sale Objection is not filed and served in accordance with the foregoing requirements, the objecting party shall be barred from objecting to the Sale and shall not be heard at the Sale Hearing, and the Bankruptcy Court may enter the Sale Order without further notice to such party.

PLEASE TAKE FURTHER NOTICE THAT copies of the Motion, the Bidding Procedures, the Bidding Procedures Order, and all pleadings and orders of the Bankruptcy Court are publicly available, for a fee via PACER at: <http://www.deb.uscourts.gov>, or free of charge from the Claims Agent at [●].

Dated: [], 2023
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Michael R. Nestor (No. 3526)
Matthew B. Lunn (No. 4119)
Joseph M. Mulvihill (No. 6061)
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Proposed Counsel for Debtors and Debtors in Possession

EXHIBIT D

Cure Notice

PLEASE TAKE FURTHER NOTICE THAT the Sale Hearing to approve the Sale to the Successful Bidder, free and clear of all liens, claims, interests, charges, and encumbrances (with any such liens, claims, interests, charges, and encumbrances attaching to the net proceeds of the Sale with the same rights and priorities therein as in the sold assets), shall take place at **[●] p.m. (prevailing Eastern time) on [●], 2023**, unless adjourned by the Debtors, before the Honorable [●] in the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, [●] Floor, Courtroom No. [●], Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE THAT on [●], 2023, the Bankruptcy Court entered the *Order (I) Approving Bidding Procedures in Connection with the 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* [Docket No. [●]] (the "**Bidding Procedures Order**") and the Bidding Procedures attached thereto as Annex 1. Pursuant to the Bidding Procedures Order, if the Auction goes forward, it shall be held at the offices of Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, on [●], 2023 at [●] (prevailing Eastern Time). Only Qualified Bidders and the Stalking Horse Bidder shall be entitled to make any bids.

The Sale Hearing may be adjourned by the Debtors from time to time without further notice to creditors or other parties in interest, except as may be required by the Bidding Procedures, other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a notice on the docket of the chapter 11 cases.

PLEASE TAKE FURTHER NOTICE THAT to facilitate the Sale, the Debtors are seeking to assume and assign to the Successful Bidder certain of the Assumed Contracts in accordance with the Bidding Procedures Order. The Assumed Contracts that the Debtors may, but are not required to, seek to assume and assign in connection with the Sale and the corresponding cure amount (each, a "**Proposed Cure Amount**"), if any, that the Debtors believe is required to be paid to the applicable counterparty (each, a "**Counterparty**," and collectively, the "**Counterparties**") to each of the Assumed Contracts under sections 365(b)(1)(A) and (B) of the Bankruptcy Code are identified on Exhibit 1 attached hereto (the "**Cure Schedule**").

PLEASE TAKE FURTHER NOTICE THAT each Counterparty shall have until **4:00 p.m. (prevailing Eastern Time) on [●], 2023** (the "**Contract Objection Deadline**") to object to the assumption and assignment of its contract on any grounds, including, without limitation, the amount of the Proposed Cure Amount, but excluding any objection as to adequate assurance of future performance under section 365(b)(1) of the Bankruptcy Code or, other than the Stalking Horse Bidder, on the basis of the identity of the Successful Bidder (each, a "**Contract Objection**"). Any such objection must be filed and served on the following parties (collectively, the "**Objection Notice Parties**"), so as to be actually received by the Contract Objection Deadline:

- A. **Debtors.** Plastiq Inc., et al., 1475 Folsom Street, Suite 400, San Francisco, CA 94103, Attn: Vladimir Kasparov, Chief Restructuring Officer (vkasparov@pppllc.com);
- B. **Proposed Debtors' Counsel.** Young Conaway Stargatt & Taylor, LLP, Rodney

Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Esq. (mnestor@ycst.com); Matthew B. Lunn, Esq. (mlunn@ycst.com); and Joseph M. Mulvihill, Esq. (jmulvihill@ycst.com);

