

Court File No. CV-24-00720035-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF KIDKRAFT, INC., SOLOWAVE DESIGN  
HOLDINGS LIMITED, SOLOWAVE DESIGN INC., SOLOWAVE  
INTERNATIONAL INC. AND SOLOWAVE DESIGN LP

APPLICATION OF KIDKRAFT, INC. UNDER SECTION 46 OF THE  
*COMPANIES CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED

Applicant

**MOTION RECORD OF THE FOREIGN REPRESENTATIVE  
(Recognition Order (Plan Modification Order and Related Relief))  
(Returnable July 12, 2024)**

July 11, 2024

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Court File No. CV-24-00720035-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF KIDKRAFT, INC., SOLOWAVE DESIGN HOLDINGS  
LIMITED., SOLOWAVE DESIGN INC., SOLOWAVE INTERNATIONAL INC. AND  
SOLOWAVE DESIGN LP

APPLICATION OF KIDKRAFT, INC. UNDER SECTION 46 OF THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED

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# TAB 1

Court File No. CV-24-00720035-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
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AND IN THE MATTER OF KIDKRAFT, INC., SOLOWAVE DESIGN  
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APPLICATION OF KIDKRAFT, INC. UNDER SECTION 46 OF THE  
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AMENDED

Applicant

**NOTICE OF MOTION  
(Recognition Order (Plan Modification Order and Related Relief))  
(Returnable July 11, 2024)**

The Applicant, KidKraft, Inc. (“**KidKraft**”), in its capacity as foreign representative (the “**Foreign Representative**”) of itself and four other debtors in possession, Solowave Design Holdings Limited, Solowave International Inc., Solowave Design Inc., and Solowave Design LP (the “**Canadian Debtors**”), will make a motion to the Court on Thursday July 11, 2024, at 12:00 p.m. E.T., or as soon after that time as the motion can be heard.

**PROPOSED METHOD OF HEARING:** The motion is to be heard

- In writing under subrule 37.12.1 (1) because it is;
- In writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;
- By video conference.

at the following location:

<https://ca01web.zoom.us/j/65979875939?pwd=VVRJZHVVVRWQ1cGdkRERtTGpRajNFUT09>

**THE MOTION IS FOR:**

1. An order, substantially in the form of the draft order included in the Motion Record, *inter alia*:
  - (a) recognizing and enforcing the Plan Modification Order (defined below) entered by the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “**U.S. Court**”), pursuant to section 49 of the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCAA**”);
  - (b) making certain amendments to the Plan Confirmation Recognition Order to account for the Modified Post-Confirmation Plan (each as defined below); and
  - (c) granting such further and other relief as counsel may request and this Honourable Court may provide.

**THE GROUNDS FOR THIS MOTION ARE:*****The Chapter 11 Cases and the Canadian Proceedings***

2. On May 10, 2024, each of KidKraft, the Canadian Debtors and six other debtors and debtors in possession (collectively, the “**Chapter 11 Debtors**”)<sup>1</sup> filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code with the U.S. Court (the “**Chapter 11 Cases**”).

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<sup>1</sup> The Chapter 11 Debtors are KidKraft, Inc., KidKraft Europe, LLC, KidKraft Intermediate Holdings, LLC, KidKraft International Holdings, Inc., KidKraft Partners, LLC, KidKraft International IP Holdings, LLC, Solowave Design Corp., Solowave Design Holdings Limited, Solowave Design Inc., Solowave Design LP, and Solowave International Inc.

3. By order dated May 10, 2024, the Ontario Superior Court of Justice (Commercial List) (the “**Ontario Court**”) granted an interim stay of proceeding in respect of KidKraft and the Canadian Debtors, and their respective directors and officers.

4. Also on May 10, 2024, the Chapter 11 Debtors filed the *Debtors’ Joint Prepacked Chapter 11 Plan* (as subsequently amended and supplemented, the “**Plan**”) and a disclosure statement in respect of the Plan. The Plan effectuates the sale of substantially all of the Chapter 11 Debtors’ assets (including the assets of the Canadian Debtors) (the “**Sale Transaction**”) to Backyard Products, LLC (the “**Purchaser**”) pursuant to the terms of the Purchase Agreement (as defined in the Fifth Affidavit of Geoffrey Walker, to be sworn).

5. By order dated May 17, 2024, the Ontario Court recognized the Chapter 11 Cases as “foreign main proceedings”, recognized the appointment of the Foreign Representative, and granted related stays of proceeding in favour of the Chapter 11 Debtors. By further order dated May 17, 2024, the Ontario Court recognized certain interim and final orders entered by the U.S. Court on May 13 and 14, 2024 and other related relief, including the appointment of KSV Restructuring Inc. as the information officer in these CCAA Part IV proceedings (in such capacity, the “**Information Officer**”).

6. On June 17, 2024, the Chapter 11 Debtors, KidKraft’s equity sponsor, the Purchaser, the official unsecured creditors’ committee, and the Prepetition and DIP Secured Parties (as defined in the Fifth Affidavit of Geoffrey Walker) reached a global settlement (the “**Global Settlement**”), notice of which was filed with the U.S. Court that day.

7. On June 19, 2024, the Ontario Court granted an order recognizing certain additional interim and final orders entered by the U.S. Court in the Chapter 11 Cases.

8. On June 20, 2024, the Chapter 11 Debtors filed the *Debtors' Amended Joint Prepackaged Chapter 11 Plan*.
9. On June 24 and 25, 2024, the U.S. Court entered the following orders, among others, approving the Sale Transaction and the Plan, including the releases contemplated therein:
  - (a) *Findings of Fact, Conclusions of Law, and Order (I) Approving the Disclosure Statement; and (II) Confirming the Debtors' Amended Joint Prepackaged Chapter 11 Plan* (the “**Plan Confirmation Order**”); and
  - (b) *Amended Order (I) Authorizing the Sale of the Debtors' Assets Free and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. §§ 105 and 363, (II) Approving the Purchase Agreement, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* (the “**Sale Order**”).
10. On June 28, 2024, the Ontario Court granted an order (the “**Plan Confirmation Recognition Order**”) recognizing, *inter alia*, certain additional final orders entered by the U.S. Court in the Chapter 11 Cases, including the Plan Confirmation Order and the Sale Order, vesting the Canadian Transferred Assets (as defined in the Purchase Agreement) in and to the Purchaser free and clear of all claims and encumbrances (upon the filing of a vesting certificate by the Information Officer), and providing for the termination of these CCAA Part IV proceedings upon the Information Officer filing a termination certificate.
11. On July 5, 2024, the Sale Transaction closed.
12. To facilitate the closing of the Sale Transaction, the Chapter 11 Debtors agreed to certain non-material changes to the Purchase Agreement pertaining to the inventory being purchased by the Purchaser and certain adjustments to the calculation of the purchase price. The Chapter 11 Debtors also agreed to, among other things, seek approval from the U.S. Court of certain minor modifications to the Plan.

13. On July 6, 2024, the Chapter 11 Debtors filed the *Debtors' Second Amended Joint Prepacked Chapter 11 Plan*, and, jointly with the Prepetition and DIP Secured Parties, filed a motion seeking approval of same with the U.S. Court, scheduled to be heard on July 9, 2024.

14. Following the hearing of the motion, the Chapter 11 Debtors have engaged in discussions with certain stakeholders in respect of certain additional modifications of the Plan.

15. It is anticipated that on or about July 10, the Chapter 11 Debtors will file the *Debtors' Third Amended Joint Prepackaged Plan* (as modified, the “**Modified Post-Confirmation Plan**”) and the U.S. Court will enter an order approving same (the “**Plan Modification Order**”).

***Recognition of the Plan Modification Order is Appropriate***

16. The Foreign Representative seeks recognition by the Ontario Court of the Plan Modification Order.

17. The amendments in the Modified Post-Confirmation Plan include:

- (a) a non-material amendment to the releases to be provided by the Prepetition and DIP Secured Parties to preserve potential claims and causes of action they may allege against the Chapter 11 Debtors, certain of their officers and their financial advisor in connection with certain post-petition matters; and
- (b) a non-material amendment to the causes of action to be transferred to the Purchaser, which causes of action will instead be contributed to the general unsecured claims trust.

18. The proposed amendments in the Modified Post-Confirmation Plan do not in any way affect the scope of other releases or the recoveries of any other creditors under the Global Settlement.

19. Recognition of the Plan Modification Order (assuming it is entered by the U.S. Court) is necessary to effect the Plan and to protect the interests of the Chapter 11 Debtors and their creditors.

20. The Chapter 11 Debtors stand ready to make distributions under the Plan, effectuate the Global Settlement, and make the Plan effective upon the Ontario Court recognizing the Plan Modification Order and granting the other requested relief.

21. The Information Officer is supportive of the Ontario Court's recognition of the Plan Modification Order.

***General***

22. The CCAA, including Part IV.

23. Such further and other grounds as counsel may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

- (a) The Fifth Affidavit of Geoffrey Walker, to be sworn;
- (b) The Supplement to the Second Report of the Information Officer, to be served; and
- (c) Such further and other evidence as counsel may advise and this Honourable Court may permit.

July 10, 2024

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Lawyers for the Applicant

**TO: THE SERVICE LIST**



IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED Court File No: CV-24-00720035-00CL  
AND IN THE MATTER OF KIDKRAFT, INC. SOLOWAVE DESIGN HOLDINGS LIMITED., SOLOWAVE DESIGN INC., SOLOWAVE INTERNATIONAL  
INC. AND SOLOWAVE DESIGN LP

APPLICATION OF KIDKRAFT, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED  
Applicant

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
PROCEEDING COMMENCED AT TORONTO

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**NOTICE OF MOTION**  
**(Recognition Order (Plan Modification Order**  
**and Related Relief))**  
**(Returnable July 11, 2024)**

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**OSLER, HOSKIN & HARCOURT LLP**

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Lawyers for the Applicant

# TAB 2

Court File No. CV-24-00720035-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF KIDKRAFT, INC., SOLOWAVE DESIGN  
HOLDINGS LIMITED, SOLOWAVE DESIGN INC., SOLOWAVE  
INTERNATIONAL INC. AND SOLOWAVE DESIGN LP

APPLICATION OF KIDKRAFT, INC. UNDER SECTION 46 OF THE  
*COMPANIES CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED

Applicant

**FIFTH AFFIDAVIT OF GEOFFREY WALKER**

**(Recognition Order (Plan Modification Order and Related Relief))  
(Sworn July 11, 2024)**

I, Geoffrey Walker, of the City of Dallas, in the State of Texas, MAKE OATH AND SAY:

1. I am the Chief Executive Officer and President of KidKraft, Inc. (“**KidKraft**”), and together with its debtor and non-debtor affiliates, the “**Company**”). I joined the Company in 2019 and have served in my current role since that time.

2. As Chief Executive Officer and President of KidKraft, I am familiar with, and have personal knowledge regarding, the Chapter 11 Debtors’ (defined below) businesses, day-to-day operations, financial affairs, and books and records, including those of Solowave Design Holdings Limited, Solowave International Inc. and Solowave Design Inc. (collectively, the “**Canadian Corporate Debtors**”), and Solowave Design LP (together with the Canadian Corporate Debtors, the “**Canadian Debtors**”). As such, I have personal knowledge of the matters deposed herein. Where I have relied on other sources of information, I have so stated and believe them to be true. In preparing this affidavit (the “**Fifth Affidavit**”), I have also consulted with the Company’s senior

management team, and financial and legal advisors. The Company does not waive or intend to waive any applicable privilege by any statement in this Fifth Affidavit.

3. KidKraft, the Canadian Debtors, and six other debtors and debtors in possession (collectively, the “**Chapter 11 Debtors**”) recently filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code with the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “**U.S. Court**”). The cases commenced by the Chapter 11 Debtors in the U.S. Court are referred to herein as the “**Chapter 11 Cases**”.

4. I swear this Fifth Affidavit in support of a motion by KidKraft in its capacity as the foreign representative of the Chapter 11 Debtors (in such capacity, the “**Foreign Representative**”), for an order, among other things:

- (a) recognizing and enforcing the Plan Modification Order (defined below) entered by the U.S. Court, pursuant to section 49 of the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCAA**”);
- (b) making certain amendments to the Plan Confirmation Recognition Order to account for the Modified Post-Confirmation Plan (each as defined below); and
- (c) granting such further and other relief as counsel may request and this Honourable Court may provide.

5. I previously swore an initial affidavit on May 10, 2024 (the “**Initial Affidavit**”), a second affidavit on May 15, 2024 (the “**Second Affidavit**”), a third affidavit on June 17, 2024 (the “**Third Affidavit**”), and a fourth affidavit on June 26, 2024 (the “**Fourth Affidavit**”). Capitalized terms used and not otherwise defined in this Fifth Affidavit have the meanings given to them in the Initial Affidavit, Second Affidavit, and Third Affidavit, and Fourth Affidavit.

6. Unless otherwise indicated, dollar amounts referenced in this Fifth Affidavit are references to United States Dollars.

**A. Background and Update on Chapter 11 Cases**

7. On May 10, 2024, each of the Chapter 11 Debtors filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code with the U.S. Court. The Chapter 11 Cases have been assigned to the Honourable Judge Michelle V. Larson.

8. By order dated May 10, 2024, the Ontario Superior Court of Justice (Commercial List) (the “**Ontario Court**”) granted an interim stay of proceeding in respect of KidKraft and the Canadian Debtors, and their respective directors and officers.

9. On May 10, 2024, the Chapter 11 Debtors filed the *Debtors’ Joint Prepacked Chapter 11 Plan* (as subsequently amended and supplemented, the “**Plan**”) and a disclosure statement in respect of the Plan. The Plan effectuates the sale of substantially all of the Chapter 11 Debtors’ assets (including the assets of the Canadian Debtors) (the “**Sale Transaction**”) to Backyard Products, LLC (the “**Purchaser**”) pursuant to the terms of an asset purchase agreement (the “**Purchase Agreement**”).<sup>1</sup> The Sale Transaction, support for the Plan, and a multi-draw debtor-in-possession term loan facility (the “**DIP Facility**”) were contemplated by the restructuring support agreement entered into by the Chapter 11 Debtors, 1903 Partners, LLC (the lender under the Prepetition Credit Agreement), GB Funding, LLC (the administrative agent under the Prepetition Credit Agreement, and together with the 1903 Partners, LLC the “**Prepetition and**

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<sup>1</sup> The Plan and Sale Transaction are described in greater detail in the Initial Affidavit at paras 45-48 and the Fourth Affidavit at paras 48-49, 53-88.

**DIP Secured Parties**<sup>2</sup>), the Purchaser, and MidOcean Partners IV, L.P., the Company's equity sponsor ("**MidOcean**").

10. By order dated May 17, 2024, the Ontario Court recognized the Chapter 11 Cases as "foreign main proceedings", recognized the appointment of the Foreign Representative, and granted related stays of proceeding in favour of the Chapter 11 Debtors (the "**Initial Recognition Order**"). By further order dated May 17, 2024, the Ontario Court recognized certain interim and final orders entered by the U.S. Court on May 13 and 14, 2024 (the "**Supplemental Order**"). In addition, the Supplemental Order appointed KSV Restructuring Inc. as the information officer in these CCAA Part IV proceedings (in such capacity, the "**Information Officer**"), granted an Administration Charge in the amount of CAD \$750,000 in favour of Canadian counsel to the Chapter 11 Debtors, the Information Officer and counsel for the Information Officer, a Directors' Charge in the amount of CAD\$100,000, and a DIP Charge (each as defined in the Supplemental Order) for advances under the DIP Facility. Copies of the Initial Recognition Order, the Supplemental Order and Justice Cavanagh's endorsement in respect of same are attached as **Exhibits "A", "B" and "C"**, respectively.

11. On June 17, 2024, the Chapter 11 Debtors, the Purchaser, MidOcean, the Prepetition and DIP Secured Parties, and the official unsecured creditors' committee (the "**Committee**")<sup>3</sup> reached a global settlement (the "**Global Settlement**"), notice of which was filed with the U.S. Court that day.

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<sup>2</sup> Details regarding the Prepetition and DIP Secured Parties, including details on the Chapter 11 Debtors prepetition secured debt and the DIP Facility, can be found in the Initial Affidavit at paras 35-39, Second Affidavit at paras 79-97, Third Affidavit at paras 22-29, and Fourth Affidavit at paras 41-45.

<sup>3</sup> As noted in the Fourth Affidavit, the Committee includes a significant unsecured creditor of the Canadian Debtors.

12. On June 19, 2024, the Ontario Court granted an order recognizing certain additional interim and final orders entered by the U.S. Court in the Chapter 11 Cases. Copies of this order and Justice Cavanagh’s endorsement in respect of same are attached as **Exhibits “D” and “E”**.

13. As contemplated in the Global Settlement, on June 20, 2024, the Chapter 11 Debtors filed the *Debtors’ Amended Joint Prepacked Chapter 11 Plan*, which included certain amendments to the Plan, including the creation of a general unsecured claims trust (the **“GUC Trust”**) and the provision of a mechanism for certain holders of general unsecured claims to affirmatively opt-in to receiving their *pro rata* share of beneficial interests in the GUC Trust. Under the Plan, the Chapter 11 Debtors and their key stakeholders agreed to fund the GUC Trust with specific assets, including cash and certain claims and causes of action. In exchange, the Committee agreed to, among other things, support the Plan and the Chapter 11 Debtors’ proposed DIP financing.

14. On June 24 and 25, 2024, the U.S. Court entered the following orders, among others, approving the Sale Transaction and the Plan, including the releases contemplated therein:

- (a) *Findings of Fact, Conclusions of Law, and Order (I) Approving the Disclosure Statement; and (II) Confirming the Debtors’ Amended Joint Prepackaged Chapter 11 Plan* (the **“Plan Confirmation Order”**); and
- (b) *Amended Order (I) Authorizing the Sale of the Debtors’ Assets Free and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. §§ 105 and 363, (II) Approving the Purchase Agreement, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* (the **“Sale Order”**).

15. On June 28, 2024, the Ontario Court granted an order (the **“Plan Confirmation Recognition Order”**) recognizing, among other things, certain additional final orders entered by the U.S. Court in the Chapter 11 Cases, including the Plan Confirmation Order and the Sale Order, vesting the Canadian Transferred Assets (as defined in the Purchase Agreement) in and to the

Purchaser free and clear of all claims and encumbrances (upon the filing of the Information Officer's Vesting Certificate), and providing for the termination of these CCAA Part IV proceedings upon the filing of the Information Officer's Termination Certificate.

16. Since the U.S. Court's approval of the Sale Transaction and Plan, and the Ontario Court's entry of the Plan Confirmation Recognition Order, the Chapter 11 Debtors, together with the Prepetition and DIP Secured Parties and the Purchaser, have been working expeditiously to close the Sale Transaction.

17. To facilitate the closing of the Sale Transaction, the Chapter 11 Debtors agreed to certain non-material changes to the Purchase Agreement pertaining to the inventory being purchased by the Purchaser and certain adjustments to the calculation of the purchase price. The Chapter 11 Debtors also agreed to seek approval from the U.S. Court of certain minor modifications to the Plan, discussed below.

18. On July 5, 2024, the Sale Transaction closed.

19. On July 6, 2024, the Chapter 11 Debtors filed the *Debtors' Second Amended Joint Prepacked Chapter 11 Plan* (the "**Second Amended Plan**"), which includes certain non-material amendments (discussed below), and, jointly with the Prepetition and DIP Secured Parties, filed a motion seeking approval of same with the U.S. Court (the "**Plan Modification Motion**"). A copy of the Plan Modification Motion is attached as **Exhibit "F"**. The motion includes a draft order (the "**First Proposed Plan Modification Order**"), which itself includes copies of the Second Amended Plan and a redline of the differences between the Plan, as confirmed, and the Second Amended Plan at Exhibits 1 and 2 to the First Proposed Plan Modification Order, respectively.



20. The Post-Confirmation Motion was heard on July 9, 2024.
21. On July 10, 2024, the Chapter 11 Debtors filed:
- (a) the *Debtors' Third Amended Joint Prepackaged Chapter 11 Plan* (the “**Third Amended Plan**”), which includes certain additional amendments (discussed below), and
  - (b) a revised draft order (the “**Second Proposed Plan Modification Order**”).
22. A copy of the Chapter 11 Debtors' notice of filing the Third Amended Plan and Second Proposed Plan Modification Order is attached hereto as **Exhibit “G”**, and includes copies of the Third Amended Plan (as Exhibit A thereto), a redline of the differences between the Second Amended Plan and the Third Amended Plan (as Exhibit A-1 thereto), the Second Proposed Plan Modification Order (as Exhibit B thereto) and a redline of the differences between the First Proposed Plan Modification Order and the Second Proposed Plan Modification Order (as Exhibit B-1 thereto).
23. It is anticipated that the U.S. Court will enter the Second Proposed Plan Modification Order, or a further draft containing other non-material amendments (as ultimately entered, the “**Plan Modification Order**”) on July 11, 2024, approving the modifications to the Plan in the Third Amended Plan, or a further amended version containing other non-material amendments (as so confirmed, the “**Modified Post-Confirmation Plan**”). A copy of the entered Plan Modification Order, which will include as Exhibit 1 thereto the Modified Post-Confirmation Plan, will be attached to a further affidavit once available.
24. Background information with respect to the Chapter 11 Debtors, including KidKraft and the Canadian Debtors, the reasons for the commencement of the Chapter 11 Cases, and the other

orders of the U.S. Court which were recognized by the Ontario Court are set out in the Initial Affidavit, the Second Affidavit, the Third Affidavit, the Fourth Affidavit, and my declarations in the Chapter 11 Cases that KidKraft submitted to the U.S. Court on May 10 and June 20, 2024, copies of which, without exhibits, are attached hereto as **Exhibits “H”, “I”, “J”, “K”, “L”** and **“M”** respectively.

**B. Recognition of Plan Modification Order**

25. The Foreign Representative seeks recognition by the Ontario Court of the Plan Modification Order.

**(a) Amendments in the Second Amended Plan**

26. As part of the preparation for the closing of the Sale Transaction, and after entry of the Plan Confirmation Order, Sale Order, and Plan Confirmation Recognition Order, the Prepetition and DIP Secured Parties formed a belief that certain financial reporting and payment issues occurred, including (i) inaccuracies in the Purchase Price Calculations delivered pursuant to the DIP Documents (each as defined in the Plan), and (ii) the Chapter 11 Debtors’ payment of approximately \$1,000,000 in prepetition claims (the **“Vendor Payments”**) outside of, at minimum, the Approved Budget (as defined in the Plan). The Vendor Payments do not prejudice any of the Chapter 11 Debtors’ stakeholders – other than, potentially, the Prepetition and DIP Secured Parties, who requested the modifications in the Second Amended Plan, in part, to address these payments.

27. Out of an abundance of caution, the Prepetition and DIP Secured Parties sought to amend the releases they are providing under the Plan related to preserving potential claims and causes of action the Prepetition and DIP Secured Parties may allege against the Chapter 11 Debtors, certain

of their officers, and the Chapter 11 Debtors' financial advisor, SierraConstellation Partners, LLC ("SCP"), in each case limited to:

- (a) the Chapter 11 Debtors' reporting obligations under the First Interim DIP Order, the Second Interim DIP Order and the Final Interim DIP Order (each as defined in the Fourth Affidavit and which orders were previously recognized by the Ontario Court) or the DIP Facility Documents (as defined in the Modified Post-Confirmation Plan), or
- (b) any payment in violation of the Prepetition Credit Agreement Documents, the Restructuring Support Agreement and/or the DIP Documents (each as defined in the Modified Post-Confirmation Plan),

provided that any potential recovery against the Chapter 11 Debtors and their officers is limited to insurance proceeds (if any) available from the Chapter 11 Debtors' insurance policies, including director and officer liability insurance policies, except that such insurance limitation will not apply to claims and causes of action arising as a result of gross negligence, fraud or willful misconduct (collectively, the "**Lender Retained Causes of Action**").

**(b) Amendments in the Third Amended Plan**

28. To facilitate the entry of the Plan Modification Order without objection, the Chapter 11 Debtors, the Prepetition and DIP Secured Parties, the Purchaser and the Committee negotiated certain additional non-material modifications to the Plan, which were incorporated into the Third Amended Plan.

29. The additional amendments in the Third Amended Plan include:

- (a) excluding from the releases provided by the Chapter 11 Debtors certain causes of action that they may have against certain of their officers and SCP, in each case

limited on the same basis as the Lender Retained Causes of Action (the “**Debtor Retained Causes of Action**”);

- (b) providing a condition requiring the Purchaser to transfer back to the Chapter 11 Debtors the potential claims or causes of action of the Chapter 11 Debtors pursuant to section 549 U.S. Bankruptcy Code that the Purchaser acquired on closing of the Sale Transaction (the “**549 Causes of Action**”), which the Purchaser has agreed to do;
- (c) providing for additional contributions to the GUC Trust by the U.S. Chapter 11 Debtors, including:
  - (i) the Debtor Retained Causes of Action;
  - (ii) the 549 Causes of Action; and
  - (iii) amounts, if any, by which the approved professional fee budget for SCP under the DIP Facility exceeds the amounts that SCP obtains through its fee application to the U.S. Court, whether such savings are obtained consensually or through an objection to SCP’s fee application (the “**Professional Fee Reduction Amount**”, and together with the Debtor Retained Causes of Action and the 549 Causes of Action, the “**GUC Retained Causes of Action**”);
- (d) providing that any recovery from the GUC Retained Causes of Action will be shared *pro rata* among the beneficiaries of the GUC Trust (*i.e.*, including the Prepetition Secured Parties’ Deficiency Claims, as defined in the Modified Post-Confirmation Plan); and
- (e) granting the Prepetition and DIP Secured Parties reporting and consultation rights with the GUC Trust.

30. In respect of the 549 Causes of Action, the Second Proposed Plan Modification Order includes a provision amending the Purchase Agreement to exclude the 549 Causes of Action from the Transferred Assets (as defined in the Purchase Agreement).

**(c) The proposed amendments are necessary and appropriate**

31. The Chapter 11 Debtors support the limited modifications in the Modified Post-Confirmation Plan (including those amendments introduced in the Second Amended Plan, the Third Amended Plan and any further amendment filed and confirmed in the Plan Confirmation Order). As they have maintained through the Chapter 11 Cases and these CCAA Part IV proceedings, the Chapter 11 Debtors believe the Sale Transaction and the Plan are the best option to maximize value for the Chapter 11 Debtors and their stakeholders.

32. Assuming the Plan Modification Order ultimately entered by the U.S. Court is substantially in the form of the Second Proposed Plan Modification Order, the U.S. Court's finding will include, among other things, that the Modified Post-Confirmation Plan does not include any modification that materially alters either the classification or treatment of any creditor that voted to accept the Plan.

33. Given the limited nature of the proposed modifications and the lack of prejudice to other parties, the Chapter 11 Debtors believe that it is appropriate for the Ontario Court to recognize the Plan Modification Order, as ultimately entered by the U.S. Court, and make certain minor amendments to the Plan Confirmation Recognition Order to account for the Modified Post-Confirmation Plan. Such recognition is necessary to effect the Plan and to protect the interests of the Chapter 11 Debtors and their creditors. The Chapter 11 Debtors stand ready to make

distributions under the Plan, effectuate the Global Settlement, and make the Plan effective upon the Ontario Court recognizing the Plan Modification Order and granting the other requested relief.

34. The Information Officer is supportive of the Ontario Court’s recognition of the Plan Modification Order, as will be set out in its supplement to the second report.

**SWORN BEFORE ME** over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg 431/20, on July 11, 2024, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in Dallas in the State of Texas.



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EMILIE DILLON  
LSO # 85199L  
Commissioner for Taking Affidavits

}



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**GEOFFREY WALKER**

THIS IS **EXHIBIT “A”** REFERRED TO IN THE AFFIDAVIT OF  
GEOFFREY WALKER SWORN BEFORE ME over video  
teleconference this 11<sup>th</sup> day of July, 2024 pursuant to O. Reg 431/20,  
Administering Oath or Declaration Remotely. The affiant was located in  
the City of Dallas, in the State of Texas, while the Commissioner was  
located in the City of Toronto, in the Province of Ontario.



---

Commissioner for Taking Affidavits  
EMILIE DILLON (LSO # 85199L)





**ON READING** the Notice of Application, the affidavit of Geoff Walker affirmed May 10, 2024, the affidavit of Geoff Walker affirmed May 15, 2024, the preliminary report of KSV Restructuring Inc., in its capacity as proposed information officer (the “**Proposed Information Officer**”) dated May 16, 2024, each filed, and upon being provided with copies of the documents required by section 46 of the CCAA,

**AND UPON BEING ADVISED** by counsel for the Foreign Representative that in addition to this Initial Recognition Order (Foreign Main Proceeding), a Supplemental Order (Foreign Main Proceeding) is being sought,

**AND UPON HEARING** the submissions of counsel for the Foreign Representative, counsel for the Proposed Information Officer, and counsel appearing on the participant information form, no one else appearing although duly served as appears from the affidavit of service of Emilie Dillon sworn May 16, 2024.

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

#### **FOREIGN REPRESENTATIVE**

2. **THIS COURT ORDERS** that the Foreign Representative is the “foreign representative” as defined in section 45 of the CCAA in respect of the Foreign Proceeding.

#### **CENTRE OF MAIN INTEREST AND RECOGNITION OF FOREIGN PROCEEDING**

3. **THIS COURT ORDERS** that the centre of its main interests for each of the Chapter 11 Debtors is the United States of America and that the Foreign Proceeding is hereby recognized as a “foreign main proceeding” as defined in section 45 of the CCAA.

## STAY OF PROCEEDINGS

4. **THIS COURT ORDERS** that until otherwise ordered by this Court:
- (a) all proceedings taken or that might be taken against any Chapter 11 Debtor under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 or the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11, are stayed;
  - (b) further proceedings in any action, suit or proceeding against any Chapter 11 Debtor are restrained; and
  - (c) the commencement of any action, suit or proceeding against any Chapter 11 Debtor is prohibited.

## NO SALE OF PROPERTY


5. **THIS COURT ORDERS** that, except with leave of this Court, each of the Chapter 11 Debtors is prohibited from selling or otherwise disposing of:
- (a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and
  - (b) any of its other property in Canada.

## GENERAL

6. **THIS COURT ORDERS** that any party may, from time to time, apply to this Court for such further or other relief as it may advise, including for directions in respect of this Order.
7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States of America or any other foreign jurisdiction, to give effect to this Order and to assist the Chapter 11 Debtors, the Foreign Representative and their counsel and agents in carrying out the terms of this Order. All courts, tribunals, and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to any of the Chapter 11 Debtors and the Foreign Representative as may be necessary or desirable to give effect to this Order, or to assist any of the Chapter 11 Debtors and the Foreign Representative and their agents in carrying out the terms of this Order.
8. **THIS COURT ORDERS** that the Interim Stay Order of this Court dated May 10, 2024 (the “**Interim Stay Order**”) shall be of no further force and effect once this Order becomes

effective, and that this Order shall be effective as of 12:01 a.m. on the date of this Order without the need for entry or filing of this Order, provided that nothing herein shall invalidate any action taken in compliance with such Interim Stay Order prior to the effectiveness of this Order.

9. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days' notice to the Chapter 11 Debtors, the Foreign Representative, the Proposed Information Officer and their respective counsel, and to any other party or parties likely to be affected by the order sought (including, without limitation, those identified on the service list maintained by the Proposed Information Officer), or upon such other notice, if any, as this Court may order.



Mr. Justice  
Cavanagh

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Justice Cavanagh

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**INITIAL RECOGNITION ORDER  
(FOREIGN MAIN PROCEEDING)**

**OSLER, HOSKIN & HARCOURT LLP**

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Lawyers for the Applicant

THIS IS **EXHIBIT “B”** REFERRED TO IN THE AFFIDAVIT OF  
GEOFFREY WALKER SWORN BEFORE ME over video  
teleconference this 11<sup>th</sup> day of July, 2024 pursuant to O. Reg 431/20,  
Administering Oath or Declaration Remotely. The affiant was located in  
the City of Dallas, in the State of Texas, while the Commissioner was  
located in the City of Toronto, in the Province of Ontario.



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Commissioner for Taking Affidavits  
EMILIE DILLON (LSO # 85199L)



Court File No. CV-24-00720035-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE ) FRIDAY, THE 17<sup>TH</sup>  
 )  
JUSTICE CAVANAGH ) DAY OF MAY, 2024  
 )

**IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF KIDKRAFT, INC., SOLOWAVE DESIGN HOLDINGS  
LIMITED., SOLOWAVE DESIGN INC., SOLOWAVE INTERNATIONAL INC. AND  
SOLOWAVE DESIGN LP**

**APPLICATION OF KIDKRAFT, INC. UNDER SECTION 46 OF THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED**

**SUPPLEMENTAL ORDER  
(FOREIGN MAIN PROCEEDING)**

**THIS APPLICATION**, made pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") by KidKraft, Inc. ("**KidKraft**"), in its capacity as the foreign representative (in such capacity, the "**Foreign Representative**") in respect of the proceedings commenced in the United States Bankruptcy Court for the Northern District of Texas (the "**U.S. Bankruptcy Court**") pursuant to chapter 11 of title 11 of the United States Code (the "**Foreign Proceeding**") by KidKraft and the Canadian Debtors (as hereinafter defined) (collectively, the "**Chapter 11 Debtors**"), for an Order substantially in the form enclosed in the Application Record, was heard this day by judicial videoconference in Toronto, Ontario.

**ON READING** the Notice of Application, the Affidavit of Geoff Walker affirmed May 10, 2024, the affidavit of Geoff Walker affirmed May 15, 2024, and the preliminary report of KSV Restructuring Inc. (“**KSV**”), in its capacity as proposed information officer dated May 16, 2024, each filed, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Foreign Representative, counsel for the proposed information officer, and counsel for the other parties appearing on the participant information form, no one appearing for any other party although duly served as appears from the affidavit of service of Emilie Dillon sworn May 16, 2024, and on reading the consent of KSV to act as the information officer, each filed:

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

### **APPLICATION**

2. **THIS COURT ORDERS** that, although not a company to which the CCAA applies, Solowave Design LP, its Business (as hereinafter defined) and Property (as hereinafter defined) shall have the benefits of the protections and authorizations provided by this Order, other orders made in these proceedings, and the CCAA, and shall otherwise be subject to the provisions of this Order and other orders made in these proceedings.

### **INITIAL RECOGNITION ORDER**

3. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) of this Court dated May 15, 2024 (the “**Initial Recognition Order**”).
4. **THIS COURT ORDERS** that the provisions of this Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Initial Recognition Order, provided that in the event of a conflict between the provisions of this Supplemental Order and the provisions of the Initial Recognition Order, the provisions of the Initial Recognition Order shall govern.

## RECOGNITION OF FOREIGN ORDERS

5. **THIS COURT ORDERS** that the following orders (collectively, the “**Foreign Orders**”) of the U.S. Bankruptcy Court made in the Foreign Proceeding are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

- (a) *Order (I) Authorizing KidKraft, Inc. to Act as Foreign Representative and (II) Granting Related Relief;*
- (b) *Order Directing Joint Administration of the Debtors’ Chapter 11 Cases;*
- (c) *Order Authorizing the Employment and Retention of Stretto, Inc. as Claims, Noticing, and Solicitation Agent;*
- (d) *Interim Order (I) Authorizing the Debtors to (A) Maintain and Administer Their Customer Programs; (B) Renew, Replace, Implement, or Modify Their Customer Programs; and (C) Honor Their Obligations Related to the Customer Programs, and (II) Granting Related Relief;*
- (e) *Order (I) Authorizing the Debtors to (A) Continue Their Prepetition Insurance Coverage and Satisfy Prepetition Obligations Related Thereto; (B) Renew, Amend, Supplement, Extend, or Purchase Insurance Coverage on a Postpetition Basis in the Ordinary Course; and (C) Continue Their Prepetition Customs Bond Program and Satisfy Prepetition Obligations Related Thereto; (II) Modifying the Automatic Stay Solely With Respect to Workers’ Compensation Claims; and (III) Granting Related Relief;*
- (f) *Order (I) Approving the Debtors’ Proposed Adequate Assurance Payments for Future Utility Services; (II) Prohibiting Utility Companies From Altering, Discontinuing, or Refusing Services; (III) Approving the Debtors’ Proposed Procedures for Resolving Additional Adequate Assurance Requests; and (IV) Granting Related Relief;*



- (g) *Order (I) Authorizing the Debtors to Pay Certain Taxes and Fees and (II) Granting Related Relief;*
- (h) *Interim Order (I) Authorizing the Debtors to Pay (A) Critical Vendors, (B) Lien Claimants, and (C) 503(B)(9) Claimants; (II) Confirming Administrative Expense Priority of Outstanding Orders; and (III) Granting Related Relief;*
- (i) *Interim Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System and Maintain Existing Bank Accounts, (B) Continue Using Existing Checks and Business Forms, (C) Maintain Their Corporate Card Program, and (D) Continue Intercompany Transactions, and (II) Granting Related Relief;*
- (j) *Order (I) Authorizing the Debtors to (A) Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief; and*
- (k) *Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Senior Secured Superpriority Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens And Providing Superpriority Administrative Expense Status, (IV), Granting Adequate Protection to the Prepetition Secured Lenders, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief (the “**Interim DIP Order**”);*  
  
(copies of which are attached as Schedules “A” to “K” hereto, respectively);

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property (as hereinafter defined) in Canada.

#### **APPOINTMENT OF INFORMATION OFFICER**

6. **THIS COURT ORDERS** that KSV is hereby appointed as an officer of this Court (in such capacity, the “**Information Officer**”), with the powers and duties set out herein and in any other Order made in these proceedings.

## **NO PROCEEDINGS AGAINST THE CHAPTER 11 DEBTORS OR THE PROPERTY**

7. **THIS COURT ORDERS** that until such date as this Court may order (the “**Stay Period**”) no proceeding, application or enforcement process in any court or tribunal in Canada (each, a “**Proceeding**”) shall be commenced or continued against or in respect of (a) KidKraft; or (b) any of Solowave Design Holdings Limited, Solowave Design Inc., Solowave International Inc. or Solowave Design LP (collectively, the “**Canadian Debtors**”), or any of KidKraft’s or the Canadian Debtors’ respective employees or representatives in Canada, or affecting their business (the “**Business**”) or (x) the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate in Canada, including all proceeds thereof, of KidKraft, and (y) the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, of the Canadian Debtors (collectively, (x) and (y), the “**Property**”), except with the written consent of the applicable Chapter 11 Debtors and the Information Officer, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Chapter 11 Debtors, or affecting the Business or the Property, are hereby stayed and suspended pending further Order of this Court.

## **NO EXERCISE OF RIGHTS OR REMEDIES**

8. **THIS COURT ORDERS** that, without limiting the stay of proceedings provided for in the Initial Recognition Order, during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities or person (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of any of the Chapter 11 Debtors, or their employees or representatives in Canada, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the applicable Chapter 11 Debtor and the Information Officer, or with leave of this Court, provided that nothing in this Order shall (a) prevent the assertion of or the exercise of rights and remedies outside of Canada; (b) empower any Chapter 11 Debtor to carry on any business in Canada which such Chapter 11 Debtor is not lawfully entitled to carry on; or (c) affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA, (d) prevent the filing of any registration to preserve or perfect a security interest, (e) prevent the registration of a claim for lien; or (f) prevent the DIP Agent (as defined in the

Interim DIP Order) under the post-filing financing approved in the Foreign Proceeding pursuant to the Interim DIP Order (the “**DIP Facilities**”) from making any filing or any registration contemplated by or consistent with the DIP Facilities or the Interim DIP Order.

### **NO INTERFERENCE WITH RIGHTS**

9. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, licence or permit in favour of or held by any of the Chapter 11 Debtors and affecting the Business or Property, except with leave of this Court.

### **ADDITIONAL PROTECTIONS**

10. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with any of the Chapter 11 Debtors or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation, all licensing arrangements, manufacturing arrangements, computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, logistics services, utility, fuel, maintenance, customs broker services or other services provided in respect of the Property or Business of the applicable Chapter 11 Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the applicable Chapter 11 Debtors, and that the Chapter 11 Debtors shall be entitled to the continued use in Canada of their current premises, bank accounts, telephone numbers, facsimile numbers, internet addresses and domain names.

11. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Chapter 11 Debtors with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of any of the Chapter 11 Debtors whereby the directors or officers are alleged under any law of Canada to be liable in their capacity as directors or officers for the payment or performance of such obligations.

12. **THIS COURT ORDERS** that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded to the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, and shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

#### **OTHER PROVISIONS RELATING TO INFORMATION OFFICER**

13. **THIS COURT ORDERS** that the Information Officer:

- (a) is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
- (b) shall report to this Court at such times and intervals that the Information Officer considers appropriate with respect to the status of these proceedings and the status of the Foreign Proceeding, which reports may include information relating to the Property, the Business, or such other matters as may be relevant to the proceedings herein;
- (c) in addition to the periodic reports referred to in paragraph 13(b) above, the Information Officer may report to this Court at such other times and intervals as the Information Officer may deem appropriate with respect to any of the matters referred to in paragraph 13(b) above;
- (d) shall have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Chapter 11 Debtors, to the extent that is necessary to perform its duties arising under this Order; and
- (e) shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

14. **THIS COURT ORDERS** that the Foreign Representative and the Chapter 11 Debtors shall (a) advise the Information Officer of all material steps taken by the Foreign Representative or the Chapter 11 Debtors in these proceedings or in the Foreign Proceeding; (b) co-operate fully with the Information Officer in the exercise of its powers and discharge of its obligations; and (c) provide the Information Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

15. **THIS COURT ORDERS** that the Information Officer shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

16. **THIS COURT ORDERS** that the Information Officer (a) shall post on its website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time; and (b) may post on its website any other materials that the Information Officer deems appropriate.

17. **THIS COURT ORDERS** that the Information Officer may provide any creditor of a Chapter 11 Debtor with information provided by the Chapter 11 Debtors in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the Chapter 11 Debtors is privileged or confidential, the Information Officer shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Information Officer, the Foreign Representative and the relevant Chapter 11 Debtors may agree.

18. **THIS COURT ORDERS** that Osler, Hoskin & Harcourt LLP, as Canadian counsel to the Foreign Representative and the Chapter 11 Debtors (“**Canadian Counsel**”), the Information Officer and Gowling WLG (Canada) LLP, counsel to the Information Officer, shall be paid by the Foreign Representative or the Chapter 11 Debtors (or any of their respective affiliates as they may elect) their reasonable fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order, in each case at their standard rates

and charges unless otherwise ordered by the Court on the passing of accounts. The Chapter 11 Debtors are hereby authorized and directed to pay the accounts of Canadian Counsel, the Information Officer and counsel for the Information Officer on a bi-weekly basis or on such terms as such parties may agree and the retainers previously paid to Canadian Counsel, the Information Officer and counsel to the Information Officer, respectively, are hereby approved, *nunc pro tunc*. The accounts of Canadian Counsel, the Information Officer, and counsel to the Information Officer shall not be subject to approval in the Foreign Proceeding.

19. **THIS COURT ORDERS** that the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that Canadian Counsel, the Information Officer and counsel to the Information Officer shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of C\$750,000 as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs 25 and 27 hereof.

#### **DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE**

21. **THIS COURT ORDERS** that the Chapter 11 Debtors shall indemnify its directors and officers against obligations and liabilities in Canada that they may incur as directors or officers of Chapter 11 Debtors after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director’s or officer’s gross negligence or wilful misconduct.

22. **THIS COURT ORDERS** that the directors and officers of the Chapter 11 Debtors shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of C\$100,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 25 and 27 hereof.

23. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and (b) the Chapter 11 Debtors' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

#### **DIP FINANCING**

24. **THIS COURT ORDERS** that the DIP Agent, for and on behalf of itself and the DIP Lender (each as defined in the Interim DIP Order), shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Charge**") on the Property, which DIP Charge shall be consistent with the liens and charges created by or set forth in the Interim DIP Order, provided however that, with respect to the Property, the DIP Charge shall have the priority set out in paragraphs 25 and 27 hereof, and further provided that, the DIP Charge shall not be enforced except in accordance with the terms of the Interim DIP Order and with leave of this Court.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

25. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge and the DIP Charge (collectively, the "**Charges**"), as among them, shall be as follows:

- (a) First – Administration Charge (to the maximum amount of C\$750,000);
- (b) Second – Directors' Charge (to the maximum amount of C\$100,000); and
- (c) Third – DIP Charge.

26. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.

27. **THIS COURT ORDERS** that the Charges (as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person.

28. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Chapter 11 Debtors shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Charges, unless the Chapter 11 Debtors also obtain the prior written consent of the beneficiaries of the Charges (collectively, the “**Chargees**”).

29. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds any Chapter 11 Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (i) the creation of the Charges shall not create or be deemed to constitute a breach by a Chapter 11 Debtor of any Agreement to which it is a party;
- (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (iii) the payments made by the Chapter 11 Debtors to the Chargees pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.



## SERVICE AND NOTICE

30. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/%20eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure, R.R.O. 1990, Reg 194 (the “**Rules of Civil Procedure**”). Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a case website shall be established in accordance with the Protocol with the following URL: <https://www.ksvadvisory.com/experience/case/KidKraft>.

31. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Foreign Representative, the Chapter 11 Debtors, the Information Officer and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Chapter 11 Debtors’ creditors or other interested parties at their respective addresses as last shown on the records of the applicable Chapter 11 Debtor and that any such service or distribution shall be deemed to be received (a) in the case of delivery by personal delivery, facsimile or electronic transmission, on the date of delivery or transmission; (b) in the case of delivery by prepaid ordinary mail, on the third business day after mailing; and (c) in the case of delivery by courier, on the next business day following the date of forwarding thereof.

32. **THIS COURT ORDERS** that the Foreign Representative, the Chapter 11 Debtors, the Information Officer and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Chapter 11 Debtors’ creditors or other interested parties and their advisors. Any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and

notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

33. **THIS COURT ORDERS** that, notwithstanding section 53(b) of the CCAA, without delay after this Order is made, the Information Officer shall cause to be published, a notice substantially in the form attached to this Order as Schedule “L”, once a week for two consecutive weeks, in *The Globe and Mail* (National Edition).

34. **THIS COURT ORDERS** that the Information Officer shall maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the “**Service List**”). The Information Officer shall post the Service List, as may be updated from time to time, on the case website as part of the public materials in relation to these proceedings. Notwithstanding the foregoing, the Information Officer shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

#### **GENERAL**

35. **THIS COURT ORDERS** that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

36. **THIS COURT ORDERS** that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy of any Chapter 11 Debtor, the Business or the Property.

37. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction in Canada, the United States or any other foreign jurisdiction, to give effect to this Order and to assist the Foreign Representative, the Chapter 11 Debtors, the Information Officer, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Foreign Representative, the Chapter 11 Debtors and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Foreign

Representative, the Chapter 11 Debtors and the Information Officer and their respective agents in carrying out the terms of this Order.

38. **THIS COURT ORDERS** that each of the Foreign Representative, the Chapter 11 Debtors and the Information Officer shall be at liberty and is hereby authorized and empowered to apply to any court, tribunal, or regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

39. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days' notice to the Foreign Representative, the Chapter 11 Debtors, the Information Officer, the DIP Agent and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

40. **THIS COURT ORDERS** that this Order shall be effective as of 12:01 a.m. on the date of this Order without the need for entry or filing of this Order.

 Mr. Justice  
Cavanagh

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Justice Cavanagh

**Schedule “A”**

**Foreign Representative Order**



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

United States Bankruptcy Judge

Signed May 14, 2024

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

|                                |   |                                |
|--------------------------------|---|--------------------------------|
| <b>In re:</b>                  | § | <b>Case No. 24-80045-mv111</b> |
|                                | § |                                |
| <b>KIDKRAFT, INC., et al.,</b> | § | <b>(Chapter 11)</b>            |
|                                | § |                                |
| <b>Debtors.<sup>1</sup></b>    | § | <b>(Jointly Administered)</b>  |
|                                | § |                                |
|                                | § | <b>Re: Docket No. 14</b>       |

**ORDER (I) AUTHORIZING KIDKRAFT, INC. TO ACT  
AS FOREIGN REPRESENTATIVE AND (II) GRANTING RELATED RELIEF**

Upon the Motion<sup>2</sup> filed by the above-referenced debtors and debtors in possession (collectively, the “*Debtors*”) for entry of an order (the “*Order*”) (i) authorizing KidKraft, Inc. to act as Foreign Representative on behalf of the Debtors’ estates in the Canadian Proceeding in relation to the Debtors’ Chapter 11 Cases and (ii) granting related relief, all as more fully set forth in the Motion and in the First Day Declaration; and the Court having jurisdiction over the matters

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft Partners, LLC (3268), KidKraft International IP Holdings, LLC (1841), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc. (4302). The location of the Debtors’ U.S. corporate headquarters and the Debtors’ service address is: 4630 Olin Road, Dallas, TX 75244.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

raised in the Motion pursuant to 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final 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 the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion under the circumstances and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is HEREBY ORDERED THAT:

1. KidKraft is authorized, pursuant to section 1505 of the Bankruptcy Code, to act as the Foreign Representative on behalf of the Debtors' estates in any judicial or other proceedings in Canada. As Foreign Representative, KidKraft is hereby authorized and has the power to act in any way permitted by applicable foreign law, including, but not limited to (i) seeking recognition of these Chapter 11 Cases in the Canadian Proceedings, (ii) requesting that the Canadian Court lend assistance to this Court in protecting the property of the Debtors' estates, (iii) requesting that the Canadian Court recognize the Sale Transaction, including, without limitation, with respect to the Canadian Transferred Assets (as defined in the Purchase Agreement), (iv) seeking any other appropriate relief from the Canadian Court that the Debtors deem just and proper in the furtherance of the protection of the Debtors' estates, (v) consistent with any orders of the Canadian Court, retaining and compensating Canadian professionals for their reasonable costs and fees on behalf of the Foreign Representative, and paying the reasonable costs of the Canadian Court-appointed

information officer and its counsel, each without further order of this Court, and (vi) taking similar steps and seeking similar relief in any other foreign jurisdiction in which the Debtors determine it is necessary to commence an ancillary proceeding.

2. This Court requests the aid and assistance of the Canadian Court to recognize these Chapter 11 Cases as a “foreign main proceeding” and KidKraft as the Foreign Representative pursuant to the CCAA, and to recognize and give full force and effect in all provinces and territories of Canada to this Order.

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

4. The terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order.

5. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

**### END OF ORDER ###**

**Order submitted by:**

**VINSON & ELKINS LLP**

William L. Wallander (Texas Bar No. 20780750)  
Matthew D. Struble (Texas Bar No. 24102544)  
Kiran Vakamudi (Texas Bar No. 24106540)  
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- and -

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**PROPOSED ATTORNEYS FOR  
THE DEBTORS AND DEBTORS IN POSSESSION**

I hereby certify that the foregoing is a true copy of the original thereof now in my office this the 14<sup>th</sup> day of May 2024 Clerk, U. S Bankruptcy Court Northern District of Texas  
By Marcy Okagon Deputy



**Schedule “B”**

**Order Directing Joint Administration**



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed May 13, 2024

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

|                                |   |                               |
|--------------------------------|---|-------------------------------|
| <b>In re:</b>                  | § | <b>Case No. 24-80045-mv11</b> |
|                                | § |                               |
| <b>KIDKRAFT, INC.</b>          | § | <b>(Chapter 11)</b>           |
|                                | § |                               |
| <b>Debtor.</b>                 | § |                               |
|                                | § |                               |
| <b>Tax I.D. No. 75-2293303</b> | § |                               |

|                                |   |                               |
|--------------------------------|---|-------------------------------|
| <b>In re:</b>                  | § | <b>Case No. 24-80046-mv11</b> |
|                                | § |                               |
| <b>KIDKRAFT EUROPE, LLC</b>    | § | <b>(Chapter 11)</b>           |
|                                | § |                               |
| <b>Debtor.</b>                 | § |                               |
|                                | § |                               |
| <b>Tax I.D. No. 26-4153174</b> | § |                               |

|  |   |                               |
|--|---|-------------------------------|
| <b>In re:</b>                              | § | <b>Case No. 24-80047-mv11</b> |
|  | § |                               |
| <b>KIDKRAFT INTERMEDIATE HOLDINGS, LLC</b> | § | <b>(Chapter 11)</b>           |
|  | § |                               |
| <b>Debtor.</b>                             | § |                               |
|  | § |                               |
| <b>Tax I.D. No. 47-4398800</b>             | § |                               |

**In re:** § **Case No. 24-80048-mv11**  
§  
**KIDKRAFT INTERNATIONAL** § **(Chapter 11)**  
**HOLDINGS, INC.** §  
§  
**Debtor.** §  
§  
**Tax I.D. No. 26-4152933** §

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**In re:** § **Case No. 24-80049-mv11**  
§  
**KIDKRAFT PARTNERS, LLC** § **(Chapter 11)**  
§  
**Debtor.** §  
§  
**Tax I.D. No. 26-4153268** §

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**In re:** § **Case No. 24-80050-mv11**  
§  
**KIDKRAFT INTERNATIONAL IP** § **(Chapter 11)**  
**HOLDINGS, LLC** §  
§  
**Debtor.** §  
§  
**Tax I.D. No. 80-0341841** §

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**In re:** § **Case No. 24-80051-mv11**  
§  
**SOLOWAVE DESIGN CORP.** § **(Chapter 11)**  
§  
**Debtor.** §  
§  
**Tax I.D. No. 75-3269294** §

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**In re:** § **Case No. 24-80052-mv11**  
§  
**SOLOWAVE DESIGN HOLDINGS** § **(Chapter 11)**  
**LIMITED** §  
§  
**Debtor.** §  
§  
**Canadian Business No. 836770206** §

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|  |   |                                |
|--|---|--------------------------------|
| <b>In re:</b>                          | § | <b>Case No. 24-80053-mvl11</b> |
|  | § |                                |
| <b>SOLOWAVE DESIGN INC.</b>            | § | <b>(Chapter 11)</b>            |
|  | § |                                |
| <b>Debtor.</b>                         | § |                                |
|  | § |                                |
| <b>Canadian Business No. 854863073</b> | § |                                |

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|  |   |                                |
|--|---|--------------------------------|
| <b>In re:</b>                          | § | <b>Case No. 24-80054-mvl11</b> |
|  | § |                                |
| <b>SOLOWAVE DESIGN LP</b>              | § | <b>(Chapter 11)</b>            |
|  | § |                                |
| <b>Debtor.</b>                         | § |                                |
|  | § |                                |
| <b>Canadian Business No. 834127201</b> | § |                                |

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|  |   |                                |
|--|---|--------------------------------|
| <b>In re:</b>                          | § | <b>Case No. 24-80055-mvl11</b> |
|  | § |                                |
| <b>SOLOWAVE INTERNATIONAL INC.</b>     | § | <b>(Chapter 11)</b>            |
|  | § |                                |
| <b>Debtor.</b>                         | § |                                |
|  | § | <b>Re: Docket No. 2</b>        |
| <b>Canadian Business No. 884734302</b> | § |                                |

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**ORDER DIRECTING JOINT  
ADMINISTRATION OF THE DEBTORS' CHAPTER 11 CASES**

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Upon the motion (the “*Motion*”)<sup>1</sup> filed by the above-captioned debtors and debtors in possession (collectively, the “*Debtors*”) for entry of an order (the “*Order*”) consolidating the administration of all of the above-captioned chapter 11 cases for procedural purposes only, all as more fully set forth in the Motion and in the First Day Declaration; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final 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

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates; and the Court having found that proper and adequate notice of the Motion under the circumstances and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is HEREBY ORDERED THAT:

1. The above-captioned chapter 11 cases shall be jointly administered for procedural purposes only as follows. Additionally, the following checked items are ordered:

- a.   X   One disclosure statement and plan of reorganization may be filed for all of the cases by any plan proponent; however, substantive consolidation of the Debtors' estates is not being requested at this time.
- b.   X   Parties may request joint hearings on matters pending in any of the jointly administered cases.
- c.   X   The U.S. Trustee may conduct joint informal meetings with the Debtors, as required, and, unless otherwise directed by the Court, a joint first meeting of creditors.
- d.   X   Unless otherwise required by the Court, each Debtor will file separate schedules of assets and liabilities and statements of financial affairs, operating reports, and, as applicable, lists of equity security holders.
- e.   X   Proofs of claim filed by creditors of any Debtor shall reflect the caption and case number of the Debtor to which the claim relates and in which chapter 11 case such claim is to be filed.
- f.   X   A separate claims register shall be maintained for each Debtor.
- g.   X   Each Debtor shall separately file operating reports and separately pay its quarterly fee due to the U.S. Trustee.

2. The Court shall maintain one file and one docket for all of the jointly administered cases under the lead case of KidKraft, Inc. and administer these chapter 11 cases under a consolidated caption, as follows:

|                                |   |                                |
|--------------------------------|---|--------------------------------|
| <b>In re:</b>                  | § | <b>Case No. 24-80045-mvl11</b> |
|                                | § |                                |
| <b>KIDKRAFT, INC., et al.,</b> | § | <b>(Chapter 11)</b>            |
|                                | § |                                |
| <b>Debtors.<sup>2</sup></b>    | § | <b>(Jointly Administered)</b>  |

3. The foregoing caption satisfies the requirements set forth in section 342(c)(1) of the Bankruptcy Code.

4. A notation substantially similar to the following shall be entered on each of the Debtors’ respective dockets (other than Debtor KidKraft, Inc.) to reflect the joint administration of these chapter 11 cases:

An order has been entered in this case in accordance with Rule 1015(b) of the Federal Rules of Bankruptcy Procedure and Rule 1015-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas directing the joint administration of the chapter 11 cases of KidKraft, Inc., KidKraft Europe, LLC, KidKraft Intermediate Holdings, LLC, KidKraft International Holdings, Inc., KidKraft Partners, LLC, KidKraft International IP Holdings, LLC, Solowave Design Corp., Solowave Design Holdings Limited, Solowave Design Inc., Solowave Design LP, and Solowave International Inc. The docket in Case No. 24-80045-mvl11 should be consulted for all matters affecting these cases. All further pleadings and other papers shall be filed in and all further docket entries shall be made in Case No. 24-80045-mvl11.

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<sup>2</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft Partners, LLC (3268), KidKraft International IP Holdings, LLC (1841), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc. (4302). The location of the Debtors’ U.S. corporate headquarters and the Debtors’ service address is: 4630 Olin Road, Dallas, TX 75244.

5. The Debtors shall maintain, and the Clerk of the Court shall keep, one consolidated docket, one file, and one consolidated service list for these chapter 11 cases.

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

7. Notice of the Motion satisfies the requirements of Bankruptcy Rule 6004(a).

8. Nothing contained in the Motion or this Order shall be deemed or construed as directing or otherwise effecting a substantive consolidation of these chapter 11 cases; *provided, however*, this Order shall be without prejudice to the rights of the Debtors to seek entry of an Order substantively consolidating their respective cases.

9. Nothing contained in the Motion or this Order shall be deemed or construed as granting any Debtor standing to be heard on any issue affecting another jointly administered Debtor beyond what is granted under applicable law.

10. Nothing contained in the Motion or this Order shall be deemed or construed as affecting the rights of parties in interest to object to, and be heard on, the appointment of any committee of creditors under section 1102 of the Bankruptcy Code, and all such rights are reserved.

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

12. The Court retains exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

**### END OF ORDER ###**

**Order submitted by:**

**VINSON & ELKINS LLP**

William L. Wallander (Texas Bar No. 20780750)  
Matthew D. Struble (Texas Bar No. 24102544)  
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**PROPOSED ATTORNEYS FOR  
THE DEBTORS AND DEBTORS IN POSSESSION**



**Schedule “C”**

**Claims Agent Employment and Retention Order**



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed May 14, 2024

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

|                                |   |                                |
|--------------------------------|---|--------------------------------|
| <b>In re:</b>                  | § | <b>Case No. 24-80045-mvl11</b> |
|                                | § |                                |
| <b>KIDKRAFT, INC., et al.,</b> | § | <b>(Chapter 11)</b>            |
|                                | § |                                |
| <b>Debtors.<sup>1</sup></b>    | § | <b>(Jointly Administered)</b>  |
|                                | § | <b>Re: Docket Nos. 4, 47</b>   |

**ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION  
OF STRETTO, INC. AS CLAIMS, NOTICING, AND SOLICITATION AGENT**

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft International IP Holdings, LLC (1841), KidKraft Partners, LLC (3268), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc. (4302). The location of the Debtors' U.S. corporate headquarters and the Debtors' service address is: 4630 Olin Road, Dallas, TX 75244.

The Court has considered the Debtors' application (the "*Application*")<sup>2</sup> to employ Stretto, Inc. (the "*Agent*") as its claims, noticing, and solicitation agent in these cases. The Court finds that *ex parte* relief is appropriate. The Court orders:

1. The Debtors are authorized to employ Agent under the terms of the Engagement Letter attached to the Application as modified by this Order.

2. The Agent is authorized and directed to perform the services as described in the Application, the Engagement Letter, and this Order. If a conflict exists, this Order controls.

3. The Agent may not sell bankruptcy data obtained through its role as the Agent to third parties.

4. The Clerk shall provide Agent with Electronic Case Filing ("*ECF*") credentials that allow Agent to receive ECF notifications, file certificates and/or affidavits of service.

5. The Agent is a custodian of court records and is designated as the authorized repository for all proofs of claim filed in these cases. The Agent shall maintain the official Claims Register(s) in these cases. The Agent must make complete copies of all proofs of claims available to the public electronically without charge. Proofs of Claims and all attachments may be redacted only as ordered by the Court.

6. The Agent shall provide the Clerk with a certified duplicate of the official Claims Register upon request.

7. The Agent shall provide (i) an electronic interface for filing proofs of claim in these cases; and (ii) a post office box or street mailing address for the receipt of proofs of claim sent by United States Mail or overnight delivery.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Application.

8. The Agent is authorized to take such other actions as are necessary to comply with all duties and provide the Services set forth in the Application and the Engagement Letter.

9. The Agent shall provide detailed invoices setting forth the services provided and the rates charged on a monthly basis to the Debtors, their counsel, the Office of the United States Trustee, counsel for any official committee, and any party in interest who specifically requests service of the monthly invoices in writing.

10. The Agent shall not be required to file fee applications. Upon receipt of Agent's invoices, the Debtors are authorized to compensate and reimburse Agent for all undisputed amounts in the ordinary course in accordance with the terms of the Engagement Letter. All amounts due to the Agent will be treated as § 503(b) administrative expenses. The Agent may apply its advance in accordance with the Engagement Letter and the terms of this Order.

11. The Debtors shall indemnify the Agent under the terms of the Engagement Letter, as modified and limited by this Order. Notwithstanding the foregoing, the Agent may only be indemnified for claims, noticing and solicitation agent activities and is not indemnified for, and may not receive any contribution or reimbursement with respect to the following:

- a. For matters or services arising before these chapter 11 cases are closed, any matter or service not approved by an order of this Court.
- b. Unauthorized marketing activities or data or privacy breaches.
- c. Any matter that is determined by a final order of a court of competent jurisdiction that arises from (i) the Agent's gross negligence, willful misconduct, fraud, bad faith, self-dealing, or breach of fiduciary duty (ii) a contractual dispute if the Court determines that indemnification, contribution, or reimbursement would not be permissible under applicable law; or (iii) any situation in which the Court determines that indemnification, contribution, or reimbursement would not be permissible pursuant to *In re Thermadyne Holdings Corp.*, 283 B.R. 749, 756 (B.A.P. 8th Cir. 2002) or applicable Fifth Circuit authority. No matter governed by this paragraph may be settled without this Court's approval.

d. This paragraph does not preclude Agent from seeking an order from this Court requiring the advancement of indemnity, contribution or reimbursement obligations in accordance with applicable law.

12. Notwithstanding paragraph 3(c) of the Engagement Letter, in the event of conversion of these chapter 11 cases to case(s) under chapter 7, nothing in this Order prevents a chapter 7 trustee from seeking an order terminating Stretto's services.

13. Section 6 of the Engagement Letter is modified as follows:

“At the request of the Company or the Company Parties, Stretto shall be authorized to establish accounts with financial institutions in the name of and as agent for the Company to facilitate distributions pursuant to a chapter 11 plan or other transaction. Any such account(s) shall be established with a United States Trustee approved depository institution in compliance with section 345 of the Bankruptcy Code. To the extent that certain financial products are provided to the Company pursuant to Stretto's agreement with financial institutions, Stretto may receive compensation from such institutions for the services Stretto provides pursuant to such agreement.”

14. Prior to any increases in Stretto's rates for any individual retained by Stretto and providing services in these cases, excluding annual “step increases” historically awarded by Stretto in the ordinary course to employees due to advancing seniority and promotion, Stretto shall file a supplemental affidavit with the Court and provide 10 business days' notice to the Debtors, the United States Trustee, and any official committee. The supplemental affidavit shall explain the basis for the requested rate increases in accordance with section 330(a)(3)(F) of the Bankruptcy Code and state whether the Debtors have consented to the rate increase. The United States Trustee retains all rights to object to any rate increase on all grounds, including, but not limited to, the reasonableness standard provided for in section 330 of the Bankruptcy Code, and all rates and rate increases are subject to review by the Court.

15. In the event of any inconsistency between the Engagement Letter, the Application, and this Order, this Order shall govern.

16. During the pendency of these cases the sole venue for resolving disputes under this engagement shall be the United States Bankruptcy Court for the Northern District of Texas. Notwithstanding section 16 of the Engagement Letter, any disputes and claims arising out of or relating to section 9 (Indemnification) of the Engagement Letter and the other indemnity provisions approved hereby shall be decided exclusively by and shall be subject to final approval of this Court, unless such amounts are *de minimis*.

17. The Agent shall not cease providing services during these chapter 11 cases for any reason, including nonpayment, without an order of the Court. In the event Agent is unable to provide the Services set out in this Order and/or the Engagement Letter, Agent will immediately notify the Clerk and the Debtors' attorney and cause all original proofs of claim and data turned over to such persons as directed by the Court.

18. After entry of an order terminating the Agent's services, upon the closing of these cases, or for any other reason, the Agent shall be responsible for archiving all proofs of claim with the Federal Archives Record Administration, if applicable, or as otherwise directed and shall be compensated by the Debtors for such archiving services.

19. The terms and conditions of this Order are immediately effective and enforceable upon its entry.

20. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order. The scope of the Agent's services may be altered only on separate motion and further order of this Court.

**### End of Order ###**

**Order submitted by:**

**VINSON & ELKINS LLP**

William L. Wallander (Texas Bar No. 20780750)  
Matthew D. Struble (Texas Bar No. 24102544)  
Kiran Vakamudi (Texas Bar No. 24106540)  
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**PROPOSED ATTORNEYS FOR  
THE DEBTORS AND DEBTORS IN POSSESSION**

**Schedule “D”**

**Interim Customer Programs Order**





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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed May 14, 2024

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

|                                |   |                                |
|--------------------------------|---|--------------------------------|
| <b>In re:</b>                  | § | <b>Case No. 24-80045-mvl11</b> |
|                                | § |                                |
| <b>KIDKRAFT, INC., et al.,</b> | § | <b>(Chapter 11)</b>            |
|                                | § |                                |
| <b>Debtors.<sup>1</sup></b>    | § | <b>(Jointly Administered)</b>  |
|                                | § |                                |
|                                | § | <b>Re: Docket No. 10</b>       |

**INTERIM ORDER  
(I) AUTHORIZING THE DEBTORS TO  
(A) MAINTAIN AND ADMINISTER THEIR CUSTOMER  
PROGRAMS; (B) RENEW, REPLACE, IMPLEMENT, OR MODIFY THEIR  
CUSTOMER PROGRAMS; AND (C) HONOR THEIR OBLIGATIONS RELATED  
TO THE CUSTOMER PROGRAMS, AND (II) GRANTING RELATED RELIEF**

Upon the Motion<sup>2</sup> filed by the above-referenced debtors and debtors in possession (collectively, the “*Debtors*”) for entry of an interim order (the “*Interim Order*”) (i) authorizing the

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft Partners, LLC (3268), KidKraft International IP Holdings, LLC (1841), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc. (4302). The location of the Debtors’ U.S. corporate headquarters and the Debtors’ service address is: 4630 Olin Road, Dallas, TX 75244.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

Debtors to (a) maintain and administer their Customer Programs; (b) renew, replace, implement, or modify their Customer Programs; and (c) honor their obligations related to the Customer Programs, in the ordinary course of business consistent with past practice and in the Debtors' business judgment, all as more fully set forth in the Motion and in the First Day Declaration; and (ii) granting related relief, and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final 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 the Court having found that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as contemplated by Bankruptcy Rule 6003; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion under the circumstances and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is HEREBY ORDERED THAT:

1. The final hearing (the "***Final Hearing***") on the Motion shall be held on June 5, 2024, at 9:30 a.m., prevailing Central Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 5:00 p.m., prevailing Central Time, on May 31, 2024, and shall be served on: (i) the Debtors, 4630 Olin Road, Dallas, TX 75244, Attn: Geoff Walker; (ii) proposed attorneys to the Debtors, Vinson & Elkins LLP, 2001 Ross Avenue, Suite 3900,

Dallas, TX 75201, Attn: Matthew D. Struble, and 1114 Avenue of the Americas, 32nd Floor, New York, New York 10036, Attn: Lauren R. Kanzer; (iii) counsel to the administrative agent under the Debtors' prepetition secured credit agreement, Katten Muchin Rosenman LLP, 50 Rockefeller Plaza, New York, NY 10020, Attn: Cindi M. Giglio; (iv) counsel to the buyer under the Debtors' prepetition asset purchase agreement, King & Spalding LLP, 1185 Avenue of the Americas, 34th Floor, New York, NY 10036, Attn: Roger Schwartz and Miguel Cadavid; and (v) the Office of the United States Trustee for the Northern District of Texas, 1100 Commerce Street, Room 976, Dallas, TX 75242, Attn: Meredyth Kippes.

2. The Debtors are authorized pursuant to sections 105(a), 363(b), 1107(a), and 1108 of the Bankruptcy Code, to maintain and administer the Customer Programs in the ordinary course of business consistent with past practice.

3. The Debtors are authorized, in their discretion, to renew, replace, implement, or modify their Customer Programs, in whole or in part, in accordance with the Debtors' business judgment.

4. The Debtors are authorized to honor their obligations owing to their customers in connection with, relating to, or based upon their Customer Programs.

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

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors'

designation of any particular check or electronic payment request as approved by this Interim Order.

7. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Customer Programs.

8. Notwithstanding the relief granted herein or actions taken hereunder, nothing contained in the Motion or this Interim Order or any payment made pursuant to this Interim Order shall constitute, nor is it intended to constitute, an implication or admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors', or any party in interest's, rights to subsequently dispute such claim or lien, a promise or requirement to pay any claim, an implication or admission that any particular claim is of a type specified or defined in the Motion or any proposed order, a waiver of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

9. Notwithstanding anything in this Interim Order to the contrary, any payment to be made, or any authorization contained hereunder, shall be subject to the terms of any orders authorizing debtor-in-possession financing or the use of cash collateral approved by this Court in these chapter 11 cases (including with respect to any approved budget governing or relating to such use) (such order, collectively with any such approved budget, the "**DIP Order**"); and to the extent there is any inconsistency between the terms of such DIP Order and any action taken or proposed to be taken hereunder, the terms of such DIP Order shall control.

10. Bankruptcy Rule 6003(b) has been satisfied.

11. The requirements of Bankruptcy Rule 6004(a) are waived.
12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.
13. The terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.
14. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.

**### END OF ORDER ###**

**Order submitted by:**

**VINSON & ELKINS LLP**

William L. Wallander (Texas Bar No. 20780750)  
Matthew D. Struble (Texas Bar No. 24102544)  
Kiran Vakamudi (Texas Bar No. 24106540)  
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- and -

David S. Meyer (*pro hac vice* pending)  
Lauren R. Kanzer (*pro hac vice* pending)  
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**PROPOSED ATTORNEYS FOR  
THE DEBTORS AND DEBTORS IN POSSESSION**

**Schedule “E”**

**Prepetition Insurance Coverage and Obligations Order**



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed May 14, 2024

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

|                                |   |                                |
|--------------------------------|---|--------------------------------|
| <b>In re:</b>                  | § | <b>Case No. 24-80045-mvl11</b> |
|                                | § |                                |
| <b>KIDKRAFT, INC., et al.,</b> | § | <b>(Chapter 11)</b>            |
|                                | § |                                |
| <b>Debtors.<sup>1</sup></b>    | § | <b>(Jointly Administered)</b>  |
|                                | § |                                |
|                                | § | <b>Re: Docket No. 7</b>        |

**ORDER**

**(I) AUTHORIZING THE DEBTORS  
TO (A) CONTINUE THEIR PREPETITION  
INSURANCE COVERAGE AND SATISFY  
PREPETITION OBLIGATIONS RELATED  
THERE TO; (B) RENEW, AMEND, SUPPLEMENT,  
EXTEND, OR PURCHASE INSURANCE COVERAGE  
ON A POSTPETITION BASIS IN THE ORDINARY COURSE; AND  
(C) CONTINUE THEIR PREPETITION CUSTOMS BOND PROGRAM  
AND SATISFY PREPETITION OBLIGATIONS RELATED THERETO;**

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft Partners, LLC (3268), KidKraft International IP Holdings, LLC (1841), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc. (4302). The location of the Debtors' U.S. corporate headquarters and the Debtors' service address is: 4630 Olin Road, Dallas, TX 75244.



**(II) MODIFYING THE AUTOMATIC STAY SOLELY WITH RESPECT TO WORKERS' COMPENSATION CLAIMS; AND (III) GRANTING RELATED RELIEF**

Upon the motion (the "*Motion*")<sup>2</sup> filed by the above-referenced debtors and debtors in possession (collectively, the "*Debtors*") for entry of an order (the "*Order*") (i) authorizing the Debtors to (a) continue their prepetition insurance coverage and satisfy prepetition obligations related thereto; (b) renew, amend, supplement, extend, or purchase insurance coverage on a postpetition basis in the ordinary course; and (c) continue their prepetition Customs Bond program and satisfy prepetition obligations related thereto; (ii) modifying the automatic stay solely with respect to workers' compensation claims; and (iii) granting related relief, all as more fully set forth in the Motion and in the First Day Declaration; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final 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 the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates; and the Court having found that proper and adequate notice of the Motion under the circumstances and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is **HEREBY ORDERED THAT:**

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.



for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

6. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Insurance Premiums, Insurance Obligations, and Customs Bond Obligations.

7. The Debtors will promptly notify the U.S. Trustee, Katten Muchin Rosenman LLP, as counsel to the administrative agent under the Debtors' prepetition secured credit agreement, King & Spalding LLP, as counsel to the buyer under the Debtors' prepetition asset purchase agreement, and any statutory committee appointed in these cases if the Debtors materially renew, amend, supplement, extend, terminate, replace, increase, or decrease existing Insurance Policy and Customs Bond coverage or change Insurance Carriers or Customs Bond Issuers, enter into any new Premium Financing Agreements, obtain additional insurance coverage, or execute other agreements in connection therewith, including letters of credit or similar financial instruments. The Debtors will provide the U.S. Trustee with proof of insurance within 10 days of the renewal or replacement of any Insurance Policy or Customs Bond.

8. Notwithstanding the relief granted herein or actions taken hereunder, nothing contained in the Motion or this Order or any payment made pursuant to this Order shall constitute, nor is it intended to constitute, an implication or admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors', or any party in interest's, rights to subsequently dispute such claim or lien, a promise or requirement to pay any prepetition claim, an implication or admission that any particular claim is of a type specified or defined in the Motion or any proposed order, a waiver of the Debtors', or any other party in interest's, rights under the

Bankruptcy Code or any other applicable law, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

9. Unless specifically provided herein, and notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in this Order shall create any rights in favor of, or enhance the status of any claim held by, any person to whom any obligations under the Insurance Policies are owed.

10. Notwithstanding anything in this Order to the contrary, any payment to be made, or any authorization contained hereunder, shall be subject to the terms of any orders authorizing debtor-in-possession financing or the use of cash collateral approved by this Court in these chapter 11 cases (including with respect to any approved budget governing or relating to such use) (such order, collectively with any such approved budget, the “*DIP Order*”); and to the extent there is any inconsistency between the terms of such DIP Order and any action taken or proposed to be taken hereunder, the terms of such DIP Order shall control.

11. The requirements of Bankruptcy Rule 6004(a) are waived.

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

13. The Court retains exclusive jurisdiction to determine amounts of any indemnification claims arising from the Customs Indemnity Agreement unless such amounts are *de minimis*.

14. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

**### End of Order ###**

**Order submitted by:**

**VINSON & ELKINS LLP**

William L. Wallander (Texas Bar No. 20780750)  
Matthew D. Struble (Texas Bar No. 24102544)  
Kiran Vakamudi (Texas Bar No. 24106540)  
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- and -

David S. Meyer (*pro hac vice* pending)  
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**PROPOSED ATTORNEYS FOR  
THE DEBTORS AND DEBTORS IN POSSESSION**

**Schedule “F”**

**Future Utility Services Order**



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed May 14, 2024

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

|                                |   |                                 |
|--------------------------------|---|---------------------------------|
| <b>In re:</b>                  | § | <b>Case No. 24-80045-mvl-11</b> |
|                                | § |                                 |
| <b>KIDKRAFT, INC., et al.,</b> | § | <b>(Chapter 11)</b>             |
|                                | § |                                 |
| <b>Debtors.<sup>1</sup></b>    | § | <b>(Jointly Administered)</b>   |
|                                | § |                                 |
|                                | § | <b>Re: Docket No. 11</b>        |

**ORDER (I) APPROVING THE DEBTORS' PROPOSED  
ADEQUATE ASSURANCE PAYMENTS FOR FUTURE UTILITY  
SERVICES; (II) PROHIBITING UTILITY COMPANIES FROM  
ALTERING, DISCONTINUING, OR REFUSING SERVICES; (III) APPROVING  
THE DEBTORS' PROPOSED PROCEDURES FOR RESOLVING ADDITIONAL  
ADEQUATE ASSURANCE REQUESTS; AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the "*Motion*")<sup>2</sup> filed by the above-captioned debtors and debtors in possession (collectively, the "*Debtors*") for entry of an order (the "*Order*") (i) approving the Debtors' proposed adequate assurance payments for future Utility Services; (ii) prohibiting Utility

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft Partners, LLC (3268), KidKraft International IP Holdings, LLC (1841), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc. (4302). The location of the Debtors' U.S. corporate headquarters and the Debtors' service address is: 4630 Olin Road, Dallas, TX 75244.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

Companies from altering, discontinuing, or refusing services; (iii) approving the Debtors' proposed Adequate Assurance Procedures for resolving additional adequate assurance requests; and (iv) granting related relief, all as more fully set forth in the Motion and in the First Day Declaration; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final 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 the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion under the circumstances and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation to the Motion and all of the proceedings had before the Court in connection with the Motion, it is HEREBY ORDERED THAT:

1. The \$20,000 to be deposited by the Debtors (the "*Adequate Assurance Deposit*") into a segregated account (the "*Adequate Assurance Account*") within 10 business days of the date hereafter or as soon thereafter as is reasonably practicable, together with the Debtors' ability to pay for future Utility Services in the ordinary course of business, subject to the Adequate Assurance Procedures, shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.

2. The Debtors are authorized to cause the Adequate Assurance Deposit to be held in a segregated account during the pendency of these chapter 11 cases. The Adequate Assurance



Account has been established as a “Debtor in Possession” account at a depository approved by the United States Trustee.

3. The Utility Companies are prohibited from altering, discontinuing, or refusing services on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance.

4. The following Adequate Assurance Procedures are approved:

- a. The Debtors will serve a copy of the Motion and this Order to each Utility Company on the Utility Services List, attached to the Motion as **Exhibit B**, within 3 business days after entry of this Order by the Court granting the Motion.
- b. Subject to paragraphs (c)-(e) herein, the Debtors will deposit the Adequate Assurance Deposit, in the aggregate amount of \$20,000, in the Adequate Assurance Account within 10 business days after entry of this Order granting the Motion, or as soon thereafter as is reasonably practicable.
- c. Each Utility Company shall be entitled to the funds in the Adequate Assurance Account in the amount set forth for such Utility Company in the column labeled “Proposed Adequate Assurance” on the Utility Services List, as may be amended or modified in accordance with this Order granting the Motion, and such funds shall constitute adequate assurance for each Utility Company.
- d. If an amount relating to Utility Services provided postpetition by a Utility Company is unpaid, and remains unpaid beyond any applicable grace period, such Utility Company may request a disbursement from the Adequate Assurance Account by filing notice with the Court demanding payment and giving notice to: (i) the Debtors, 4630 Olin Road, Dallas, TX 75244, Attn: Geoff Walker; (ii) proposed attorneys to the Debtors, 2001 Ross Avenue, Suite 3900, Dallas, TX 75201, Attn: Matthew D. Struble, and 1114 Avenue of the Americas, 32nd Floor, New York, New York 10036, Attn: Lauren R. Kanzer; (iii) counsel to the administrative agent under the Debtors’ prepetition secured credit agreement, Katten Muchin Rosenman LLP, 50 Rockefeller Plaza, New York, NY 10020, Attn: Cindi M. Giglio; (iv) counsel to the buyer under the Debtors’ prepetition asset purchase agreement, King & Spalding LLP, 1185 Avenue of the Americas, 34<sup>th</sup> Floor, New York, NY 10036, Attn: Roger Schwartz and Miguel Cadavid; and (v) the Office of the United States Trustee for the Northern District of Texas, 1100 Commerce Street, Room 976, Dallas, TX 75242, Attn: Meredyth Kippes (collectively, the “*Notice Parties*”). The Debtors shall honor such valid request within five (5) business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Company to resolve any dispute regarding such

request without further order of the Court. To the extent that a Utility Company receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed.

- e. The portion of the Adequate Assurance Deposit attributable to each Utility Company shall be removed from the Adequate Assurance Account by the Debtors automatically on the earlier of: (i) reconciliation and payment by the Debtors of the Utility Company's final invoice in accordance with applicable nonbankruptcy law following the Debtors' termination of Utility Services from such Utility Company; and (ii) the effective date of any chapter 11 plan confirmed in these chapter 11 cases.
- f. Any Utility Company desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must file and serve a request for additional assurance (an "***Additional Assurance Request***") on the Notice Parties within 14 days after entry of this Order by the Court granting the Motion.
- g. Any Additional Assurance Request must: (i) be filed with the Court; (ii) set forth the location(s) for which Utility Services are provided, the account number(s) for such location(s), and the outstanding balance for each such account; (iii) summarize the Debtors' payment history relevant to the affected account(s), including any security deposits or surety bonds; and (iv) explain why the Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment under section 366 of the Bankruptcy Code or the basis for seeking the Additional Assurance Request, each as applicable.
- h. Any Utility Company that does not timely file with the Court and serve an Additional Assurance Request will be (i) deemed to have received "satisfactory" adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) forbidden from altering, discontinuing, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges or requiring additional assurance of payment (other than the Proposed Adequate Assurance).
- i. The Debtors may, without further order from the Court, resolve any Additional Assurance Request by mutual agreement with a Utility Company, and the Debtors may, in connection with any such agreement, provide a Utility Company with additional adequate assurance of payment, including, but not limited to, cash deposits, prepayments, or other forms of security if the Debtors submit that such adequate assurance is reasonable.
- j. Notwithstanding anything in these procedures to the contrary, the Court shall conduct a hearing within 30 days following the Petition Date to resolve any outstanding Adequate Assurance Requests in the event any are timely filed by the Utility Companies (the "***Determination Hearing***").

5. The Utility Companies are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

6. All Utility Companies that do not file an objection or serve an Additional Assurance Request shall be: (a) deemed to have received adequate assurance of payment “satisfactory” to such Utility Company in compliance with section 366 of the Bankruptcy Code, and (b) forbidden from (i) altering, discontinuing, or refusing services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance, and (ii) requiring additional assurance of payment other than the Proposed Adequate Assurance.

7. To the extent there is an Additional Assurance Request that has not been resolved between the Debtors and such Utility Company, the Court shall conduct the Determination Hearing on June 5, 2024 at 9:30 a.m. Central Time to resolve any disputes between the Debtors and such Utility Company regarding the Adequate Assurance Procedures and/or the proposed Adequate Assurance Deposit.

8. For Utility Companies that are identified by the Debtors subsequent to the entry of this Order, the Debtors will add such Utility Company to the Utility Services List and cause a copy of this Order, including the Adequate Assurance Procedures, to be served, within 3 business days, on such subsequently identified Utility Company and with sufficient time for such Utility to object in advance of the Determination Hearing. In addition, the Debtors will provide an Adequate Assurance Deposit in an amount equal to the lesser of (a)(i) approximately half of the Average Monthly Utility Company Cost for such Utility Company, minus (ii) any deposit held by such Utility Company, plus (iii) the estimated amount owed to such Utility Company for prepetition

services which have accrued but not come due; and (b) approximately half of the Average Monthly Utility Company Cost for such Utility Company.

9. The relief granted herein is for all Utility Companies providing Utility Services to the Debtors and is not limited to those parties or entities listed on the Utility Services List; *provided, however*, the Debtors must add any Utility Company impacted by this Order to the Utility Service List and (a) serve any subsequently identified Utility Company with a copy of the Motion and Order within 3 business days of such provider being added to the list and with sufficient time for such Utility to object in advance of the Determination Hearing, (b) allocate additional amounts to the Adequate Assurance Deposit in accordance with the Motion, and (c) provide notice to the subsequently identified Utility Company of its proposed Adequate Assurance. Any subsequently identified Utility Company shall (x) be bound to the Adequate Assurance Procedures and (y) have until the earlier of 21 days from the date of service of the Motion and the Order or the business day before the Determination Hearing to make an Additional Assurance Request in accordance with the Adequate Assurance Procedures.

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

11. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Utility Services.

12. Notwithstanding the relief granted herein or actions taken hereunder, nothing contained in the Motion or this Order or any payment made pursuant to this Order shall constitute, nor is it intended to constitute, an implication or admission as to the validity or priority of any

claim or lien against the Debtors, a waiver of the Debtors', or any party in interest's, rights to subsequently dispute such claim or lien, a promise or requirement to pay any claim, an implication or admission that any particular claim is of a type specified or defined in the Motion or any proposed order, a waiver of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

13. Nothing in the Motion or this Order shall be deemed to vacate or modify any other restrictions on the termination of service by a Utility Company as provided by sections 362 and 365 of the Bankruptcy Code or other applicable law.

14. Notwithstanding anything in this Order to the contrary, any payment to be made, or any authorization contained hereunder, shall be subject to the terms of any orders authorizing debtor-in-possession financing or the use of cash collateral approved by this Court in these chapter 11 cases (including with respect to any approved budget governing or relating to such use) (such order, collectively with any such approved budget, the "*DIP Order*"); and to the extent there is any inconsistency between the terms of such DIP Order and any action taken or proposed to be taken hereunder, the terms of such DIP Order shall control.

15. The requirements of Bankruptcy Rule 6004(a) are waived.

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

17. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

**### END OF ORDER ###**

**Order submitted by:**

**VINSON & ELKINS LLP**

William L. Wallander (Texas Bar No. 20780750)  
Matthew D. Struble (Texas Bar No. 24102544)  
Kiran Vakamudi (Texas Bar No. 24106540)  
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lkanzer@velaw.com

**PROPOSED ATTORNEYS FOR  
THE DEBTORS AND DEBTORS IN POSSESSION**

**Schedule “G”**

**Taxes and Fees Order**



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed May 14, 2024

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

|                                |   |                                |
|--------------------------------|---|--------------------------------|
| <b>In re:</b>                  | § | <b>Case No. 24-80045-mvl11</b> |
|                                | § |                                |
| <b>KIDKRAFT, INC., et al.,</b> | § | <b>(Chapter 11)</b>            |
|                                | § |                                |
| <b>Debtors. <sup>1</sup></b>   | § | <b>(Jointly Administered)</b>  |
|                                | § |                                |
|                                | § | <b>Re: Docket No. 5</b>        |

**ORDER (I) AUTHORIZING THE DEBTORS TO  
PAY CERTAIN TAXES AND FEES AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “*Motion*”)<sup>2</sup> filed by the above-captioned debtors and debtors in possession (collectively, the “*Debtors*”) for entry of an order (the “*Order*”) (i) authorizing the

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft Partners, LLC (3268), KidKraft International IP Holdings, LLC (1841), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc. (4302). The location of the Debtors’ U.S. corporate headquarters and the Debtors’ service address is: 4630 Olin Road, Dallas, TX 75244.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.



Debtors to remit and pay (or use tax credits to offset) certain accrued and outstanding prepetition Taxes and Fees that will become payable during the pendency of these chapter 11 cases in the ordinary course of business and (ii) granting related relief, all as more fully set forth in the Motion and in the First Day Declaration; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final 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 the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion under the circumstances and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation to the Motion and all of the proceedings had before the Court in connection with the Motion, it is HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized to pay and remit prepetition Taxes and Fees to the Authorities pursuant to this Order in accordance with the Motion.
3. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented

for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

5. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any taxes or fees.

6. Notwithstanding the relief granted herein or actions taken hereunder, nothing contained in the Motion or this Order or any payment made pursuant to this Order shall constitute, nor is it intended to constitute, an implication or admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors', or any party in interest's, rights to subsequently dispute such claim or lien, a promise or requirement to pay any prepetition claim, an implication or admission that any particular claim is of a type specified or defined in the Motion or any proposed order, a waiver of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

7. Notwithstanding anything in this Order to the contrary, any payment to be made, or any authorization contained hereunder, shall be subject to the terms of any orders authorizing debtor-in-possession financing or the use of cash collateral approved by this Court in these chapter 11 cases (including with respect to any approved budget governing or relating to such use) (such order, collectively with any such approved budget, the "**DIP Order**"); and to the extent there is any inconsistency between the terms of such DIP Order and any action taken or proposed to be taken hereunder, the terms of such DIP Order shall control.

8. The requirements of Bankruptcy Rule 6004(a) are waived.

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

10. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

**### END OF ORDER ###**

**Order submitted by:**

**VINSON & ELKINS LLP**

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**PROPOSED ATTORNEYS FOR  
THE DEBTORS AND DEBTORS IN POSSESSION**

**Schedule “H”**

**Interim Authorization to Pay Critical Vendors and Claimants Order**



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed May 14, 2024

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

|                                |   |                                 |
|--------------------------------|---|---------------------------------|
| <b>In re:</b>                  | § | <b>Case No. 24-80045-mvl-11</b> |
|                                | § |                                 |
| <b>KIDKRAFT, INC., et al.,</b> | § | <b>(Chapter 11)</b>             |
|                                | § |                                 |
| <b>Debtors.<sup>1</sup></b>    | § | <b>(Jointly Administered)</b>   |
|                                | § | <b>Re: Docket No. 9</b>         |

**INTERIM ORDER  
(I) AUTHORIZING THE DEBTORS TO PAY  
(A) CRITICAL VENDORS, (B) LIEN CLAIMANTS, AND  
(C) 503(B)(9) CLAIMANTS; (II) CONFIRMING ADMINISTRATIVE EXPENSE  
PRIORITY OF OUTSTANDING ORDERS; AND (III) GRANTING RELATED RELIEF**

Upon the Motion filed by the above referenced debtors and debtors in possession (collectively, the “*Debtors*”) for entry of an interim order (the “*Interim Order*”) (i) authorizing the Debtors to pay in the ordinary course of business, based on their sound business judgment, prepetition amounts owed to the Vendors that are necessary to avoid immediate and irreparable

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft Partners, LLC (3268), KidKraft International IP Holdings, LLC (1841), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc. (4302). The location of the Debtors’ U.S. corporate headquarters and the Debtors’ service address is: 4630 Olin Road, Dallas, TX 75244.

harm; (ii) confirming the administrative expense priority status and treatment of the Debtors' Outstanding Orders; and (iii) granting related relief, all as more fully set forth in the Motion and in the First Day Declaration; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final 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 the Court having found that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as contemplated by Bankruptcy Rule 6003; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion under the circumstances and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is HEREBY ORDERED THAT:

1. The final hearing (the "***Final Hearing***") on the Motion shall be held on June 5, 2024, at 9:30 a.m., prevailing Central Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 5:00 p.m., prevailing Central Time, on May 31, 2024, and shall be served on: (i) the Debtors, 4630 Olin Road, Dallas, TX 75244, Attn: Geoff Walker; (ii) proposed attorneys to the Debtors, Vinson & Elkins LLP, 2001 Ross Avenue, Suite 3900, Dallas, TX 75201, Attn: Matthew D. Struble, and 1114 Avenue of the Americas, 32nd Floor, New York, New York 10036, Attn: Lauren R. Kanzer; (iii) counsel to the administrative

agent under the Debtors' prepetition secured credit agreement, Katten Muchin Rosenman LLP, 50 Rockefeller Plaza, New York, NY 10020, Attn: Cindi M. Giglio; (iv) 1185 Avenue of the Americas, 34th Floor, New York, NY 10036, Attn: Roger Schwartz and Miguel Cadavid; and (v) the Office of the United States Trustee for the Northern District of Texas, 1100 Commerce Street, Room 976, Dallas, TX 75242, Attn: Meredyth Kippes.