- C. **Debtors' Restructuring Advisor.** Triple P RTS, LLC, 1330 Avenue of the Americas, 22nd Floor, New York, NY 10019, Attn: Steve Bremer (sbremer@pppllc.com) and Geoff Schmitz (gschmitz@pppllc.com);
- D. **Counsel for the Prepetition Secured Parties and the DIP Lender.** (i) Schulte Roth & Zabel LLP, 919 Third Avenue, New York, NY 10022, Attn: Adam Harris (adam.harris@srz.com) and Reuben Dizengoff (reuben.dizengoff@srz.com), and (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn. Matthew B. McGuire (mcguire@lrclaw.com);
- E. **Counsel to the Stalking Horse Bidder.** Troutman Pepper Hamilton Sanders LLP, 600 Peachtree Street, N.E., Suite 3000 Atlanta, GA 30308, Attn: Matthew Brooks (matthew.brooks@troutman.com), Gary Marsh (gary.marsh@troutman.com), Kenneth Listwak (ken.listwak@troutman.com), James Stevens (james.stevens@troutman.com), and Brenna Sheffield (Brenna.Sheffield@troutman.com); and
- F. **Proposed counsel to the Committee, if any.**

PLEASE TAKE FURTHER NOTICE THAT each Counterparty may raise objections as to adequate assurance of future performance or on the basis of the identity of the Successful Bidder until 4:00 p.m. (prevailing Eastern time) on the date that is five (5) days after the filing and service by the Debtors to the Counterparty of a notice identifying the applicable Successful Bidder, which, for the avoidance of doubt, may be provided with the Cure Notice or the Previously Omitted Contract Notice or at any time thereafter with respect to the Stalking Horse Bidder; *provided, however,* that objections, if any, on the basis of the identity of the Successful Bidder shall not, in any event, be raised later than one (1) hour prior to the commencement of the Sale Hearing (the “**Buyer Specific Objection Deadline**”). Any such objection must be filed and served on the Debtors and their counsel, the Committee and its proposed counsel, and the applicable Successful Bidder or Stalking Horse Bidder, as applicable, and its counsel, so as to be actually received by the Buyer Specific Objection Deadline. Any such unresolved objections shall be heard at the Sale Hearing, unless otherwise agreed by the parties.

PLEASE TAKE FURTHER NOTICE THAT, at the Sale Hearing, the Debtors will seek Court approval of the assumption and assignment to the Successful Bidder of only those Assumed Contracts that have actually been selected by the Successful Bidder to be assumed and assigned (collectively, the “**Assumed Contracts**”). The Debtors and their estates reserve any and all rights with respect to any Assumed Contracts that are not ultimately designated as Assumed Contracts.

PLEASE TAKE FURTHER NOTICE THAT nothing contained in this notice or on the exhibits hereto shall constitute a waiver of any rights of the Debtors and their estates or an admission with respect to the Debtors’ chapter 11 cases, including, but not limited to, any issues involving objections to claims, setoff or recoupment, equitable subordination or

recharacterization of debt, defenses, characterization or re-characterization of contracts, leases and claims, assumption or rejection of contracts and leases and/or causes of action arising under the Bankruptcy Code or any other applicable laws.

If no Contract Objection is timely received with respect to an Assumed Contract: (i) the Counterparty to such Assumed Contract shall be deemed to have consented to the assumption by the Debtors and assignment to the Successful Bidder of the Assumed Contract, and be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by the Successful Bidder); (ii) any and all defaults under the Assumed Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code upon payment of the Proposed Cure Amount set forth in this Cure Notice for such Assumed Contract; and (iii) the Proposed Cure Amount set forth in this Cure Notice for such Assumed Contract shall be controlling, notwithstanding anything to the contrary in such Assumed Contract, or any other related document, and the Counterparty shall be deemed to have consented to the Proposed Cure Amount and shall be forever barred from asserting any other claims related to such Assumed Contract against the Debtors and their estates or the Successful Bidder, or the property of any of them, that existed prior to the entry of the order resolving the Contract Objections.

PLEASE TAKE FURTHER NOTICE THAT if you would like to obtain copies of the Motion, the Bidding Procedures, the Bidding Procedures Order, or any other pleadings or orders of the Bankruptcy Court, they are publicly available, for a fee via PACER at: <http://www.deb.uscourts.gov>, or free of charge from the claims agent at [●]. Such documents and pleadings may also be obtained by calling the Debtors' restructuring hotline at [●] (toll-free) or [●] (international).

Dated: [___], 2023
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

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Proposed Counsel for Debtors and Debtors in Possession

EXHIBIT 1

Cure Schedule