2. The Debtors are authorized, subject to this Interim Order, to pay the prepetition Vendor Claims described in the Motion, in the ordinary course of business, as the Debtors determine to be necessary or appropriate in order to avoid immediate and irreparable harm, in an aggregate amount not to exceed \$525,000 on an interim basis as set forth in the categories and amounts set forth in the Motion. In the event the Debtors expect to exceed the aggregate amounts in any category as detailed in the Motion during the interim period, the Debtors shall file a notice with the Court describing the category and overage amount prior to payment; *provided* that if the Debtors expect to exceed the aggregate amount of all Vendor Claims under this Interim Order, the Debtors shall file a separate motion seeking authority to exceed such aggregate amount.

3. As a condition to receiving any payment under this Interim Order, a Vendor must maintain or apply, as applicable, Customary Trade Terms<sup>2</sup> during the pendency of these chapter 11 cases. Further, if a Vendor, after receiving a payment under this Interim Order, ceases to provide goods or services on Customary Trade Terms, the Debtors may assert and request that the Court order: (i) that the payment of such Vendor Claim is a voidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code that the Debtors may recover from such Vendor in cash,

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<sup>2</sup> As used herein, "*Customary Trade Terms*" means, with respect to a Vendor, (i) the normal and customary trade terms, practices, and programs that were most favorable to the Debtors and in effect between such Vendor and the Debtors in the twelve-month period prior to the Petition Date or (ii) such other trade terms as agreed by the Debtors and such Vendor that, in the reasonable business judgment of the Debtors, are more favorable to the Debtors than the terms in the preceding clause (i).



(ii) that the Vendor immediately return such payment(s) in respect of its Vendor Claim to the extent that the aggregate amount of such payment(s) exceeds the postpetition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever, and (iii) upon recovery of such payment(s) by the Debtors, such Vendor Claim shall be reinstated in such an amount as to restore the Debtors and the applicable Vendor to their original positions, as if the payment of the Vendor Claim had not been made.

4. The form of Vendor Agreement, substantially in the form attached to the Motion as **Exhibit C**, is approved in its entirety. The Debtors are authorized to enter into Vendor Agreements with Vendors, in their discretion. To the extent that the Debtors do not enter into a Vendor Agreement with a Vendor, such Vendor's acceptance of payment on account of its Vendor Claim shall be deemed as the Vendor's agreement to continue providing goods or services on Customary Trade Terms.

5. The Debtors are authorized to negotiate, modify, or amend the form of the Vendor Agreement (provided that any such modification or amendment must require the Vendor to provide the trade terms set forth above) and to settle all or some of the Vendor Claims for less than the face amount of such claims without further notice or hearing, each in the Debtors' reasonable business judgment.

6. The Debtors are authorized to require, as a further condition of receiving payment on a Vendor Claim, that a Vendor agree to take whatever action is necessary to remove any existing liens on the Debtors' property at such Vendor's sole cost and expense and waive any right to assert a trade lien on account of a paid Vendor Claim.

7. Any party that accepts payments from the Debtors on account of a Vendor Claim shall be deemed to have agreed to the terms and provisions of this Interim Order. Notwithstanding

anything to the contrary herein, prior to making any payment pursuant to this Interim Order, the Debtors shall provide such Vendor with a copy of this Interim Order (unless previously provided to such Vendor).

8. If any party accepts payment on behalf of a Vendor Claim under this Interim Order, and such claim is determined by the Court after notice and hearing (i) in the case of a Lien Claim, not to give rise to a Lien or Interest or (ii) in the case of a 503(b)(9) Claim, not to give rise to a claim entitled to priority under section 503(b)(9) of the Bankruptcy Code, the Debtors are authorized to avoid such payment as a postpetition transfer under section 549 of the Bankruptcy Code, and the party who had accepted such payment shall be required to immediately repay to the Debtors any payment made to such party on account of its asserted claim to the extent the aggregate amount of such payments exceeds the postpetition obligations then outstanding, without the right of setoff, claims, or otherwise. Upon recovery of such payments by the Debtors, the obligations shall be reinstated as a prepetition claim in the amount so recovered.

9. All undisputed obligations arising from the Outstanding Orders shall receive administrative expense priority, and the Debtors are authorized to pay all undisputed obligations arising from the Outstanding Orders in their discretion and in the ordinary course of business consistent with the parties' prepetition customary practices.

10. Nothing herein shall impair or prejudice the Debtors' or any other party in interest's ability to contest the extent, perfection, priority, validity, or amount of any Vendor Claim.

11. Nothing herein shall prejudice the Debtors' ability to seek a further order from this Court authorizing the Debtors to exceed the aggregate amounts of Vendor Claims as set forth in the Motion and herein or any party in interest's right to contest such relief.

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

13. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

14. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Vendor Claims.

15. The Debtors shall deliver to the Office of the United States Trustee for the Northern District of Texas a list of the Critical Vendors to be paid pursuant to this Interim Order.

16. For the avoidance of doubt, this Interim Order does not authorize payments to insiders (as such term is defined in section 101(31) of the Bankruptcy Code) of the Debtors.

17. Notwithstanding the relief granted herein or actions taken hereunder, nothing contained in the Motion or this Interim Order or any payment made pursuant to this Interim Order shall constitute, nor is it intended to constitute, an implication or admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors', or any party in interest's, rights to subsequently dispute such claim or lien, a promise or requirement to pay any prepetition claim, an implication or admission that any particular claim is of a type specified or defined in the Motion or any proposed order, a waiver of the Debtors', or any other party in interest's, rights

under the Bankruptcy Code or any other applicable law, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

18. Notwithstanding anything in this Interim Order to the contrary, any payment to be made, or any authorization contained hereunder, shall be subject to the terms of any orders authorizing debtor-in-possession financing or the use of cash collateral approved by this Court in these chapter 11 cases (including with respect to any approved budget governing or relating to such use) (such order, collectively with any such approved budget, the “*DIP Order*”); and to the extent there is any inconsistency between the terms of such DIP Order and any action taken or proposed to be taken hereunder, the terms of such DIP Order shall control.

19. Bankruptcy Rule 6003(b) has been satisfied.

20. The requirements of Bankruptcy Rule 6004(a) are waived.

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

22. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Order.

**### End of Order ###**

**Order submitted by:**

**VINSON & ELKINS LLP**

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**PROPOSED ATTORNEYS FOR  
THE DEBTORS AND DEBTORS IN POSSESSION**

**Schedule "I"**

**Interim Cash Management Order**



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed May 14, 2024

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:** § **Case No. 24-80045-mvl11**  
§  
**KIDKRAFT, INC., et al.,** § **(Chapter 11)**  
§  
**Debtors.<sup>1</sup>** § **(Jointly Administered)**  
§ **Re: Docket No. 20**

**INTERIM ORDER (I) AUTHORIZING  
THE DEBTORS TO (A) CONTINUE TO OPERATE THEIR  
CASH MANAGEMENT SYSTEM AND MAINTAIN EXISTING BANK  
ACCOUNTS, (B) CONTINUE USING EXISTING CHECKS AND BUSINESS FORMS,  
(C) MAINTAIN THEIR CORPORATE CARD PROGRAM, AND (D) CONTINUE  
INTERCOMPANY TRANSACTIONS, AND (II) GRANTING RELATED RELIEF**

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft Partners, LLC (3268), KidKraft International IP Holdings, LLC (1841), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc. (4302). The location of the Debtors' U.S. corporate headquarters and the Debtors' service address is: 4630 Olin Road, Dallas, TX 75244.

Upon the Motion<sup>2</sup> filed by the above-referenced debtors and debtors in possession (collectively, the “*Debtors*”) for entry of an interim order (the “*Interim Order*”) (i) authorizing the Debtors to: (a) continue to operate their Cash Management System and maintain existing Bank Accounts; (b) continue using their existing Checks and Business Forms; (c) maintain their Corporate Card Program; and (d) continue to engage in Intercompany Transactions and (ii) granting related relief, all as more fully set forth in the Motion and in the First Day Declaration; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final 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 the Court having found that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as contemplated by Bankruptcy Rule 6003; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion under the circumstances and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is **HEREBY ORDERED THAT:**

1. The final hearing (the “*Final Hearing*”) on the Motion shall be held on June 5, 2024, at 9:30 a.m., prevailing Central Time. Any objections or responses to entry of a final order

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.



on the Motion shall be filed on or before 5:00 p.m., prevailing Central Time, on May 31, 2024, and shall be served on: (i) the Debtors, 4630 Olin Road, Dallas, TX 75244, Attn: Geoff Walker; (ii) proposed attorneys to the Debtors, Vinson & Elkins LLP, 2001 Ross Avenue, Suite 3900, Dallas, TX 75201, Attn: Matthew D. Struble, and 1114 Avenue of the Americas, 32nd Floor, New York, New York 10036, Attn: Lauren R. Kanzer; (iii) counsel to the administrative agent under the Debtors' prepetition secured credit agreement, Katten Muchin Rosenman LLP, 50 Rockefeller Plaza, New York, NY 10020, Attn: Cindi M. Giglio; (iv) counsel to the buyer under the Debtors' prepetition asset purchase agreement, King & Spalding LLP, 1185 Avenue of the Americas, 34<sup>th</sup> Floor, New York, NY 10036, Attn: Roger Schwartz and Miguel Cadavid; and (v) the Office of the United States Trustee for the Northern District of Texas, 1100 Commerce Street, Room 976, Dallas, TX 75242, Attn: Meredyth A. Kippes.

2. The Debtors are authorized, on an interim basis, in the ordinary course of business and consistent with prepetition practices to (i) maintain and continue to operate the Cash Management System in accordance with the Motion, (ii) maintain and continue to use any or all of their existing Bank Accounts, including, but not limited to the Bank Accounts identified on **Exhibit C** to the Motion; and (iii) deposit funds in and withdraw funds from any of the Bank Accounts by all usual means, including, but not limited to, checks, wire transfers, ACH transfers and debits, electronic fund transfers, and other debits; *provided*, that the Debtors will make a reasonable effort to request that JPMorgan designate all of the Bank Accounts maintained at JPMorgan as debtor-in-possession accounts; *provided, further*, that the Debtors shall provide notice to the U.S. Trustee, any statutory committee appointed in these chapter 11 cases, and counsel to the Prepetition Secured Lender of any material changes to their Cash Management System (including, but not limited to, any prospective closing of Bank Accounts) within 14 days.

3. The Debtors shall have until June 24, 2024, to either bring the Bank Account at CMB into compliance with section 345(b) of the Bankruptcy Code and the U.S. Trustee Guidelines or to make such other arrangements as are agreed to by the U.S. Trustee or approved by the Court, subject to further extension. The Debtors will attach the applicable CMB account statements to their monthly operating reports, with account numbers redacted.

4. The Debtors shall have until June 24, 2024 to either convert or redesignate the Bank Accounts maintained at JPMorgan to debtor in possession accounts in compliance with section 345(b) of the Bankruptcy Code and the U.S. Trustee Guidelines, or to make such other arrangements as are agreed to by the U.S. Trustee or approved by the Court, subject to further extension.

5. The requirements of the U.S. Trustee Guidelines are hereby waived with respect to the Debtors' existing Bank Accounts at HSBC, and the Debtors are authorized to maintain and continue to use such Bank Accounts in the ordinary course of business; *provided, however*, that the Debtors shall use reasonable efforts to ensure that amounts in the Bank Accounts at HSBC do not exceed \$250,000. The Debtors will attach the applicable HSBC account statements to their monthly operating reports, with account numbers redacted.

6. The Banks are each authorized and directed to maintain, service, and administer the Bank Accounts without interruption on an interim basis and in the ordinary course of business.

7. The Debtors are authorized to pay any undisputed, outstanding Bank Fees owed to the Banks as of the Petition Date and to continue to pay the Bank Fees on an interim basis in the ordinary course of business.

8. The Debtors are authorized to continue the Corporate Card Program and to pay any prepetition or postpetition amounts related thereto.

9. The Debtors are authorized to use, in their present form, the Checks and Business Forms, without reference to their status as debtors-in-possession or the case number assigned to these chapter 11 cases; *provided* that once the Debtors' existing Checks and Business Forms have been exhausted, the Debtors shall include, or direct others to include, the designation "Debtor in Possession" and the corresponding bankruptcy case number on all Checks and Business Forms as soon as it is reasonably practicable to do so.

10. The Debtors are authorized to enter into and engage in postpetition Intercompany Transactions on an interim basis in the ordinary course of business. Pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, all Intercompany Claims as a result of any ordinary course postpetition Intercompany Transactions are hereby accorded administrative expense priority status; *provided*, that such administrative expense status claim shall be junior to any superpriority administrative expense status claim granted as part of the adequate protection given pursuant to the DIP Orders (as defined below). In connection therewith, the Debtors shall continue to maintain current records with respect to all transfers of cash in the ordinary course of business consistent with their practices prior to the Petition Date such that Intercompany Transactions can be readily ascertained and traceable; *provided, however*, that such records shall be made available upon request by the Consenting Creditor Representatives, the U.S. Trustee, or any statutory committee appointed in these Chapter 11 cases. To the extent that the transfers within the Cash Management System are disbursements, they will be noted and reflected on the monthly operating reports.

11. The Debtors will comply with the monthly operating report requirements (i) for reporting intercompany transactions and (ii) to report cash activity on an unconsolidated basis, in each case in accordance with the instructions for U.S. Trustee Form 11-MOR.

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

13. The Banks are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

14. Any bank, including the Banks, may rely upon the representations of the Debtors with respect to whether any check, draft, wire, payment order, or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to any order of this Court, and no bank that honors such a prepetition check, draft, wire, payment order, or other transfer drawn on any Bank Account (i) at the direction of the Debtors or (ii) in a good-faith belief that this Court has authorized such prepetition check, draft, wire, payment, or other transfer to be honored shall be deemed to be, nor shall be, liable to the Debtors or their estates or any other party on account thereof or otherwise be deemed to be in violation of this Interim Order.

15. The Debtors are authorized to issue new postpetition checks, wire transfers, or electronic fund transfer requests to replace any prepetition checks, wire transfers, or funds transfers that may be dishonored or rejected as a result of the commencement of these chapter 11 cases with respect to prepetition amounts that are authorized to be paid pursuant to this Interim Order.

16. The Debtors are authorized to open new bank accounts; *provided, however*, that all accounts opened by the Debtors on or after the Petition Date shall be at depositories that are (i) insured by the FDIC or the Federal Savings and Loan Insurance Corporation, (ii) designated as an authorized depository by the U.S. Trustee pursuant to the U.S. Trustee Guidelines, and (iii) with a bank that agrees to be bound by the terms of this Interim Order; *provided further*,

however, that such opening shall be timely indicated on the Debtors' monthly operating reports and notice of such opening or closing shall be provided to the U.S. Trustee, any statutory committee appointed in these chapter 11 cases, and counsel to the Prepetition Secured Lender within 14 days.

17. Notwithstanding the relief granted herein or actions taken hereunder, nothing contained in the Motion or this Interim Order or any payment made pursuant to this Interim Order shall constitute, nor is it intended to constitute, an implication or admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors' or any party in interest's rights to subsequently dispute such claim or lien, a promise or requirement to pay any prepetition claim, an implication or admission that any particular claim is of a type specified or defined in the Motion or any proposed order, a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

18. Notwithstanding anything in this Order to the contrary, any payment to be made, or any authorization contained hereunder, shall be subject to the terms of any orders authorizing debtor-in-possession financing or the use of cash collateral approved by this Court in these chapter 11 cases (including with respect to any approved budget governing or relating to such use) (such order, collectively with any such approved budget, the "**DIP Order**"); and to the extent there is any inconsistency between the terms of such DIP Order and any action taken or proposed to be taken hereunder, the terms of such DIP Order shall control.

19. Bankruptcy Rule 6003(b) has been satisfied.

20. The requirements of Bankruptcy Rule 6004(a) are waived.

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

22. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Order.

**### End of Order ###**

**Order submitted by:**

**VINSON & ELKINS LLP**

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**PROPOSED ATTORNEYS FOR  
THE DEBTORS AND DEBTORS IN POSSESSION**

**Schedule “J”**

**Employee Wages Order**





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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed May 14, 2024

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

|                                |   |                                |
|--------------------------------|---|--------------------------------|
| <b>In re:</b>                  | § | <b>Case No. 24-80045-mvl11</b> |
|                                | § |                                |
| <b>KIDKRAFT, INC., et al.,</b> | § | <b>(Chapter 11)</b>            |
|                                | § |                                |
| <b>Debtors.<sup>1</sup></b>    | § | <b>(Jointly Administered)</b>  |
|                                | § |                                |
|                                | § | <b>Re: Docket No. 18</b>       |

**ORDER (I) AUTHORIZING  
THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, OTHER  
COMPENSATION, AND REIMBURSABLE EXPENSES AND (B) CONTINUE  
EMPLOYEE BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF**

Upon the Motion<sup>2</sup> filed by the above-referenced debtors and debtors in possession (collectively, the “*Debtors*”) for entry of an order (the “*Order*”) (i) authorizing the Debtors to

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft Partners, LLC (3268), KidKraft International IP Holdings, LLC (1841), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc. (4302). The location of the Debtors’ U.S. corporate headquarters and the Debtors’ service address is: 4630 Olin Road, Dallas, TX 75244.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

(a) pay prepetition wages, salaries, other compensation, and reimbursable expenses and (b) continue employee benefits programs, and (ii) granting related relief, all as more fully set forth in the Motion and in the First Day Declaration; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final 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 the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion under the circumstances and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is HEREBY ORDERED THAT:

1. The Debtors are authorized to pay and honor prepetition amounts related to the Compensation and Benefits Programs in an aggregate amount not to exceed \$206,300 and to continue paying postpetition amounts related to the Compensation and Benefits Programs (including, for the avoidance of doubt, funding of Wages to the Chinese Employees and the Dutch Employees as necessary), in the ordinary course of business; *provided*, that the Debtors shall not honor any prepetition Employee Compensation and Benefits Obligations that exceed the priority amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code and shall not pay any prepetition amounts on account of Expense Reimbursements that exceed the priority amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code.

2. The Debtors are authorized to pay the Unpaid Employee Severance Obligations for the former Employees who had signed a separation agreement as of the Petition Date, and the Debtors may seek to pay the Unpaid Employee Severance Obligations to former Employees who sign a separation agreement after the Petition Date either by separate motion or pursuant to the Plan.

3. The Debtors are authorized to continue and/or modify, change, and discontinue the Compensation and Benefits Programs in the ordinary course of business in accordance with this Order during these chapter 11 cases and consistent with historical practices and without the need for further Court approval.

4. Nothing herein shall be deemed to authorize the payment of any amounts in violation of section 503(c) of the Bankruptcy Code.

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

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

7. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts authorized to be paid pursuant to this Order.

8. Notwithstanding the relief granted herein or actions taken hereunder, nothing contained in the Motion or this Order or any payment made pursuant to this Order shall constitute, nor is it intended to constitute, an implication or admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors', or any party in interest's, rights to subsequently dispute such claim or lien, a promise or requirement to pay any prepetition claim, an implication or admission that any particular claim is of a type specified or defined in the Motion or any proposed order, a waiver of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

9. Notwithstanding anything in this Order to the contrary, any payment to be made, or any authorization contained hereunder, shall be subject to the terms of any orders authorizing debtor-in-possession financing or the use of cash collateral approved by this Court in these chapter 11 cases (including with respect to any approved budget governing or relating to such use) (such order, collectively with any such approved budget, the "*DIP Order*"); and to the extent there is any inconsistency between the terms of such DIP Order and any action taken or proposed to be taken hereunder, the terms of such DIP Order shall control.

10. The requirements of Bankruptcy Rule 6004(a) are waived.

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

12. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

**### END OF ORDER ###**

**Order submitted by:**

**VINSON & ELKINS LLP**

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Matthew D. Struble (Texas Bar No. 24102544)  
Kiran Vakamudi (Texas Bar No. 24106540)  
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**PROPOSED ATTORNEYS FOR  
THE DEBTORS AND DEBTORS IN POSSESSION**

**Schedule “K”**

**Interim DIP Order**



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed May 14, 2024

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:** § Case No. 24-80045-mvl11  
§  
**KIDKRAFT, INC., et al.,** § (Chapter 11)  
§  
**Debtors.<sup>1</sup>** § (Jointly Administered)  
§ Re: Docket Nos. 22, 23  
§

**INTERIM ORDER  
PURSUANT TO 11 U.S.C. §§ 105, 361, 362,  
363, 364, AND 507 AND FED. R. BANKR. P. 2002, 4001  
AND 9014 (I) AUTHORIZING DEBTORS AND DEBTORS  
IN POSSESSION TO OBTAIN POSTPETITION SENIOR  
SECURED SUPERPRIORITY FINANCING, (II) AUTHORIZING  
THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING  
LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE  
EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION TO THE  
PREPETITION SECURED PARTIES, (V) MODIFYING THE AUTOMATIC STAY,  
(VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF**

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft Partners, LLC (3268), KidKraft International IP Holdings, LLC (1841), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc. (4302). The location of the Debtors' U.S. corporate headquarters and the Debtors' service address is: 4630 Olin Road, Dallas, TX 75244.

Upon the motion (the “**Motion**”) of the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) pursuant to §§ 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), and 364(d) of title 11 of the United States Code (the “**Bankruptcy Code**”), and Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the “**Bankruptcy Rules**”), and the General Order Regarding Procedures for Complex Cases (the “**Complex Case Procedures**”) made applicable by Rules 4001-1 and 9013-1 of the Local Bankruptcy Rules (the “**N.D. Tex. L.B.R.**”) for the United States Bankruptcy Court for the Northern District of Texas (the “**Court**”) *inter alia* seeking, among other things:

(1) authorization for KidKraft, Inc. (“**KidKraft**” or “**Borrower**”) to obtain, and for KidKraft Intermediate Holdings, LLC (“**HoldCo**”, and together with the other Guarantors listed in Schedule 1 of the DIP Term Sheet, the “**Guarantors**”) to guarantee, unconditionally, on a joint and several basis, a senior secured super-priority multi-draw debtor-in-possession term loan credit facility (the “**DIP Facility**”) on the terms and conditions set forth in the Priming Superpriority Debtor-In-Possession Financing Term Sheet, dated as of April 25, 2024, attached hereto as **Exhibit A** (as amended, supplemented or otherwise modified from time to time in accordance with the terms and conditions set forth herein and including the references to the Prepetition Credit Agreement (as defined below) specified therein, the “**DIP Term Sheet**”),<sup>2</sup> by and among the Borrower, the Guarantors, GB Funding, LLC, as DIP Agent (“**DIP Agent**”), and 1903 Partners, LLC, as DIP Lender (“**DIP Lender**,” and, together with the DIP Agent, the “**DIP Secured Parties**”), and the other DIP Documents (as defined below) consisting of: (i) \$4.0 million of new money loans (the “**Interim DIP Commitment**”) to be provided following entry of the Interim Order

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion or the DIP Term Sheet, as applicable.



by DIP Lender, (ii) \$6.5 million of new money loans (“*Final DIP Commitment*”) to be provided following entry of the Final Order by DIP Lender; (iii) \$23.3 million of Prepetition Obligations, which will be deemed to have been advanced and shall convert into DIP Loans on a dollar-for-dollar cashless basis upon entry of the Final Order (the “*Roll-Up Amount*”, and together with the Interim DIP Commitment and Final DIP Commitment, the “*DIP Commitment*”), and in accordance with this order (the “*Interim Order*”), secured by perfected senior priority security interests in and liens on the DIP Collateral (as defined below) pursuant to §§ 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code (subject to the Carve-Out and the Permitted Liens (each as defined below));

(2) authorization for Borrower and Guarantors to remit all collections, asset proceeds and payments to the DIP Secured Parties for application, or deemed application, first to the repayment of all DIP Obligations (as defined below) in accordance with the DIP Term Sheet and the other DIP Documents until such obligations are fully repaid, and then to the Prepetition Secured Parties for application until all Prepetition Obligations (as defined below) are fully repaid;

(3) authorization for the Debtors to grant superpriority administrative claim status, pursuant to § 364(c)(1) of the Bankruptcy Code, to DIP Agent, for the benefit of itself and DIP Lender, in respect of all DIP Obligations (subject to the Carve-Out);

(4) as set forth below, subject to Section 4.1 of this Interim Order, approval of certain stipulations by the Debtors as set forth in this Interim Order in connection with the Prepetition Credit Agreement;

(5) authorizing and directing the Debtors to pay the principal, interest, fees, expenses and other amounts payable under the DIP Documents as such become due, including, without limitation, continuing commitment fees, closing fees, audit fees, appraisal fees, liquidator fees,

structuring fees, administrative agent's fees, the reasonable and documented fees and disbursements of DIP Agent's and DIP Lender's respective attorneys, advisors, accountants and other consultants, all to the extent provided in, and in accordance with, the applicable DIP Documents;

(6) as set forth below, authorization to use Cash Collateral and all other Prepetition Collateral and to provide adequate protection to Prepetition Agent and Prepetition Lender (each in their respective capacities under the Prepetition Loan Documents (as defined below)), to the extent set forth herein;

(7) effective only upon entry of a Final Order (as defined below), the waiver of the Debtors' right to assert claims to surcharge against the DIP Collateral pursuant to § 506(c) of the Bankruptcy Code;

(8) the modification of the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Interim Order to the extent hereinafter set forth;

(9) the setting of a final hearing on the Motion ("**Final Hearing**") to consider entry of a final order (the "**Final Order**") authorizing, among other things, the borrowing under the DIP Documents on a final basis, as set forth in the Motion and the DIP Term Sheet filed with the Court, including the granting to DIP Agent and DIP Lender the senior security interests and liens described above and super-priority administrative expense claims (subject to the Carve-Out); and

(10) related relief.

The initial hearing on the Motion having been held by the Court on May 13, 2024 (the "**Interim Hearing**"), and upon the record made by the Debtors at the Interim Hearing, including the Motion, the *Declaration of Geoffrey Walker in Support of Chapter 11 Petitions and*

*First Day Pleadings*, the *Declaration of Ajay Bijoor, Managing Director of Robert W. Baird & Co. Incorporated*, in Support of (I) the Debtors' Motion to Obtain Postpetition Debtor in Possession Financing and (II) the Sale Process, the *Declaration of Carl Moore, Manager of SierraConstellation Partners, LLC* in Support of the Debtors' Motion to Obtain Postpetition Debtor in Possession Financing, and the filings and pleadings in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**"), the Court having found that the relief requested in the Motion is in the best interests of Debtors, their estates, their creditors and other parties in interest, and represents a sound exercise of the Debtors' business judgment and is essential for the continued operation of the Debtors' businesses; it appearing to the Court that granting the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing; notice of the Motion, the relief requested therein, and the Interim Hearing (the "**Notice**") was sufficient under the circumstances; the Notice having been served by the Debtors in accordance with Bankruptcy Rules 4001 and 9014 and the Local Rules on (i) the administrative agent under the Prepetition Credit Agreement (the "**Prepetition Agent**"), (ii) Katten Muchin Rosenman LLP, as counsel to the Prepetition Agent, (iii) the Office of the U.S. Trustee for the Northern District of Texas (the "**U.S. Trustee**"), (iv) King & Spalding LLP, as counsel to the buyer under the Debtors' prepetition asset purchase agreement (the "**APA**"), (v) the holders of the thirty (30) largest unsecured claims, on a consolidated basis, against the Estates (the "**30 Largest Unsecured Creditors**"), (vi) the Internal Revenue Service and applicable state taxing authorities; (vii) any party that has asserted or may assert a lien in the Debtors' assets, (viii) the office of attorneys general for the states in which the Debtors operate; (ix) the United States Attorney's Office for the Northern District of Texas, (x) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002, (xi) the United

States Securities and Exchange Commission, (xii) all other applicable government agencies to the extent required by the Bankruptcy Rules or the N.D. Tex. L.B.R, and (xiii) the DIP Lender (collectively, the “*Notice Parties*”); and the opportunity for a hearing on the Motion was appropriate and no other notice need be provided; and after due deliberation sufficient cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW<sup>3</sup>:

A. Petition. On May 10, 2024 (the “*Petition Date*”), each Debtor filed a voluntary petition (each, a “*Petition*”) under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

B. Disposition. The Motion is hereby granted in accordance with the terms of this Interim Order. Any objections to the Motion with respect to the entry of the Interim Order that have not been withdrawn, waived, resolved, or settled are hereby denied and overruled.

C. Jurisdiction and Venue. The Court has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 1334. The Motion is a “core” proceeding as defined in 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 this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>3</sup> 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.

D. Committee Formation. As of the date hereof, the U.S. Trustee has not yet appointed an official committee of unsecured creditors in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (a “**Committee**”).

E. Basis for Relief. The statutory and legal predicates for the relief sought herein include sections 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 9013 and 9014 and the applicable provisions of the Local Rules.

F. Notice. Proper, timely, adequate, and sufficient notice of the Motion has been provided under the circumstances in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice of the Motion with respect to the relief requested at the Interim Hearing or the entry of this Interim Order shall be required.

G. Debtors’ Acknowledgments, Stipulations, and Agreements. After consultation with their attorneys and financial advisors, and without prejudice to the rights of any Committee appointed in these Chapter 11 Cases or other parties-in-interest as and, subject to Section 4.1 of this Interim Order, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge and agree that:

(a) Prepetition Stipulations

(i) Prepetition Loan Documents. Prior to the commencement of the Chapter 11 Cases, Prepetition Agent and Prepetition Lender made loans, advances and provided other financial accommodations to Borrower and KidKraft Netherlands B.V., a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of The Netherlands (the “**Dutch Borrower**”), jointly and severally with respect to the Priority Revolving Loans (as defined in the Prepetition Credit Agreement), Guarantors and certain of their non-Debtor affiliates (the Dutch Borrower, together with the other non-Debtor affiliates

party to the Prepetition Credit Agreement, “*Non-Debtor Loan Parties*”), pursuant to the terms and conditions set forth in (1) that certain Amended and Restated First Lien Credit Agreement dated as of April 3, 2020 (as amended, supplemented, or otherwise modified prior to the Petition Date, the “*Prepetition Credit Agreement*”); (2) that certain Amended and Restated First Lien Security Agreement as of dated April 3, 2020 by and among Borrower, the Guarantors, and the Non-Debtor Loan Parties (the Non-Debtor Loan Parties, together with the Borrower and the Guarantors, the “*Grantors*”) and Prepetition Agent, as Secured Party (as amended, supplemented, or otherwise modified prior to the Petition Date, including the *Security Agreement Supplement*, dated January 30, 2024, the “*Prepetition Security Agreement*”); and (3) all other agreements, documents and instruments executed and/or delivered with, to, or in favor of Prepetition Agent or Prepetition Lender in connection with the Prepetition Credit Agreement or the Prepetition Security Agreement, including, without limitation, all security agreements, notes, guarantees, mortgages, Uniform Commercial Code financing statements and all other related agreements, documents and instruments executed and/or delivered in connection therewith or related thereto (all of the foregoing, together with the Prepetition Credit Agreement and the Prepetition Security Agreement, as all of the same have heretofore been amended, supplemented, modified, extended, renewed, restated and/or replaced at any time prior to the Petition Date, collectively, the “*Prepetition Loan Documents*”).

(ii) Prepetition Obligations. As of the Petition Date, the Borrower, Guarantors and Non-Debtor Loan Parties were indebted, jointly and severally, to Prepetition Agent and Prepetition Lender under the Prepetition Loan Documents in respect of outstanding Loans (as defined in the Prepetition Credit Agreement) in an aggregate principal amount of not less than \$144.9 million, plus all other Obligations (as defined in the Prepetition Credit Agreement), plus

interest accrued and accruing thereon, together with all costs, fees, expenses (including attorneys' fees and legal expenses) and other charges accrued, accruing or chargeable with respect thereto (collectively, the "***Prepetition Obligations***"). The Prepetition Obligations constitute allowed, legal, valid, binding, enforceable and non-avoidable obligations of Borrower, Guarantors, and the Non-Debtor Loan Parties and are not subject to any offset, defense, counterclaim, avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or any other applicable law, and the Debtors do not possess, shall not assert, hereby forever release, and are forever barred from bringing any claim, cause of action, counterclaim, setoff or defense of any kind, nature or description, in any such case, arising out of, connected with, or relating to any and all acts, omissions or events occurring prior to the entry of this Interim Order, which would in any way affect the validity, enforceability and non-avoidability of any of the Prepetition Obligations or liens and security interest securing the same described in clause (F)(a)(iii) below, including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law. The Debtors and their estates (a) have no claims, objections, challenges, causes of action, and/or choses in action, including without limitation, avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against Prepetition Agent or Prepetition Lender or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees arising out of, based upon or related to the Prepetition Loan Documents or Prepetition Obligations; and (b) have waived, discharged, and released any right to challenge any of the Prepetition Obligations, including the priority of the Prepetition Obligations, and the validity, extent, and priority of the liens securing the Prepetition Obligations.

(iii) Prepetition Collateral. As of the Petition Date, the Prepetition Obligations were fully secured pursuant to the Prepetition Loan Documents by valid, perfected, enforceable and non-avoidable first-priority security interests and liens (except, in the case of perfection, for (A) Excluded Accounts and (B) commercial tort claims, letter of credit rights, certificate of title vehicles, and other assets, in each case of this clause (B), to the extent expressly excluded from the requirement to perfect liens thereon pursuant to the Prepetition Loan Documents) (the “*Prepetition Liens*”) granted by Borrower, Guarantors, and the Non-Debtor Loan Parties for fair consideration and reasonably equivalent value to DIP Agent, for the benefit of itself and DIP Lender under the Prepetition Loan Documents, in and upon all of the of the Debtors’ and Non-Debtor Loan Parties’ assets and property other than Excluded Assets, Excluded Receivables, and Consumer Goods (as each such term is defined in the Prepetition Credit Agreement) (collectively, the “*Prepetition Collateral*”), including all cash of the Debtors, wherever located, and all cash equivalents, including any cash in deposit accounts of the Debtors (other than Excluded Accounts), in each case, whether as Prepetition Collateral or which represents income, proceeds, products, rents or profits of non-cash Prepetition Collateral (collectively, the “*Cash Collateral*”), subject only to the liens permitted under Section 7.01 of the Prepetition Credit Agreement to the extent that such security interests, liens or encumbrances are (A) valid, perfected and non-avoidable security interests, liens or encumbrances securing valid, binding and unavoidable debt permitted under the Prepetition Loan Documents, and (B) senior to, have not been, and are not subject to being subordinated to the Prepetition Liens or otherwise avoided, and, in each instance, only for so long as and to the extent that such encumbrances are and remain senior and outstanding (hereinafter referred to as the “*Prepetition Permitted Liens*”). The Debtors do not possess and will not assert any claim, counterclaim, setoff or defense of any kind, nature or



description, whether arising at law or in equity, including any recharacterization, subordination, avoidance or other claim arising under or pursuant to section 105 or chapter 5 (including, without limitation, sections 510, 544, 547, 548, 549 or 550) of the Bankruptcy Code or under any other similar provisions of applicable state or federal law, that would in any way affect the validity, enforceability and non-avoidability of any of Prepetition Agent's and Prepetition Lender's liens, claims or security interests in the Prepetition Collateral.

(iv) Default by the Debtors. The Debtors acknowledge and stipulate that one or more Events of Default (as defined in the Prepetition Credit Agreement) have occurred and are continuing as of the date hereof.

(v) Proof of Claim. The acknowledgment by the Debtors of the Prepetition Obligations and the liens, rights, priorities and protections granted to or in favor of Prepetition Agent and Prepetition Lender in respect of the Prepetition Collateral as set forth herein and in the Prepetition Loan Documents shall be deemed a timely filed proof of claim on behalf of Prepetition Agent and Prepetition Lender in these Chapter 11 Cases.

(vi) Indemnity. The DIP Agent, DIP Lender, and Prepetition Secured Parties have acted in good faith, without negligence or violation of public policy or law, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, or obtaining the requisite approvals of the DIP Facility and the use of Cash Collateral, including in respect of granting DIP Liens, any challenges or objections to the DIP Facility or the use of Cash Collateral, and all documents related to any and all transactions contemplated by the foregoing. Accordingly, each of the Prepetition Secured Parties and the DIP Secured Parties shall be and hereby are indemnified and held harmless by the Debtors in respect of any claim or liability incurred in respect thereof of in any way related thereto, provided that no such parties will be

indemnified for any cost, expense, or liability to the extent determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted primarily from such parties' bad faith, gross negligence, fraud, or willful misconduct. No exception or defense exists in contract, law, or equity to the Debtors' obligation under this paragraph to indemnify and/or hold harmless each of the Prepetition Secured Parties and the DIP Secured Parties. The Court retains exclusive jurisdiction to determine amounts of any indemnification claims arising from the DIP Documents unless such amounts are *de minimis*.

(vii) Release. Each Debtor, on behalf of itself and its successors and assigns, and their respective agents, officers, directors, employees, attorneys, professionals, predecessors, successors, and assigns (collectively, the "**Releasors**"), hereby forever, unconditionally, permanently, and irrevocably release, discharge, and acquit each of the Prepetition Agent and Prepetition Lender and each of their respective successors and assigns, and their present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees and other representatives (collectively, the "**Prepetition Releasees**") of and from any and all claims, demands, liabilities, damages, expenses, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, of every kind, nature and description, whether arising in law or otherwise, and whether known or unknown, matured, or contingent that any of the Releasors had, have or hereafter can or may have against any Prepetition Releasees as of the date hereof, in respect of events that occurred on or prior to the date hereof with respect to the Debtors, the Prepetition Obligations, the Prepetition Loan Documents, the DIP Obligations, the RSA, the Plan, the Backyard Sale, the DIP Documents and any DIP Loans or other financial accommodations made by DIP Agent and/or DIP Lender to the Debtors pursuant to the Prepetition Loan Documents or the DIP Documents including, without limitation, (a) any so-called "lender liability" or

equitable subordination claims or defenses, (b) any and all “claims” (as defined in the Bankruptcy Code) and causes of action arising under the Bankruptcy Code, and (c) any and all offsets, defenses, claims, counterclaims, set off rights, objections, challenges, causes of action, and/or choses in action of any kind or nature whatsoever, whether arising at law or in equity, including any recharacterization, recoupment, subordination, avoidance, or other claim or cause of action arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state, federal, or foreign law, including, without limitation, any right to assert any disgorgement or recovery, in each case, with respect to the extent, amount, validity, enforceability, priority, security, and perfection of any of the Prepetition Obligations, the Prepetition Loan Documents, or the Prepetition Liens.

(viii) Non-Debtor Loan Parties. The Dutch Borrower and the Borrower are jointly and severally liable with respect to the Priority Revolving Loans (as defined in the Prepetition Credit Agreement) and each of the other Non-Debtor Loan Parties and the Debtors are jointly and severally liable with respect to the Prepetition Obligations.

H. Findings Regarding the DIP Financing.

(i) DIP Financing. The Debtors have requested from the DIP Secured Parties, and the DIP Secured Parties are willing, to extend certain loans, advances and other financial accommodations on the terms and conditions set forth in this Interim Order, the DIP Term Sheet and the other DIP Documents, respectively.

(ii) Need for DIP Financing. The Debtors do not have sufficient available sources of working capital, including Cash Collateral, to operate their businesses in the ordinary course of business without the financing requested in the Motion. The Debtors’ ability to pay their vendors, suppliers, and employees, and to otherwise fund their operations is essential to the

preservation and maintenance of the going concern value of each Debtor and consummation of the Backyard Sale and the Plan. Accordingly, the Debtors have an immediate need to enter into the DIP Facility in order to, among other things, permit the orderly continuation of the operation of their businesses, minimize the disruption of their business operations, and preserve and maximize the value of the assets of the Debtors' bankruptcy estates (as defined under § 541 of the Bankruptcy Code, the "*Estates*") in order to maximize the value of the Estates.

(iii) No Credit Available on More Favorable Terms. The Debtors are unable to procure financing in the form of unsecured credit allowable as an administrative expense under §§ 364(a), 364(b), or 503(b)(1) of the Bankruptcy Code or in exchange for the grant of a superpriority administrative expense, junior liens on encumbered property of the Estates, or liens on property of the Estates not subject to a lien pursuant to § 364(c)(1), 364(c)(2) or 364(c)(3) of the Bankruptcy Code. The Debtors have been unable to procure the necessary financing on terms more favorable, taken as a whole, than the DIP Facility. In light of the foregoing, and considering all alternatives, the Debtors have reasonably and properly concluded, in the exercise of their sound business judgment, the DIP Facility represents the best financing available to the Debtors at this time, and are in the best interests of the Debtors, their respective Estates, and all of their stakeholders.

(iv) Initial Budget. The Debtors have prepared and delivered to DIP Agent and DIP Lender an initial nine-week budget (the "*Initial Budget*" and each subsequent approved budget pursuant to section 1.8 hereof, an "*Approved Budget*") reflecting the Debtors' anticipated cash receipts and anticipated disbursements for each calendar week for the covered periods, a summary of which is attached hereto as Exhibit B. The Initial Budget was prepared by the Debtors, with the assistance of their professional advisors and management, and the Debtors

represent that the Initial Budget is achievable in accordance with the terms of the DIP Documents and this Interim Order. DIP Agent and DIP Lender are relying upon the Debtors' compliance with the Initial Budget in accordance with this Interim Order in determining to enter into the DIP Facility.

(v) Business Judgment and Good Faith Pursuant to § 364(e). The terms of the DIP Documents and this Interim Order are fair, just and reasonable under the circumstances, ordinary and appropriate for secured financing to debtors-in-possession, reflect the Debtors' exercise of their prudent business judgment consistent with their fiduciary duties, and supported by reasonably equivalent value and fair consideration. The terms and conditions of the DIP Documents and this Interim Order have been negotiated in good faith and at arms' length by and among the Debtors and DIP Agent, with all parties being represented by competent counsel. Any credit extended under the terms of this Interim Order shall be deemed to have been extended in "good faith" by DIP Agent and DIP Lender, as that term is used in section 364(e) of the Bankruptcy Code and the DIP Obligations, the DIP Liens, and the DIP Superpriority Claim are entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise.

(vi) Credit Bid Rights. To the fullest extent permitted by section 363(k) of the Bankruptcy Code, in connection with any sale or other disposition of the DIP Collateral or Prepetition Collateral (as applicable) including any sales occurring under or pursuant to section 363 of the Bankruptcy Code, a plan of reorganization or plan of liquidation under section 1129 of the Bankruptcy Code, or a sale or disposition by a chapter 7 trustee for any of the Debtors under section 725 of the Bankruptcy Code (any of the foregoing sales or dispositions, a "**Sale**"), (a) DIP Agent (on behalf of their respective DIP Secured Parties) shall have the right to credit bid, in

accordance with the DIP Documents, up to the full amount of the DIP Obligations, (b) the Prepetition Agent (on behalf of and at the written direction of the Prepetition Secured Parties) shall have the right to credit bid, in accordance with the Prepetition Loan Documents, up to the full amount of the Prepetition Obligations, (c) DIP Agent and Prepetition Agent shall have the absolute right (at the direction of their respective Secured Parties) to assign, transfer, sell or otherwise dispose of its rights to credit bid in connection with the assignment, transfer, sale, or disposition of the corresponding DIP Obligations, except as may be set forth in the DIP Documents, and Prepetition Obligations, respectively, and (d) each of the Debtors hereby acknowledge and agree that they shall not object, or support any objection, to or limit, or support any limitation on, any other such DIP Secured Parties' or Prepetition Secured Parties' rights to credit bid, as applicable, up to the full amount of the DIP Obligations and Prepetition Obligations, respectively.

(vii) Sections 506(c) and 552(b) Waivers. Subject to entry of a Final Order, as material inducement to (a) the DIP Secured Parties' agreement to provide the DIP Facility and the Prepetition Secured Parties' consent to the use of Cash Collateral in accordance with the Approved Budget, (b) the DIP Secured Parties' agreement to subordinate the DIP Liens and the DIP Superpriority Claim to the Carve-Out, and (c) the Prepetition Secured Parties' agreement to subordinate the Prepetition Liens, Prepetition Replacement Lien and the Prepetition Adequate Protection Superpriority Claim to the Carve-Out, the DIP Liens, and the DIP Superpriority Claim, subject to entry of the Final Order (retroactive to the Petition Date), each of the DIP Secured Parties and the Prepetition Secured Parties are entitled to receive (1) a waiver of any equities of the case exceptions or claims under section 552(b) of the Bankruptcy Code and a waiver of unjust

enrichment and similar equitable relief as set forth below, and (2) a waiver of the provisions of section 506(c) of the Bankruptcy Code.

(viii) Good Cause. The relief requested in the Motion is necessary, essential and appropriate, and is in the best interest of and will benefit the Debtors, their creditors and their Estates, as its implementation will, among other things, provide the Debtors with the necessary liquidity to (1) minimize disruption to the Debtors' businesses and ongoing operations in anticipation of the consummation of the Backyard Sale and Plan, (2) preserve and maximize the value of the Estates for the benefit of all the Debtors' creditors, and (3) avoid immediate and irreparable harm to the Debtors, their creditors, their businesses, their employees, and their assets.

(ix) Adequate Protection. The Prepetition Secured Parties are entitled, pursuant to sections 361, 362, 363, and 364 of the Bankruptcy Code, to receive adequate protection to the extent of any Diminution in Value of their respective interests in the Prepetition Collateral (including Cash Collateral), to the extent set forth in the Interim Order.

(x) Immediate Entry. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2). No party appearing in the Chapter 11 Cases has filed or made an objection to the relief sought in the Motion or the entry of this Interim Order, or any objections that were made (to the extent such objections have not been withdrawn, waived, resolved, or settled) are hereby overruled. Based upon the foregoing, and after due consideration and good cause appearing therefor.

IT IS HEREBY ORDERED THAT:

Section 1. Authorization and Conditions to Financing.

1.1 Motion Granted. The Motion is granted in accordance with Bankruptcy Rule 4001(c)(2) to the extent provided in this Interim Order. Except as otherwise expressly

provided in this Interim Order, any objection to the entry of this Interim Order that has not been withdrawn, waived, resolved or settled, is hereby denied and overruled on the merits.

1.2 Authorization to Borrow, Guaranty, and Use Loan Proceeds. Borrower is hereby authorized and empowered to immediately borrow and obtain DIP Loans and to incur indebtedness and other Obligations (as defined in the DIP Term Sheet) (collectively referred to as the “*DIP Obligations*”), and the Guarantors are hereby authorized to guarantee such DIP Obligations, all pursuant to the terms and conditions of this Interim Order, the DIP Term Sheet, and the other DIP Documents, during the period commencing on the date of entry of this Interim Order through and including the entry of the Final Order, up to an aggregate amount equal to the Interim DIP Commitment, plus, subject to entry of the Final Order, the Roll-Up Amount. Subject to the terms and conditions contained in this Interim Order and the DIP Documents, the Debtors shall use the proceeds of the DIP Loans and other credit and financial accommodations provided by DIP Agent and DIP Lender under the DIP Term Sheet and the other DIP Documents solely for payment of expenses set forth in the Approved Budget and all interest, costs, fees, amounts, and other obligations owing to the DIP Secured Parties in accordance with the terms and conditions of the DIP Documents and this Interim Order.

1.3 Financing Documents

(a) Authorization. The Debtors are hereby authorized to enter into, execute, deliver, perform, and comply with all of the terms, conditions and covenants of the DIP Term Sheet and the other DIP Documents; provided that any additional DIP Documents entered into following entry of this Interim Order shall be filed on the docket of these Chapter 11 Cases, and parties in interest shall have seven (7) days to object to such additional DIP Documents. If no objection to such additional DIP Documents is filed within such seven (7) days, unless the Court



rules otherwise, such DIP Documents shall be deemed approved by this Court. If any objection is filed within such seven (7) day period, the Court shall hold an emergency hearing to consider approval of such DIP Document. Upon execution and delivery of the DIP Term Sheet and the other DIP Documents, such agreements and documents shall constitute valid and binding obligations of the Debtors, enforceable against each Debtor party thereto in accordance with the terms of such agreements, documents and this Interim Order. No obligation, payment, transfer or grant of security arising under the DIP Term Sheet, the other DIP Documents or this Interim Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under § 502(d) of the Bankruptcy Code), or be subject to any defense, reduction, setoff, recoupment or counterclaim. The Debtors are hereby authorized and directed to pay, in accordance with this Interim Order, the principal, interest, fees, expenses and other amounts described in the DIP Documents as such become due and without need to obtain further Court approval, including, without limitation, monitoring fees, agency fees, alternate transaction fees, closing fees, unused facility fees, continuing commitment fees, backstop fees, exit fees, servicing fees, yield maintenance premiums, audit fees, appraisal fees, liquidator fees, structuring fees, administrative agent's fees, the reasonable and documented fees and disbursements of the DIP Secured Parties' attorneys, advisors, accountants, and other consultants, whether or not such fees arose before or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, to implement all applicable reserves and to take any other actions that may be necessary or appropriate, all to the extent provided in this Interim Order or the DIP Documents. Upon execution and delivery, the DIP Term Sheet and other DIP Documents shall represent valid and binding obligations of the Debtors, enforceable against each of the Debtors and their Estates in accordance with their terms.

(b) Approval; Evidence of Borrowing Arrangements. All terms, conditions and covenants set forth in the DIP Documents (including, without limitation, the DIP Term Sheet) are approved to the extent necessary to implement the terms and provisions of this Interim Order. All such terms, conditions and covenants shall be sufficient and conclusive evidence of (a) the borrowing arrangements by and among the Debtors, DIP Agent and DIP Lender, and (b) each Debtor's assumption and adoption of all of the terms, conditions, and covenants of the DIP Term Sheet and the other DIP Documents for all purposes, including, without limitation, to the extent applicable, the payment of all DIP Obligations arising thereunder, including, without limitation, all principal, interest, fees and other expenses, including, without limitation, all of DIP Agent's and DIP Lender's consultant fees, professional fees, attorney fees and legal expenses, as more fully set forth in the DIP Documents.

(c) Amendment. Subject to the terms and conditions of the DIP Term Sheet and the other DIP Documents, Debtors and DIP Agent may amend, modify, supplement or waive any provision of the DIP Documents (a "***DIP Amendment***") without further approval or order of the Court, so long as (a) such DIP Amendment is not materially burdensome on the Debtors or their Estates, and is undertaken in good faith by DIP Agent, DIP Lender and the Debtors; (b) the Debtors provide prior written notice of the DIP Amendment (the "***DIP Amendment Notice***") to the U.S. Trustee and counsel to any Committee, or in the event no such Committee is appointed at the time of such DIP Amendment, the 30 Largest Unsecured Creditors, and (c) the Debtors file the DIP Amendment Notice with the Court; provided, however, that neither consent of the parties notified pursuant to section (b) hereof nor approval of the Court will be necessary to effectuate any such amendment, modification or supplement. Any material DIP Amendment to the DIP Documents must be approved by the Court to be effective.

1.4 Payment of Prepetition Debt. Subject to entry of the Final Order, the Debtors are authorized to repay all Prepetition Obligations in accordance with the DIP Term Sheet, the other DIP Documents and this Interim Order, including, without limitation, Sections 1.5 and 1.6 of this Interim Order.

1.5 Payments and Application of Payments & DIP Collateral Proceeds; Roll-Up. The Debtors are authorized and directed to make all payments and transfers of Estate property to DIP Agent as provided for, permitted and/or required under the DIP Term Sheet and the other DIP Documents, which payments and transfers shall not be avoidable or recoverable from DIP Agent or DIP Lender under §§ 547, 548, 550, 553 or any other section of the Bankruptcy Code, or by reason of any other claim, charge, assessment, or other liability, whether by application of the Bankruptcy Code, other law or otherwise. All proceeds of the DIP Collateral (as defined herein) received by DIP Agent or DIP Lender, and any other amounts or payments received by DIP Agent or DIP Lender in respect of the DIP Obligations, may be applied or deemed to be applied by DIP Agent, in its discretion, first, to the indefeasible repayment of the DIP Obligations, and then to the indefeasible repayment in full of the Prepetition Obligations, all in accordance with the DIP Term Sheet, the other DIP Documents and this Interim Order. Without limiting the generality of the foregoing, the Debtors are authorized without further order of the Court to pay or reimburse DIP Agent and DIP Lender for future costs and expenses, including, without limitation, all professional fees, consultant fees and legal fees and expenses paid or incurred by DIP Agent or DIP Lender in connection with the financing transactions as provided in this Interim Order and the DIP Documents, all of which shall be and are included as part of the principal amount of the DIP Obligations and secured by the DIP Collateral.

1.6 Continuation of Prepetition Procedures. Except to the extent expressly set forth in the DIP Documents, all prepetition practices and procedures for the payment and collection of proceeds of the Prepetition Collateral (as defined herein), the turnover of cash, the delivery of property to Prepetition Agent and Prepetition Lender, and any blocked depository bank account arrangements, are hereby approved and shall continue without interruption after the commencement of the Chapter 11 Cases.

1.7 Indemnification. Subject to entry of the Final Order, the Debtors are authorized to indemnify and hold harmless each of the Prepetition Secured Parties and DIP Secured Parties, each of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders and employees, past, present, and future, and their respective heirs, predecessors, successors and assigns in accordance with, and subject to the terms of, the DIP Documents, which indemnification is hereby authorized and approved. The Court retains exclusive jurisdiction to determine amounts of any indemnification claims arising from the DIP Documents unless such amounts are *de minimis*.

1.8 Approved Budget; Permitted Variances; Debtor Professional Reports.

(a) The Debtors shall use Cash Collateral and the proceeds of the DIP Facility solely in accordance with the Approved Budget and the DIP Documents. Commencing on the Monday of the first full calendar week after the Petition Date at 5:00 p.m. (Central Time) and continuing on the two (2)-week anniversary thereafter (or such other times as the Debtors may elect with the consent of DIP Lender and Backyard Products, LLP (the “*Purchaser*”)), the Debtors shall deliver to DIP Agent, and the United States Trustee an updated budget with the form and level of detail set forth in the Initial Budget, and shall include, weekly basis cash revenues, receipts,

expenses, professional fees and other disbursements (including, without limitation, any payments with respect to real property leases), net cash flows, inventory receipts and other items on a line item basis (including all necessary and required expenses that the Debtors expect to incur and anticipated uses of proceeds of draws under the DIP Facilities). If such budget is in form and substance satisfactory to DIP Agent in its sole discretion and consented to by the Purchaser (such consent not to be unreasonably withheld, conditioned, or delayed, other than line items of the budget pertaining to the Reimbursement Amounts (as defined in the APA) or which impact the Purchase Price (as defined in the APA), for which such consent shall be in the discretion of the Purchaser), it shall constitute the “Approved Budget” for purposes of this Interim Order. Any amendments, supplements or modifications to the Approved Budget shall be subject to the prior written approval of DIP Lender in its sole discretion and the prior written consent of the Purchaser (such consent not to be unreasonably withheld, conditioned, or delayed, other than line items of the budget pertaining to the Reimbursement Amounts or which impact the Purchase Price, for which such consent shall be in the discretion of the Purchaser), prior to the implementation thereof. Notwithstanding anything to the contrary herein, Purchaser shall not have any consent rights with respect to the Approved Budget following any breach by Purchaser of the APA or termination of the APA.

(b) Commencing on the Wednesday of the first full calendar week after the Petition Date at 5:00 p.m. (Central Time), and on a weekly basis thereafter (or at such other times as the Debtors may elect with the consent of DIP Lender) the Debtors shall deliver to DIP Lender a variance report in form and substance reasonably acceptable to DIP Lender (an “*Approved Variance Report*”) showing comparisons of actual results for each line item against such line item in the Approved Budget. Thereafter, the Debtors shall deliver to DIP Lender, an Approved

Variance Report on a weekly basis for (a) the preceding week, and (b) the trailing four (4) week period (or, if fewer than four (4) weeks have lapsed since the Petition Date, then for the trailing one, two or three week period, as applicable). Any amendments, supplements or modifications to an Approved Variance Report shall be subject to the prior written approval of DIP Lender in its sole discretion.

(c) Each Approved Variance Report shall indicate whether there are any adverse variances that exceed any of the Permitted Variances. “*Permitted Variances*” shall mean variances: (a) up to 15% of the aggregate for all cash disbursements line-items in the Approved Budget (other than fees and expenses of counsel to the DIP Secured Parties and Professional Persons), (b) less than 20% of the aggregate for all cash receipts in the Approved Budget, and (c) up to 15% of all fees and expenses incurred on a per-Professional Person basis (the “*Professional Fee Variance*”), in each case calculated weekly on a rolling four (4) week basis commencing as of the Petition Date, with the first such testing of (a) and (b) to begin three (3) weeks from the Petition Date, and the Professional Fee Variance testing set forth in (c) shall be performed weekly beginning the week following the Petition Date and not on a rolling four (4) week basis.

(d) If any Professional Person exceeds the Professional Fee Variance, such Professional Person will make a representative available to meet and confer with DIP Lender as soon as practicable and no later than two (2) Business Days after delivery of such Approved Variance Report, to discuss a good faith modification to the Approved Budget (the “*Meet and Confer*”). If DIP Lender and such Professional Person cannot mutually agree on a modification following the Meet and Confer, DIP Lender may, in its sole discretion, declare an Event of Default, consistent with the provisions herein.

(e) Commencing on the Monday of the first full calendar week after the Petition Date and continuing weekly thereafter, each Debtor Professional shall submit a report of the prior

week's accrued fees and expenses to the DIP Agent (the "***Debtor Professional Report***"). The DIP Agent shall review the Debtor Professional Reports, may test the accrued fees and expenses in the Debtor Professional Report against the Professional Fee Variance, and must submit a written objection (if any) to the applicable Debtor Professional no later than two (2) Business Days following delivery of the Debtor Professional Report (the "***Review Period***"). If the DIP Agent does not submit a written objection at the close of the Review Period, the Debtors shall fund the full amount of accrued fees and expenses in such Debtor Professional Report into the Professional Carve Out Reserve Account. If the DIP Agent submits a written objection to the Debtor Professional Report prior to the end of the Review Period, the DIP Agent and the applicable Debtor Professional shall conduct a Meet and Confer within two (2) Business Days. At the conclusion of the Meet and Confer, if the DIP Agent elects to declare an Event of Default, the Debtors shall only fund an amount not to exceed 150% of such Debtor Professional's budgeted amount as set forth in the Approved Budget for the period covered by such Debtor Professional Report. For the avoidance of doubt, any Event of Default or other action taken by the DIP Agent shall not impact any amounts previously funded in the Funded Reserve Account in compliance with the procedures herein. For the avoidance of doubt, the DIP Agent's request for a Meet and Confer shall not (in and of itself absent an Event of Default declaration) impact any terms of the DIP Documents, including any subsequent reporting and testing as set forth herein, nor the DIP Secured Parties' obligations to loan and the Debtors' obligations to fund the Funded Reserve Account in accordance with the DIP Documents after a Meet and Confer is requested.

Section 2. DIP Liens; Superpriority Administrative Claim Status.

2.1 DIP Liens.

(a) Granting of DIP Liens. To secure the prompt payment and performance of any and all DIP Obligations of the Debtors to DIP Agent and DIP Lender of

whatever kind, nature or description, absolute or contingent, now existing or hereafter arising, DIP Agent, for the benefit of itself and DIP Lender, shall have and is hereby granted, effective as of the Petition Date, valid and perfected first-priority security interests and liens, superior to all other liens, claims or security interests that any creditor of any of the Estates may have (subject only to the Carve-Out and the Permitted Liens), in and upon all assets and property (whether tangible, intangible, real, personal or mixed), wherever located, whether now owned or owing to, or hereafter acquired by, or arising in favor of each Debtor and its respective chapter 11 estate, and any and all proceeds therefrom, including, without limiting the generality of the foregoing, all cash, Cash Collateral, accounts, accounts receivable, inventory, property, plant and equipment, real estate, leaseholds, equity interests, intellectual property, and upon entry of the Final Order, the proceeds of any avoidance actions under chapter 5 of the Bankruptcy Code (all of the foregoing collectively, the “*DIP Collateral*”). The DIP Collateral shall also include any rents, issues, products, proceeds, and profits generated by any item of DIP Collateral, without the necessity of any further action of any kind or nature by DIP Agent to claim or perfect such rents, issues, products, or proceeds.

(b) Priority of DIP Liens. The liens and security interests of DIP Agent and DIP Lender granted under the DIP Documents and this Interim Order on the DIP Collateral securing all DIP Obligations shall be first and senior in priority to all other interests and liens of every kind, nature and description, whether created consensually, by an order of the Court or otherwise, including, without limitation, liens or interests granted in favor of third parties in conjunction with §§ 363, 364 or any other section of the Bankruptcy Code or other applicable law; provided, however, that DIP Agent’s and DIP Lender’s liens on and security interests in the DIP Collateral shall be subject only to (a) such priming liens or interests imposed by applicable non-



bankruptcy law that are in existence as of the Petition Date, and are otherwise unavoidable (collectively, “*Permitted Liens*”) and (b) the Carve-Out. The right of a seller of goods to reclaim any goods whether under section 546(c) of the Bankruptcy Code or otherwise shall not be a Permitted Lien or Prepetition Lien; rather, any such alleged claim arising or asserted as a right of reclamation shall have the same rights and priority with respect to the DIP Liens, Prepetition Liens and Prepetition Payment Liens, as such claims had with respect to the Prepetition Liens.

(c) Right of Repayment. The right of DIP Agent and DIP Lender to repayment in accordance with the DIP Documents and this Interim Order from the sale or other disposition of the DIP Collateral, or any proceeds thereof, shall be first and senior in priority to all other rights of repayment of every kind, nature, and description (other than the Carve-Out).

(d) Perfection of DIP Liens and Prepetition Replacement Lien. This Interim Order shall be sufficient and conclusive evidence of the priority, perfection and validity of all liens and security interests granted herein, including the DIP Liens and the Prepetition Replacement Lien, which shall be effective as of the Petition Date, without any further act and without regard to any other federal, state or local requirements or law requiring notice, filing, registration, recording or possession of the DIP Collateral, or other act to validate or perfect such security interest or lien, including without limitation control agreements with any deposit bank or with any other financial institution(s) holding a depository account or other account consisting of or containing Collateral (a “*Perfection Act*”). Notwithstanding the foregoing, if DIP Agent or Prepetition Agent, as applicable, shall, in its sole discretion, elect for any reason to file, record or otherwise effectuate any Perfection Act, then such DIP Agent or Prepetition Agent is authorized to perform such act, and the Debtors and Guarantors are authorized to perform such act to the extent necessary or required by the DIP Documents, which act or acts shall be deemed to have

been accomplished as of the date and time of entry of this Interim Order notwithstanding the date and time actually accomplished, and in such event, the subject filing or recording office is authorized to accept, file or record any document in regard to such act in accordance with applicable law. DIP Agent or Prepetition Agent, as applicable, may choose to file, record or present a certified copy of this Interim Order in the same manner as a Perfection Act, which shall be tantamount to a Perfection Act, and, in such event, the subject filing or recording office is authorized to accept, file or record such certified copy of this Interim Order in accordance with applicable law. Should DIP Agent or Prepetition Agent, as applicable, so choose and attempt to file, record or perform a Perfection Act, no defect or failure in connection with such attempt shall in any way limit, waive or alter the validity, enforceability, attachment, or perfection of the DIP liens and security interests granted herein by virtue of the entry of this Interim Order.

(e) Nullifying Prepetition Restrictions to DIP Financing.

Notwithstanding anything contained in any prepetition agreement, contract, lease, document, note or instrument to which any Debtor is a party or under which any Debtor is obligated, except as otherwise permitted under the DIP Documents, any provision that restricts, limits or impairs in any way any Debtor from granting DIP Agent security interests in or liens upon any of the Debtors' assets or properties (including, among other things, any anti-lien granting or anti-assignment clauses in any leases or other contractual arrangements to which any Debtor is a party) under the DIP Documents or this Interim Order, as applicable, or otherwise entering into and complying with all of the terms, conditions and provisions hereof or of the DIP Documents, shall not (a) be effective and/or enforceable against any of the Debtors, DIP Agent or DIP Lender, as applicable, or (b) adversely affect the validity, priority or enforceability of the liens, security interests, claims, rights, priorities and/or protections granted to DIP Agent and DIP Lender

pursuant to this Interim Order or the DIP Documents, in each case, to the maximum extent permitted under the Bankruptcy Code and other applicable law.

(f) To the extent that any applicable non-bankruptcy law otherwise would restrict the granting, scope, enforceability, attachment, or perfection of any liens and security interests granted and created by this Interim Order (including the DIP Liens and the Prepetition Replacement Liens) or otherwise would impose filing or registration requirements with respect to such liens and security interests, such law is hereby pre-empted to the maximum extent permitted by the Bankruptcy Code, applicable federal or foreign law, and the judicial power and authority of the Court. By virtue of the terms of this Interim Order, to the extent that any DIP Agent or Prepetition Agent, as applicable, has filed Uniform Commercial Code financing statements, mortgages, deeds of trust, or other security or perfection documents under the names of any of the Debtors (including all Guarantors), such filings shall be deemed to properly perfect its liens and security interests granted and confirmed by this Interim Order without further action by the applicable DIP Agent or Prepetition Agent, as applicable.

(g) Except with respect to the Carve-Out, certain Permitted Liens, the DIP Liens, the DIP Superpriority Claims, the Prepetition Replacement Liens, and the Prepetition Adequate Protection Superpriority Claims (i) shall not be made subject to or *pari passu* with (A) any lien, security interest, or claim heretofore or hereinafter granted in any of these Chapter 11 Cases or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of these Chapter 11 Cases against the Debtors (such converted cases, “*Successor Cases*”), their respective Estates, any trustee, or any other estate representative appointed or elected in these Chapter 11 Cases or any Successor Cases and/or upon the dismissal of any of these Chapter 11 Cases or any Successor Cases; (B) any lien that is avoided and preserved for the benefit of the Debtors and their

respective Estates under section 551 of the Bankruptcy Code or otherwise; and (C) any intercompany or affiliate lien or claim; and (ii) shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code.

2.2 Superpriority Administrative Expense Claims. For all DIP Obligations now existing or hereafter arising pursuant to this Interim Order or the DIP Documents, DIP Agent, for the benefit of itself and DIP Lender, is granted an allowed superpriority administrative claim pursuant to § 364(c)(1) of the Bankruptcy Code, having priority in right of payment over any and all other obligations, liabilities and indebtedness of the Debtors (other than the Carve-Out), whether now in existence or hereafter incurred by the Debtors, and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to, inter alia, §§ 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 364(c)(1), 546(c), 726, 1113 or 1114 of the Bankruptcy Code (other than the Carve-Out), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed superpriority administrative claim shall be payable from and have recourse to all prepetition and post-petition property of the Debtors and all proceeds thereof (the “*DIP Superpriority Claim*”).

2.3 Carve-Out.

(a) Carve-Out. As used in this Interim Order, the “*Carve-Out*” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate; (ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (iii) to the extent allowed or permitted to be paid at any time, whether by interim order, procedural order, or otherwise, all accrued and unpaid fees, disbursements, costs, and expenses (the “*Allowed Professional Fees*”) incurred by persons or

firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “**Debtor Professionals**”) and by any Creditors’ Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the “**Committee Professionals**” and, together with the Debtors’ Professionals, “**Professional Persons**”) at any time before or on the first business day following delivery by DIP Agent to the Debtors of a Carve-Out Trigger Notice (as defined below), but shall not include any restructuring, sale, transaction or other “success” fee except for such fee earned by Robert W. Baird & Co. Inc. in its capacity as investment banker to the Debtors during such time; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$150,000 incurred after the first business day following delivery by DIP Agent of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (this section (iv) the “**Post-Carve-Out Trigger Notice Cap**”); and (v) an amount up to the amount secured by and necessary to fund the Canadian Priority Charges (as defined in the DIP Term Sheet) for the beneficiaries thereof (without duplication) in the CCAA Recognition Proceedings. For purposes of the foregoing, “**Carve-Out Trigger Notice**” shall mean a written notice delivered by email (or other electronic means) by DIP Agent to the Debtors and the Committee (if any), which notice may be delivered in the sole discretion of DIP Agent following the occurrence of an Event of Default, and shall describe the Event of Default, state that the DIP Facility is terminated and that the Post-Carve-Out Trigger Notice Cap has been invoked.

(b) Pre-Carve-Out Trigger Notice Funding. Commencing on the Friday of the first full calendar week following the Petition Date and on a weekly basis thereafter, the DIP Secured Parties shall loan and the Debtors shall fund, using borrowings from the DIP Facility, Cash Collateral, or cash on hand, a segregated account (the “**Funded Reserve Account**”) held by the Debtors in trust and solely for the benefit of the Debtor Professionals in an amount equal to the

amount of applicable Professional Fees set forth in the Approved Budget, subject to the objection procedures described in Section 1.8(d) hereof and the Prepetition Secured Parties' and DIP Secured Parties' reversionary interest in any unused amounts. The Debtors shall pay only Allowed Professional Fees from the Funded Reserve Account, and all payments of Allowed Professional Fees incurred prior to the Carve-Out Termination Date shall be paid first from such Funded Reserve Account, provided that this shall not be a limitation on payment of Allowed Professional Fees from sources other than the Funded Reserve Account in the event the Funded Reserve Account does not have sufficient funds or has not be funded as provided above.

(c) Post-Carve-Out Trigger Notice Funding. On the day on which a Carve-Out Trigger Notice is given by the DIP Agent to counsel for the Debtors and the Committee (the "***Carve-Out Termination Date***"), the Carve-Out Trigger Notice shall be deemed a draw request and notice of borrowing hereunder and also a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund (A) the Funded Reserve Account in an amount equal to the sum of (x) the amounts set forth in paragraphs (a)(i)-(iii) above, plus (y) the total amount of unpaid Allowed Professional Fees set forth in the "Professional Fees (Escrow Account Funding)" line item of the Approved Budget for any time before or on the first business day following the Carve-Out Termination Date, to the extent not already funded in accordance with Section 2.3(b) hereof, whether such fees have become Allowed Professional Fees prior to the Carve-Out Termination Date, plus (z) the amount set forth in paragraph (a)(v) above to an account designated by the Information Officer in the CCAA Recognition Proceedings for the beneficiaries of the Canadian Priority Charges (the "***Canadian Priority Reserve Account***"); and (B) a segregated escrow account held by the Debtors in trust for the benefit of Professional Persons in an amount equal to the Post-Carve-Out Trigger Notice Cap

(the “*Post-Carve-Out Trigger Notice Reserve Account*” and, together with the Funded Reserve Account and the Canadian Priority Reserve Account, the “*Carve-Out Reserve Accounts*”). Prepetition Agent’s, Prepetition Lender’s, DIP Agent’s, and DIP Lender’s, in each case to the fullest extent applicable, claims, liens and security interests in any property of the Debtors, including, without limitation, the Prepetition Collateral, the DIP Collateral, Cash Collateral, the Prepetition Adequate Protection Superpriority Claim (as defined below), the DIP Superpriority Claim, any other adequate protection or superpriority claim, and any junior pre- or post-petition lien, interest or claim in favor of any other party, shall be subordinate to the Allowed Professional Fee Claims of the Professional Persons and other beneficiaries thereof as to all funds in the Carve-Out Reserve Accounts.

(d) No Direct Obligation To Pay Allowed Professional Fees. None of the DIP Secured Parties or Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any Successor Cases under any chapter of the Bankruptcy Code provided that the Carve-Out Reserve Accounts shall have been fully funded from cash on hand, Cash Collateral, or proceeds of the DIP Facility. Nothing in this Interim Order shall be construed to obligate any of the DIP Secured Parties or Prepetition Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement, provided that the Carve-Out Reserve Accounts shall have been fully funded, and provided that this shall not be a limitation on payment of Allowed Professional Fees from sources other than the Carve-Out Reserve Accounts in the event the Carve-Out Reserve Accounts does not have sufficient funds or has not be funded as provided above. Notwithstanding anything herein, nothing shall require the

DIP Secured Parties or Prepetition Secured Parties to provide any funding in excess of the DIP Commitment.

(e) Payment of Allowed Professional Fees Prior to the Carve-Out Termination Date. Any payment or reimbursement made prior to the occurrence of the Carve-Out Termination Date in respect of any Allowed Professional Fees shall not reduce the Carve-Out; *provided* that, upon the full funding of the Carve-Out Reserve Accounts following the Carve-Out Termination Date, the Debtors' authorization to use Cash Collateral to fund the Carve-Out Reserve Accounts shall cease, and the liens and claims of the DIP Agent and DIP Lender shall cease being subordinated to the Carve-Out, each with respect to and to the extent of the amounts so funded.

(f) Payment of Carve-Out on or After the Carve-Out Termination Date. Any payment or reimbursement made on or after the occurrence of the Carve-Out Termination Date in respect of any Allowed Professional Fees shall permanently reduce the Carve-Out on a dollar-for-dollar basis. Any funding of the Carve-Out shall be added to, and made a part of, the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under this Interim Order, the DIP Documents, the Bankruptcy Code, and applicable law.

#### 2.4 Payment of Carve-Out.

Payment from the Carve-Out Reserve Accounts, whether by or on behalf of DIP Agent or DIP Lender, shall not and shall not be deemed to reduce the DIP Obligations, and shall not be deemed to subordinate any of any of DIP Agent's or DIP Lender's liens and security interests in the Prepetition Collateral, any other DIP Collateral, the Prepetition Adequate Protection Superpriority Claim, or the DIP Superpriority Claim to any junior pre- or post-petition lien, interest or claim in favor of any other party other than the Carve-Out for Professional Persons.

#### 2.5 Excluded Professional Fees.



(a) Notwithstanding anything to the contrary in this Interim Order, no DIP Collateral (or proceeds thereof) nor any DIP Loans or any other credit or financial accommodations provided under or in connection with the DIP Documents shall be used to pay any Allowed Professional Fees or any other fees or expenses incurred by any Professional Person in connection with any of the following:

(i) an assertion or joinder in any claim, counter-claim, action, proceeding, application, motion, objection, defense or other contested matter seeking any order, judgment, determination or similar relief: (A) challenging the legality, validity, priority, perfection, or enforceability of (I) the Prepetition Obligations or any Prepetition Secured Parties' liens on and security interests in the Prepetition Collateral or (II) the DIP Obligations or any DIP Secured Parties' liens on and security interests in the DIP Collateral; (B) invalidating, setting aside, avoiding, recharacterizing or subordinating, in whole or in part, (I) the Prepetition Obligations or any Prepetition Secured Parties' liens on and security interests in the Prepetition Collateral or (II) the DIP Obligations or any DIP Secured Parties' liens on and security interests in the DIP Collateral; or (C) preventing, hindering or delaying DIP Agent's or DIP Lender's assertion or enforcement of any lien, claim, right or security interest or realization upon any DIP Collateral in accordance with the terms and conditions of the DIP Term Sheet, the DIP Documents, and this Interim Order other than reasonable and documented fees in connection with a good faith challenge of an asserted Event of Default and related Carve-Out Trigger Notice;

(ii) a request made to this Court to use Cash Collateral (as such term is defined in section 363 of the Bankruptcy Code) without the prior written consent of DIP Agent and Prepetition Agent;

(iii) a request made to this Court for authorization to obtain debtor-in-possession financing or other financial accommodations pursuant to section 364(c) or section 364(d) of the Bankruptcy Code or otherwise incur Indebtedness (as defined in the Prepetition Credit Agreement) without the prior written consent of DIP Agent (except to the extent permitted under the DIP Documents);

(iv) the commencement or prosecution of any action or proceeding of any claims, causes of action or defenses against any DIP Secured Party or Prepetition Secured Party or any of their respective officers, directors, employees, agents, attorneys, affiliates, successors or assigns, including, without limitation, any attempt to recover or avoid any claim or interest or disgorge any payments under chapter 5 of the Bankruptcy Code or any applicable state law equivalents;

(v) the cost of a Committee's investigation into any claims against any Prepetition Secured Parties arising under or in connection with the Prepetition Loan Documents in excess of \$25,000 (the "***Committee Investigation Budget***"); provided that no portion of the Committee Investigation Budget may be used to seek formal discovery or commence any challenge, objection, or prosecute any such Challenge, claims or causes of actions; or

(vi) any act which has or could directly, materially and adversely modify or compromise the rights and remedies of any of the DIP Secured Parties or Prepetition Secured Parties under this Interim Order, or which directly results in the occurrence of an Event of Default under this Interim Order or any DIP Documents.

2.6 Limited Use of Cash Collateral; Adequate Protection.

(a) Authorization to Use Cash Collateral. Subject to the terms and conditions of this Interim Order, the DIP Term Sheet, the DIP Documents, and in accordance with the Approved Budget, Borrower shall be and are hereby authorized to use Cash Collateral for the period commencing on the date of this Interim Order and terminating on the Carve-Out Termination Date, subject to the liens and security interests granted to Prepetition Agent and Prepetition Lender; provided that during the Remedies Notice Period (as defined herein) the Debtors may use Cash Collateral solely for the following amounts and expenses: (i) to fund the Carve-Out Reserve Accounts in accordance with Section 2.3 above; and (ii) to pay expenses critical to the administration of the Estates, as agreed by DIP Agent in its sole discretion. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or their Estates outside the ordinary course of business, or any Debtor's use of Cash Collateral or other proceeds resulting therefrom, except as expressly permitted in this Interim Order, the DIP Documents and in accordance with the Approved Budget.

(b) Prepetition Replacement Lien. As adequate protection for the diminution in value of their interests in the Prepetition Collateral (including Cash Collateral) on account of the Borrower's use of such Prepetition Collateral (including Cash Collateral), the imposition of the automatic stay and the subordination to the Carve-Out on a dollar-for-dollar basis (collectively, the "***Diminution in Value***"), Prepetition Agent, for the benefit of itself and Prepetition Lender, is hereby granted pursuant to §§ 361 and 363 of the Bankruptcy Code, and solely to the extent of the Diminution in Value, valid, binding, enforceable and perfected replacement liens upon and security interests in all DIP Collateral (the "***Prepetition Replacement Lien***"). The Prepetition Replacement Lien shall be junior and subordinate only to (A) the Carve-

Out, (B) the Permitted Liens, and (C) the DIP Liens on the DIP Collateral to secure the DIP Obligations, and shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral.

(c) Prepetition Adequate Protection Superpriority Claim. As adequate protection for the Diminution in Value, Prepetition Agent, for the benefit of itself and Prepetition Lender, is hereby granted, solely to the extent of the Diminution in Value, an allowed superpriority administrative expense claim pursuant to sections 503(b), 507(a), and 507(b) of the Bankruptcy Code in each of the Chapter 11 Cases and any successor bankruptcy cases (the “*Prepetition Adequate Protection Superpriority Claim*”). The Prepetition Adequate Protection Superpriority Claim shall be junior only to (A) the Carve-Out, and (B) the DIP Superpriority Claim, and shall otherwise have priority over all administrative expense claims and unsecured claims against the Debtors and their Estates now existing or hereafter arising, of any kind or nature whatsoever.

(d) Adequate Protection Payments and Protections. Upon entry of this Interim Order, as further adequate protection (the “*Adequate Protection Payments*”) for the Diminution in Value, the Debtors are authorized and directed to provide adequate protection to the Prepetition Secured Parties in the form of payment in cash (regardless of the Approved Budget, and regardless of any Diminution in Value) for (i) the reasonable, documented fees, expenses, and disbursements (including without limitation, the reasonable and documented fees, expenses, and disbursements of counsel and third-party consultants and other vendors, including without limitation, financial advisors and auditors) incurred by Prepetition Secured Parties arising prior to the Petition Date, and (ii) the reasonable, documented fees, expenses, and disbursements (including without limitation, the fees, expenses, and disbursements of counsel and third-party

consultants and other vendors, including without limitation, financial advisors and auditors) incurred by Prepetition Secured Parties arising subsequent to the Petition Date.

Section 3. Default; Rights and Remedies; Relief from Stay.

3.1 Events of Default. The occurrence of any of the following events shall constitute an “**Event of Default**” under this Interim Order: (a) any Debtor’s failure to perform, in any respect, any of their obligations under this Interim Order; or (b) the occurrence of an “Event of Default” under the DIP Term Sheet or any of the other DIP Documents, including the following:

- (a) after the first applicable testing date, the occurrence of any deviation from the Approved Budget that is greater than the Permitted Variances; *provided, that*, the DIP Lender may only declare an Event of Default arising from any deviation from the Professional Fee Variance if the DIP Lender and such Professional Person cannot mutually agree to a good faith modification during the Meet and Confer;
- (b) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents, DIP Orders, the Canadian DIP Recognitions Orders or Approved Budget;
- (c) modification by the Debtors of the DIP Secured Parties’ rights under the DIP Documents, DIP Orders or the Canadian DIP Recognition Orders;
- (d) failure of any of the Chapter 11 Milestones to be satisfied;
- (e) failure by any Debtor to be in compliance in all material respects with the sections of the DIP Term Sheet entitled “Affirmative Consents” (and five (5) business days shall have elapsed since the DIP Lender shall have given notice to the Debtors of such failure) and “Negative Covenants” or failure to otherwise be in compliance in all material respects with any other provision of this Term Sheet, the DIP Orders and the Canadian DIP Recognition Orders;
- (f) failure of any representation or warranty to be true and correct in all material respects;
- (g) filing of any application by the Debtors for the approval of (or an order is entered by the Court approving) any claim arising under section 507(b) of the Bankruptcy Code or any other provision of the Bankruptcy Code or any security, mortgage, collateral interest or other lien in any of the Chapter 11 Cases or CCAA Recognition Proceedings which is *pari passu* with or senior to the DIP Superpriority Claims or the DIP Liens, excluding liens arising under the DIP Orders or the Canadian DIP Recognition Orders, or pursuant to any other financing agreement made with the prior written consent of the DIP Agent;
- (h) the filing of any applications by the Debtors for approval of (or an order is entered by the Court authorizing) compensation or other amounts under any employee or

executive incentive or retention plans (or any similar sort of retention or incentive program) without the prior written consent of the DIP Secured Parties in their sole discretion;

- (i) any request made by the Debtors for, or the reversal, modification, amendment, stay, reconsideration or vacatur of the DIP Orders, as entered by the Bankruptcy Court or the Canadian DIP Recognition Orders, as entered by the CCAA Court, as applicable, without the prior written consent of the DIP Secured Parties;
- (j) the commencement of any action by the Debtors or other authorized person (other than an action permitted by the DIP orders or the Canadian DIP Recognition Orders) against any of the DIP Secured Parties or its agents and employees, to subordinate or avoid any liens made in connection with the DIP orders or the Canadian DIP Recognition Orders;
- (k) (1) the assertion by the Debtors in any pleading filed in any court that any material provision of the DIP Orders, the Canadian DIP Recognition Orders or the DIP Term Sheet is not valid and binding, or (2) any material provision of the DIP Orders, the Canadian DIP Recognition Orders or this Term Sheet shall for any reason, or any other order of this Court approving the Debtors' use of Cash Collateral, cease to be valid and binding (without the prior written consent of the DIP Secured Parties);
- (l) the filing with the Bankruptcy Court of any plan of reorganization or liquidation in any of the Chapter 11 Cases other than the Plan;
- (m) the appointment or entry in any of the Chapter 11 Cases of a trustee, receiver, examiner, or responsible officer with enlarged powers relating to the operation of business of any Debtor (powers beyond those set forth in sections 1106(a)(3) and (a)(4) of the Bankruptcy Code), unless such appointment or order has not been reversed, stayed, or vacated within thirty (30) days after the entry of such order;
- (n) the granting of relief from the automatic stay by the Bankruptcy Court or of the stay ordered by the CCAA Court to any other creditor or party in interest in the Chapter 11 Cases with respect to any portion of the DIP Collateral exceeding \$100,000 in value in the aggregate;
- (o) failure to pay principal, interest or other DIP Obligations in full in cash when due, including, without limitation, on the Maturity Date;
- (p) the allowance of any claim or claims under sections 506(c) and 552(b) against or with respect to any DIP Collateral;
- (q) withdrawal or material modification by the Debtors of any motion in connection with the Backyard Sale, without the consent of the DIP Secured Parties;
- (r) the Debtors seek to consummate an Alternative Transaction (as defined in the APA) without the prior written consent of the DIP Secured Parties;
- (s) the Plan is not confirmed or is changed without the DIP Secured Parties' consent, or the Plan Sponsor breaches (or is anticipated to breach) its obligations under the Plan;
- (t) the occurrence of any Material Adverse Change;

- (u) any termination of the RSA or APA;
- (v) the amount of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, and Allowed Other Priority Claims (each as defined in the Plan) exceeds or is expected to exceed the Administrative Expense Claim, Priority Tax Claim, or Other Priority Claim Backstop Amount;
- (w) the occurrence of any Negative Purchase Variance under any Purchase Price Calculation; and
- (x) the conversion of any Chapter 11 Case to a Chapter 7 case(s), or any Debtor shall file a motion or other pleading seeking the conversion of any Chapter 11 Case to chapter 7 of the Bankruptcy Code or the making of an assignment bankruptcy by or entry by any Canadian Court of a bankruptcy order in respect of the Debtors under the BIA, or the entry of an order of any Canadian court appointing a receiver under the BIA over any DIP Collateral, in each case, without the prior written consent of DIP Agent.<sup>4</sup>

3.2 Rights and Remedies upon Event of Default. Upon the occurrence of an Event of Default, (a) the Debtors shall be bound by all restrictions, prohibitions and other terms as provided in this Interim Order, the DIP Term Sheet and the other DIP Documents, and (b) DIP Agent shall be entitled to take any act or exercise any right or remedy (subject to Section 3.4 below) as provided in this Interim Order or the DIP Term Sheet or any of the other DIP Documents, as applicable, including, without limitation, declaring all DIP Obligations immediately due and payable, accelerating the DIP Obligations, ceasing to extend DIP Loans, setting off any DIP Obligations with DIP Collateral or proceeds in DIP Agent's or DIP Lender's possession, and enforcing any and all rights with respect to the DIP Collateral. DIP Agent and DIP Lender shall have no obligation to lend or advance any additional funds to or on behalf of the Debtors, or provide any other financial accommodations to the Debtors, immediately upon or after the occurrence of an Event of Default or upon the occurrence of any act, event, or condition that, with the giving of notice or the passage of time, or both, would constitute an Event of Default.

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<sup>4</sup> Capitalized terms used but not otherwise defined in Section 3.1(a)-(x) shall have the meanings set forth in the DIP Facility Term Sheet.

3.3 Expiration of Loan Commitment. Upon the expiration, termination, or maturity of Borrower's authority to borrow or otherwise obtain other credit accommodations from DIP Agent and DIP Lender pursuant to the terms of this Interim Order and the DIP Documents (except if such authority shall be extended with the prior written consent of DIP Agent, which consent shall not be implied or construed from any action, inaction or acquiescence by DIP Agent or DIP Lender), unless an Event of Default set forth in Section 3.1 above occurs sooner and the automatic stay has been lifted or modified pursuant to Section 3.4 of this Interim Order, all of the DIP Obligations shall immediately become due and payable and DIP Agent and DIP Lender shall have no obligation whatsoever to make or extend any loans, advances, provide any financial or credit accommodations to the Debtors or permit the use of Cash Collateral.

3.4 Modification of Automatic Stay; Remedies Notice Period.

(a) The automatic stay provisions of section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified without further notice, application or order of the Court to the extent necessary to permit DIP Agent and DIP Lender to perform any act authorized or permitted under or by virtue of this Interim Order or the DIP Documents, as applicable, including, without limitation, (I)(A) to implement the DIP financing arrangements authorized by this Interim Order and pursuant to the terms of the DIP Documents, (B) to take any act to create, validate, evidence, attach or perfect any lien, security interest, right or claim in the DIP Collateral, (C) to assess, charge, collect, advance, deduct and receive payments with respect to the Prepetition Obligations or the DIP Obligations, as applicable, including, without limitation, all interests, fees, costs and expenses permitted under the DIP Documents (subject to Section 5.12 of this Interim Order) and apply such payments to the Prepetition Obligations or DIP Obligations pursuant to the DIP Documents and/or



this Interim Order, as applicable, and (II) upon an Event of Default, (A) declare a termination, reduction or restriction on the ability of the Debtors to use Cash Collateral, (B) to take any other action and exercise all other rights and remedies provided to it by this Interim Order, the DIP Documents or applicable law other than those rights and remedies subject to the expiration of the Remedies Notice Period, and (C) charge interest at the default rate under the DIP Documents.

(b) In addition, and without limiting anything in Section 3.4(a) hereof, upon the filing of a Carve-Out Trigger Notice on the docket of these Chapter 11 Cases and the expiration of the five (5) business day period thereafter (the “*Remedies Notice Period*”), DIP Agent, acting on behalf of itself and DIP Lender, without further notice, application or order of the Court, shall be entitled to take any action and exercise all rights and remedies provided to it by this Interim Order, the DIP Documents or applicable law that DIP Agent may deem appropriate in its sole discretion to proceed against and realize upon the DIP Collateral or any other assets or properties of the Estates upon which DIP Agent, for the benefit of itself and DIP Lender, has been or may hereafter be granted liens or security interests to obtain the full and indefeasible repayment of all DIP Obligations. Notwithstanding anything to the contrary, any action that DIP Agent is otherwise permitted to take pursuant to this Interim Order to (i) terminate the DIP Commitments, (ii) accelerate the DIP Loans, (iii) send blocking notices or activation notices pursuant to the terms of any deposit account control agreement, and (iv) repay any amounts owing in respect of the DIP Obligations (including, without limitation, fees, indemnities and expense reimbursements), in each case, shall not require any advance notice to the Debtors. During the Remedies Notice Period, the Debtors, the Committee (if appointed), and/or any party in interest shall be entitled to seek an emergency hearing, and DIP Agent and DIP Lender shall consent to such emergency hearing so long as it occurs within the Remedies Notice Period; provided, that, (A) the sole issue the Debtors

may bring before the Court at any such emergency hearing is whether an Event of Default has occurred, and (B) if such emergency hearing cannot be scheduled prior to the expiration of the Remedies Notice Period solely as a result of the Court's unavailability, the Remedies Notice Period shall be automatically extended to the date that is one (1) business day after the first date the Court is available.

Section 4. Representations; Covenants; and Waivers.

4.1 Reservation of Third-Party Challenge Rights. Notwithstanding anything in this Interim Order, the stipulations, releases, agreements, and admissions contained in this Interim Order, including, without limitation, paragraph G hereof (collectively, the "**Debtors' Stipulations**"), shall be binding in all circumstances on the Debtors, their respective Estates and any successor (including, without limitation, any estate representative or a chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors with respect thereto) provided that, the Debtors' Stipulations shall be binding on each other party in interest, including, without limitation, the Committee (if any), unless (a) any such party in interest with standing and authority (which the DIP Secured Parties and Prepetition Secured Parties hereby agree may be sought on an emergency basis), including the Committee (if any), has timely filed a complaint or a motion seeking authority to commence litigation as a representative of the estate (a "**Challenge**") before the earliest of (i) the objection deadline for the Plan, (ii) sixty (60) calendar days from the date of appointment of the Committee by the U.S. Trustee, and (iii) seventy-five (75) calendar days from the Petition Date for all parties other than the Committee (if any) (the "**Challenge Period**") challenging the amount, validity, perfection, enforceability, priority, or extent of the Prepetition Obligations or Prepetition Liens, or otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims or any other claims, counterclaims, or causes of action, objections, contests, or defenses with respect to the Prepetition Obligations or Prepetition

Liens and (b) such Challenge sets forth with specificity the basis for such challenge, and any challenges or claims not so specified prior to the expiration of the Challenge Period shall be deemed forever waived, released, and barred. For the avoidance of doubt, a party's commencement of a timely Challenge shall preserve the Challenge Period only with respect to such party. Nothing in this Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including the Committee (if any), standing or authority to pursue any Challenge or cause of action belonging to the Debtors or their respective Estates, including, without limitation, claims and defenses with respect to the Prepetition Credit Agreements or the Prepetition Liens on the Prepetition Collateral. If any Challenge is timely commenced, the Debtors' Stipulations shall nonetheless remain binding and conclusive (as provided in this paragraph) on the Debtors, the Committee (if any), and any other person or entity, except as to any specific findings and admissions that were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. If no such Challenge is timely and properly filed, or if a Challenge is timely and properly filed but denied, (i) the Prepetition Obligations shall be deemed allowed in full, shall not be subject to any setoff, recoupment, counterclaim, deduction or claim of any kind, and shall not be subject to any further objection or challenge by any party at any time, and the Prepetition Liens on and security interest in the Prepetition Collateral shall be deemed legal, valid, perfected, enforceable, and non-avoidable for all purposes and of first and senior priority, subject to only the Carve-Out and Permitted Liens, and (ii) Prepetition Agent and Prepetition Lender, and each of their respective participants, agents, officers, directors, employees, attorneys, professionals, successors, and assigns (each in their respective capacities as such) shall be deemed released and discharged from any and all claims and causes of action related to or arising out of the Prepetition Loan Documents,

and shall not be subject to any further objection or challenge relating thereto or arising therefrom by any party at any time. Nothing contained in this Section 4.1(a) shall or shall be deemed or construed to impair, prejudice or waive any rights, claims or protections afforded to DIP Agent or DIP Lender in connection with the DIP Documents, and any other post-petition financial and credit accommodations provided by DIP Agent and DIP Lender to the Debtors in reliance on section 364(e) of the Bankruptcy Code and in accordance with the terms and provisions of this Interim Order and the DIP Documents.

4.2 Debtors' Waivers. Prior to the indefeasible repayment in full in cash of all Prepetition Obligations and all DIP Obligations (“**Repayment in Full**”), any request by the Debtors of this Court without the prior consent of the DIP Agent with respect to the following shall also constitute an Event of Default: (a) to use Cash Collateral under section 363 of the Bankruptcy Code other than as provided in this Interim Order, (b) to obtain post-petition loans or other financial accommodations pursuant to section 364(c) or 364(d) of the Bankruptcy Code, other than as provided in this Interim Order or as may be otherwise expressly permitted pursuant to the DIP Documents, (c) to challenge the application of any payments authorized by this Interim Order as pursuant to section 506(b) of the Bankruptcy Code, or to assert that the value of the Prepetition Collateral is less than the Prepetition Obligations, (d) to propose, support or have a plan of reorganization or liquidation that is inconsistent with the Plan, Backyard Sale or RSA, or (e) to seek relief under the Bankruptcy Code, including without limitation, under section 105 of the Bankruptcy Code, to the extent any such relief would in any way restrict or impair the rights and remedies of DIP Agent or DIP Lender as provided in this Interim Order and the DIP Documents or DIP Agent’s or DIP Lender’s exercise of such rights or remedies; provided,

however, that DIP Agent may otherwise consent in writing, but no such consent shall be implied from any other action, inaction, or acquiescence by any DIP Secured Party.

4.3 Section 506(c) Claims. Subject to entry of the Final Order, no costs or expenses of administration which have or may be incurred in the Chapter 11 Cases shall be charged against DIP Agent or DIP Lender, their respective claims, or the DIP Collateral pursuant to §§ 105 or 506(c) of the Bankruptcy Code or otherwise without the prior written consent of DIP Agent, and no such consent shall be implied from any other action, inaction or acquiescence by DIP Agent or DIP Lender.

4.4 DIP Collateral Rights. Until the occurrence of Repayment in Full:

(a) no other party shall foreclose or otherwise seek to enforce any junior lien or claim in DIP Collateral and

(b) upon and after the delivery of a Carve-Out Trigger Notice and the expiration of the Remedies Notice Period, if requested by the DIP Agent in connection with such exercise of rights and remedies, the Debtors shall cooperate with the DIP Agent to, among other things, (i) make reasonable efforts to collect accounts receivable, without setoff by any account debtor, (ii) provide at all reasonable times access to the Debtors' premises to representatives or agents of the DIP Agent (including any collateral liquidator or consultant), (iii) provide the DIP Agent and their representatives or agents, at all reasonable times access to the Debtors' books and records and any information or documents requested by the DIP Agent or their respective representatives, (iv) perform all other obligations set forth in the DIP Documents, and (v) take reasonable steps to safeguard and protect the DIP Collateral.

4.5 Release of DIP Secured Parties. Subject to entry of the Final Order, each of the Releasors hereby forever, unconditionally, permanently, and irrevocably release, discharge, and acquit each of the DIP Secured Parties and their respective successors and assigns, and their

present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees and other representatives (collectively, the “*DIP Releasees*”) of and from any and all claims, demands, liabilities, damages, expenses, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, of every kind, nature and description, whether arising in law or otherwise, and whether known or unknown, matured, or contingent that any of the Releasors had, have or hereafter can or may have against any DIP Releasees as of the date hereof, in respect of events that occurred on or prior to the date hereof with respect to the Debtors, the Prepetition Obligations, the Prepetition Loan Documents, the DIP Obligations, the RSA, the Plan, the Backyard Sale, the DIP Documents and any DIP Loans or other financial accommodations made by DIP Agent and/or DIP Lender to the Debtors pursuant to the Prepetition Loan Documents or the DIP Documents including, without limitation, any so-called “lender liability” claims or defenses, (a) any so-called “lender liability” or equitable subordination claims or defenses, (b) any and all “claims” (as defined in the Bankruptcy Code) and causes of action arising under the Bankruptcy Code, and (c) any and all offsets, defenses, claims, counterclaims, set off rights, objections, challenges, causes of action, and/or choses in action of any kind or nature whatsoever, whether arising at law or in equity, including any recharacterization, recoupment, subordination, avoidance, or other claim or cause of action arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state, federal, or foreign law, including, without limitation, any right to assert any disgorgement or recovery, in each case, with respect to the extent, amount, validity, enforceability, priority, security, and perfection of any of the DIP Obligations, the DIP Documents, or the DIP Liens.

Section 5. Other Rights and DIP Obligations.

5.1 No Modification or Stay of This Interim Order. The DIP Agent and DIP Lender have acted in good faith in connection with the DIP Facility and with this Interim Order,

and their reliance on this Interim Order is in good faith, and the DIP Agent and DIP Lender are hereby entitled to the protections of section 364(e) of the Bankruptcy Code. Notwithstanding (a) any stay, modification, amendment, supplement, vacating, revocation or reversal of this Interim Order, the DIP Documents or any term hereunder or thereunder, (b) the failure to obtain a Final Order pursuant to Bankruptcy Rule 4001(c)(2), or (c) the dismissal or conversion of one or more of the Chapter 11 Cases (each, a “**Subject Event**”), (x) the acts taken by each of DIP Agent and DIP Lender in accordance with this Interim Order, and (y) the DIP Obligations incurred or arising prior to DIP Agent’s actual receipt of written notice from the Debtors expressly describing the occurrence of such Subject Event shall, in each instance, be governed in all respects by the original provisions of this Interim Order, and the acts taken by DIP Agent and DIP Lender in accordance with this Interim Order, and the liens granted to DIP Agent and DIP Lender in the DIP Collateral, and all other rights, remedies, privileges, and benefits in favor of DIP Agent and DIP Lender pursuant to this Interim Order and the DIP Documents shall remain valid and in full force and effect pursuant to section 364(e) of the Bankruptcy Code. For purposes of this Interim Order, the term “appeal”, as used in section 364(e) of the Bankruptcy Code, shall be construed to mean any proceeding for reconsideration, amending, rehearing, or re-evaluating this Interim Order by the Court or any other tribunal.

5.2 Power to Waive Rights; Duties to Third Parties. DIP Agent and Prepetition Agent, as applicable, shall have the right to waive any of the terms, rights and remedies provided or acknowledged in this Interim Order that are in favor of the DIP Secured Parties and Prepetition Secured Parties, respectively (the “**Lender Rights**”), and shall have no obligation or duty to any other party with respect to the exercise or enforcement, or failure to exercise or enforce, any Lender Right(s). Any waiver by DIP Agent or Prepetition Agent of any Lender Rights shall not be or

constitute a continuing waiver unless expressly provided therein. Any delay in or failure to exercise or enforce any Lender Right shall neither constitute a waiver of such Lender Right, subject any of the DIP Secured Parties or Prepetition Secured Parties to any liability to any other party, nor cause or enable any party other than the Debtors to rely upon or in any way seek to assert as a defense to any obligation owed by the Debtors to any of the DIP Secured Parties or Prepetition Secured Parties.

5.3 Disposition of DIP Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral outside the ordinary course of business, other than pursuant to the terms of the DIP Term Sheet, this Interim Order, and the Approved Budget, without the prior written consent of DIP Agent (and no such consent shall be implied, from any other action, inaction or acquiescence by DIP Agent or DIP Lender) and, in each case, an order of the Court.

5.4 Inventory. The Debtors shall not, without the consent of DIP Agent, (a) enter into any agreement to return any inventory to any of their creditors for application against any prepetition indebtedness under any applicable provision of section 546 of the Bankruptcy Code, or (b) consent to any creditor taking any setoff against any of its prepetition indebtedness based upon any such return pursuant to section 553(b)(1) of the Bankruptcy Code or otherwise.

5.5 Reservation of Rights. The terms, conditions and provisions of this Interim Order are in addition to and without prejudice to the rights of each DIP Secured Party and Prepetition Secured Party to pursue any and all rights and remedies under the Bankruptcy Code, the DIP Documents, the Prepetition Loan Documents, or any other applicable agreement or law, including, without limitation, rights to seek adequate protection and/or additional or different adequate protection, to seek relief from the automatic stay, to seek an injunction, to oppose any



request for use of cash collateral or granting of any interest in the DIP Collateral or Prepetition Collateral, as applicable, or priority in favor of any other party, to object to any sale of assets, and to object to applications for allowance and/or payment of compensation of Professional Persons or other parties seeking compensation or reimbursement from the Estates and to pursue any and all rights and remedies against any Non-Debtor Loan Party.

5.6 Binding Effect.

(a) The provisions of this Interim Order and the DIP Documents, the DIP Obligations, the Prepetition Adequate Protection Superpriority Claim, the DIP Superpriority Claim and any and all rights, remedies, privileges and benefits in favor of each of DIP Agent and DIP Lender provided or acknowledged in this Interim Order, and any actions taken pursuant thereto, shall be effective immediately upon entry of this Interim Order notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h) and 7062, shall continue in full force and effect, and shall survive entry of any such other order converting one or more of the Chapter 11 Cases to any other chapter under the Bankruptcy Code, or dismissing one or more of the Chapter 11 Cases.

(b) Any order dismissing one or more of the Chapter 11 Cases under section 1112 or otherwise shall be deemed to provide (in accordance with §§ 105 and 349 of the Bankruptcy Code) that (a) the DIP Superpriority Claim and DIP Agent's and DIP Lender's liens on and security interests in the DIP Collateral and all other claims, liens, adequate protections and other rights granted pursuant to the terms of this Interim Order shall continue in full force and effect notwithstanding such dismissal until Repayment in Full, and (b) the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing all such claims, liens, protections and rights.

(c) In the event the Court modifies any of the provisions of this Interim Order or the DIP Documents following a Final Hearing, such modifications shall not affect the rights or priorities of DIP Agent and DIP Lender pursuant to this Interim Order with respect to the DIP Collateral or any portion of the DIP Obligations which arises or is incurred or is advanced prior to such modifications, and this Interim Order shall otherwise remain in full force and effect to such extent.

(d) This Interim Order shall be binding upon the Debtors, all parties in interest in the Chapter 11 Cases and their respective successors and assigns, including any trustee or other fiduciary appointed in the Chapter 11 Cases or any subsequently converted bankruptcy case(s) of any Debtor. This Interim Order shall also inure to the benefit of the Debtors, DIP Agent, DIP Lender, and each of their respective successors and assigns.

5.7 Restrictions on Cash Collateral Use; Additional Financing; Plan Treatment.

(a) All post-petition advances and other financial accommodations under the DIP Term Sheet and the other DIP Documents are made in reliance on this Interim Order and there shall not at any time be entered in the Chapter 11 Cases, or in any Successor Case, any order (other than the Final Order) which authorizes the use of Cash Collateral, or the sale, lease, or other disposition of property of any Estate in which DIP Agent or DIP Lender have a lien or security interest, except as expressly permitted hereunder or in the DIP Documents, or authorizes under section 364 of the Bankruptcy Code the obtaining of credit or the incurring of indebtedness secured by a lien or security interest which is equal or senior to a lien or security interest in property in which DIP Agent or DIP Lender hold a lien or security interest, or which is entitled to priority administrative claim status which is equal or superior to that granted to DIP Agent and DIP Lender herein; unless, in each instance (x) Agent shall have given its express prior written consent with

respect thereto, no such consent being implied from any other action, inaction or acquiescence by DIP Agent or DIP Lender, or (y) such other order requires Repayment in Full. The security interests and liens granted to or for the benefit of DIP Agent and DIP Lender hereunder and the rights of DIP Agent and DIP Lender pursuant to this Interim Order and the DIP Documents with respect to the DIP Obligations and the DIP Collateral are cumulative.

(b) All DIP Obligations and Prepetition Obligations shall receive treatment under the Plan as set forth in the RSA, Plan Term Sheet, and DIP Term Sheet.

5.8 No Owner/Operator Liability. In determining to make any loan under the DIP Documents (including the negotiation thereof) and authorizing the use of Cash Collateral, none of the DIP Secured Parties or the Prepetition Secured Parties shall be deemed to (i) be in control of the operations of the Debtors or to be acting as a “controlling person,” “responsible person,” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the Internal Revenue Code, the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended, or any similar federal or state statute) or (ii) owe any fiduciary duty to any of the Debtors. Furthermore, nothing in this Interim Order shall in any way be construed or interpreted to impose or allow the imposition upon any of the DIP Secured Parties or the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their respective affiliates (as defined in section 101(2) of the Bankruptcy Code).

5.9 Marshalling; 552(b) Waiver. Subject to entry of the Final Order, (a) none of the DIP Secured Parties or the Prepetition Secured Parties shall be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral or the

Prepetition Collateral, as applicable, and all proceeds of DIP Collateral shall be received and applied in accordance with the DIP Documents and the Prepetition Credit Agreements as applicable, (b) the DIP Secured Parties and the Prepetition Secured Parties are and shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and (c) the “equities of the case” exception under section 552(b) shall not apply to any of the Prepetition Secured Parties, DIP Secured Parties, DIP Obligations, or Prepetition Obligations.

5.10 Right of Setoff. To the extent any funds were on deposit with Prepetition Agent as of the Petition Date, including, without limitation, all funds deposited in, or credited to, an account of any Debtor with Prepetition Agent or Prepetition Lender immediately prior to the filing of the Chapter 11 Cases (regardless of whether, as of the Petition Date, such funds had been collected or made available for withdrawal by any such Debtor), such funds (the “**Deposited Funds**”) are subject to rights of setoff. By virtue of such setoff rights, the Deposited Funds are subject to a lien in favor of Prepetition Agent and/or Prepetition Lender, as applicable, pursuant to §§ 506(a) and 553 of the Bankruptcy Code.

5.11 Right to Credit Bid.

(a) To the fullest extent permitted by section 363(k) of the Bankruptcy Code, in connection with any sale or other disposition of the DIP Collateral or Prepetition Collateral (as applicable) including any Sale: (a) DIP Agent (on behalf of DIP Lender) shall have the right to credit bid on a dollar-for-dollar basis, in accordance with the DIP Documents, up to the full amount of the DIP Obligations, (b) subject to the challenge rights set forth in Section 4.1 hereof, Prepetition Agent (on behalf of the Prepetition Lender) shall have the right to credit bid, in accordance with the Prepetition Loan Documents, up to the full amount of the Prepetition Secured Obligations, (c) each of the DIP Agent and Prepetition Agent shall have the absolute right (at the

direction of their respective secured parties) to assign, transfer, sell or otherwise dispose of its rights to credit bid in connection with the assignment, transfer, sale, or disposition of the corresponding DIP Obligations, except as may be set forth in the DIP Documents, and (d) each of the Debtors, the Prepetition Secured Parties, and DIP Secured Parties acknowledge and agree that they shall not object, or support any objection, to or limit, or support any limitation on, any other such DIP Secured Parties' or Prepetition Secured Parties' rights to credit bid, up to the full amount of their respective DIP Obligations and/or Prepetition Obligations,

5.12 Payment and Review of Lender Professional Fees and Expenses. Each Debtor shall pay all reasonable and documented professional fees and other expenses of the Prepetition Secured Parties and the DIP Secured Parties, whether incurred before or after the Petition Date; provided, that the Debtors shall pay all such reasonable and documented fees and expenses within ten (10) business days of delivery of a statement or invoice for such fees and expenses (it being understood that such statements or invoices may be in summary form and shall not be required to be maintained in accordance with the U.S. Trustee Guidelines, nor shall any such counsel or other professional be required to file any interim or final fee applications with the Court or otherwise seek the Court's approval of any such payments) to the Debtors, the U.S. Trustee and the Committee (if appointed), unless, within such seven (7) business day period, the Debtors or the Committee (if appointed) serve a written objection upon the requesting party, in which case, the Debtors shall immediately pay such amounts that are not the subject of any objection and pay the withheld amount as subsequently agreed by the parties or ordered by the Court to be paid.

5.13 Access to DIP Collateral. Notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of DIP Agent and DIP Lender contained

in this Interim Order, the DIP Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Term Sheet, upon reasonable prior written notice to the landlord of any leased premises that an Event of Default has occurred and is continuing, DIP Agent may, subject to the applicable notice provisions, if any, in this Interim Order and any separate applicable agreement by and between such landlord and DIP Agent, enter upon any leased premises of the Debtors or any other party for the purpose of exercising any remedy with respect to DIP Collateral located thereon and shall be entitled to all of the Debtors' rights and privileges as lessee under such lease without interference from the landlords thereunder, provided that DIP Agent shall be obligated only to pay rent of the Debtors that first accrues after the written notice referenced above and that is payable during the period of such occupancy by DIP Agent, calculated on a daily per diem basis. Nothing herein shall require DIP Agent to assume any lease as a condition to the rights afforded in this paragraph. For the avoidance of doubt, subject to (and without waiver of) the rights of DIP Agent under applicable nonbankruptcy law, DIP Agent can only enter upon a leased premises after an Event of Default in accordance with (i) a separate agreement with the landlord at the applicable leased premises, or (ii) upon entry of an order of the Court obtained by motion of DIP Agent on such notice to the landlord as shall be required by the Court.

5.14 Indefeasible Payment. All payments made to or for the benefit of any of the DIP Secured Parties or Prepetition Secured Parties after the Petition Date shall be indefeasible and shall not be subject to disgorgement, counterclaim, set-off, subordination, recharacterization, defense, disallowance, recovery or avoidance by any party for any reason except as may occur pursuant to application of Section 4.1 of this Interim Order, Reservation of Third-Party Challenge Rights.

5.15 Term; Termination. Notwithstanding any provision of this Interim Order to the contrary, the term of the financing arrangements among the Debtors, DIP Agent and DIP

Lender authorized by this Interim Order may be terminated pursuant to the terms of the DIP Term Sheet.

5.16 Limited Effect. In the event of a conflict between the terms and provisions of any of the DIP Documents, the Motion, and this Interim Order, the terms and provisions of this Interim Order shall govern.

5.17 Objections Overruled. All objections to the entry of this Interim Order are (to the extent not withdrawn, waived, or settled) hereby overruled.

5.18 Retention of Jurisdiction. The Court retains jurisdiction and power with respect to all matters arising from or related to the implementation or interpretation of this Interim Order, the DIP Term Sheet, and the other DIP Documents.

Section 6. Final Hearing and Objection Deadline.

The Final Hearing on the Motion pursuant to Bankruptcy Rule 4001(c)(2) is scheduled for June 5, 2024 at 9:30 a.m. (Central Time) before the Court. The Debtors shall promptly mail copies of this Interim Order to the Notice Parties, and to any other party that has filed a request for notices with the Court and to any Committee (if appointed) and such Committee's counsel, if same shall have filed a request for notice. Such notice is deemed good and sufficient and that no further notice need be given. Any party in interest objecting to the relief sought at the Final Hearing shall serve and file written objections, which objections shall be served upon (i) proposed attorneys to the Debtors, (i) Vinson & Elkins LLP, 2001 Ross Avenue, Suite 3900, Dallas, TX 75201, Attn: Matthew D. Struble, and 1114 Avenue of the Americas, 32nd Floor, New York, New York 10036, Attn: Lauren R. Kanzer; (ii) counsel to the DIP Secured Parties and Prepetition Secured Parties, Katten Muchin Rosenman LLP, 50 Rockefeller Plaza, New York, NY 10020, Attn: Cindi M Giglio and Lucy F. Kweskin; (iii) counsel to the Committee (if appointed); and (iv) the Office of the United States Trustee for the Northern District of Texas, 1100 Commerce

Street, Room 976, Dallas, Texas 75242, Attn: Meredyth A. Kippes, and shall be filed with the Clerk of the United States Bankruptcy Court for the Northern District of Texas, in each case, no later than 5:00 p.m. (Central Time) on May 31, 2024 (the “*Objection Deadline*”).

**### End of Order ###**



**Order submitted by:**

**VINSON & ELKINS LLP**

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**PROPOSED ATTORNEYS FOR  
THE DEBTORS AND DEBTORS IN POSSESSION**

**EXHIBIT A**

**DIP Term Sheet**

**KIDKRAFT, INC.**

**Priming Superpriority Debtor-In-Possession Financing  
Term Sheet**

**Dated as of April 25, 2024**

This Priming Superpriority Debtor-in-Possession Financing Term Sheet (including all schedules, annexes and exhibits hereto, this “**Term Sheet**”) describes the principal terms and conditions of a proposed DIP Facility to be provided by the DIP Lender to the Borrower in connection with cases (collectively, the “**Chapter 11 Cases**”) to be filed by the Debtors in the United States Bankruptcy Court for the Northern District of Texas (the “**Bankruptcy Court**”) pursuant to chapter 11 of title 11 of the United States Code (as amended, the “**Bankruptcy Code**”) on or around May 6, 2024 (the date of filing, the “**Petition Date**”) and proceedings to be commenced pursuant to Part IV of the *Companies’ Creditors Arrangement Act* (Canada) (“**CCAA**” and the related recognition proceedings, the “**CCAA Recognition Proceedings**”) in the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**”).

The parties contemplate the sale of the Debtors’ assets to Backyard Products, LLC or its designee (the “**Backyard Sale**”) pursuant to that certain Asset Purchase Agreement (the “**APA**”) dated as of the date hereof between KidKraft, Inc., and certain of its affiliates and Backyard Products, LLC (the “**Purchaser**”) and an orderly wind down pursuant to a chapter 11 plan (the “**Plan**”) to be consummated in the Chapter 11 Cases pursuant to that certain Restructuring Support Agreement to which this Term Sheet is attached (the “**RSA**”) and the Plan Term Sheet attached thereto (the “**Plan Term Sheet**”).

This Term Sheet is being provided on a confidential basis and it, along with its contents and existence, may not be distributed, disclosed or discussed with any other party. This Term Sheet is not an offer for the purchase, sale or subscription or invitation of any offer to buy, sell or to subscribe for any securities. The terms and conditions set forth in this Term Sheet do not constitute or create an agreement, obligation or commitment of any kind by or on behalf of any party, unless and until executed by each of the undersigned parties hereto.

|                        |  |
|------------------------|--|
| <b>BORROWER:</b>       | KidKraft, Inc. (“ <b>KidKraft</b> ” or “ <b>Borrower</b> ”)  |
| <b>GUARANTORS:</b>     | The affiliates of KidKraft listed on Schedule 1 hereto (such affiliates and KidKraft, Inc., each a “ <b>Debtor</b> ” and collectively, the “ <b>Debtors</b> ”), as may be modified with the consent of the DIP Agent and any additional guarantor. |
| <b>DIP LENDER:</b>     | 1903 Partners, LLC (the “ <b>DIP Lender</b> ”)   |
| <b>DIP AGENT:</b>      | GB Funding, LLC (the “ <b>DIP Agent</b> ”, and together with the DIP Lender, the “ <b>DIP Secured Parties</b> ”)   |
| <b>DIP COMMITMENT:</b> | The DIP Lender agrees to make senior secured superpriority priming debtor-in-possession loans (each, a “ <b>DIP Loan</b> ” and   |

|                                    |   |
|------------------------------------|---|
|                                    | <p>in the aggregate, the “<b>DIP Loans</b>”) to Borrower from time to time pursuant to a multi-draw debtor-in-possession term loan facility (the “<b>DIP Facility</b>”) in an aggregate amount (i) not to exceed at any time outstanding aggregate commitments of \$10.5 million (the “<b>DIP Commitment</b>”) consisting of a \$4.0 million DIP Commitment as of the Interim Closing Date (the “<b>Interim Commitment</b>”) and an incremental \$6.5 million DIP Commitment as of the Final Closing Date (the “<b>Final Commitment</b>”) <i>plus</i> (ii) the Roll-Up Amount.</p>  |
| <b>PURCHASE PRICE CALCULATION:</b> | <p>Every Wednesday beginning the first full calendar week following the Petition Date, the Debtors shall deliver an updated calculation of the “Purchase Price at close” in accordance with Exhibit B of the APA as though the Backyard Sale was closing on such date (each such calculation, a “<b>Purchase Price Calculation</b>”) to the DIP Agent and the Purchaser. If the aggregate “Purchase Price at close” in any such Purchase Price Calculation is 20% or more below the Example Purchase Price Calculation set forth in the Exhibit B of the APA, it shall be deemed a “<b>Negative Purchase Variance.</b>”</p>   |
| <b>ROLL UP:</b>                    | <p>Upon entry of the Interim Order, \$23.3 million of the Prepetition Obligations shall be “rolled up” and converted into DIP Loans on a dollar-for-dollar cashless basis (the “<b>Roll-Up Amount</b>”).</p>  |
| <b>CASH COLLATERAL:</b>            | <p>“<b>Cash Collateral</b>” consists of: (i) cash collateral (as such term is defined in section 363(a) of the Bankruptcy Code, including, without limitation, any accounts receivable and general intangible and any other cash or right that would be included in such definition of “cash collateral” within the meaning of section 363(a) of the Bankruptcy Code) including, without limitation, all cash or cash equivalents and other amounts, including the cash in any deposit or securities accounts, wherever located; (ii) any cash or cash equivalents received as proceeds of Prepetition Collateral or DIP Collateral; and (iii) all other cash or cash equivalents of the Debtors.</p> <p>Subject to the terms of the DIP Documents, the Prepetition Secured Parties (as defined below) shall consent to the Debtors’ use of Cash Collateral during the Chapter 11 Cases and CCAA Recognition Proceedings to fund (i) working capital, (ii) general corporate purposes, (iii) restructuring costs and expenses, and (iv) any other fees required under the DIP Documents and the other definitive documentation during the pendency of the Chapter 11 Cases and CCAA Recognition</p> |

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|                                       | <p>Proceedings, in each case, subject to the Approved Budget (as defined below), including the Permitted Variances.</p> <p>To the extent any amounts required to be funded under this Term Sheet, the DIP Documents, the RSA, the Plan, or the APA or any other document or order (including the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount, Post-Sale Reserve, and Foreign Sale Reserve) are not actually expended, such amounts shall be deemed Cash Collateral and distributed to the DIP Agent or Prepetition Agent, as applicable.</p>   |
| <p><b>CLOSING DATES:</b></p>          | <p>“<b>Interim Closing Date</b>” means the date on which the “Conditions Precedent to Each Interim DIP Loan” (including, without limitation, entry of the Interim Order) are satisfied or waived in accordance with this Term Sheet.</p> <p>“<b>Final Closing Date</b>” means the date on which the “Conditions Precedent to Each Final DIP Loan” as set forth below (including, without limitation, entry of the Final Order) shall have been satisfied or waived in accordance with this Term Sheet.</p>  |
| <p><b>DIP LOAN DOCUMENTATION:</b></p> | <p>At the option of the DIP Lender in its sole discretion, Debtors shall execute definitive financing documentation with respect to the DIP Loans, including, without limitation, all guaranties thereof, satisfactory in form and substance to each of the DIP Lender and Debtors (and together with this Term Sheet and other documents governing the DIP Facility, the “<b>DIP Documents</b>”). The provisions of the DIP Documents shall, upon execution, supersede the provisions of this Term Sheet. The provisions of the DIP Documents shall be substantially the same as the Prepetition Loan Documents with such changes as are necessary to reflect the terms of this Term Sheet, the DIP Orders and the Canadian DIP Recognition Orders (once entered).</p> <p>“<b>Canadian DIP Recognition Orders</b>” shall mean, as applicable, an order (after hearing on notice to all parties having or asserting a lien on all or any portion of the DIP Collateral situated in Canada), recognizing and giving effect in Canada to: (i) the Interim Order (the “<b>Interim DIP Recognition Order</b>,” and together with the Interim Order, the “<b>Interim Orders</b>”), and (ii) the Final Order (the “<b>Final DIP Recognition Order</b>” and together with the Final Order, the “<b>Final Orders</b>”).</p> |

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|  | <p>In addition to the provisions set forth herein, the DIP Orders and the Canadian DIP Recognition Orders shall contain additional customary protections for the DIP Lenders. Each of the parties’ rights and obligations hereunder shall be subject to entry of the DIP Orders and the Canadian DIP Recognition Orders.</p>  |
| <p><b>ACKNOWLEDGMENT;<br/>                 RATIFICATION:</b></p> | <p>Each Debtor hereby acknowledges, confirms, and agrees that:</p> <p>(i) as of the Petition Date, the Debtors are jointly and severally indebted under and in connection with that certain <i>Amended and Restated First Lien Credit Agreement</i> dated as of April 3, 2020, among KidKraft and KidKraft Netherlands B.V. as borrowers, KidKraft Intermediate Holdings, LLC (“<b>Holdings</b>”), the subsidiaries of Holdings that are guarantors thereto (collectively, with Holdings, the “<b>Guarantors</b>”) GB Funding, LLC in its capacity as administrative agent and collateral agent (the “<b>Prepetition Agent</b>”), and 1903 Partners, LLC in its capacity as Lender (the “<b>Prepetition Secured Lender</b>”, and together with the Prepetition Agent, the “<b>Prepetition Secured Parties</b>”) (as may be amended, supplemented or otherwise modified from time to time, the “<b>Prepetition Credit Agreement</b>”, and together with all related security agreements, collateral agreements, pledge agreements, control agreements, guarantees, the “<b>Prepetition Loan Documents</b>”) in the aggregate principal amount of not less than \$144.9 million (together with any other amounts outstanding under the Prepetition Credit Agreement, including interest costs, expenses, indemnification obligations, and fees (including attorneys’ fees and legal expenses) (collectively, the “<b>Prepetition Obligations</b>”));</p> <p>(ii) the Prepetition Obligations constitute the legal, valid and binding obligations of each Debtor enforceable against it in accordance with the terms thereof, and each Debtor has no valid defense, offset or counterclaim to the enforcement of such obligations;</p> <p>(iii) the Prepetition Obligations are secured by valid, enforceable and perfected (except, in the case of perfection, for (A) Excluded Accounts and (B) commercial tort claims, letter of credit rights, certificate of title vehicles, and other assets, in each case of this clause (B), to the extent expressly excluded from the requirement to perfect liens thereon pursuant to the Prepetition Loan Documents) first priority and senior security interests in and liens (subject in priority only to those “Liens” permitted under Section 7.01 of the</p> |

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|                                 | <p>Prepetition Credit Agreement (the “<b>Prepetition Permitted Liens</b>”) and the DIP Liens) upon all of the Debtors’ assets and property other than Excluded Assets, Excluded Receivables and Consumer Goods (as each such term is defined in the Prepetition Credit Agreement) (collectively, the “<b>Prepetition Collateral</b>”), including Cash Collateral;</p> <p>(iv) each of the Prepetition Loan Documents to which it is a party was duly executed and delivered by such Debtor, and each is in full force and effect as of the date hereof;</p> <p>(v) the Prepetition Secured Parties are and shall be entitled to all of the rights, remedies and benefits provided for in the Prepetition Loan Documents and the DIP Orders; and</p> <p>(vi) all of the terms and conditions of the Prepetition Loan Documents, as amended and supplemented pursuant hereto and pursuant to the DIP Orders and the Canadian DIP Recognition Orders, are ratified, restated, assumed, adopted and affirmed, and each Debtor agrees (a) to be fully bound, as debtor and debtor-in-possession, by the terms of the Prepetition Loan Documents to which such Debtor is a party, (b) to pay all of the Prepetition Obligations in accordance with the terms of such Prepetition Loan Documents and in accordance with the DIP Orders, and (c) each of the Prepetition Loan Documents are hereby incorporated herein by reference and hereby are and shall be deemed adopted and assumed in full by each Debtor, each as Debtor and debtor-in-possession, and considered as agreements between such Debtor, on the one hand, and the Prepetition Secured Parties on the other hand.</p> <p>The Interim Order and Final Order shall include typical acknowledgments regarding the validity and priority of the Prepetition Secured Parties and Prepetition Obligations.</p> |
| <p><b>CHALLENGE PERIOD:</b></p> | <p>The “ACKNOWLEDGMENT; RATIFICATION” section of this Term Sheet and portion of the “RELEASES” sections of this Term Sheet pertaining to the Prepetition Obligations, Prepetition Loan Documents, and Prepetition Secured Parties shall be subject to a typical “challenge period” (the “<b>Challenge Period</b>”) to be set forth in the Interim Order and Final Order, which Challenge Period shall expire prior to the date that the Plan is confirmed by the Bankruptcy Court.</p>   |

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| <p><b>CARVE-OUT:</b></p> | <p>“<b>Carve-Out</b>” shall mean the sum of:</p> <p>(i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code <i>plus</i> interest at the statutory rate;</p> <p>(ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code;</p> <p>(iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise all unpaid fees, costs, disbursements and expenses (the “<b>Allowed Professional Fees</b>”) incurred or earned by persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the “<b>Debtor Professionals</b>”) and the Committee (if any) pursuant to sections 328 or 1103 of the Bankruptcy Code (the “<b>Committee Professionals</b>,” and, together with the Debtor Professionals, the “<b>Professional Persons</b>”) at any time on or before the first business day following delivery by the DIP Lender to the Debtors of a Carve-Out Trigger Notice (as defined in the Interim Order and Final Order), but shall not include any restructuring, sale, transaction or other “success” fee except for such fee earned by Robert W. Baird &amp; Co. Inc. in its capacity as investment banker to the Debtors during such time;</p> <p>(a) Commencing on the Friday of the first full calendar week following the Petition Date and on a weekly basis thereafter, the DIP Secured Parties shall loan and the Debtors shall fund, using borrowings from the DIP Facility or cash on hand, a segregated account (the “<b>Funded Reserve Account</b>”) held by the Debtors in trust for the benefit of the Debtor Professionals in an amount equal to the amount of applicable Professional Fees set forth in the Approved Budget, subject to the objection procedures herein in the “Debtor Professional Budget and Reporting” section.</p> <p>(iv) Allowed Professional Fees of the Professional Persons in an aggregate amount not to exceed \$150,000 accrued after the first business day following delivery by the DIP Agent of a Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, final order, or otherwise; and</p> <p>(v) an amount up to the amount secured by and necessary to fund the Administration Charge (as defined below) for the</p> |
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|   | <p>beneficiaries thereof (without duplication) in the CCAA Recognition Proceedings.</p>   |
| <p><b>USE OF PROCEEDS:</b></p>  | <p>Proceeds of the DIP Loans (and Cash Collateral) will be used solely in accordance with the Approved Budget (as defined below) for (a) working capital and general corporate purposes of the Debtors, (b) restructuring costs and expenses, (c) costs and expenses related to the DIP Facility, (d) payment of interest on the DIP Loans, and (e) other costs to ensure consummation of the Plan.</p> <p>Neither proceeds of the DIP Loans nor any Cash Collateral shall be used (i) to permit the Borrower, the Guarantors or any other party-in-interest or any of their representatives to challenge or otherwise contest or institute any proceeding to determine (x) the validity, perfection or priority of security interests in favor of any of the DIP Secured Parties or the Prepetition Secured Parties, or (y) the enforceability of the obligations of the Debtors under the DIP Documents or the Prepetition Loan Documents, (ii) to investigate, commence, prosecute or defend any claim, motion, proceeding or cause of action against any of the DIP Secured Parties or the Prepetition Secured Parties, each in such capacity, and their respective agents, attorneys, advisors or representatives.</p>   |
| <p><b>APPROVED BUDGET; APPROVED CASH FLOW PROJECTION; AND VARIANCE REPORTS:</b></p> | <p>By no later than two (2) Business Days before the Petition Date, Debtors shall deliver to the DIP Lender a weekly budget for the 9-week period commencing on the Petition Date, and such weekly budget shall be approved by the DIP Lender and the Purchaser (such consent, which shall not be unreasonably withheld, conditioned, or delayed, other than line items of the budget pertaining to the Reimbursement Amounts (as defined in the APA) or which impact the Purchase Price (as defined in the APA), for which such consent shall be in the discretion of the Purchaser) and shall set forth, among other things, all projected cash receipts, sales, and cash disbursements, a copy of which is attached as <b><u>Exhibit A</u></b> hereto (the “<b>Approved Budget</b>”).</p> <p>Commencing on the Monday of the first full calendar week after the Petition Date at 5:00 p.m. (Central Time) and continuing on the two (2)-week anniversary thereafter (or such other time as the Debtors may elect with the consent of the DIP Lender), the weekly budget shall be updated, and if such updated budget is in form and substance satisfactory to the DIP Lender and the Purchaser (such consent, which shall not be unreasonably withheld, conditioned, or delayed, other</p> |

than line items of the budget pertaining to the Reimbursement Amounts or which impact the Purchase Price, for which such consent shall be in the discretion of the Purchaser), it shall become the “Approved Budget” for purposes of this Term Sheet and the DIP Orders. Commencing on the Wednesday of the first full calendar week after the Petition Date at 5:00 p.m. (Central Time), and on a weekly basis thereafter (or at such other times as the Debtors may elect with the consent of the DIP Lender) the Debtors shall deliver to the DIP Lender a variance report in form and substance reasonably acceptable to the DIP Lender (an “**Approved Variance Report**”) showing comparisons of actual results for each line item against such line item in the Approved Budget. Thereafter, Debtors shall deliver to the DIP Lender, an Approved Variance Report on a weekly basis for (a) the preceding week, and (b) the trailing four (4) week period (or, if fewer than four (4) weeks have lapsed since the Petition Date, then for the trailing one, two or three week period, as applicable).

Each Approved Variance Report shall indicate whether there are any adverse variances that exceed any of the Permitted Variances.

“**Permitted Variances**” shall mean variances: (a) up to 15% of the aggregate for all cash disbursements (other than fees and expenses of counsel to the DIP Secured Parties and Professional Persons) line-items in the Approved Budget, (b) less than 20% of the aggregate for all cash receipts in the Approved Budget, and (c) up to 15% of all fees and expenses incurred on a per-Professional Person basis (the “**Professional Fee Variance**”) in each case calculated weekly on a rolling four (4) week basis commencing as of the Petition Date, with the first such testing to begin three (3) weeks from the Petition Date, except that the Professional Fee Variance shall be calculated weekly and not on a rolling four (4) week basis. Any amendments, supplements or modifications to the Approved Budget or an Approved Variance Report shall be subject to the prior written approval of the DIP Lender in its sole discretion prior to the implementation thereof.

Other than as set forth below in the “Debtor Professional Budgeting and Reporting” section of this term sheet, if any Professional Person exceeds the Professional Fee Variance, such Professional Person will, if requested by the DIP Lender within two (2) Business Days of receipt of such adverse variance report, make a representative available to meet and

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|   | <p>confer with the DIP Lender as soon as practicable and no later than two (2) Business Days after delivery of such Approved Variance Report, to discuss a good faith modification to the Approved Budget (the “<b>Meet and Confer</b>”). If the DIP Lender and such Professional Person cannot mutually agree on a modification following the Meet and Confer, the DIP Lender may, in its sole discretion, declare an Event of Default, consistent with the provisions herein.</p> <p>To the extent the amount of actual fees and expenses of any Professional Person is less than the amount set forth in the Approved Budget on a weekly basis, such amount for such Professional Person may be rolled forward to increase the amount available to the applicable Professional Person in any subsequent week.</p>   |
| <p><b>DEBTOR PROFESSIONAL BUDGETING AND REPORTING</b></p> | <p>Notwithstanding anything to the contrary herein, the following requirements shall apply to each Debtor Professional.</p> <p>(i) Commencing on the Monday of the first full calendar week after the Petition Date and continuing weekly thereafter, each Debtor Professional shall submit a report of the prior week’s accrued fees and expenses to the DIP Agent (the “<b>Debtor Professional Report</b>”).</p> <p>(ii) The DIP Agent shall review the Debtor Professional Reports, may test the accrued fees and expenses in the Debtor Professional Report against the Professional Fee Variance, and must submit a written objection (if any) to the applicable Debtor Professional no later than two (2) Business Days following delivery of the Debtor Professional Report (the “<b>Review Period</b>”).</p> <p>(a) If the DIP Agent does not submit a written objection at the close of the Review Period, the Debtors shall fund the full amount of accrued fees and expenses in such Debtor Professional Report into the Funded Reserve Account.</p> <p>(b) If the DIP Agent submits a written objection to the Debtor Professional Report prior to the end of the Review Period, the DIP Agent and the applicable Debtor Professional shall conduct a Meet and Confer within two (2) Business Days.</p> <p>(c) At the conclusion of the Meet and Confer, if the DIP Agent elects to declare an Event of Default, the Debtors</p> |

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|   | <p>shall only fund an amount not to exceed 150% of such Debtor Professional’s budgeted amount as set forth in the Approved Budget for the period covered by such Debtor Professional Report. For the avoidance of doubt, any Event of Default or other action taken by the DIP Agent shall not impact any amounts previously funded in the Funded Reserve Account in compliance with the procedures herein.</p> <p>For the avoidance of doubt, the DIP Agent’s request for a Meet and Confer shall not (in and of itself absent an Event of Default declaration) impact any terms of the DIP Documentation, including any subsequent reporting and testing as set forth herein, nor the DIP Secured Parties’ obligations to loan and the Debtors’ obligations to fund the Funded Reserve Account in accordance with the DIP Term Sheet after a Meet and Confer is requested.</p>  |
| <p><b>ADMINISTRATIVE EXPENSE CLAIM, PRIORITY TAX CLAIM, AND OTHER PRIORITY CLAIM BACKSTOP AMOUNT:</b></p> | <p>The amount, to be agreed upon by the Debtors and both the DIP Lender and Backyard Products, LLC, each in its sole discretion, and funded by cash on hand of the Debtors and the proceeds of the DIP Facility prior to the Confirmation Date, sufficient to satisfy the agreed upon estimated amount of the Allowed Administrative Expense Claims, Allowed Priority Tax Claims, and Allowed Other Priority Claims excluding Allowed Professional Fee Claims; <i>provided, that</i> in no event will the DIP Lender’s obligation to provide such funding exceed the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount (as defined and set forth in the Plan).</p>   |
| <p><b>FIRST PRIORITY SECURITY INTEREST:</b></p>   | <p>All DIP Loans and other liabilities and obligations of Debtors to the DIP Secured Parties under or in connection with this Term Sheet, the DIP Documents, and the DIP Orders (collectively, the “<b>DIP Obligations</b>”) shall be:</p> <p>(i) pursuant to section 364(c)(1) of the Bankruptcy Code, constitute an allowed superpriority administrative expense claim (the “<b>DIP Superpriority Claim</b>”) in the Chapter 11 Cases of the Debtors with priority over any and all administrative expenses, whether heretofore or hereafter incurred, of the kind specified in sections 503(b) or 507(a) of the Bankruptcy Code but shall be subject to the Carve-Out and, shall be payable from the proceeds of DIP Collateral;</p> <p>(ii) pursuant to sections 364(c)(2), secured by a perfected first priority lien on the DIP Collateral, to the extent that such DIP</p> |

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|  | <p>Collateral is not subject to valid, perfected, and non-avoidable liens as of the Petition Date (but in all cases subject to the Carve-Out);</p> <p>(iii) pursuant to section 364(c)(3), secured by a perfected junior lien on DIP Collateral (as defined below), to the extent such DIP Collateral is subject to a Permitted Lien;</p> <p>(iv) pursuant to section 364(d) of the Bankruptcy Code, secured by the DIP Liens, which shall constitute a perfected, senior secured superpriority priming security interest and lien on the DIP Collateral (but in all cases subject to the Carve-Out); and</p> <p>(v) pursuant to the Canadian DIP Recognition Orders, secured by a super-priority CCAA Court-ordered charge upon DIP Collateral which is property of a Debtor formed under the laws of Canada (the “<b>Canadian Debtors</b>”) or DIP Collateral situated in Canada (all such collateral, the “<b>Canadian Collateral</b>”).</p> <p>For clarity, all existing liens, including the liens granted in connection with the Prepetition Loan Documents shall be primed and made subject to and subordinate to the DIP Liens.</p> <p>The DIP Liens shall not be <i>pari passu</i> with or subordinated to any other liens or security interests (whether currently existing or hereafter created), except (i) the Carve-Out, (ii) such liens or interests expressly agreed upon in writing by the DIP Agent in its sole discretion, (iii) with respect to the Canadian Collateral, (A) the super-priority administration charge to be established by the CCAA Court on the Canadian Collateral in the Supplemental Order (Foreign Main Proceeding) as security for the professional fees and disbursements of Canadian counsel to the Debtors, the information officer appointed by the CCAA Court in the CCAA Recognition Proceedings (the “<b>Information Officer</b>”) and legal counsel to the Information Officer incurred in respect of the CCAA Recognition Proceedings in an amount not to exceed C\$750,000 (the “<b>Administration Charge</b>”), and (B) the super-priority charge to be established by the CCAA Court on the Canadian Collateral in the Supplemental Order (Foreign Main Proceeding), securing an indemnity by KidKraft and the Canadian Debtors in favor of their directors and officers against certain Canadian obligations or liabilities that they may incur as directors and officers of KidKraft and the Canadian Debtors on or after the commencement of the</p> |
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|   | <p>CCAA Recognition Proceedings in an amount not to exceed C\$100,000 (the “<b>Directors’ Charge</b>, and together with the Administration Charge, the “<b>Canadian Priority Charges</b>”) or (iv) such priming liens or interests imposed by applicable non-bankruptcy law and disclosed to the DIP Agent prior to the entry of the Interim Order, are in existence as of the Petition Date, and otherwise unavoidable (collectively, the “<b>Permitted Liens</b>”). For the avoidance of doubt, the Permitted Liens shall not include any liens which are junior in priority to the liens held by the Prepetition Secured Parties.</p>   |
| <p><b>GRANT OF SECURITY INTEREST:</b></p> | <p>As collateral security for the prompt performance, observance, and payment in full of the DIP Obligations, each Debtor, as debtor and debtor-in-possession, hereby grants, pledges, and assigns to the DIP Agent, for the benefit of the DIP Lender, continuing security interests in and liens upon, and rights of setoff against, all of the DIP Collateral (the “<b>DIP Liens</b>”).</p> <p>As collateral security for the prompt performance, observance, and payment in full of the Adequate Protection Superpriority Claim (as defined below), each Debtor, as debtor and debtor-in-possession, hereby grants, pledges, and assigns to Prepetition Agent, for the benefit of the Prepetition Secured Lender, continuing security interests in and liens upon, and rights of setoff against, all of the DIP Collateral (the “<b>Replacement Lien</b>”).</p>  |
| <p><b>ADEQUATE PROTECTION:</b></p>        | <p>As adequate protection for any diminution of the Prepetition Secured Parties’ interest in the Prepetition Collateral resulting from the use of Cash Collateral, the subordination of their existing liens to the DIP Liens, and the imposition of the Carve-Out, the Prepetition Secured Parties shall receive:</p> <p>(i) pursuant to sections 361, 363(e), and 364(d)(l) of the Bankruptcy Code, the Replacement Lien, which shall be subject and subordinated only to the Carve-Out, the DIP Liens, and the Permitted Liens;</p> <p>(ii) an administrative expense claim, junior and subordinate only to the Carve-Out and the DIP Superpriority Claim with priority over any and all other administrative expenses (the “<b>Adequate Protection Superpriority Claim</b>”); and</p> <p>(iii) payment of all reasonable, documented out-of-pocket costs and expenses of the Prepetition Secured Parties relating to the DIP Facility, the Debtors’ Chapter 11 Cases, and the CCAA Recognition Proceedings (including, without</p> |

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|                               | <p>limitation, prepetition and post-petition reasonable and documented fees and disbursements of counsel and advisors).</p> <p>Such adequate protection shall in all cases be subject to the Carve-Out and shall be entitled to the full protections of Section 507(b) of the Bankruptcy Code and shall be payable from Avoidance Actions upon entry of the Interim Order.</p> <p>The Prepetition Secured Parties reserve all rights with respect to additional adequate protection, including adequate protection payments substantially equal to interest on the Prepetition Obligations.</p>  |
| <p><b>DIP COLLATERAL:</b></p> | <p><b>“DIP Collateral”</b> means, collectively, all assets and property (whether tangible, intangible, real, personal or mixed), wherever located, whether now owned or owing to, or hereafter acquired by, or arising in favor of each Debtor and its respective chapter 11 estate, and any and all proceeds therefrom, including, without limiting the generality of the foregoing, all cash, Cash Collateral, accounts, accounts receivable, inventory, property, plant and equipment, real estate, leaseholds, equity interests, intellectual property, and upon entry of the Final Order, avoidance actions under chapter 5 of the Bankruptcy Code and proceeds thereof (collectively, the <b>“Avoidance Actions”</b>).</p> <p>For the avoidance of doubt, any amounts paid by Purchaser to the Debtors in the event of a breach or termination of the APA shall be Cash Collateral.</p> <p>The DIP Collateral shall also include any rents, issues, products, proceeds, and profits generated by any item of DIP Collateral, without the necessity of any further action of any kind or nature by the DIP Agent in order to claim or perfect such rents, issues, products, or proceeds.</p> <p>The Debtors shall take all action that may be reasonably necessary or desirable or that the DIP Agent may reasonably request, to at all times maintain the validity, perfection, enforceability and priority of the security interest and liens of the DIP Agent in the DIP Collateral, or to enable the DIP Agent to protect, exercise or enforce its rights hereunder, under the DIP Orders, the Canadian DIP Recognition Orders and in the DIP Collateral.</p> |
| <p><b>DIP FEES:</b></p>       | <p>The Debtors shall pay the (A) DIP Lender (i) an origination fee of 2.00% of the DIP Commitment, which shall be fully</p>  |

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|                       | earned and non-refundable on the Interim Closing Date, and shall be paid from the proceeds of the initial funding of DIP Loans, and (ii) an exit fee of 2.00% of the DIP Commitment, which shall be fully earned and non-refundable upon consummation of the Plan and (B) the DIP Agent, a weekly administrative fee of \$7,500.   |
| <b>INTEREST RATE:</b> | The interest rate on the DIP Loans shall be a rate per annum equal to Adjusted Term SOFR for an Interest Period (as such terms are defined in the Prepetition Credit Agreement) of one month plus 8.50%. Interest shall be paid at the end of each Interest Period in cash, using Cash Collateral or proceeds of the DIP Loans. On the last day of each Interest Period the interest rate on the outstanding DIP Loans will be automatically deemed continued at Adjusted Term SOFR for an Interest Period of one month determined as of such date. Interest shall be paid monthly on the DIP Loans in cash, using Cash Collateral or proceeds of the DIP Loans.   |
| <b>DEFAULT RATE:</b>  | At all times following the occurrence and during the continuance of an Event of Default, principal, interest and other amounts due on the DIP Loans shall bear interest at a rate equal to the “Interest Rate” section above <i>plus</i> 3.00%.  |
| <b>MATURITY DATE:</b> | The DIP Loans (together with all other DIP Obligations) shall mature and be due and payable on the earliest to occur of the following (such date, the “ <b>Maturity Date</b> ”):<br><br>(i) the date that is sixty (60) days after the Petition Date (the “ <b>Outside Date</b> ”), which may be extended in the sole discretion of the DIP Lender;<br><br>(ii) the date which is thirty (30) days following the entry of the Interim Order if the Bankruptcy Court has not entered the Final Order on or prior to such date;<br><br>(iii) the date of the Debtors’ receipt of notice of the acceleration of any of the DIP Loans and the termination of the commitments to make the DIP Loans resulting from the occurrence of an Event of Default (including, without limitation, the failure to meet any Chapter 11 Milestone set forth in the RSA (collectively, the “ <b>Chapter 11 Milestones</b> ”));<br><br>(iv) the effective date of the Plan; |



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|  | <p>(v) a sale of all or substantially all of the Debtors’ assets is consummated under Section 363 of the Bankruptcy Code (which for the avoidance of doubt shall include the Backyard Sale after the occurrence of the Sale Toggle (as defined in the Plan Term Sheet)); and</p> <p>(vi) the filing of a motion by the Debtors seeking dismissal or termination of any or all of the Chapter 11 Cases or the CCAA Recognition Proceedings, the dismissal or termination of any or all of the Chapter 11 Cases or the CCAA Recognition Proceedings, the filing of a motion by the Debtors seeking to convert any or all of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, the conversion of any or all of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code or entry of an order appointing a trustee under chapter 11 of the Bankruptcy Code, a responsible officer or examiner with enlarged powers relating to the operation of the Debtors’ business (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106 of the Bankruptcy Code, the making of an assignment in bankruptcy by or entry by any Canadian court of a bankruptcy order in respect of any of the Debtors under the <i>Bankruptcy and Insolvency Act</i> (Canada) (“<b>BIA</b>”), or the entry of an order of any Canadian court appointing a receiver under the BIA over any DIP Collateral, in each case without the prior written consent of the DIP Agent.</p> |
| <p><b>OPTIONAL PREPAYMENTS:</b></p>                              | <p>The Debtors may prepay the DIP Loans in whole or in part at any time without premium or penalty. All optional prepayments shall be applied to the DIP Loans in accordance with the Prepayment Waterfall set forth below. Any amounts so prepaid may not be reborrowed.</p>   |
| <p><b>MANDATORY PREPAYMENTS; APPLICATION OF PREPAYMENTS:</b></p> | <p>The Debtors shall pay or prepay the DIP Loans and all other DIP Obligations (together with a cash reserve established for the benefit of the DIP Agent to cover asserted contingent and indemnity obligations) in accordance with the Prepayment Waterfall, in each case after funding the Carve-Out, reserving proceeds sufficient to pay accrued and unpaid expenses to the extent set forth in the Approved Budget, and reserving for amount secured by and necessary to fund the Canadian Priority Charges (without duplication), upon receipt of any of the following (each, a “<b>Mandatory Prepayment Event</b>”):</p> <p>(i) net proceeds of any sale or disposition of all or substantially all of Debtors’ assets pursuant to section 363 of</p>   |

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|  | <p>the Bankruptcy Code simultaneous with the consummation thereof, other than the Backyard Sale.</p> <p>(ii) net proceeds of any other sale or other disposition by any Debtor of any assets, in a single transaction or series of related transactions, having a value in excess of \$10,000 (except for the sale of goods or services in the ordinary course of business, sales contemplated by the Approved Budget, and certain other sales to be agreed on); and</p> <p>(iii) 100% of the net proceeds of extraordinary receipts (including tax refunds, indemnity payments, pension reversions, acquisition purchase price adjustments and insurance proceeds not included as proceeds of asset dispositions) by any Debtor, excluding any tax refunds contemplated to be received by any of the Debtors as set forth in the Approved Budget.</p> <p>Any amounts so paid or prepaid may not be reborrowed. No reinvestment of the proceeds of any extraordinary receipts, asset sales or other proceeds described above shall be permitted without the prior written consent of the DIP Lender.</p> <p>All payments or prepayments and proceeds of DIP Collateral received by the Debtors outside the ordinary course of business (other than the Backyard Sale) will be applied in the following order of priority (the “<b>Prepayment Waterfall</b>” (unless otherwise determined by the DIP Lender in its sole discretion)), in each case after funding the Carve-Out, reserving proceeds sufficient to pay accrued and unpaid expenses to the extent set forth in the Approved Budget, and reserving for amount secured by and necessary to fund the Canadian Priority Charges (without duplication):</p> <p>(i) <i>first</i>, to pay all reasonable documented out-of-pocket expenses of the DIP Secured Parties (including, without limitation, reasonable and documented out-of-pocket fees and expenses of counsel and external advisors);</p> <p>(ii) <i>second</i>, to pay an amount equal to all accrued and unpaid interest (including, without limitation, any interest that accrued and was “paid in kind”) owing to the DIP Secured Parties;</p> |
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|  | <p>(iii) <i>third</i>, to repay any principal amounts outstanding in respect of the DIP Loans (including any amounts, other interest, that have been added to the principal balance); and</p> <p>(iv) <i>fourth</i>, all other amounts owing to the DIP Secured Parties.</p> <p>Proceeds from the Backyard Sale shall be distributed in accordance with the Plan.</p>   |
| <p><b>INDEFEASIBLE PAYMENT:</b></p>                          | <p>All payments made to or for the benefit of any of the DIP Secured Parties or Prepetition Secured Parties after the Petition Date shall be indefeasible and shall not be subject to disgorgement, counterclaim, set-off, subordination, recharacterization, defense, disallowance, recovery or avoidance by any party for any reason.</p>   |
| <p><b>CONDITIONS PRECEDENT TO EACH INTERIM DIP LOAN:</b></p> | <p>The obligations of the DIP Lender to make any Interim DIP Loans will be subject to satisfaction, or written waiver, by the DIP Lender in its sole and absolute discretion, of each of the following conditions precedent in connection with each draw request:</p> <p>(i) DIP Agent shall have received a request in writing in form approved by DIP Agent, in each case signed by Borrower, not later than 5:00 p.m. New York time (or such later time as DIP Agent may consent to in its discretion) three (3) business days prior to the date of the proposed borrowing of such Interim DIP Loan;</p> <p>(ii) Debtors shall have timely delivered to the DIP Lender the Approved Budget or any update thereto required to be delivered in accordance with this Term Sheet;</p> <p>(iii) Debtors shall have delivered to the DIP Agent a Closing Certificate, duly executed by the chief executive officer, president, or chief financial officer of the Borrower and appropriately completed, by which such officer shall certify to the DIP Agent all of the conditions precedent to the Interim DIP Loans have been satisfied (at any time delivered, a “<b>Closing Certificate</b>”);</p> <p>(iv) the Debtor shall have delivered all Purchase Price Calculations as required hereunder, and there shall have been no Negative Purchase Variances;</p> |

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|  | <p>(v) Debtors shall be in compliance with and satisfied the applicable Chapter 11 Milestones;</p> <p>(vi) the interim order has been entered by the Bankruptcy Court (after a hearing on notice to all parties having or asserting a lien on all or any portion of the DIP Collateral) and shall not have been reversed, modified, amended, stayed or vacated, or in the case of any modification or amendment, in a manner without the consent of the DIP Lender (the “<b>Interim Order</b>”), and the Debtors shall be in compliance in all respects with the Interim Order;</p> <p>(vii) the DIP Lender shall be satisfied that the DIP Liens have been properly perfected and shall constitute first-priority liens (subject only to Permitted Liens);</p> <p>(viii) all reasonable, documented fees and out-of-pocket expenses of the DIP Secured Parties relating to the DIP Facility (including, without limitation, the reasonable, documented fees and out-of-pocket expenses of their counsel and external advisors) shall have been paid in full to the extent invoiced at least two (2) business days prior;</p> <p>(ix) Debtors shall have insurance (including, without limitation, commercial general liability and property insurance) with respect to the DIP Collateral in such amounts and scope as is customary for companies similarly-situated to the Debtors and otherwise reasonably acceptable to the DIP Agent, and the DIP Agent shall have received additional insured and loss payee endorsements, as applicable, with respect thereto, in form and substance reasonably acceptable to the DIP Agent;</p> <p>(x) the DIP Agent shall have received the results of a recent lien, tax, and judgment search in each relevant jurisdiction with respect to Debtors, and such search shall reveal no liens on any of the assets of Debtors other than Permitted Liens and Permitted Prepetition Liens;</p> <p>(xi) no Event of Default shall have occurred and be continuing on the Interim Closing Date, or after giving effect to the Interim DIP Loan;</p> <p>(xii) all representations and warranties of the Debtors hereunder shall be true and correct in all material respects;</p> |
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|  | <p>(xiii) subject to Bankruptcy Court approval, (i) each Debtor shall have the corporate power and authority to make, deliver and perform its obligations under this Term Sheet and the Interim Order, and (ii) no consent or authorization of, or filing with, any person (including, without limitation, any governmental authority) shall be required in connection with the execution, delivery or performance by each Debtor, or for the validity or enforceability in accordance with its terms against such Debtor, of this Term Sheet and the Interim Order, except for consents, authorizations and filings which shall have been obtained or made and are in full force and effect, relating to the CCAA Recognition Proceedings, or, the failure to obtain or perform, could not reasonably be expected to cause a Material Adverse Change;</p> <p>(xiv) no Material Adverse Change shall have occurred;</p> <p>(xv) each of the non-Debtor borrower and the non-Debtor guarantors under the Prepetition Loan Documents shall have executed a reaffirmation and ratification agreement ratifying and confirming its obligations under each of the Prepetition Loan Documents to which it is a party and each grant of a security interest contained therein, which agreement shall be in form and substance acceptable to the Prepetition Secured Parties;</p> <p>(xvi) DIP Agent shall have received, such certificates of good standing (to the extent such concept exists) from the applicable secretary of state (or equivalent) of the state (or other jurisdiction) of organization of each Debtor, certificates of resolutions or other corporate or limited liability company action, incumbency certificates and/or other certificates of responsible officers of each Debtor as the DIP Agent may reasonably require evidencing the identity, authority and capacity of each responsible officer thereof authorized to act as a responsible officer in connection with this DIP Term Sheet and the other DIP Documents to which such Debtor is a party or is to be a party on the Interim Closing Date and certifying the organization documents of each Debtor; and</p> <p>(xvii) the DIP Secured Parties shall have received such other information and/or deliverables as they may reasonably require or request consistent with the Prepetition Loan Documents.</p> <p><b>“Material Adverse Change”</b> means a material adverse effect on and/or material adverse developments arising after the</p> |
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|  | <p>Petition Date with respect to (i) the business operations, properties, assets, or financial conditions of the Debtors and their subsidiaries taken as a whole; (ii) the validity, perfection or priority of the DIP Liens granted by the Borrower and the Guarantors in favor of the DIP Secured Parties, (iii) the rights, remedies and benefits available to, or conferred upon, the DIP Secured Parties, taken as a whole; <i>provided that</i> the filing and administration of the Chapter 11 Cases and the CCAA Recognition Proceedings and related events shall not constitute a Material Adverse Change, or (iv) the Backyard Sale; <i>provided that</i> the filing and administration of the Chapter 11 Cases and the CCAA Recognition Proceedings and related events shall not constitute a Material Adverse Change.</p>   |
| <p><b>CONDITIONS PRECEDENT TO EACH FINAL DIP LOAN:</b></p> | <p>The obligations of the DIP Lender to make any Final DIP Loans shall be subject to satisfaction or waiver of each of the following conditions:</p> <ul style="list-style-type: none"> <li>(i) all representations and warranties of the Debtors hereunder being true and correct in all material respects;</li> <li>(ii) no Event of Default shall exist or would immediately result from such proposed Final DIP Loan or from the application of the proceeds therefrom;</li> <li>(iii) all reasonable, documented fees and out-of-pocket expenses, including reasonable, documented and out-of-pocket attorney’s fees of the DIP Secured Parties, shall have been paid in full;</li> <li>(iv) the applicable Chapter 11 Milestones shall have been satisfied;</li> <li>(v) a final order approving the DIP Facility shall have been entered, which final order shall not have been reversed, modified, amended, stayed or vacated or in the case of any modification or amendment, in a manner without the consent of the DIP Lender (the “<b>Final Order</b>,” and together with the Interim Order, the “<b>DIP Orders</b>”) and the Debtors shall be in compliance in all respects with the Final Order;</li> <li>(vi) no Material Adverse Change shall have occurred;</li> <li>(vii) the Debtors shall have delivered to the DIP Agent a Closing Certificate certifying all of the conditions precedent to such Final DIP Loan have been satisfied;</li> </ul> |

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|   | <p>(viii) DIP Agent shall have received a request in writing in form approved by DIP Agent, in each case signed by Borrower, not later than 5:00 p.m. New York time (or such later time as DIP Agent may consent to in its discretion) three (3) business days prior to the date of the proposed borrowing of such Final DIP Loan;</p> <p>(ix) DIP Agent shall have received with respect to the week in which such Final DIP Loan is to be made, an Approved Budget for such week, including an Approved Variance Report;</p> <p>(x) the Debtor shall have delivered all Purchase Price Calculations as required hereunder, and there shall have been no Negative Purchase Variances; and</p> <p>(xi) the DIP Secured Parties shall have received such other information and/or deliverables as they may reasonably require or request consistent with the Prepetition Loan Documents.</p> <p>Any modifications of the Final Orders shall require the prior written consent of the DIP Secured Parties.</p> |
| <p><b>REPRESENTATIONS AND WARRANTIES:</b></p> | <p>The representations and warranties set forth in Sections 5.01 through 5.04, 5.06 through 5.10, 5.12, 5.13, 5.15, 5.17, and 5.18 of the Prepetition Credit Agreement are incorporated herein by reference and shall be deemed made by the Debtors for the benefit of the DIP Secured Parties in respect of the DIP Facility and DIP Obligations, <i>mutatis mutandis</i>, as if fully set forth herein, on the Interim Closing Date, on the Final Closing Date and on the date of each credit extension hereunder. Each Debtor further represents that the proceeds of each advance hereunder shall be used solely in accordance with the “Use of Proceeds” section of this Term Sheet.</p>  |
| <p><b>AFFIRMATIVE COVENANTS:</b></p>          | <p>From and after the Closing Date, each Debtor shall:</p> <p>(i) comply with the affirmative covenants set forth in Sections 6.04 through 6.08, 6.11 and 6.12 of the Prepetition Credit Agreement which are incorporated herein by reference for the benefit of the DIP Secured Parties in respect of the DIP Facility and DIP Obligations, <i>mutatis mutandis</i>, as if fully set forth herein;</p> <p>(ii) timely deliver, or cause to be timely delivered, to the DIP Lender the Approved Budget and Approved Variance</p>   |

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|  | <p>Reports, and all other financial reports, budgets, forecasts, and legal and financial documentation requested by the DIP Lender (or their respective legal advisors), all in accordance with the provisions set forth herein;</p> <p>(iii) deliver, or continue to deliver, to the DIP Lender all financial and other information required to be delivered by any Debtor under Sections 6.01, 6.02, and 6.03 of the Prepetition Credit Agreement which are incorporated herein by reference for the benefit of the DIP Secured Parties in respect of the DIP Facility and DIP Obligations, mutatis mutandis, as if fully set forth herein;</p> <p>(iv) (a) keep proper books, records and accounts in accordance with GAAP in which full, true and correct entries shall be made of all dealings and transactions in relation to their business and activities and consistent with Section 6.09 of the Prepetition Credit Agreement, (b) cooperate, consult with, and provide to the DIP Secured Parties all such information as required or as reasonably requested by the DIP Secured Parties, (c) permit, upon three (3) business days' notice, representatives of the DIP Secured Parties to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral audit and analysis of their respective inventory and accounts, to tour the Debtors' business premises and other properties, and to discuss, and provide advice with respect to, their respective affairs, finances, properties, business operations and accounts with their respective officers, employees and independent public accountants as often as may reasonably be desired, and (d) permit representatives of the DIP Secured Parties to consult with and advise the Debtors' management on matters concerning the general status of the Debtors' business, financial condition and operations;</p> <p>(v) comply with the Approved Budget (subject to the Permitted Variances) and with provisions of this Term Sheet, DIP Orders and the Canadian DIP Recognition Orders (as applicable);</p> <p>(vi) except to the extent (a) contemplated by the Approved Budget, (b) the failure to do so could not reasonably be expected to cause a Material Adverse Change, or (c) otherwise consented to by the DIP Lender in writing, continue, and cause to be continued, the business of the Debtors, maintain, and cause to be maintained, the Debtors'</p> |
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|  | <p>existence and material relationships, rights and privileges, and comply with all material contractual obligations;</p> <p>(vii) take, or cause to be taken, all appropriate action, to do or cause to be done all things necessary, proper or advisable, to pursue and consummate the Plan in accordance with the Chapter 11 Milestones, and provide the DIP Lender with copies of any bids (including, without limitation, any information, financial or otherwise, submitted in connection with any bids) upon receipt by the Debtors;</p> <p>(viii) do or cause to be done all things reasonably necessary, proper or advisable under applicable law, and to execute and deliver such documents and other papers, as may be reasonably requested by the DIP Secured Parties to carry out the provisions of this Term Sheet, the Interim Order, the Final Order or the Canadian DIP Recognition Orders;</p> <p>(ix) take, or cause to be taken, all appropriate action to remain the sole owner of the DIP Collateral, free of liens other than Permitted Liens and Permitted Prepetition Liens;</p> <p>(x) take, or cause to be taken, all appropriate action to comply with all material applicable laws with respect to the DIP Collateral;</p> <p>(xi) pay when due all U.S. Trustee fees;</p> <p>(xii) provide all notices received from the Purchaser under the APA, and exercise or refrain from exercising, as applicable, such rights, in each case, in accordance with the written instructions (emails suffice) of the DIP Agent, and otherwise allow the DIP Agent to participate and audit any of the Debtors' rights under the APA;</p> <p>(xiii) the Debtors shall not release or otherwise terminate, or cause to be released or otherwise terminated, any security interest granted by the Debtors' non-debtor affiliates under the Prepetition Loan Documents before a substitute, valid right of pledge or similar charge has been created, consented to and perfected by such affiliate in favor of the Prepetition Secured Parties (which substitute shall include a right, pledge or charge against any proceeds of the asset on which the security interest has been released or terminated); and</p> <p>(xiv) promptly provide such additional information concerning the Debtors, the Plan, or the DIP Collateral as the</p> |
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|                                   | <p>DIP Secured Parties may reasonably request and access to Debtors’ officers, directors, and advisors to discuss such information at reasonable times during normal business hours (and such officers, directors, and advisors shall be directed to discuss such information with the DIP Secured Parties).</p>   |
| <p><b>NEGATIVE COVENANTS:</b></p> | <p>Unless otherwise provided in the Approved Budget, this Term Sheet or as part of the Plan, no Debtor shall, without the express, prior written consent of the DIP Agent, do, or cause to be done, any of the following:</p> <p>(i) create, incur, assume or suffer to exist any lien (other than a Prepetition Permitted Lien) upon any of its property, assets, income or profits, whether now owned or hereafter acquired, except valid, perfected and unavoidable liens existing as of the Petition Date which, other than Permitted Liens, are junior to the liens securing the DIP Facility, and shall not cause, or permit to be caused, any direct or indirect subsidiary of Borrower that is not a Debtor to, create, incur, assume or suffer to exist any such liens;</p> <p>(ii) convey, sell, lease, assign, transfer or otherwise dispose of (including through a transaction of merger or consolidation) any of its property, business or assets, whether now owned or hereafter acquired, out of the ordinary course of business;</p> <p>(iii) incur or make any expenditure, investment or other payment, or any Restricted Payment (as defined in the Prepetition Credit Agreement), other than in accordance with the Approved Budget, subject to the Permitted Variances;</p> <p>(iv) create, or acquire any ownership interest in, any subsidiaries (whether direct or indirect) other than those existing on the Petition Date;</p> <p>(v) create, incur assume or suffer to exist any indebtedness other than (A) indebtedness of the Debtors under this Term Sheet, (B) indebtedness contemplated by the Approved Budget and (D) indebtedness permitted under Section 7.03(l), (o), (v) or (z) of the Prepetition Credit Agreement;</p> <p>(vi) enter into any transaction of any kind with any Affiliate of Borrower without the DIP Agent’s prior written consent or as otherwise permitted by the order of the Bankruptcy Court governing the Debtors’ authorization to continue using its cash management system; or</p> |

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|                                  | <p>(vi) consummate any amendment, restatement, supplement or other modification to or waiver of any of its organization documents.</p>   |
| <p><b>EVENTS OF DEFAULT:</b></p> | <p>Each of the following shall constitute an “Event of Default”:</p> <p>(i) after the first applicable testing date, the occurrence of any deviation from the Approved Budget that is greater than the Permitted Variances; <i>provided, that</i>, the DIP Lender may only declare an Event of Default arising from any deviation from the Professional Fee Variance if the DIP Lender and such Professional Person cannot mutually agree to a good faith modification during the Meet and Confer;</p> <p>(ii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents, DIP Orders, the Canadian DIP Recognition Orders or Approved Budget;</p> <p>(iii) any modification by the Debtors of the DIP Secured Parties’ rights under the DIP Documents, DIP Orders or the Canadian DIP Recognition Orders;</p> <p>(iv) failure of any of the Chapter 11 Milestones to be satisfied;</p> <p>(v) failure by any Debtor to be in compliance in all material respects with the sections of the Term Sheet entitled “Affirmative Covenants” (and five (5) business days shall have elapsed since the DIP Lender shall have given notice to the Debtors of such failure) and “Negative Covenants” or failure to otherwise be in compliance in all material respects with any other provision of this Term Sheet, the DIP Orders and the Canadian DIP Recognition Orders;</p> <p>(vi) failure of any representation or warranty to be true and correct in all material respects when made;</p> <p>(vii) the filing of any application by the Debtors for the approval of (or an order is entered by the Court approving) any claim arising under Section 507(b) of the Bankruptcy Code or any other provision of the Bankruptcy Code or any security, mortgage, collateral interest or other lien in any of the Chapter 11 Cases or CCAA Recognition Proceedings which is <i>pari passu</i> with or senior to the DIP Superpriority Claims or the DIP Liens, excluding liens arising under the DIP Orders or the Canadian DIP Recognition Orders, or</p> |

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|  | <p>pursuant to any other financing agreement made with the prior written consent of the DIP Agent;</p> <p>(viii) the filing of any application by the Debtors for the approval of (or an order is entered by the Court authorizing) compensation or other amounts under any employee or executive incentive or retention plans (or any similar sort of retention or incentive program) without the prior written consent of the DIP Secured Parties in their sole discretion;</p> <p>(ix) any request made by the Debtors for, or the reversal, modification, amendment, stay, reconsideration or vacatur of the DIP Orders, as entered by the Bankruptcy Court or the Canadian DIP Recognition Orders, as entered by the CCAA Court, as applicable, without the prior written consent of the DIP Secured Parties;</p> <p>(x) the commencement of any action by the Debtors or other authorized person (other than an action permitted by the DIP Orders or the Canadian DIP Recognition Orders) against any of the DIP Secured Parties or its agents and employees, to subordinate or avoid any liens made in connection with the DIP Orders or the Canadian DIP Recognition Orders;</p> <p>(xi) (1) the assertion by the Debtors in any pleading filed in any court that any material provision of the DIP Orders, the Canadian DIP Recognition Orders or this Term Sheet is not valid and binding for any reason, or (2) any material provision of the DIP Orders, the Canadian DIP Recognition Orders or this Term Sheet shall for any reason, or any other order of this Court approving the Debtors' use of Cash Collateral (as defined in the DIP Orders), cease to be valid and binding (without the prior written consent of the DIP Secured Parties);</p> <p>(xii) the filing with the Bankruptcy Court of a plan of reorganization or liquidation in any of the Chapter 11 Cases other than the Plan;</p> <p>(xiii) the appointment or entry of an order in any of the Chapter 11 Cases of a trustee, receiver, examiner, or responsible officer with enlarged powers relating to the operation of the business of any Debtor (powers beyond those set forth in sections 1106(a)(3) and (a)(4) of the Bankruptcy Code), unless such appointment or order has not been</p> |
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|  | <p>reversed, stayed, or vacated within thirty (30) days after the entry of such order;</p> <p>(xiv) the granting of relief from the automatic stay by the Bankruptcy Court or of the stay ordered by the CCAA Court to any other creditor or party in interest in the Chapter 11 Cases with respect to any portion of the DIP Collateral exceeding \$100,000 in value in the aggregate;</p> <p>(xv) failure to pay principal, interest or other DIP Obligations in full in cash when due, including without limitation, on the Maturity Date;</p> <p>(xvi) the allowance of any claim or claims under section 506(c) or 552(b) of the Bankruptcy Code against or with respect to any DIP Collateral;</p> <p>(xvii) withdrawal or material modification by the Debtors of any motion in connection with the Backyard Sale, without the consent of the DIP Secured Parties;</p> <p>(xviii) the Debtors seek to consummate an Alternative Transaction (as defined in the APA) without the prior written consent of the DIP Secured Parties;</p> <p>(xix) the Plan is not confirmed or is changed without the DIP Secured Parties' consent, or the Plan Sponsor breaches (or is anticipated to breach) its obligations under the Plan;</p> <p>(xx) the occurrence of any Material Adverse Change;</p> <p>(xxi) any termination of the RSA or the APA;</p> <p>(xxii) the actual amount of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, and Allowed Other Priority Claims (each as defined in the Plan) exceeds or is expected to exceed the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount;</p> <p>(xxiii) the occurrence of any Negative Purchase Variance under any Purchase Price Calculation;</p> <p>(xxiv) such other events of default to be included in the DIP Orders as reasonably specified by the DIP Secured Parties with the reasonable consent of the Debtors; and</p> |
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|   | <p>(xxv) the conversion of any Chapter 11 Case to a Chapter 7 case(s), or any Debtor shall file a motion or other pleading seeking the conversion of any Chapter 11 Case to chapter 7 of the Bankruptcy Code or the making of an assignment bankruptcy by or entry by any Canadian court of a bankruptcy order in respect of any of the Debtors under the BIA, or the entry of an order of any Canadian court appointing a receiver under the BIA over any DIP Collateral, in each case, without the prior written consent of DIP Agent.</p>  |
| <p><b>REMEDIES UPON EVENT OF DEFAULT:</b></p> | <p>Upon the occurrence and during the continuance of any Event of Default and delivery of a Carve-Out Trigger Notice (as defined in the Interim DIP Order or the Final DIP Order, as applicable) and delivery by the DIP Agent of five (5) business days' notice to the Debtors (the "Notice Period"), during which time the Debtors may seek an emergency hearing before the Bankruptcy Court, the DIP Secured Parties may not exercise rights or remedies; <i>provided, that</i>, if a hearing cannot be scheduled prior to the expiration of the Notice Period solely as a result of the Bankruptcy Court's unavailability, the Notice Period shall be automatically extended to the date that is one (1) business day after the first date that the Bankruptcy Court is available.</p> <p>After the expiration of the Notice Period, the DIP Secured Parties may (except as otherwise ordered by the Bankruptcy Court or the CCAA Court):</p> <ul style="list-style-type: none"> <li>(i) declare all DIP Obligations (including principal of and accrued interest on any outstanding DIP Loans) to be immediately due and payable;</li> <li>(ii) terminate the DIP Facility and/or any further commitment to lend to Borrower; and</li> <li>(iii) exercise rights and remedies pursuant to the terms of the DIP Documents, the DIP Orders, the Canadian DIP Recognition Orders or applicable law, and if requested by the DIP Agent in connection with such exercise of rights and remedies, the Debtors shall cooperate with the DIP Agent to, among other things, (A) make reasonable efforts to collect accounts receivable, without setoff by any account debtor, (B) provide at all reasonable times access to the Debtors' premises to representatives or agents of the DIP Agent (including any collateral liquidator or consultant), (B) provide the DIP Agent and their representatives or agents, at all reasonable times access to the Debtors' books and records</li> </ul> |

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|  | <p>and any information or documents requested by the DIP Agent or their respective representatives, (C) perform all other obligations set forth in the DIP Documents, and (D) take reasonable steps to safeguard and protect the DIP Collateral, and</p> <p>(iv) the Debtors shall not otherwise interfere with or actively encourage others to interfere with the DIP Agent’s enforcement of rights including, without limitation, the right to (W) take any actions reasonably calculated to preserve or safeguard the DIP Collateral or to prepare the DIP Collateral for sale; (X) foreclose or otherwise enforce the DIP Liens on any or all of the DIP Collateral; (Y) immediately set off any and all amounts held as Cash Collateral (including, without limitation, in any Cash Collateral account held for the benefit of the DIP Agent and DIP Lenders); and/or (Z) exercise any other default-related rights and remedies under the under the DIP Facility Documents, this Interim Order the DIP Orders, the Canadian DIP Recognition Orders or applicable law.</p> |
| <p><b>DIP SECURED PARTIES’ EXPENSES:</b></p> | <p>All reasonable, documented out-of-pocket costs and expenses of the DIP Secured Parties relating to the DIP Facility, the Debtors’ Chapter 11 Cases, and the CCAA Recognition Proceedings (including, without limitation, prepetition and post-petition reasonable and documented fees and disbursements of counsel and advisors) shall be payable by Borrower promptly upon written demand (together with summary backup documentation supporting such reimbursement request) and without the requirement for Bankruptcy Court or CCAA Court approval.</p> <p>A copy of summary invoices for the U.S. advisors to the DIP Secured Parties and Prepetition Secured Parties shall be provided by the Debtors to the Office of the U.S. Trustee, and counsel for any statutory committee, subject to customary review periods.</p>  |
| <p><b>RELEASES:</b></p>                      | <p>The Interim Order and Final Order shall provide customary releases for each of the DIP Secured Parties and the Prepetition Secured Parties and each of their respective each of their respective former, current or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates and successors and predecessors in interest (in their respective capacities as such) (collectively, the “<b>Released Parties</b>”) with respect to all claims and liabilities arising from</p>  |

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|  | the DIP Facility, the DIP Liens, the DIP Superpriority Claims, the DIP Documents and the Prepetition Secured Parties with respect to the Prepetition Obligations and the Prepetition Loan Documents; <i>provided that</i> , with respect to the Prepetition Secured Parties, such releases shall be subject to the Challenge Period.   |
| <b>INDEMNITY:</b>                      | Each Debtor shall indemnify, pay and hold harmless the DIP Secured Parties (and each of their directors, officers, members, employees and agents) against any loss, liability, cost, or expense incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof (except to the extent resulting from the gross negligence, or willful misconduct, bad faith, or a material breach of DIP Documents of the indemnified party, as determined by a final, nonappealable judgment of a court of competent jurisdiction). |
| <b>CREDIT BID:</b>                     | The DIP Agent shall have the right to credit bid the outstanding DIP Obligations on a dollar-for-dollar basis in any sale of DIP Collateral, subject to the requirement that the DIP Agent fund all Allowed Administrative Expenses, up to the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount and the Carve-Out, and the amount secured by and necessary to fund the Canadian Priority Charges (without duplication).  |
| <b>DIP ORDERS GOVERN:</b>              | To the extent of any conflict or inconsistency between this Term Sheet and the DIP Orders, the DIP Orders shall govern.  |
| <b>AMENDMENT AND WAIVER:</b>           | No provision of this Term Sheet or the DIP Orders may be amended other than by an instrument in writing signed by the DIP Secured Parties and Debtors, provided, however on the Petition Date, the Parties agree to update the amounts set forth in (i) of the “Acknowledgment; Ratification” section herein and the “Roll-Up” section herein.   |
| <b>GOVERNING LAW AND JURISDICTION:</b> | The laws of the State of New York (except as governed by mandatory provisions of the Bankruptcy Code or the CCAA) shall govern this Term Sheet.<br><br>The parties to this Term Sheet shall submit to the exclusive jurisdiction of the Bankruptcy Court and shall waive any right to trial by jury. Notwithstanding the foregoing, the CCAA Court shall have exclusive jurisdiction of the CCAA Recognition Proceedings.  |



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| <p><b>NOTICES:</b></p>                                  | <p>All notices required to be provided hereunder shall be delivered to:</p> <p>(i) if to Debtors to:<br/>                 KidKraft, Inc.<br/>                 Attention: Geoffrey Walker<br/>                 Email: Geoff.W@kidkraft.com</p> <p>with a copy (which shall not constitute notice) to:</p> <p>Vinson &amp; Elkins LLP<br/>                 Attention: David Meyer; William Wallander; Lauren Kanzer<br/>                 Email: dmeyer@velaw.com; bwallander@velaw.com; lkanzer@velaw.com</p> <p>(ii) if to Prepetition Secured Parties or DIP Secured Parties to:</p> <p>GB Funding, LLC<br/>                 Attention: David Braun and Kyle Shonak<br/>                 Email: dbraun@gordonbrothers.com; kshonak@gordonbrothers.com</p> <p>with a copy (which shall not constitute notice) to:</p> <p>Katten Muchin Rosenman LLP<br/>                 Attention: Steven Reisman; Cindi Giglio<br/>                 Email: sreisman@katten.com; cgiglio@katten.com</p> |
| <p><b>COUNTERPARTS AND ELECTRONIC TRANSMISSION:</b></p> | <p>This Term Sheet may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which when so executed and delivered, shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Term Sheet by facsimile, “PDF” or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Term Sheet.</p>  |

### Schedule 1

1. KidKraft, Inc.
2. KidKraft Intermediate Holdings, LLC
3. KidKraft International Holdings, Inc.
4. KidKraft Europe, LLC
5. KidKraft International IP Holdings, LLC
6. KidKraft Partners, LLC
7. Solowave Design Corp.
8. Solowave Design Inc.
9. Solowave Design LP
10. Solowave Design Holdings Limited
11. Solowave International Inc.

**Exhibit A**

**Approved Budget**

KidKraft, Inc. DIP Budget (9 Weeks)

DIP Week>>  
 Week End>>

|  | 1         | 2           | 3         | 4           | 5           | 6           | 7           | 8         | 9         | Total        |
|--|-----------|-------------|-----------|-------------|-------------|-------------|-------------|-----------|-----------|--------------|
|  | 5/10/2024 | 5/17/2024   | 5/24/2024 | 5/31/2024   | 6/7/2024    | 6/14/2024   | 6/21/2024   | 6/28/2024 | 7/5/2024  |              |
| <b>Total Inflows</b>                             | 2,000,000 | 2,097,889   | 1,796,228 | 1,079,983   | 1,810,476   | 2,048,180   | 2,120,225   | 2,160,181 | 2,565,020 | 17,678,181   |
| <b>Operating Cash Flow:</b>                      |           |             |           |             |             |             |             |           |           |              |
| Factory Payments                                 | 1,089,533 | 1,041,389   | 733,769   | 594,427     | 1,796,758   | 1,806,739   | 1,737,717   | 762,125   | 694,866   | 10,257,323   |
| Cost of Sales (Shipping, Testings, etc.)         | 301,795   | 314,211     | 444,969   | 195,409     | 203,911     | 161,007     | 387,578     | 188,353   | 214,588   | 2,411,821    |
| Employee Costs                                   | 295,450   | 392,254     | 291,039   | 39,254      | 291,039     | 39,254      | 291,039     | 39,254    | 291,039   | 1,715,874    |
| Operating Expenses                               | 518,985   | 377,348     | 266,077   | 410,319     | 797,084     | 535,720     | 217,965     | 378,859   | 545,151   | 4,097,506    |
| Intercompany (from)/to China                     | 342,000   | 660,000     | -         | -           | -           | 225,000     | 570,000     | -         | -         | 1,925,226    |
| <b>Total Operational Outflows</b>                | 2,547,763 | 2,432,202   | 1,735,853 | 1,239,408   | 3,088,792   | 2,767,720   | 3,204,299   | 1,368,591 | 1,745,643 | 20,407,750   |
| <b>Restructuring Fees:</b>                       |           |             |           |             |             |             |             |           |           |              |
| Professional Fees - BK Restructuring             | 30,000    | 626,545     | 574,878   | 408,212     | 424,878     | 408,212     | 633,212     | 429,878   | 526,545   | 5,287,361    |
| Professional Fees - Trustee Fees (est)           | -         | -           | -         | -           | -           | -           | -           | -         | -         | 250,000      |
| Other  | 27,250    | 7,500       | 7,500     | 7,500       | 7,500       | 7,500       | 7,500       | 7,500     | 7,500     | 87,250       |
| <b>Total Restructuring Outflows</b>              | 57,250    | 634,045     | 582,378   | 415,712     | 432,378     | 415,712     | 640,712     | 437,378   | 534,045   | 5,624,611    |
| <b>Other Obligations</b>                         |           |             |           |             |             |             |             |           |           |              |
| Other Employee Obligations                       | -         | -           | -         | -           | -           | -           | -           | -         | 58,905    | 58,905       |
| Priority Tax Claims                              | -         | -           | -         | 300,700     | -           | -           | -           | -         | 175,000   | 750,700      |
| Severance  | 93,257    | -           | -         | -           | -           | -           | -           | -         | 57,848    | 151,105      |
| Post Sale Reserve                                | -         | -           | -         | -           | -           | -           | -           | -         | -         | 643,000      |
| Pre-Petition Vendor Payments - CV/503b9/Shippers | -         | 525,000     | -         | 425,000     | -           | -           | -           | -         | -         | 950,000      |
| Utility Deposit                                  | -         | 20,000      | -         | -           | -           | -           | -           | -         | -         | 20,000       |
| <b>Total Incremental Outflows</b>                | 93,257    | 545,000     | -         | 725,700     | -           | -           | -           | -         | 291,753   | 2,573,710    |
| <b>Net Cash Flow</b>                             | (698,270) | (1,513,359) | (522,004) | (1,300,837) | (1,710,695) | (1,135,251) | (1,724,786) | 354,211   | (6,421)   | (10,927,891) |
| <b>Cash Requirement</b>                          |           |             |           |             |             |             |             |           |           |              |
| Beginning Book Balance                           | 2,129,070 | 1,430,800   | 2,129,070 | 2,129,070   | 2,129,070   | 2,129,070   | 2,129,070   | 2,129,070 | 2,129,070 | 2,129,070    |
| Net Cash Flow                                    | (698,270) | (1,513,359) | (522,004) | (1,300,837) | (1,710,695) | (1,135,251) | (1,724,786) | 354,211   | (6,421)   | (10,927,891) |
| DIP Financing                                    | -         | 2,211,629   | 522,004   | 1,300,837   | 1,710,695   | 1,135,251   | 1,724,786   | (354,211) | 6,421     | 8,798,821    |
| Ending Cash                                      | 1,430,800 | 2,129,070   | 2,129,070 | 2,129,070   | 2,129,070   | 2,129,070   | 2,129,070   | 2,129,070 | 2,129,070 | -            |
| <b>DIP Financing</b>                             |           |             |           |             |             |             |             |           |           |              |
| Interest/Origination Fee/Exit Fee                | -         | 210,000     | -         | -           | -           | -           | -           | -         | 841,994   | 1,051,994    |
| DIP Financing                                    | -         | 2,211,629   | 522,004   | 1,300,837   | 1,710,695   | 1,135,251   | 1,724,786   | (354,211) | 6,421     | 8,798,821    |
| Ending Balance                                   | -         | 2,421,629   | 522,004   | 1,300,837   | 1,710,695   | 1,135,251   | 1,724,786   | (354,211) | 848,416   | 9,850,815    |

**Schedule “L”**

**Form of Notice**

Court File No.: CV-24-00720035-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF KIDKRAFT, INC., SOLOWAVE DESIGN HOLDINGS LIMITED, SOLOWAVE DESIGN INC., SOLOWAVE INTERNATIONAL INC., AND SOLOWAVE DESIGN LP (collectively, the “**Canadian Debtors**”)

APPLICATION OF KIDKRAFT, INC. UNDER SECTION 46 OF THE COMPANIES’  
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

**NOTICE OF RECOGNITION ORDERS**

**PLEASE BE ADVISED** that this Notice is being published pursuant to orders of the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) granted on May 15, 2024 (the “**Recognition Orders**”).

**PLEASE TAKE NOTICE** that on May 10, 2024, the Canadian Debtors and certain other of their affiliates filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code (the “**Chapter 11 Cases**”) with the United States Bankruptcy Court for the Northern District of Texas Dallas Division (the “**U.S. Court**”). In connection with the Chapter 11 Cases, KidKraft, Inc. has been appointed as the foreign representative of the Canadian Debtors. KidKraft, Inc.’s address is 4630 Olin Road Dallas, TX 75244 USA.

**AND TAKE NOTICE** that the Recognitions Orders granted by the Canadian Court under Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA Proceedings**”), among other things: (i) recognize the Chapter 11 Cases as a “foreign main proceeding”; (ii) grant a stay of proceedings in respect of the Canadian Debtors, their property and their directors and officers in Canada; (iii) prohibit the commencement of any proceedings against the Canadian Debtors in Canada absent further order of the Canadian Court; and (iv) appoint KSV Restructuring Inc. as Information Officer in the CCAA Proceedings.

**AND TAKE NOTICE** that the motions and notices filed with, and the orders entered by (i) the U.S. Court are available at <https://cases.stretto.com/kidkraft/>, and (ii) the Canadian Court are available at <https://www.ksvadvisory.com/experience/case/KidKraft>.

**AND TAKE NOTICE** that Canadian counsel for the Canadian Debtors is:

**Osler, Hoskin & Harcourt LLP**  
1 First Canadian Place, 100 King West, Suite 6200  
Toronto, ON M5X 1B8  
Email: [jkanji@osler.com](mailto:jkanji@osler.com)

**PLEASE FINALLY TAKE NOTICE** that for further information on the CCAA Proceedings you may contact the Information Officer at:

**KSV Restructuring Inc.**  
150 King Street West, #2308  
Toronto, ON M5H 1J9

Phone: 647 848 1350  
Email: mostling@ksvadvisory.com

**DATED AT TORONTO, ONTARIO** this May 15, 2024.

**KSV RESTRUCTURING INC.**, solely in its capacity as Information Officer in the CCAA Proceedings and not in its personal or corporate capacity

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

**AND IN THE MATTER OF KIDKRAFT, INC., SOLOWAVE DESIGN HOLDINGS LIMITED., SOLOWAVE DESIGN INC.,  
SOLOWAVE INTERNATIONAL INC. AND SOLOWAVE DESIGN LP**

**APPLICATION OF KIDKRAFT, INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.  
1985, c. C-36 AS AMENDED**

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**SUPPLEMENTAL ORDER  
(FOREIGN MAIN PROCEEDING)**

**OSLER, HOSKIN & HARCOURT LLP**

1 First Canadian Place, P.O. Box 50  
Toronto, ON M5X 1B8  
Fax: 416.862.6666

Tracy C. Sandler (LSO# 32443N)  
Tel: 416.862.5890  
Email: [tsandler@osler.com](mailto:tsandler@osler.com)

Martino Calvaruso (LSO# 57359Q)  
Tel: 416.862.6665  
Email: [mcalvaruso@osler.com](mailto:mcalvaruso@osler.com)

Mark Sheeley (LSO# 66473O)  
Tel: 416.862.6791  
Email: [msheelley@osler.com](mailto:msheelley@osler.com)

Lawyers for the Applicant



THIS IS **EXHIBIT “C”** REFERRED TO IN THE AFFIDAVIT OF  
GEOFFREY WALKER SWORN BEFORE ME over video  
teleconference this 11<sup>th</sup> day of July, 2024 pursuant to O. Reg 431/20,  
Administering Oath or Declaration Remotely. The affiant was located in  
the City of Dallas, in the State of Texas, while the Commissioner was  
located in the City of Toronto, in the Province of Ontario.



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Commissioner for Taking Affidavits  
EMILIE DILLON (LSO # 85199L)



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

**COURT FILE NO.:** CV-24-00720035-00CL

**DATE:** May 17, 2024

**NO. ON LIST:** 1

**TITLE OF PROCEEDING:** KIDKRAFT, INC.

**BEFORE:** JUSTICE CAVANAGH

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

| Name of Person Appearing | Name of Party                               | Contact Info       |
|--------------------------|---|--------------------|
| Mark Sheeley             | Lawyers for the Applicant,<br>Kidkraft Inc. | msheeley@osler.com |
| Emilie Dillon            |   | edillon@osler.com  |
| Justin Kanji             |   | jkanji@osler.com   |

**For Other, Self-Represented:**

| Name of Person Appearing | Name of Party                            | Contact Info                     |
|--------------------------|--|----------------------------------|
| Virginie Gauthier        | Lawyer for the KSV Restructuring<br>Inc. | virginie.gauthier@gowlingwlg.com |
| Heather Meredith         | Lawyers for the Backyard<br>Products LLC | hmeredith@mccarthy.ca            |
| Ella Hantho              |  | ethantho@mccarthy.ca             |
| Mitch Stephenson         | Lawyers for the Gordon Brothers          | mstephenson@fasken.com           |
| Stuart Brotman           |  | sbrotman@fasken.com              |

**ENDORSEMENT OF JUSTICE CAVANAGH:**

- [1] KidKraft, Inc. (“KidKraft”, and together with its debtor and non-debtor affiliates, the “Company”), in its capacity as the proposed foreign representative of Solowave Design Holdings Limited, Solowave International Inc., and Solowave Design Inc. (the “Canadian Corporate Debtors”), Solowave Design LP (together with the Canadian Corporate Debtors, the “Canadian Debtors”), and itself, brings this application for:

- a. an order (the “Initial Recognition Order”), among other things:
  - i. recognizing the Chapter 11 Cases (as defined in the application materials) in respect of KidKraft and the Canadian Debtors as “foreign main proceedings” pursuant to Part IV of the *Companies’ Creditors Arrangement Act* (the “CCAA”); and
  - ii. recognizing KidKraft as the “foreign representative” in respect of the Chapter 11 Cases (as defined in the application materials) of KidKraft and the Canadian Debtors; and
- b. an order (the “Supplemental Order”), among other things:
  - i. recognizing certain other First Day Orders issued by the U.S. Court in the Chapter 11 Cases, including the Foreign Representative Order (each as defined in the application materials);
  - ii. granting a stay of proceedings in respect of KidKraft and the Canadian Debtors and their respective directors and officers (the “Canadian Stay”);
  - iii. appointing KSV Restructuring Inc. (“KSV Restructuring”) as the information Officer in this proceeding (in such capacity, the “Information Officer”);
  - iv. granting a Court-ordered charge on the present and future assets, property and undertakings of KidKraft located in Canada and of the Canadian Debtors (the “Canadian Property”) to secure:
    1. the professional fees and disbursements incurred in respect of this proceeding by the Information Officer, its counsel and KidKraft and the Canadian Debtors’ Canadian counsel (the “Administration Charge”);
    2. the indemnity granted by KidKraft and the Canadian Debtors in favour of their respective directors and officers in respect of obligations and liabilities in Canada that they may incur as directors or officers after the commencement of this proceeding (the “D&O Charge”); and
    3. advances under a debtor-in-possession credit facility (the “DIP Charge”).

[2] No one appeared today to oppose this application.

[3] On May 10, 2024, KidKraft, and the Canadian Debtors, and six other debtors and debtors in possession filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code and several first day motions and applications (the “First Day Motions”), with the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “U.S. Court”), commencing the “Chapter 11 Cases”.

[4] The U.S. Court heard the First Day Motions on May 13, 2024 and entered orders (the “First Day Orders”) on May 13 and 14, including an order authorizing KidKraft to act as the Foreign Representative on behalf of itself and the Canadian Debtors in the *CCAA* proceedings.

[5] Now that the First Day Orders have been granted, the Foreign Representative seeks the proposed Initial Recognition Order and Supplemental Order from this Court.

[6] The Foreign Representative submits that this Court should exercise its discretion to grant the requested orders because this relief is necessary to protect and preserve the operations and value of the Company’s business in Canada, while the Chapter 11 Debtors, including the Canadian Debtors, pursue a comprehensive and coordinated restructuring in the Chapter 11 Cases. The Foreign Representative also submits that granting the requested orders is consistent with the principles of comity that underlie the provisions of Part IV of the *CCAA* and will assist in providing the Company with the breathing room to restructure its business and emerge as a strong and sustainable enterprise for the benefit of a broad range of stakeholders.

[7] The facts in respect of this application are set out in the materials and are summarized in the Applicant’s factum at paragraphs 7-20.

[8] I am satisfied that the Chapter 11 Cases should be recognized as foreign main proceedings. In this respect, I accept the submissions made on behalf of the Applicant at paragraphs 22-35 of its factum.

[9] I am satisfied that the Initial Recognition Order and Supplemental Order should be granted. In this respect, I accept the submissions made on behalf of the Applicant at paragraphs 36-54 of its factum.

[10] Orders to issue in forms of Orders signed by me today.

 Mr. Justice  
Cavanagh

THIS IS **EXHIBIT “D”** REFERRED TO IN THE AFFIDAVIT OF  
GEOFFREY WALKER SWORN BEFORE ME over video  
teleconference this 11<sup>th</sup> day of July, 2024 pursuant to O. Reg 431/20,  
Administering Oath or Declaration Remotely. The affiant was located in  
the City of Dallas, in the State of Texas, while the Commissioner was  
located in the City of Toronto, in the Province of Ontario.



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Commissioner for Taking Affidavits  
EMILIE DILLON (LSO # 85199L)



Court File No. CV-24-00720035-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE ) WEDNESDAY, THE 19<sup>TH</sup>  
 )  
JUSTICE CAVANAGH ) DAY OF JUNE, 2024  
 )

**IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF KIDKRAFT, INC., SOLOWAVE DESIGN HOLDINGS  
LIMITED., SOLOWAVE DESIGN INC., SOLOWAVE INTERNATIONAL INC. AND  
SOLOWAVE DESIGN LP**

**APPLICATION OF KIDKRAFT, INC. UNDER SECTION 46 OF THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED**

**RECOGNITION ORDER  
(Bar Dates Order, Second Interim DIP Order, and  
Final Customer Programs Order, and Related Relief)**

**THIS MOTION**, made by KidKraft, Inc. ("**KidKraft**"), in its capacity as the foreign representative (in such capacity, the "**Foreign Representative**") of Solowave Design Holdings Limited, Solowave Design Inc., Solowave International Inc. and Solowave Design LP (collectively with KidKraft, the "**Chapter 11 Debtors**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order, among other things, recognizing certain orders entered by the United States Bankruptcy Court for the Northern District of Texas (the "**U.S. Bankruptcy Court**") in the cases commenced by the Chapter 11 Debtors pursuant to Chapter 11 of the United States Bankruptcy Code (the "**Foreign Proceeding**"), was heard this day by judicial videoconference via Zoom at Toronto, Ontario.

**ON READING** the Notice of Motion, the Third Affidavit of Geoff Walker affirmed June 17, 2024, and the first report of KSV Restructuring Inc., in its capacity as information officer (the “**Information Officer**”), dated June 18, 2024, each filed,

**AND UPON HEARING** the submissions of counsel for the Foreign Representative, counsel for the Information Officer, and counsel for the other parties appearing on the participant information form, no one appearing for any other party although duly served as appears from the Affidavit of Service of Chloe Duggal sworn June 18, 2024, each filed:

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

### **DEFINITIONS**

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Supplemental Order (Foreign Main Proceeding) of this Court dated May 17, 2024 (the “**Supplemental Order**”).

### **RECOGNITION OF FOREIGN ORDERS**

3. **THIS COURT ORDERS** that the following orders of the U.S. Bankruptcy Court made in the Foreign Proceeding are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA:

- (a) *Final Order (I) Authorizing the Debtors to (A) Maintain and Administer Their Customer Programs; (B) Renew, Replace, Implement, or Modify Their Customer Programs; and (C) Honor Their Obligations Related to the Customer Programs, and (II) Granting Related Relief (the “**Final Customer Programs Order**”);*
- (b) *Second Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507 and Fed. R. Bankr. P. 2002, 4001, and 9014 (I) Authorizing Debtors and Debtors in Possession to Obtain Postpetition Senior Secured Superpriority*

*Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief (the “**Second Interim DIP Order**”); and*

- (c) *Order (I) Establishing Bar Dates and Procedures and (II) Approving the Form and Manner of Notice Thereof (the “**Bar Dates Order**”);*

(copies of which are attached as Schedules “A” to “C” hereto, respectively);

provided, however, that in the event of any conflict between the terms of the Final Customer Programs Order, the Second Interim DIP Order, the Bar Dates Order and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property in Canada.

#### **AMENDMENTS TO THE SUPPLEMENTAL ORDER**

4. **THIS COURT ORDERS** that paragraph 24 of the Supplemental Order is hereby amended as follows:

24. **THIS COURT ORDERS** that the DIP Agent, for and on behalf of itself and the DIP Lender (each as defined in the Interim DIP Order and the Second Interim DIP Order, shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Charge**”) on the Property, which DIP Charge shall be consistent with the liens and charges created by or set forth in the Interim DIP Order and the Second Interim DIP Order provided however that, with respect to the Property, the DIP Charge shall have the priority set out in paragraphs 25 and 27 hereof, and further provided that, the DIP Charge shall not be enforced except in accordance with the terms of the Interim DIP Order and the Second Interim DIP Order and with leave of this Court.

#### **GENERAL**



5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction in Canada, the United States or any other foreign jurisdiction, to give effect to this Order and to assist the Foreign Representative, the Chapter 11 Debtors, the Information Officer, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Foreign Representative, the Chapter 11 Debtors and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Foreign Representative, the Chapter 11 Debtors and the Information Officer and their respective agents in carrying out the terms of this Order.

6. **THIS COURT ORDERS** that each of the Foreign Representative, the Chapter 11 Debtors and the Information Officer shall be at liberty and is hereby authorized and empowered to apply to any court, tribunal, or regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

7. **THIS COURT ORDERS** that this Order shall be effective as of 12:01 a.m. Eastern Standard Time on the date of this Order without the need for entry or filing of this Order.



Mr. Justice  
Cavanagh

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Justice Cavanagh

**Schedule “A”**

**Final Customer Programs Order**



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

**Signed June 7, 2024**

**United States Bankruptcy Judge**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:**

**KIDKRAFT, INC., et al.,**

**Debtors.<sup>1</sup>**

§  
§  
§  
§  
§  
§  
§

**Case No. 24-80045-mvl11**

**(Chapter 11)**

**(Jointly Administered)**

**Re: Docket No. 10**

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft Partners, LLC (3268), KidKraft International IP Holdings, LLC (1841), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc. (4302). The location of the Debtors' U.S. corporate headquarters and the Debtors' service address is: 4630 Olin Road, Dallas, TX 75244.

**FINAL ORDER**  
**(I) AUTHORIZING THE DEBTORS TO**  
**(A) MAINTAIN AND ADMINISTER THEIR CUSTOMER**  
**PROGRAMS; (B) RENEW, REPLACE, IMPLEMENT, OR MODIFY THEIR**  
**CUSTOMER PROGRAMS; AND (C) HONOR THEIR OBLIGATIONS RELATED**  
**TO THE CUSTOMER PROGRAMS, AND (II) GRANTING RELATED RELIEF**

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Upon the Motion<sup>2</sup> filed by the above-referenced debtors and debtors in possession (collectively, the “*Debtors*”) for entry of an order (the “*Final Order*”) (i) authorizing the Debtors to (a) maintain and administer their Customer Programs; (b) renew, replace, implement, or modify their Customer Programs; and (c) honor their obligations related to the Customer Programs, in the ordinary course of business consistent with past practice and in the Debtors’ business judgment, all as more fully set forth in the Motion and in the First Day Declaration; and (ii) granting related relief, and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final 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 the Court having entered the Interim Order; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion under the circumstances and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is **HEREBY ORDERED THAT:**

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

1. The Debtors are authorized pursuant to sections 105(a), 363(b), 1107(a), and 1108 of the Bankruptcy Code, to maintain and administer the Customer Programs in the ordinary course of business consistent with past practice.

2. The Debtors are authorized, in their discretion, to renew, replace, implement, or modify their Customer Programs, in whole or in part, in accordance with the Debtors' business judgment.

3. The Debtors are authorized to honor their obligations owing to their customers in connection with, relating to, or based upon their Customer Programs.

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

5. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

6. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Customer Programs.

7. Notwithstanding the relief granted herein or actions taken hereunder, nothing contained in the Motion or this Final Order or any payment made pursuant to this Final Order shall constitute, nor is it intended to constitute, an implication or admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors', or any party in interest's, rights

to subsequently dispute such claim or lien, a promise or requirement to pay any claim, an implication or admission that any particular claim is of a type specified or defined in the Motion or any proposed order, a waiver of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

8. Notwithstanding anything in this Final Order to the contrary, any payment to be made, or any authorization contained hereunder, shall be subject to the terms of any orders authorizing debtor-in-possession financing or the use of cash collateral approved by this Court in these chapter 11 cases (including with respect to any approved budget governing or relating to such use) (such order, collectively with any such approved budget, the "*DIP Order*"); and to the extent there is any inconsistency between the terms of such DIP Order and any action taken or proposed to be taken hereunder, the terms of such DIP Order shall control.

9. The requirements of Bankruptcy Rule 6004(a) are waived.

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

11. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.

**### END OF ORDER ###**

**Order submitted by:**

**VINSON & ELKINS LLP**

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**PROPOSED ATTORNEYS FOR  
THE DEBTORS AND DEBTORS IN POSSESSION**

**Schedule “B”**

**Second Interim DIP Order**





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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed June 11, 2024

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

|                                |   |   |
|--------------------------------|---|---|
| <b>In re:</b>                  | § | <b>Case No. 24-80045-mvl11</b>          |
|                                | § |   |
| <b>KIDKRAFT, INC., et al.,</b> | § | <b>(Chapter 11)</b>                     |
|                                | § |   |
| <b>Debtors.<sup>1</sup></b>    | § | <b>(Jointly Administered)</b>           |
|                                | § |   |
|                                | § | <b>Re: Docket Nos. 22, 23, &amp; 96</b> |

**SECOND INTERIM ORDER  
PURSUANT TO 11 U.S.C. §§ 105, 361, 362,  
363, 364, AND 507 AND FED. R. BANKR. P. 2002, 4001  
AND 9014 (I) AUTHORIZING DEBTORS AND DEBTORS  
IN POSSESSION TO OBTAIN POSTPETITION SENIOR  
SECURED SUPERPRIORITY FINANCING, (II) AUTHORIZING  
THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING  
LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE  
EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION TO THE  
PREPETITION SECURED PARTIES, (V) MODIFYING THE AUTOMATIC STAY,  
(VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF**

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft Partners, LLC (3268), KidKraft International IP Holdings, LLC (1841), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc. (4302). The location of the Debtors' U.S. corporate headquarters and the Debtors' service address is: 4630 Olin Road, Dallas, TX 75244.

Upon the motion (the “**Motion**”) of the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) pursuant to §§ 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), and 364(d) of title 11 of the United States Code (the “**Bankruptcy Code**”), and Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the “**Bankruptcy Rules**”), and the General Order Regarding Procedures for Complex Cases (the “**Complex Case Procedures**”) made applicable by Rules 4001-1 and 9013-1 of the Local Bankruptcy Rules (the “**N.D. Tex. L.B.R.**”) for the United States Bankruptcy Court for the Northern District of Texas (the “**Court**”) *inter alia* seeking, among other things:

(1) authorization for KidKraft, Inc. (“**KidKraft**” or “**Borrower**”) to obtain, and for KidKraft Intermediate Holdings, LLC (“**HoldCo**”, and together with the other Guarantors listed in Schedule 1 of the DIP Term Sheet, the “**Guarantors**”) to guarantee, unconditionally, on a joint and several basis, a senior secured super-priority multi-draw debtor-in-possession term loan credit facility (the “**DIP Facility**”) on the terms and conditions set forth in the Priming Superpriority Debtor-In-Possession Financing Term Sheet, dated as of April 25, 2024, attached hereto as **Exhibit A** (as amended, supplemented or otherwise modified from time to time in accordance with the terms and conditions set forth herein and including the references to the Prepetition Credit Agreement (as defined below) specified therein, the “**DIP Term Sheet**”),<sup>2</sup> by and among the Borrower, the Guarantors, GB Funding, LLC, as DIP Agent (“**DIP Agent**”), and 1903 Partners, LLC, as DIP Lender (“**DIP Lender**,” and, together with the DIP Agent, the “**DIP Secured Parties**”), and the other DIP Documents (as defined below) consisting of: (i) \$5.5 million of new money loans (the “**Interim DIP Commitment**”) to be provided following entry of the Second

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion or the DIP Term Sheet, as applicable.

Interim Order (as defined below) by DIP Lender, (ii) \$5.0 million of new money loans (the “*Final DIP Commitment*”) to be provided following entry of the Final Order by DIP Lender; and (iii) \$23.3 million of Prepetition Obligations, which will be deemed to have been advanced and shall convert into DIP Loans on a dollar-for-dollar cashless basis upon entry of the Final Order (the “*Roll-Up Amount*”, and together with the Interim DIP Commitment and the Final DIP Commitment, the “*DIP Commitment*”), and in accordance with this order (the “*Second Interim Order*”) secured by perfected senior priority security interests in and liens on the DIP Collateral (as defined below) pursuant to §§ 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code (subject to the Carve-Out and the Permitted Liens (each as defined below));

(2) authorization for Borrower and Guarantors to remit all collections, asset proceeds and payments to the DIP Secured Parties for application, or deemed application, first to the repayment of all DIP Obligations (as defined below) in accordance with the DIP Term Sheet and the other DIP Documents until such obligations are fully repaid, and then to the Prepetition Secured Parties for application until all Prepetition Obligations (as defined below) are fully repaid;

(3) authorization for the Debtors to grant superpriority administrative claim status, pursuant to § 364(c)(1) of the Bankruptcy Code, to DIP Agent, for the benefit of itself and DIP Lender, in respect of all DIP Obligations (subject to the Carve-Out);

(4) as set forth below, subject to Section 4.1 of this Second Interim Order, approval of certain stipulations by the Debtors as set forth in this Second Interim Order in connection with the Prepetition Credit Agreement;

(5) authorizing and directing the Debtors to pay the principal, interest, fees, expenses and other amounts payable under the DIP Documents as such become due, including, without limitation, continuing commitment fees, closing fees, audit fees, appraisal fees, liquidator fees,

structuring fees, administrative agent's fees, the reasonable and documented fees and disbursements of DIP Agent's and DIP Lender's respective attorneys, advisors, accountants and other consultants, all to the extent provided in, and in accordance with, the applicable DIP Documents;

(6) as set forth below, authorization to use Cash Collateral and all other Prepetition Collateral and to provide adequate protection to Prepetition Agent and Prepetition Lender (each in their respective capacities under the Prepetition Loan Documents (as defined below)), to the extent set forth herein;

(7) effective only upon entry of a Final Order (as defined below), the waiver of the Debtors' right to assert claims to surcharge against the DIP Collateral pursuant to § 506(c) of the Bankruptcy Code;

(8) the modification of the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Second Interim Order to the extent hereinafter set forth;

(9) the setting of a final hearing on the Motion ("***Final Hearing***") to consider entry of a final order (the "***Final Order***") authorizing, among other things, the borrowing under the DIP Documents on a final basis, as set forth in the Motion and the DIP Term Sheet filed with the Court including the granting to DIP Agent and DIP Lender the senior security interests and liens described above and super-priority administrative expense claims (subject to the Carve-Out); and

(10) related relief.

The initial hearing on the Motion having been held by the Court on May 13, 2024 (the "***Interim Hearing***"), and upon the record made by the Debtors at the Interim Hearing, including the Motion, the *Declaration of Geoffrey Walker in Support of Chapter 11 Petitions and*

*First Day Pleadings* [Docket No. 31], the *Declaration of Ajay Bijoor, Managing Director of Robert W. Baird & Co. Incorporated, in Support of (I) the Debtors' Motion to Obtain Postpetition Debtor in Possession Financing and (II) the Sale Process* [Docket No. 32], the *Declaration of Carl Moore, Manager of SierraConstellation Partners, LLC in Support of the Debtors' Motion to Obtain Postpetition Debtor in Possession Financing* [Docket No. 33], and the filings and pleadings in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”); and the Court having entered the *Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 and Fed. R. Bankr. P. 2002, 4001 and 9014 (I) Authorizing Debtors and Debtors in Possession to Obtain Postpetition Senior Secured Superpriority Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 96] (the “**First Interim Order**,” and together with the Second Interim Order, the “**Interim Orders**”); and the Court having found 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 represents a sound exercise of the Debtors’ business judgment and is essential for the continued operation of the Debtors’ businesses; it appearing to the Court that granting the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing; notice of the Motion, the relief requested therein, and the Interim Hearing (the “**Notice**”) was sufficient under the circumstances; the Notice having been served by the Debtors in accordance with Bankruptcy Rules 4001 and 9014 and the Local Rules on (i) the administrative agent under the Prepetition Credit Agreement (the “**Prepetition Agent**”), (ii) Katten Muchin Rosenman LLP, as counsel to the Prepetition Agent, (iii) the Office of the U.S. Trustee for the Northern District of Texas (the “**U.S.**

*Trustee*”), (iv) King & Spalding LLP, as counsel to the buyer under the Debtors’ prepetition asset purchase agreement (the “*APA*”), (v) the holders of the thirty (30) largest unsecured claims, on a consolidated basis, against the Estates (the “*30 Largest Unsecured Creditors*”), (vi) the Internal Revenue Service and applicable state taxing authorities; (vii) any party that has asserted or may assert a lien in the Debtors’ assets, (viii) the office of attorneys general for the states in which the Debtors operate; (ix) the United States Attorney’s Office for the Northern District of Texas, (x) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002, (xi) the United States Securities and Exchange Commission, (xii) all other applicable government agencies to the extent required by the Bankruptcy Rules or the N.D. Tex. L.B.R, and (xiii) the DIP Lender (collectively, the “*Notice Parties*”); and the opportunity for a hearing on the Motion was appropriate and no other notice need be provided; and after due deliberation sufficient cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW<sup>3</sup>:

A. Petition. On May 10, 2024 (the “*Petition Date*”), each Debtor filed a voluntary petition (each, a “*Petition*”) under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

B. Disposition. The Motion is hereby granted in accordance with the terms of this Second Interim Order. Any objections to the Motion with respect to the entry of this Second

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<sup>3</sup> 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.

Interim Order that have not been withdrawn, waived, resolved, or settled are hereby denied and overruled.

C. Jurisdiction and Venue. The Court has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 1334. The Motion is a “core” proceeding as defined in 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 this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

D. Committee Formation. On May 23, 2024, the U.S. Trustee appointed the Committee in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code [Docket No. 120].

E. Basis for Relief. The statutory and legal predicates for the relief sought herein include sections 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 9013 and 9014 and the applicable provisions of the Local Rules.

F. Notice. Proper, timely, adequate, and sufficient notice of the Motion has been provided under the circumstances in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice of the Motion with respect to the relief requested at the Interim Hearing or the entry of this Second Interim Order shall be required.

G. Debtors’ Acknowledgments, Stipulations, and Agreements. After consultation with their attorneys and financial advisors, and without prejudice to the rights of any Committee or other parties-in-interest as and, subject to Section 4.1 of this Second Interim Order, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge and agree that:

(a) Prepetition Stipulations

(i) Prepetition Loan Documents. Prior to the commencement of the

Chapter 11 Cases, Prepetition Agent and Prepetition Lender made loans, advances and provided other financial accommodations to Borrower and KidKraft Netherlands B.V., a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of The Netherlands (the “**Dutch Borrower**”), jointly and severally with respect to the Priority Revolving Loans (as defined in the Prepetition Credit Agreement), Guarantors and certain of their non-Debtor affiliates (the Dutch Borrower, together with the other non-Debtor affiliates party to the Prepetition Credit Agreement, “**Non-Debtor Loan Parties**”), pursuant to the terms and conditions set forth in (1) that certain Amended and Restated First Lien Credit Agreement dated as of April 3, 2020 (as amended, supplemented, or otherwise modified prior to the Petition Date, the “**Prepetition Credit Agreement**”); (2) that certain Amended and Restated First Lien Security Agreement as of dated April 3, 2020 by and among Borrower, the Guarantors, and the Non-Debtor Loan Parties (the Non-Debtor Loan Parties, together with the Borrower and the Guarantors, the “**Grantors**”) and Prepetition Agent, as Secured Party (as amended, supplemented, or otherwise modified prior to the Petition Date, including the *Security Agreement Supplement*, dated January 30, 2024, the “**Prepetition Security Agreement**”); and (3) all other agreements, documents and instruments executed and/or delivered with, to, or in favor of Prepetition Agent or Prepetition Lender in connection with the Prepetition Credit Agreement or the Prepetition Security Agreement, including, without limitation, all security agreements, notes, guarantees, mortgages, Uniform Commercial Code financing statements and all other related agreements, documents and instruments executed and/or delivered in connection therewith or related thereto (all of the foregoing, together with the Prepetition Credit Agreement and the Prepetition Security Agreement,



as all of the same have heretofore been amended, supplemented, modified, extended, renewed, restated and/or replaced at any time prior to the Petition Date, collectively, the “***Prepetition Loan Documents***”).

(ii) Prepetition Obligations. As of the Petition Date, the Borrower, Guarantors and Non-Debtor Loan Parties were indebted, jointly and severally, to Prepetition Agent and Prepetition Lender under the Prepetition Loan Documents in respect of outstanding Loans (as defined in the Prepetition Credit Agreement) in an aggregate principal amount of not less than \$144.9 million, plus all other Obligations (as defined in the Prepetition Credit Agreement), plus interest accrued and accruing thereon, together with all costs, fees, expenses (including attorneys’ fees and legal expenses) and other charges accrued, accruing or chargeable with respect thereto (collectively, the “***Prepetition Obligations***”). The Prepetition Obligations constitute allowed, legal, valid, binding, enforceable and non-avoidable obligations of Borrower, Guarantors, and the Non-Debtor Loan Parties and are not subject to any offset, defense, counterclaim, avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or any other applicable law, and the Debtors do not possess, shall not assert, hereby forever release, and are forever barred from bringing any claim, cause of action, counterclaim, setoff or defense of any kind, nature or description, in any such case, arising out of, connected with, or relating to any and all acts, omissions or events occurring prior to the entry of this Second Interim Order, which would in any way affect the validity, enforceability and non-avoidability of any of the Prepetition Obligations or liens and security interest securing the same described in clause (F)(a)(iii) below, including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non- bankruptcy law. The Debtors and their estates (a) have no claims, objections, challenges, causes of action, and/or choses

in action, including without limitation, avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against Prepetition Agent or Prepetition Lender or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees arising out of, based upon or related to the Prepetition Loan Documents or Prepetition Obligations; and (b) have waived, discharged, and released any right to challenge any of the Prepetition Obligations, including the priority of the Prepetition Obligations, and the validity, extent, and priority of the liens securing the Prepetition Obligations.

(iii) Prepetition Collateral. As of the Petition Date, the Prepetition Obligations were fully secured pursuant to the Prepetition Loan Documents by valid, perfected, enforceable and non-avoidable first-priority security interests and liens (except, in the case of perfection, for (A) Excluded Accounts and (B) commercial tort claims, letter of credit rights, certificate of title vehicles, and other assets, in each case of this clause (B), to the extent expressly excluded from the requirement to perfect liens thereon pursuant to the Prepetition Loan Documents) (the “*Prepetition Liens*”) granted by Borrower, Guarantors, and the Non-Debtor Loan Parties for fair consideration and reasonably equivalent value to DIP Agent, for the benefit of itself and DIP Lender under the Prepetition Loan Documents, in and upon all of the of the Debtors’ and Non-Debtor Loan Parties’ assets and property other than Excluded Assets, Excluded Receivables, and Consumer Goods (as each such term is defined in the Prepetition Credit Agreement) (collectively, the “*Prepetition Collateral*”), including all cash of the Debtors, wherever located, and all cash equivalents, including any cash in deposit accounts of the Debtors (other than Excluded Accounts), in each case, whether as Prepetition Collateral or which represents income, proceeds, products, rents or profits of non-cash Prepetition Collateral (collectively, the “*Cash*”

*Collateral*”), subject only to the liens permitted under Section 7.01 of the Prepetition Credit Agreement to the extent that such security interests, liens or encumbrances are (A) valid, perfected and non-avoidable security interests, liens or encumbrances securing valid, binding and unavoidable debt permitted under the Prepetition Loan Documents, and (B) senior to, have not been, and are not subject to being subordinated to the Prepetition Liens or otherwise avoided, and, in each instance, only for so long as and to the extent that such encumbrances are and remain senior and outstanding (hereinafter referred to as the “*Prepetition Permitted Liens*”). The Debtors do not possess and will not assert any claim, counterclaim, setoff or defense of any kind, nature or description, whether arising at law or in equity, including any recharacterization, subordination, avoidance or other claim arising under or pursuant to section 105 or chapter 5 (including, without limitation, sections 510, 544, 547, 548, 549 or 550) of the Bankruptcy Code or under any other similar provisions of applicable state or federal law, that would in any way affect the validity, enforceability and non-avoidability of any of Prepetition Agent’s and Prepetition Lender’s liens, claims or security interests in the Prepetition Collateral.

(iv) Default by the Debtors. The Debtors acknowledge and stipulate that one or more Events of Default (as defined in the Prepetition Credit Agreement) have occurred and are continuing as of the date hereof.

(v) Proof of Claim. The acknowledgment by the Debtors of the Prepetition Obligations and the liens, rights, priorities and protections granted to or in favor of Prepetition Agent and Prepetition Lender in respect of the Prepetition Collateral as set forth herein and in the Prepetition Loan Documents shall be deemed a timely filed proof of claim on behalf of Prepetition Agent and Prepetition Lender in these Chapter 11 Cases.

(vi) Indemnity. The DIP Agent, DIP Lender, and Prepetition Secured Parties have acted in good faith, without negligence or violation of public policy or law, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, or obtaining the requisite approvals of the DIP Facility and the use of Cash Collateral, including in respect of granting DIP Liens, any challenges or objections to the DIP Facility or the use of Cash Collateral, and all documents related to any and all transactions contemplated by the foregoing. Accordingly, each of the Prepetition Secured Parties and the DIP Secured Parties shall be and hereby are indemnified and held harmless by the Debtors in respect of any claim or liability incurred in respect thereof of in any way related thereto, provided that no such parties will be indemnified for any cost, expense, or liability to the extent determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted primarily from such parties' bad faith, gross negligence, fraud, or willful misconduct. No exception or defense exists in contract, law, or equity to the Debtors' obligation under this paragraph to indemnify and/or hold harmless each of the Prepetition Secured Parties and the DIP Secured Parties. The Court retains exclusive jurisdiction to determine amounts of any indemnification claims arising from the DIP Documents unless such amounts are *de minimis*.

(vii) Release. Each Debtor, on behalf of itself and its successors and assigns, and their respective agents, officers, directors, employees, attorneys, professionals, predecessors, successors, and assigns (collectively, the "**Releasers**"), hereby forever, unconditionally, permanently, and irrevocably release, discharge, and acquit each of the Prepetition Agent and Prepetition Lender and each of their respective successors and assigns, and their present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees and other representatives (collectively, the "**Prepetition Releasees**") of and from any

and all claims, demands, liabilities, damages, expenses, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, of every kind, nature and description, whether arising in law or otherwise, and whether known or unknown, matured, or contingent that any of the Releasors had, have or hereafter can or may have against any Prepetition Releasees as of the date hereof, in respect of events that occurred on or prior to the date hereof with respect to the Debtors, the Prepetition Obligations, the Prepetition Loan Documents, the DIP Obligations, the RSA, the Plan, the Backyard Sale, the DIP Documents and any DIP Loans or other financial accommodations made by DIP Agent and/or DIP Lender to the Debtors pursuant to the Prepetition Loan Documents or the DIP Documents including, without limitation, (a) any so-called “lender liability” or equitable subordination claims or defenses, (b) any and all “claims” (as defined in the Bankruptcy Code) and causes of action arising under the Bankruptcy Code, and (c) any and all offsets, defenses, claims, counterclaims, set off rights, objections, challenges, causes of action, and/or choses in action of any kind or nature whatsoever, whether arising at law or in equity, including any recharacterization, recoupment, subordination, avoidance, or other claim or cause of action arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state, federal, or foreign law, including, without limitation, any right to assert any disgorgement or recovery, in each case, with respect to the extent, amount, validity, enforceability, priority, security, and perfection of any of the Prepetition Obligations, the Prepetition Loan Documents, or the Prepetition Liens.

(viii) Non-Debtor Loan Parties. The Dutch Borrower and the Borrower are jointly and severally liable with respect to the Priority Revolving Loans (as defined in the Prepetition Credit Agreement) and each of the other Non-Debtor Loan Parties and the Debtors are jointly and severally liable with respect to the Prepetition Obligations.

H. Findings Regarding the DIP Financing.

(i) DIP Financing. The Debtors have requested from the DIP Secured Parties, and the DIP Secured Parties are willing, to extend certain loans, advances and other financial accommodations on the terms and conditions set forth in this Second Interim Order, the DIP Term Sheet and the other DIP Documents, respectively.

(ii) Need for DIP Financing. The Debtors do not have sufficient available sources of working capital, including Cash Collateral, to operate their businesses in the ordinary course of business without the financing requested in the Motion. The Debtors' ability to pay their vendors, suppliers, and employees, and to otherwise fund their operations is essential to the preservation and maintenance of the going concern value of each Debtor and consummation of the Backyard Sale and the Plan. Accordingly, the Debtors have an immediate need to enter into the DIP Facility in order to, among other things, permit the orderly continuation of the operation of their businesses, minimize the disruption of their business operations, and preserve and maximize the value of the assets of the Debtors' bankruptcy estates (as defined under § 541 of the Bankruptcy Code, the "*Estates*") in order to maximize the value of the Estates.

(iii) No Credit Available on More Favorable Terms. The Debtors are unable to procure financing in the form of unsecured credit allowable as an administrative expense under §§ 364(a), 364(b), or 503(b)(1) of the Bankruptcy Code or in exchange for the grant of a superpriority administrative expense, junior liens on encumbered property of the Estates, or liens on property of the Estates not subject to a lien pursuant to § 364(c)(1), 364(c)(2) or 364(c)(3) of the Bankruptcy Code. The Debtors have been unable to procure the necessary financing on terms more favorable, taken as a whole, than the DIP Facility. In light of the foregoing, and considering all alternatives, the Debtors have reasonably and properly concluded, in the exercise of their sound

business judgment, the DIP Facility represents the best financing available to the Debtors at this time, and are in the best interests of the Debtors, their respective Estates, and all of their stakeholders.

(iv) Initial Budget. The Debtors have prepared and delivered to DIP Agent and DIP Lender an initial nine-week budget (the “*Initial Budget*” and each subsequent approved budget pursuant to section 1.8 hereof, an “*Approved Budget*”) reflecting the Debtors’ anticipated cash receipts and anticipated disbursements for each calendar week for the covered periods, a summary of which is attached hereto as Exhibit B and which was previously attached in Exhibit A of the First Interim Order. The Initial Budget was prepared by the Debtors, with the assistance of their professional advisors and management, and the Debtors represent that the Initial Budget is achievable in accordance with the terms of the DIP Documents and the Interim Orders. DIP Agent and DIP Lender are relying upon the Debtors’ compliance with the Interim Budget in accordance with the Interim Orders in determining to enter into the DIP Facility.

(v) Business Judgment and Good Faith Pursuant to § 364(e). The terms of the DIP Documents and this Second Interim Order are fair, just and reasonable under the circumstances, ordinary and appropriate for secured financing to debtors-in-possession, reflect the Debtors’ exercise of their prudent business judgment consistent with their fiduciary duties, and supported by reasonably equivalent value and fair consideration. The terms and conditions of the DIP Documents and the Interim Orders have been negotiated in good faith and at arms’ length by and among the Debtors and DIP Agent, with all parties being represented by competent counsel. Any credit extended under the terms of the Interim Orders shall be deemed to have been extended in “good faith” by DIP Agent and DIP Lender, as that term is used in section 364(e) of the Bankruptcy Code and the DIP Obligations, the DIP Liens, and the DIP Superpriority Claim are

entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that either of the Interim Orders or any provision hereof is vacated, reversed, or modified on appeal or otherwise.

(vi) Credit Bid Rights. To the fullest extent permitted by section 363(k) of the Bankruptcy Code, in connection with any sale or other disposition of the DIP Collateral or Prepetition Collateral (as applicable) including any sales occurring under or pursuant to section 363 of the Bankruptcy Code, a plan of reorganization or plan of liquidation under section 1129 of the Bankruptcy Code, or a sale or disposition by a chapter 7 trustee for any of the Debtors under section 725 of the Bankruptcy Code (any of the foregoing sales or dispositions, a “*Sale*”), (a) DIP Agent (on behalf of their respective DIP Secured Parties) shall have the right to credit bid, in accordance with the DIP Documents, up to the full amount of the DIP Obligations, (b) the Prepetition Agent (on behalf of and at the written direction of the Prepetition Secured Parties) shall have the right to credit bid, in accordance with the Prepetition Loan Documents, up to the full amount of the Prepetition Obligations, (c) DIP Agent and Prepetition Agent shall have the absolute right (at the direction of their respective Secured Parties) to assign, transfer, sell or otherwise dispose of its rights to credit bid in connection with the assignment, transfer, sale, or disposition of the corresponding DIP Obligations, except as may be set forth in the DIP Documents, and Prepetition Obligations, respectively, and (d) each of the Debtors hereby acknowledge and agree that they shall not object, or support any objection, to or limit, or support any limitation on, any other such DIP Secured Parties’ or Prepetition Secured Parties’ rights to credit bid, as applicable, up to the full amount of the DIP Obligations and Prepetition Obligations, respectively.

(vii) Sections 506(c) and 552(b) Waivers. Subject to entry of a Final Order, as material inducement to (a) the DIP Secured Parties’ agreement to provide the DIP Facility and the



Prepetition Secured Parties' consent to the use of Cash Collateral in accordance with the Approved Budget, (b) the DIP Secured Parties' agreement to subordinate the DIP Liens and the DIP Superpriority Claim to the Carve-Out, and (c) the Prepetition Secured Parties' agreement to subordinate the Prepetition Liens, Prepetition Replacement Lien and the Prepetition Adequate Protection Superpriority Claim to the Carve-Out, the DIP Liens, and the DIP Superpriority Claim, subject to entry of the Final Order (retroactive to the Petition Date), each of the DIP Secured Parties and the Prepetition Secured Parties are entitled to receive (1) a waiver of any equities of the case exceptions or claims under section 552(b) of the Bankruptcy Code and a waiver of unjust enrichment and similar equitable relief as set forth below, and (2) a waiver of the provisions of section 506(c) of the Bankruptcy Code.

(viii) Good Cause. The relief requested in the Motion is necessary, essential and appropriate, and is in the best interest of and will benefit the Debtors, their creditors and their Estates, as its implementation will, among other things, provide the Debtors with the necessary liquidity to (1) minimize disruption to the Debtors' businesses and ongoing operations in anticipation of the consummation of the Backyard Sale and Plan, (2) preserve and maximize the value of the Estates for the benefit of all the Debtors' creditors, and (3) avoid immediate and irreparable harm to the Debtors, their creditors, their businesses, their employees, and their assets.

(ix) Adequate Protection. The Prepetition Secured Parties are entitled, pursuant to sections 361, 362, 363, and 364 of the Bankruptcy Code, to receive adequate protection to the extent of any Diminution in Value of their respective interests in the Prepetition Collateral (including Cash Collateral), to the extent set forth in the Interim Orders.

(x) Immediate Entry. Sufficient cause exists for immediate entry of this Second Interim Order pursuant to Bankruptcy Rule 4001(c)(2). No party appearing in the Chapter 11

Cases has filed or made an objection to the entry of this Second Interim Order, or any objections that were made (to the extent such objections have not been withdrawn, waived, resolved, or settled) are hereby overruled. Based upon the foregoing, and after due consideration and good cause appearing therefor.

IT IS HEREBY ORDERED THAT:

Section 1. Authorization and Conditions to Financing.

1.1 Motion Granted. The Motion is granted in accordance with Bankruptcy Rule 4001(c)(2) to the extent provided in this Second Interim Order. Except as otherwise expressly provided in this Second Interim Order, any objection to the entry of this Second Interim Order that has not been withdrawn, waived, resolved or settled, is hereby denied and overruled on the merits.

1.2 Authorization to Borrow, Guaranty, and Use Loan Proceeds. Borrower is hereby authorized and empowered to immediately borrow and obtain DIP Loans and to incur indebtedness and other Obligations (as defined in the DIP Term Sheet) (collectively referred to as the “**DIP Obligations**”), and the Guarantors are hereby authorized to guarantee such DIP Obligations, all pursuant to the terms and conditions of the Interim Orders, the DIP Term Sheet, and the other DIP Documents, during the period commencing on the date of entry of the First Interim Order through and including the entry of the Final Order, up to an aggregate amount equal to the Interim DIP Commitment, plus, subject to entry of the Final Order, the Roll-Up Amount. Subject to the terms and conditions contained in the Interim Orders and the DIP Documents, the Debtors shall use the proceeds of the DIP Loans and other credit and financial accommodations provided by DIP Agent and DIP Lender under the DIP Term Sheet and the other DIP Documents solely for payment of expenses set forth in the Approved Budget and all interest, costs, fees, amounts, and other obligations owing to the DIP Secured Parties in accordance with the terms and conditions of the DIP Documents and this Second Interim Order.

### 1.3 Financing Documents

(a) Authorization. The Debtors are hereby authorized to enter into, execute, deliver, perform, and comply with all of the terms, conditions and covenants of the DIP Term Sheet and the other DIP Documents; provided that any additional DIP Documents entered into following entry of the First Interim Order shall be filed on the docket of these Chapter 11 Cases, and parties in interest shall have seven (7) days to object to such additional DIP Documents. If no objection to such additional DIP Documents is filed within such seven (7) days, unless the Court rules otherwise, such DIP Documents shall be deemed approved by this Court. If any objection is filed within such seven (7) day period, the Court shall hold an emergency hearing to consider approval of such DIP Document. Upon execution and delivery of the DIP Term Sheet and the other DIP Documents, such agreements and documents shall constitute valid and binding obligations of the Debtors, enforceable against each Debtor party thereto in accordance with the terms of such agreements, documents and the Interim Orders (as applicable). No obligation, payment, transfer or grant of security arising under the DIP Term Sheet, the other DIP Documents or the Interim Orders shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under § 502(d) of the Bankruptcy Code), or be subject to any defense, reduction, setoff, recoupment or counterclaim. The Debtors are hereby authorized and directed to pay, in accordance with the Interim Orders, the principal, interest, fees, expenses and other amounts described in the DIP Documents as such become due and without need to obtain further Court approval, including, without limitation, monitoring fees, agency fees, alternate transaction fees, closing fees, unused facility fees, continuing commitment fees, backstop fees, exit fees, servicing fees, yield maintenance premiums, audit fees, appraisal fees, liquidator fees, structuring fees, administrative agent's fees, the reasonable and documented

fees and disbursements of the DIP Secured Parties' attorneys, advisors, accountants, and other consultants, whether or not such fees arose before or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, to implement all applicable reserves and to take any other actions that may be necessary or appropriate, all to the extent provided in the Interim Orders or the DIP Documents. Upon execution and delivery, the DIP Term Sheet and other DIP Documents shall represent valid and binding obligations of the Debtors, enforceable against each of the Debtors and their Estates in accordance with their terms.

(b) Approval; Evidence of Borrowing Arrangements. All terms, conditions and covenants set forth in the DIP Documents (including, without limitation, the DIP Term Sheet) are approved to the extent necessary to implement the terms and provisions of the Interim Orders. All such terms, conditions and covenants shall be sufficient and conclusive evidence of (a) the borrowing arrangements by and among the Debtors, DIP Agent and DIP Lender, and (b) each Debtor's assumption and adoption of all of the terms, conditions, and covenants of the DIP Term Sheet and the other DIP Documents for all purposes, including, without limitation, to the extent applicable, the payment of all DIP Obligations arising thereunder, including, without limitation, all principal, interest, fees and other expenses, including, without limitation, all of DIP Agent's and DIP Lender's consultant fees, professional fees, attorney fees and legal expenses, as more fully set forth in the DIP Documents.

(c) Amendment. Subject to the terms and conditions of the DIP Term Sheet and the other DIP Documents, Debtors and DIP Agent may amend, modify, supplement or waive any provision of the DIP Documents (a "***DIP Amendment***") without further approval or order of the Court, so long as (a) such DIP Amendment is not materially burdensome on the Debtors or their Estates, and is undertaken in good faith by DIP Agent, DIP Lender and the

Debtors; (b) the Debtors provide prior written notice of the DIP Amendment (the “*DIP Amendment Notice*”) to the U.S. Trustee and counsel to any Committee, or in the event no such Committee is appointed at the time of such DIP Amendment, the 30 Largest Unsecured Creditors, and (c) the Debtors file the DIP Amendment Notice with the Court; provided, however, that neither consent of the parties notified pursuant to section (b) hereof nor approval of the Court will be necessary to effectuate any such amendment, modification or supplement. Any material DIP Amendment to the DIP Documents must be approved by the Court to be effective.

1.4 Payment of Prepetition Debt. Subject to entry of the Final Order, the Debtors are authorized to repay all Prepetition Obligations in accordance with the DIP Term Sheet, the other DIP Documents and the Interim Orders, including, without limitation, Sections 1.5 and 1.6 of this Second Interim Order.

1.5 Payments and Application of Payments & DIP Collateral Proceeds; Roll-Up. The Debtors are authorized and directed to make all payments and transfers of Estate property to DIP Agent as provided for, permitted and/or required under the DIP Term Sheet and the other DIP Documents, which payments and transfers shall not be avoidable or recoverable from DIP Agent or DIP Lender under §§ 547, 548, 550, 553 or any other section of the Bankruptcy Code, or by reason of any other claim, charge, assessment, or other liability, whether by application of the Bankruptcy Code, other law or otherwise. All proceeds of the DIP Collateral (as defined herein) received by DIP Agent or DIP Lender, and any other amounts or payments received by DIP Agent or DIP Lender in respect of the DIP Obligations, may be applied or deemed to be applied by DIP Agent, in its discretion, first, to the indefeasible repayment of the DIP Obligations, and then to the indefeasible repayment in full of the Prepetition Obligations, all in accordance with the DIP Term Sheet, the other DIP Documents and the Interim Orders. Without limiting the

generality of the foregoing, the Debtors are authorized without further order of the Court to pay or reimburse DIP Agent and DIP Lender for future costs and expenses, including, without limitation, all professional fees, consultant fees and legal fees and expenses paid or incurred by DIP Agent or DIP Lender in connection with the financing transactions as provided in the Interim Orders and the DIP Documents, all of which shall be and are included as part of the principal amount of the DIP Obligations and secured by the DIP Collateral.

1.6 Continuation of Prepetition Procedures. Except to the extent expressly set forth in the DIP Documents, all prepetition practices and procedures for the payment and collection of proceeds of the Prepetition Collateral (as defined herein), the turnover of cash, the delivery of property to Prepetition Agent and Prepetition Lender, and any blocked depository bank account arrangements, are hereby approved and shall continue without interruption after the commencement of the Chapter 11 Cases.

1.7 Indemnification. Subject to entry of the Final Order, the Debtors are authorized to indemnify and hold harmless each of the Prepetition Secured Parties and DIP Secured Parties, each of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders and employees, past, present, and future, and their respective heirs, predecessors, successors and assigns in accordance with, and subject to the terms of, the DIP Documents, which indemnification is hereby authorized and approved. The Court retains exclusive jurisdiction to determine amounts of any indemnification claims arising from the DIP Documents unless such amounts are *de minimis*.

1.8 Approved Budget; Permitted Variances; Debtor Professional Reports.

(a) The Debtors shall use Cash Collateral and the proceeds of the DIP Facility solely in accordance with the Approved Budget and the DIP Documents. Commencing on the Monday of the first full calendar week after the Petition Date at 5:00 p.m. (Central Time) and continuing on the two (2)-week anniversary thereafter (or such other times as the Debtors may elect with the consent of DIP Lender and Backyard Products, LLP (the “*Purchaser*”)), the Debtors shall deliver to DIP Agent, and the United States Trustee an updated budget with the form and level of detail set forth in the Initial Budget, and shall include, weekly basis cash revenues, receipts, expenses, professional fees and other disbursements (including, without limitation, any payments with respect to real property leases), net cash flows, inventory receipts and other items on a line item basis (including all necessary and required expenses that the Debtors expect to incur and anticipated uses of proceeds of draws under the DIP Facilities). If such budget is in form and substance satisfactory to DIP Agent in its sole discretion and consented to by the Purchaser (such consent not to be unreasonably withheld, conditioned, or delayed, other than line items of the budget pertaining to the Reimbursement Amounts (as defined in the APA) or which impact the Purchase Price (as defined in the APA), for which such consent shall be in the discretion of the Purchaser), it shall constitute the “Approved Budget” for purposes of the Interim Orders. Any amendments, supplements or modifications to the Approved Budget shall be subject to the prior written approval of DIP Lender in its sole discretion and the prior written consent of the Purchaser (such consent not to be unreasonably withheld, conditioned, or delayed, other than line items of the budget pertaining to the Reimbursement Amounts or which impact the Purchase Price, for which such consent shall be in the discretion of the Purchaser), prior to the implementation thereof. Notwithstanding anything to the contrary herein, Purchaser shall not have any consent rights with

respect to the Approved Budget following any breach by Purchaser of the APA or termination of the APA.

(b) Commencing on the Wednesday of the first full calendar week after the Petition Date at 5:00 p.m. (Central Time), and on a weekly basis thereafter (or at such other times as the Debtors may elect with the consent of DIP Lender) the Debtors shall deliver to DIP Lender a variance report in form and substance reasonably acceptable to DIP Lender (an “**Approved Variance Report**”) showing comparisons of actual results for each line item against such line item in the Approved Budget. Thereafter, the Debtors shall deliver to DIP Lender, an Approved Variance Report on a weekly basis for (a) the preceding week, and (b) the trailing four (4) week period (or, if fewer than four (4) weeks have lapsed since the Petition Date, then for the trailing one, two or three week period, as applicable). Any amendments, supplements or modifications to an Approved Variance Report shall be subject to the prior written approval of DIP Lender in its sole discretion.

(c) Each Approved Variance Report shall indicate whether there are any adverse variances that exceed any of the Permitted Variances. “**Permitted Variances**” shall mean variances: (a) up to 15% of the aggregate for all cash disbursements line-items in the Approved Budget (other than fees and expenses of counsel to the DIP Secured Parties and Professional Persons), (b) less than 20% of the aggregate for all cash receipts in the Approved Budget, and (c) up to 15% of all fees and expenses incurred on a per-Professional Person basis (the “**Professional Fee Variance**”), in each case calculated weekly on a rolling four (4) week basis commencing as of the Petition Date, with the first such testing of (a) and (b) to begin three (3) weeks from the Petition Date, and the Professional Fee Variance testing set forth in (c) shall be performed weekly beginning the week following the Petition Date and not on a rolling four (4) week basis.



(d) If any Professional Person exceeds the Professional Fee Variance, such Professional Person will make a representative available to meet and confer with DIP Lender as soon as practicable and no later than two (2) Business Days after delivery of such Approved Variance Report, to discuss a good faith modification to the Approved Budget (the “**Meet and Confer**”). If DIP Lender and such Professional Person cannot mutually agree on a modification following the Meet and Confer, DIP Lender may, in its sole discretion, declare an Event of Default, consistent with the provisions herein.

(e) Commencing on the Monday of the first full calendar week after the Petition Date and continuing weekly thereafter, each Debtor Professional shall submit a report of the prior week’s accrued fees and expenses to the DIP Agent (the “**Debtor Professional Report**”). The DIP Agent shall review the Debtor Professional Reports, may test the accrued fees and expenses in the Debtor Professional Report against the Professional Fee Variance, and must submit a written objection (if any) to the applicable Debtor Professional no later than two (2) Business Days following delivery of the Debtor Professional Report (the “**Review Period**”). If the DIP Agent does not submit a written objection at the close of the Review Period, the Debtors shall fund the full amount of accrued fees and expenses in such Debtor Professional Report into the Funded Reserve Account. If the DIP Agent submits a written objection to the Debtor Professional Report prior to the end of the Review Period, the DIP Agent and the applicable Debtor Professional shall conduct a Meet and Confer within two (2) Business Days. At the conclusion of the Meet and Confer, if the DIP Agent elects to declare an Event of Default, the Debtors shall only fund an amount not to exceed 150% of such Debtor Professional’s budgeted amount as set forth in the Approved Budget for the period covered by such Debtor Professional Report. For the avoidance of doubt, any Event of Default or other action taken by the DIP Agent shall not impact any amounts

previously funded in the Funded Reserve Account in compliance with the procedures herein. For the avoidance of doubt, the DIP Agent's request for a Meet and Confer shall not (in and of itself absent an Event of Default declaration) impact any terms of the DIP Documents, including any subsequent reporting and testing as set forth herein, nor the DIP Secured Parties' obligations to loan and the Debtors' obligations to fund the Funded Reserve Account in accordance with the DIP Documents after a Meet and Confer is requested.

Section 2. DIP Liens; Superpriority Administrative Claim Status.

2.1 DIP Liens.

(a) Granting of DIP Liens. To secure the prompt payment and performance of any and all DIP Obligations of the Debtors to DIP Agent and DIP Lender of whatever kind, nature or description, absolute or contingent, now existing or hereafter arising, DIP Agent, for the benefit of itself and DIP Lender, shall have and is hereby granted, effective as of the Petition Date, valid and perfected first-priority security interests and liens, superior to all other liens, claims or security interests that any creditor of any of the Estates may have (subject only to the Carve-Out and the Permitted Liens), in and upon all assets and property (whether tangible, intangible, real, personal or mixed), wherever located, whether now owned or owing to, or hereafter acquired by, or arising in favor of each Debtor and its respective chapter 11 estate, and any and all proceeds therefrom, including, without limiting the generality of the foregoing, all cash, Cash Collateral, accounts, accounts receivable, inventory, property, plant and equipment, real estate, leaseholds, equity interests, intellectual property, and upon entry of the Final Order, the proceeds of any avoidance actions under chapter 5 of the Bankruptcy Code (all of the foregoing collectively, the "***DIP Collateral***"). The DIP Collateral shall also include any rents, issues, products, proceeds, and profits generated by any item of DIP Collateral, without the necessity of

any further action of any kind or nature by DIP Agent to claim or perfect such rents, issues, products, or proceeds.

(b) Priority of DIP Liens. The liens and security interests of DIP Agent and DIP Lender granted under the DIP Documents and the Interim Orders on the DIP Collateral securing all DIP Obligations shall be first and senior in priority to all other interests and liens of every kind, nature and description, whether created consensually, by an order of the Court or otherwise, including, without limitation, liens or interests granted in favor of third parties in conjunction with §§ 363, 364 or any other section of the Bankruptcy Code or other applicable law; provided, however, that DIP Agent's and DIP Lender's liens on and security interests in the DIP Collateral shall be subject only to (a) such priming liens or interests imposed by applicable non-bankruptcy law that are in existence as of the Petition Date, and are otherwise unavoidable (collectively, "*Permitted Liens*") and (b) the Carve-Out. The right of a seller of goods to reclaim any goods whether under section 546(c) of the Bankruptcy Code or otherwise shall not be a Permitted Lien or Prepetition Lien; rather, any such alleged claim arising or asserted as a right of reclamation shall have the same rights and priority with respect to the DIP Liens, Prepetition Liens and Prepetition Payment Liens, as such claims had with respect to the Prepetition Liens.

(c) Right of Repayment. The right of DIP Agent and DIP Lender to repayment in accordance with the DIP Documents and the Interim Orders from the sale or other disposition of the DIP Collateral, or any proceeds thereof, shall be first and senior in priority to all other rights of repayment of every kind, nature, and description (other than the Carve-Out).

(d) Perfection of DIP Liens and Prepetition Replacement Lien. The Interim Orders shall be sufficient and conclusive evidence of the priority, perfection and validity of all liens and security interests granted herein, including the DIP Liens and the Prepetition

Replacement Lien, which shall be effective as of the Petition Date, without any further act and without regard to any other federal, state or local requirements or law requiring notice, filing, registration, recording or possession of the DIP Collateral, or other act to validate or perfect such security interest or lien, including without limitation control agreements with any deposit bank or with any other financial institution(s) holding a depository account or other account consisting of or containing Collateral (a “*Perfection Act*”). Notwithstanding the foregoing, if DIP Agent or Prepetition Agent, as applicable, shall, in its sole discretion, elect for any reason to file, record or otherwise effectuate any Perfection Act, then such DIP Agent or Prepetition Agent is authorized to perform such act, and the Debtors and Guarantors are authorized to perform such act to the extent necessary or required by the DIP Documents, which act or acts shall be deemed to have been accomplished as of the date and time of entry of the applicable Interim Orders notwithstanding the date and time actually accomplished, and in such event, the subject filing or recording office is authorized to accept, file or record any document in regard to such act in accordance with applicable law. DIP Agent or Prepetition Agent, as applicable, may choose to file, record or present a certified copy of the applicable Interim Orders in the same manner as a Perfection Act, which shall be tantamount to a Perfection Act, and, in such event, the subject filing or recording office is authorized to accept, file or record such certified copy of this Second Interim Order in accordance with applicable law. Should DIP Agent or Prepetition Agent, as applicable, so choose and attempt to file, record or perform a Perfection Act, no defect or failure in connection with such attempt shall in any way limit, waive or alter the validity, enforceability, attachment, or perfection of the DIP liens and security interests granted herein by virtue of the entry of the Interim Orders.

(e) Nullifying Prepetition Restrictions to DIP Financing.

Notwithstanding anything contained in any prepetition agreement, contract, lease, document, note or instrument to which any Debtor is a party or under which any Debtor is obligated, except as otherwise permitted under the DIP Documents, any provision that restricts, limits or impairs in any way any Debtor from granting DIP Agent security interests in or liens upon any of the Debtors' assets or properties (including, among other things, any anti-lien granting or anti-assignment clauses in any leases or other contractual arrangements to which any Debtor is a party) under the DIP Documents or the Interim Orders, as applicable, or otherwise entering into and complying with all of the terms, conditions and provisions hereof or of the DIP Documents, shall not (a) be effective and/or enforceable against any of the Debtors, DIP Agent or DIP Lender, as applicable, or (b) adversely affect the validity, priority or enforceability of the liens, security interests, claims, rights, priorities and/or protections granted to DIP Agent and DIP Lender pursuant to the Interim Orders or the DIP Documents, in each case, to the maximum extent permitted under the Bankruptcy Code and other applicable law.

(f) To the extent that any applicable non-bankruptcy law otherwise would restrict the granting, scope, enforceability, attachment, or perfection of any liens and security interests granted and created by the Interim Orders (including the DIP Liens and the Prepetition Replacement Liens) or otherwise would impose filing or registration requirements with respect to such liens and security interests, such law is hereby pre-empted to the maximum extent permitted by the Bankruptcy Code, applicable federal or foreign law, and the judicial power and authority of the Court. By virtue of the terms of the Interim Orders, to the extent that any DIP Agent or Prepetition Agent, as applicable, has filed Uniform Commercial Code financing statements, mortgages, deeds of trust, or other security or perfection documents under the names

of any of the Debtors (including all Guarantors), such filings shall be deemed to properly perfect its liens and security interests granted and confirmed by the Interim Orders without further action by the applicable DIP Agent or Prepetition Agent, as applicable.

(g) Except with respect to the Carve-Out, certain Permitted Liens, the DIP Liens, the DIP Superpriority Claims, the Prepetition Replacement Liens, and the Prepetition Adequate Protection Superpriority Claims (i) shall not be made subject to or *pari passu* with (A) any lien, security interest, or claim heretofore or hereinafter granted in any of these Chapter 11 Cases or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of these Chapter 11 Cases against the Debtors (such converted cases, “**Successor Cases**”), their respective Estates, any trustee, or any other estate representative appointed or elected in these Chapter 11 Cases or any Successor Cases and/or upon the dismissal of any of these Chapter 11 Cases or any Successor Cases; (B) any lien that is avoided and preserved for the benefit of the Debtors and their respective Estates under section 551 of the Bankruptcy Code or otherwise; and (C) any intercompany or affiliate lien or claim; and (ii) shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code.

2.2 Superpriority Administrative Expense Claims. For all DIP Obligations now existing or hereafter arising pursuant to the Interim Orders or the DIP Documents, DIP Agent, for the benefit of itself and DIP Lender, is granted an allowed superpriority administrative claim pursuant to § 364(c)(1) of the Bankruptcy Code, having priority in right of payment over any and all other obligations, liabilities and indebtedness of the Debtors (other than the Carve-Out), whether now in existence or hereafter incurred by the Debtors, and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to, inter alia, §§ 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 364(c)(1), 546(c), 726, 1113 or 1114 of the

Bankruptcy Code (other than the Carve-Out), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed superpriority administrative claim shall be payable from and have recourse to all prepetition and post-petition property of the Debtors and all proceeds thereof (the “*DIP Superpriority Claim*”).

2.3 Carve-Out.

(a) Carve-Out. As used in the Interim Orders, the “*Carve-Out*” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate; (ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (iii) to the extent allowed or permitted to be paid at any time, whether by interim order, procedural order, or otherwise, all accrued and unpaid fees, disbursements, costs, and expenses (the “*Allowed Professional Fees*”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “*Debtor Professionals*”) and by the Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the “*Committee Professionals*” and, together with the Debtors’ Professionals, “*Professional Persons*”) at any time before or on the first business day following delivery by DIP Agent to the Debtors of a Carve-Out Trigger Notice (as defined below), but shall not include any restructuring, sale, transaction or other “success” fee except for such fee earned by Robert W. Baird & Co. Inc. in its capacity as investment banker to the Debtors during such time; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$150,000 incurred after the first business day following delivery by DIP Agent of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (this section (iv) the “*Post-Carve-Out Trigger Notice Cap*”); and (v) an amount up to

the amount secured by and necessary to fund the Canadian Priority Charges (as defined in the DIP Term Sheet) for the beneficiaries thereof (without duplication) in the CCAA Recognition Proceedings. For purposes of the foregoing, “*Carve-Out Trigger Notice*” shall mean a written notice delivered by email (or other electronic means) by DIP Agent to the Debtors and the Committee, which notice may be delivered in the sole discretion of DIP Agent following the occurrence of an Event of Default, and shall describe the Event of Default, state that the DIP Facility is terminated and that the Post-Carve-Out Trigger Notice Cap has been invoked.

(b) Pre-Carve-Out Trigger Notice Funding. Commencing on the Friday of the first full calendar week following the Petition Date and on a weekly basis thereafter, the DIP Secured Parties shall loan and the Debtors shall fund, using borrowings from the DIP Facility, Cash Collateral, or cash on hand, a segregated account (the “*Funded Reserve Account*”) held by the Debtors in trust and solely for the benefit of the Debtor Professionals in an amount equal to the amount of applicable Professional Fees set forth in the Approved Budget, subject to the objection procedures described in Section 1.8(d) hereof and the Prepetition Secured Parties’ and DIP Secured Parties’ reversionary interest in any unused amounts. The Debtors shall pay only Allowed Professional Fees from the Funded Reserve Account, and all payments of Allowed Professional Fees incurred prior to the Carve-Out Termination Date shall be paid first from such Funded Reserve Account, provided that this shall not be a limitation on payment of Allowed Professional Fees from sources other than the Funded Reserve Account in the event the Funded Reserve Account does not have sufficient funds or has not be funded as provided above.

(c) Post-Carve-Out Trigger Notice Funding. On the day on which a Carve-Out Trigger Notice is given by the DIP Agent to counsel for the Debtors and the Committee (the “*Carve-Out Termination Date*”), the Carve-Out Trigger Notice shall be deemed a draw



request and notice of borrowing hereunder and also a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund (A) the Funded Reserve Account in an amount equal to the sum of (x) the amounts set forth in paragraphs (a)(i)-(iii) above, plus (y) the total amount of unpaid Allowed Professional Fees set forth in the “Professional Fees (Escrow Account Funding)” line item of the Approved Budget for any time before or on the first business day following the Carve-Out Termination Date, to the extent not already funded in accordance with Section 2.3(b) hereof, whether such fees have become Allowed Professional Fees prior to the Carve-Out Termination Date, plus (z) the amount set forth in paragraph (a)(v) above to an account designated by the Information Officer in the CCAA Recognition Proceedings for the beneficiaries of the Canadian Priority Charges (the “**Canadian Priority Reserve Account**”); and (B) a segregated escrow account held by the Debtors in trust for the benefit of Professional Persons in an amount equal to the Post-Carve-Out Trigger Notice Cap (the “**Post-Carve-Out Trigger Notice Reserve Account**” and, together with the Funded Reserve Account and the Canadian Priority Reserve Account, the “**Carve-Out Reserve Accounts**”). Prepetition Agent’s, Prepetition Lender’s, DIP Agent’s, and DIP Lender’s, in each case to the fullest extent applicable, claims, liens and security interests in any property of the Debtors, including, without limitation, the Prepetition Collateral, the DIP Collateral, Cash Collateral, the Prepetition Adequate Protection Superpriority Claim (as defined below), the DIP Superpriority Claim, any other adequate protection or superpriority claim, and any junior pre- or post-petition lien, interest or claim in favor of any other party, shall be subordinate to the Allowed Professional Fee Claims of the Professional Persons and other beneficiaries thereof as to all funds in the Carve-Out Reserve Accounts.

(d) No Direct Obligation To Pay Allowed Professional Fees. None of the DIP Secured Parties or Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any Successor Cases under any chapter of the Bankruptcy Code provided that the Carve-Out Reserve Accounts shall have been fully funded from cash on hand, Cash Collateral, or proceeds of the DIP Facility. Nothing in the Interim Orders shall be construed to obligate any of the DIP Secured Parties or Prepetition Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement, provided that the Carve-Out Reserve Accounts shall have been fully funded, and provided that this shall not be a limitation on payment of Allowed Professional Fees from sources other than the Carve-Out Reserve Accounts in the event the Carve-Out Reserve Accounts do not have sufficient funds or have not been funded as provided above. Notwithstanding anything herein, nothing shall require the DIP Secured Parties or Prepetition Secured Parties to provide any funding in excess of the DIP Commitment.

(e) Payment of Allowed Professional Fees Prior to the Carve-Out Termination Date. Any payment or reimbursement made prior to the occurrence of the Carve-Out Termination Date in respect of any Allowed Professional Fees shall not reduce the Carve-Out; *provided* that, upon the full funding of the Carve-Out Reserve Accounts following the Carve-Out Termination Date, the Debtors' authorization to use Cash Collateral to fund the Carve-Out Reserve Accounts shall cease, and the liens and claims of the DIP Agent and DIP Lender shall cease being subordinated to the Carve-Out, each with respect to and to the extent of the amounts so funded.

(f) Payment of Carve-Out on or After the Carve-Out Termination Date. Any payment or reimbursement made on or after the occurrence of the Carve-Out Termination Date in respect of any Allowed Professional Fees shall permanently reduce the Carve-Out on a dollar-for-dollar basis. Any funding of the Carve-Out shall be added to, and made a part of, the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under the Interim Orders, the DIP Documents, the Bankruptcy Code, and applicable law.

2.4 Payment of Carve-Out. Payment from the Carve-Out Reserve Accounts, whether by or on behalf of DIP Agent or DIP Lender, shall not and shall not be deemed to reduce the DIP Obligations, and shall not be deemed to subordinate any of any of DIP Agent's or DIP Lender's liens and security interests in the Prepetition Collateral, any other DIP Collateral, the Prepetition Adequate Protection Superpriority Claim, or the DIP Superpriority Claim to any junior pre- or post-petition lien, interest or claim in favor of any other party other than the Carve-Out for Professional Persons.

2.5 Excluded Professional Fees.

(a) Notwithstanding anything to the contrary in the Interim Orders, no DIP Collateral (or proceeds thereof) nor any DIP Loans or any other credit or financial accommodations provided under or in connection with the DIP Documents shall be used to pay any Allowed Professional Fees or any other fees or expenses incurred by any Professional Person in connection with any of the following:

(i) an assertion or joinder in any claim, counter-claim, action, proceeding, application, motion, objection, defense or other contested matter seeking any order, judgment, determination or similar relief: (A) challenging the legality, validity, priority, perfection, or enforceability of (I) the Prepetition Obligations or any Prepetition

Secured Parties' liens on and security interests in the Prepetition Collateral or (II) the DIP Obligations or any DIP Secured Parties' liens on and security interests in the DIP Collateral; (B) invalidating, setting aside, avoiding, recharacterizing or subordinating, in whole or in part, (I) the Prepetition Obligations or any Prepetition Secured Parties' liens on and security interests in the Prepetition Collateral or (II) the DIP Obligations or any DIP Secured Parties' liens on and security interests in the DIP Collateral; or (C) preventing, hindering or delaying DIP Agent's or DIP Lender's assertion or enforcement of any lien, claim, right or security interest or realization upon any DIP Collateral in accordance with the terms and conditions of the DIP Term Sheet, the DIP Documents, and the Interim Orders other than reasonable and documented fees in connection with a good faith challenge of an asserted Event of Default and related Carve-Out Trigger Notice;

(ii) a request made to this Court to use Cash Collateral (as such term is defined in section 363 of the Bankruptcy Code) without the prior written consent of DIP Agent and Prepetition Agent;

(iii) a request made to this Court for authorization to obtain debtor-in-possession financing or other financial accommodations pursuant to section 364(c) or section 364(d) of the Bankruptcy Code or otherwise incur Indebtedness (as defined in the Prepetition Credit Agreement) without the prior written consent of DIP Agent (except to the extent permitted under the DIP Documents);

(iv) the commencement or prosecution of any action or proceeding of any claims, causes of action or defenses against any DIP Secured Party or Prepetition Secured Party or any of their respective officers, directors, employees, agents, attorneys, affiliates, successors or assigns, including, without limitation, any attempt to recover or

avoid any claim or interest or disgorge any payments under chapter 5 of the Bankruptcy Code or any applicable state law equivalents;

(v) the cost of a Committee's investigation into any claims against any Prepetition Secured Parties arising under or in connection with the Prepetition Loan Documents in excess of \$25,000 (the "*Committee Investigation Budget*"); provided that no portion of the Committee Investigation Budget may be used to seek formal discovery or commence any challenge, objection, or prosecute any such Challenge, claims or causes of actions; or

(vi) any act which has or could directly, materially and adversely modify or compromise the rights and remedies of any of the DIP Secured Parties or Prepetition Secured Parties under the Interim Orders, or which directly results in the occurrence of an Event of Default under this Second Interim Order or any DIP Documents.

## 2.6 Limited Use of Cash Collateral; Adequate Protection.

(a) Authorization to Use Cash Collateral. Subject to the terms and conditions of the Interim Orders, the DIP Term Sheet, the DIP Documents, and in accordance with the Approved Budget, Borrower shall be and are hereby authorized to use Cash Collateral for the period commencing on the date of the First Interim Order and terminating on the Carve-Out Termination Date, subject to the liens and security interests granted to Prepetition Agent and Prepetition Lender; provided that during the Remedies Notice Period (as defined herein) the Debtors may use Cash Collateral solely for the following amounts and expenses: (i) to fund the Carve-Out Reserve Accounts in accordance with Section 2.3 above; and (ii) to pay expenses critical to the administration of the Estates, as agreed by DIP Agent in its sole discretion. Nothing in the Interim Orders shall authorize the disposition of any assets of the Debtors or their Estates

outside the ordinary course of business, or any Debtor's use of Cash Collateral or other proceeds resulting therefrom, except as expressly permitted in the Interim Orders, the DIP Documents and in accordance with the Approved Budget.

(b) Prepetition Replacement Lien. As adequate protection for the diminution in value of their interests in the Prepetition Collateral (including Cash Collateral) on account of the Borrower's use of such Prepetition Collateral (including Cash Collateral), the imposition of the automatic stay and the subordination to the Carve-Out on a dollar-for-dollar basis (collectively, the "***Diminution in Value***"), Prepetition Agent, for the benefit of itself and Prepetition Lender, is hereby granted pursuant to §§ 361 and 363 of the Bankruptcy Code, and solely to the extent of the Diminution in Value, valid, binding, enforceable and perfected replacement liens upon and security interests in all DIP Collateral (the "***Prepetition Replacement Lien***"). The Prepetition Replacement Lien shall be junior and subordinate only to (A) the Carve-Out, (B) the Permitted Liens, and (C) the DIP Liens on the DIP Collateral to secure the DIP Obligations, and shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral.

(c) Prepetition Adequate Protection Superpriority Claim. As adequate protection for the Diminution in Value, Prepetition Agent, for the benefit of itself and Prepetition Lender, is hereby granted, solely to the extent of the Diminution in Value, an allowed superpriority administrative expense claim pursuant to sections 503(b), 507(a), and 507(b) of the Bankruptcy Code in each of the Chapter 11 Cases and any successor bankruptcy cases (the "***Prepetition Adequate Protection Superpriority Claim***"). The Prepetition Adequate Protection Superpriority Claim shall be junior only to (A) the Carve-Out, and (B) the DIP Superpriority Claim, and shall otherwise have priority over all administrative expense claims and

unsecured claims against the Debtors and their Estates now existing or hereafter arising, of any kind or nature whatsoever.

(d) Adequate Protection Payments and Protections. Upon entry of the First Interim Order, as further adequate protection (the “*Adequate Protection Payments*”) for the Diminution in Value, the Debtors are authorized and directed to provide adequate protection to the Prepetition Secured Parties in the form of payment in cash (regardless of the Approved Budget, and regardless of any Diminution in Value) for (i) the reasonable, documented fees, expenses, and disbursements (including without limitation, the reasonable and documented fees, expenses, and disbursements of counsel and third-party consultants and other vendors, including without limitation, financial advisors and auditors) incurred by Prepetition Secured Parties arising prior to the Petition Date, and (ii) the reasonable, documented fees, expenses, and disbursements (including without limitation, the fees, expenses, and disbursements of counsel and third-party consultants and other vendors, including without limitation, financial advisors and auditors) incurred by Prepetition Secured Parties arising subsequent to the Petition Date.

Section 3. Default; Rights and Remedies; Relief from Stay.

3.1 Events of Default. The occurrence of any of the following events shall constitute an “*Event of Default*” under the Interim Orders: (a) any Debtor’s failure to perform, in any respect, any of their obligations under the Interim Orders; or (b) the occurrence of an “Event of Default” under the DIP Term Sheet or any of the other DIP Documents, including the following:

- (a) after the first applicable testing date, the occurrence of any deviation from the Approved Budget that is greater than the Permitted Variances; *provided, that*, the DIP Lender may only declare an Event of Default arising from any deviation from the Professional Fee Variance if the DIP Lender and such Professional Person cannot mutually agree to a good faith modification during the Meet and Confer;
- (b) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents, DIP Orders, the Canadian DIP Recognitions Orders or Approved Budget;

- (c) modification by the Debtors of the DIP Secured Parties' rights under the DIP Documents, DIP Orders or the Canadian DIP Recognition Orders;
- (d) failure of any of the Chapter 11 Milestones to be satisfied;
- (e) failure by any Debtor to be in compliance in all material respects with the sections of the DIP Term Sheet entitled "Affirmative Consents" (and five (5) business days shall have elapsed since the DIP Lender shall have given notice to the Debtors of such failure) and "Negative Covenants" or failure to otherwise be in compliance in all material respects with any other provision of the DIP Term Sheet, the DIP Orders and the Canadian DIP Recognition Orders;
- (f) failure of any representation or warranty to be true and correct in all material respects;
- (g) filing of any application by the Debtors for the approval of (or an order is entered by the Court approving) any claim arising under section 507(b) of the Bankruptcy Code or any other provision of the Bankruptcy Code or any security, mortgage, collateral interest or other lien in any of the Chapter 11 Cases or CCAA Recognition Proceedings which is *pari passu* with or senior to the DIP Superpriority Claims or the DIP Liens, excluding liens arising under the DIP Orders or the Canadian DIP Recognition Orders, or pursuant to any other financing agreement made with the prior written consent of the DIP Agent;
- (h) the filing of any applications by the Debtors for approval of (or an order is entered by the Court authorizing) compensation or other amounts under any employee or executive incentive or retention plans (or any similar sort of retention or incentive program) without the prior written consent of the DIP Secured Parties in their sole discretion;
- (i) any request made by the Debtors for, or the reversal, modification, amendment, stay, reconsideration or vacatur of the DIP Orders, as entered by the Bankruptcy Court or the Canadian DIP Recognition Orders, as entered by the CCAA Court, as applicable, without the prior written consent of the DIP Secured Parties;
- (j) the commencement of any action by the Debtors or other authorized person (other than an action permitted by the DIP orders or the Canadian DIP Recognition Orders) against any of the DIP Secured Parties or its agents and employees, to subordinate or avoid any liens made in connection with the DIP orders or the Canadian DIP Recognition Orders;
- (k) (1) the assertion by the Debtors in any pleading filed in any court that any material provision of the DIP Orders, the Canadian DIP Recognition Orders or the DIP Term Sheet is not valid and binding, or (2) any material provision of the DIP Orders, the Canadian DIP Recognition Orders or this Term Sheet shall for any reason, or any other order of this Court approving the Debtors' use of Cash Collateral, cease to be valid and binding (without the prior written consent of the DIP Secured Parties);
- (l) the filing with the Bankruptcy Court of any plan of reorganization or liquidation in any of the Chapter 11 Cases other than the Plan;



- (m) the appointment or entry in any of the Chapter 11 Cases of a trustee, receiver, examiner, or responsible officer with enlarged powers relating to the operation of business of any Debtor (powers beyond those set forth in sections 1106(a)(3) and (a)(4) of the Bankruptcy Code), unless such appointment or order has not been reversed, stayed, or vacated within thirty (30) days after the entry of such order;
- (n) the granting of relief from the automatic stay by the Bankruptcy Court or of the stay ordered by the CCAA Court to any other creditor or party in interest in the Chapter 11 Cases with respect to any portion of the DIP Collateral exceeding \$100,000 in value in the aggregate;
- (o) failure to pay principal, interest or other DIP Obligations in full in cash when due, including, without limitation, on the Maturity Date;
- (p) the allowance of any claim or claims under sections 506(c) and 552(b) against or with respect to any DIP Collateral;
- (q) withdrawal or material modification by the Debtors of any motion in connection with the Backyard Sale, without the consent of the DIP Secured Parties;
- (r) the Debtors seek to consummate an Alternative Transaction (as defined in the APA) without the prior written consent of the DIP Secured Parties;
- (s) the Plan is not confirmed or is changed without the DIP Secured Parties' consent, or the Plan Sponsor breaches (or is anticipated to breach) its obligations under the Plan;
- (t) the occurrence of any Material Adverse Change;
- (u) any termination of the RSA or APA;
- (v) the amount of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, and Allowed Other Priority Claims (each as defined in the Plan) exceeds or is expected to exceed the Administrative Expense Claim, Priority Tax Claim, or Other Priority Claim Backstop Amount;
- (w) the occurrence of any Negative Purchase Variance under any Purchase Price Calculation; and
- (x) the conversion of any Chapter 11 Case to a Chapter 7 case(s), or any Debtor shall file a motion or other pleading seeking the conversion of any Chapter 11 Case to chapter 7 of the Bankruptcy Code or the making of an assignment bankruptcy by or entry by any Canadian Court of a bankruptcy order in respect of the Debtors under the BIA, or the entry of an order of any Canadian court appointing a receiver under the BIA over any DIP Collateral, in each case, without the prior written consent of DIP Agent.<sup>4</sup>

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<sup>4</sup> Capitalized terms used but not otherwise defined in Section 3.1(a)–(x) shall have the meanings set forth in the DIP Term Sheet. For the avoidance of doubt, “*DIP Orders*” shall include the Interim Orders and the Final Order.

3.2 Rights and Remedies upon Event of Default. Upon the occurrence of an Event of Default, (a) the Debtors shall be bound by all restrictions, prohibitions and other terms as provided in the Interim Orders, the DIP Term Sheet and the other DIP Documents, and (b) DIP Agent shall be entitled to take any act or exercise any right or remedy (subject to Section 3.4 below) as provided in the Interim Orders or the DIP Term Sheet or any of the other DIP Documents, as applicable, including, without limitation, declaring all DIP Obligations immediately due and payable, accelerating the DIP Obligations, ceasing to extend DIP Loans, setting off any DIP Obligations with DIP Collateral or proceeds in DIP Agent's or DIP Lender's possession, and enforcing any and all rights with respect to the DIP Collateral. DIP Agent and DIP Lender shall have no obligation to lend or advance any additional funds to or on behalf of the Debtors, or provide any other financial accommodations to the Debtors, immediately upon or after the occurrence of an Event of Default or upon the occurrence of any act, event, or condition that, with the giving of notice or the passage of time, or both, would constitute an Event of Default.

3.3 Expiration of Loan Commitment. Upon the expiration, termination, or maturity of Borrower's authority to borrow or otherwise obtain other credit accommodations from DIP Agent and DIP Lender pursuant to the terms of the Interim Orders and the DIP Documents (except if such authority shall be extended with the prior written consent of DIP Agent, which consent shall not be implied or construed from any action, inaction or acquiescence by DIP Agent or DIP Lender), unless an Event of Default set forth in Section 3.1 above occurs sooner and the automatic stay has been lifted or modified pursuant to Section 3.4 of the Interim Orders, all of the DIP Obligations shall immediately become due and payable and DIP Agent and DIP Lender shall have no obligation whatsoever to make or extend any loans, advances, provide any financial or credit accommodations to the Debtors or permit the use of Cash Collateral.

### 3.4 Modification of Automatic Stay; Remedies Notice Period.

(a) The automatic stay provisions of section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified without further notice, application or order of the Court to the extent necessary to permit DIP Agent and DIP Lender to perform any act authorized or permitted under or by virtue of the Interim Orders or the DIP Documents, as applicable, including, without limitation, (I)(A) to implement the DIP financing arrangements authorized by this Second Interim Order and pursuant to the terms of the DIP Documents, (B) to take any act to create, validate, evidence, attach or perfect any lien, security interest, right or claim in the DIP Collateral, (C) to assess, charge, collect, advance, deduct and receive payments with respect to the Prepetition Obligations or the DIP Obligations, as applicable, including, without limitation, all interests, fees, costs and expenses permitted under the DIP Documents (subject to Section 5.12 of the Interim Orders) and apply such payments to the Prepetition Obligations or DIP Obligations pursuant to the DIP Documents and/or the Interim Orders, as applicable, and (II) upon an Event of Default, (A) declare a termination, reduction or restriction on the ability of the Debtors to use Cash Collateral, (B) to take any other action and exercise all other rights and remedies provided to it by the Interim Orders, the DIP Documents or applicable law other than those rights and remedies subject to the expiration of the Remedies Notice Period, and (C) charge interest at the default rate under the DIP Documents.

(b) In addition, and without limiting anything in Section 3.4(a) hereof, upon the filing of a Carve-Out Trigger Notice on the docket of these Chapter 11 Cases and the expiration of the five (5) business day period thereafter (the “**Remedies Notice Period**”), DIP Agent, acting on behalf of itself and DIP Lender, without further notice, application or order of the Court, shall be entitled to take any action and exercise all rights and remedies provided to it by

the Interim Orders, the DIP Documents or applicable law that DIP Agent may deem appropriate in its sole discretion to proceed against and realize upon the DIP Collateral or any other assets or properties of the Estates upon which DIP Agent, for the benefit of itself and DIP Lender, has been or may hereafter be granted liens or security interests to obtain the full and indefeasible repayment of all DIP Obligations. Notwithstanding anything to the contrary, any action that DIP Agent is otherwise permitted to take pursuant to the Interim Orders to (i) terminate the DIP Commitments, (ii) accelerate the DIP Loans, (iii) send blocking notices or activation notices pursuant to the terms of any deposit account control agreement, and (iv) repay any amounts owing in respect of the DIP Obligations (including, without limitation, fees, indemnities and expense reimbursements), in each case, shall not require any advance notice to the Debtors. During the Remedies Notice Period, the Debtors, the Committee, and/or any party in interest shall be entitled to seek an emergency hearing, and DIP Agent and DIP Lender shall consent to such emergency hearing so long as it occurs within the Remedies Notice Period; provided, that, (A) the sole issue the Debtors may bring before the Court at any such emergency hearing is whether an Event of Default has occurred, and (B) if such emergency hearing cannot be scheduled prior to the expiration of the Remedies Notice Period solely as a result of the Court's unavailability, the Remedies Notice Period shall be automatically extended to the date that is one (1) business day after the first date the Court is available.

Section 4. Representations; Covenants; and Waivers.

4.1 Reservation of Third-Party Challenge Rights. Notwithstanding anything in the Interim Orders, the stipulations, releases, agreements, and admissions contained in the Interim Orders, including, without limitation, paragraph G hereof (collectively, the "***Debtors' Stipulations***"), shall be binding in all circumstances on the Debtors, their respective Estates and any successor (including, without limitation, any estate representative or a chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors with respect thereto) provided that, the Debtors'

Stipulations shall be binding on each other party in interest, including, without limitation, the Committee, unless (a) any such party in interest with standing and authority (which the DIP Secured Parties and Prepetition Secured Parties hereby agree may be sought on an emergency basis), including the Committee, has timely filed a complaint or a motion seeking authority to commence litigation as a representative of the estate (a “**Challenge**”) before the earliest of (i) the objection deadline for the Plan, (ii) sixty (60) calendar days from the date of appointment of the Committee by the U.S. Trustee, and (iii) seventy-five (75) calendar days from the Petition Date for all parties other than the Committee (the “**Challenge Period**”) challenging the amount, validity, perfection, enforceability, priority, or extent of the Prepetition Obligations or Prepetition Liens, or otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims or any other claims, counterclaims, or causes of action, objections, contests, or defenses with respect to the Prepetition Obligations or Prepetition Liens and (b) such Challenge sets forth with specificity the basis for such challenge, and any challenges or claims not so specified prior to the expiration of the Challenge Period shall be deemed forever waived, released, and barred. For the avoidance of doubt, a party’s commencement of a timely Challenge shall preserve the Challenge Period only with respect to such party. Nothing in the Interim Orders vests or confers on any Person (as defined in the Bankruptcy Code), including the Committee, standing or authority to pursue any Challenge or cause of action belonging to the Debtors or their respective Estates, including, without limitation, claims and defenses with respect to the Prepetition Credit Agreements or the Prepetition Liens on the Prepetition Collateral. If any Challenge is timely commenced, the Debtors’ Stipulations shall nonetheless remain binding and conclusive (as provided in this paragraph) on the Debtors, the Committee, and any other person or entity, except as to any specific findings and admissions that were expressly and successfully

challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. If no such Challenge is timely and properly filed, or if a Challenge is timely and properly filed but denied, (i) the Prepetition Obligations shall be deemed allowed in full, shall not be subject to any setoff, recoupment, counterclaim, deduction or claim of any kind, and shall not be subject to any further objection or challenge by any party at any time, and the Prepetition Liens on and security interest in the Prepetition Collateral shall be deemed legal, valid, perfected, enforceable, and non-avoidable for all purposes and of first and senior priority, subject to only the Carve-Out and Permitted Liens, and (ii) Prepetition Agent and Prepetition Lender, and each of their respective participants, agents, officers, directors, employees, attorneys, professionals, successors, and assigns (each in their respective capacities as such) shall be deemed released and discharged from any and all claims and causes of action related to or arising out of the Prepetition Loan Documents, and shall not be subject to any further objection or challenge relating thereto or arising therefrom by any party at any time. Nothing contained in this Section 4.1(a) shall or shall be deemed or construed to impair, prejudice or waive any rights, claims or protections afforded to DIP Agent or DIP Lender in connection with the DIP Documents, and any other post-petition financial and credit accommodations provided by DIP Agent and DIP Lender to the Debtors in reliance on section 364(e) of the Bankruptcy Code and in accordance with the terms and provisions of the Interim Orders and the DIP Documents.

4.2 Debtors' Waivers. Prior to the indefeasible repayment in full in cash of all Prepetition Obligations and all DIP Obligations (“**Repayment in Full**”), any request by the Debtors of this Court without the prior consent of the DIP Agent with respect to the following shall also constitute an Event of Default: (a) to use Cash Collateral under section 363 of the Bankruptcy Code other than as provided in the Interim Orders, (b) to obtain post-petition loans or other

financial accommodations pursuant to section 364(c) or 364(d) of the Bankruptcy Code, other than as provided in the Interim Orders or as may be otherwise expressly permitted pursuant to the DIP Documents, (c) to challenge the application of any payments authorized by the Interim Orders as pursuant to section 506(b) of the Bankruptcy Code, or to assert that the value of the Prepetition Collateral is less than the Prepetition Obligations, (d) to propose, support or have a plan of reorganization or liquidation that is inconsistent with the Plan, Backyard Sale or RSA, or (e) to seek relief under the Bankruptcy Code, including without limitation, under section 105 of the Bankruptcy Code, to the extent any such relief would in any way restrict or impair the rights and remedies of DIP Agent or DIP Lender as provided in the Interim Orders and the DIP Documents or DIP Agent's or DIP Lender's exercise of such rights or remedies; provided, however, that DIP Agent may otherwise consent in writing, but no such consent shall be implied from any other action, inaction, or acquiescence by any DIP Secured Party.

4.3 Section 506(c) Claims. Subject to entry of the Final Order, no costs or expenses of administration which have or may be incurred in the Chapter 11 Cases shall be charged against DIP Agent or DIP Lender, their respective claims, or the DIP Collateral pursuant to §§ 105 or 506(c) of the Bankruptcy Code or otherwise without the prior written consent of DIP Agent, and no such consent shall be implied from any other action, inaction or acquiescence by DIP Agent or DIP Lender.

4.4 DIP Collateral Rights. Until the occurrence of Repayment in Full:

(a) no other party shall foreclose or otherwise seek to enforce any junior lien or claim in DIP Collateral and

(b) upon and after the delivery of a Carve-Out Trigger Notice and the expiration of the Remedies Notice Period, if requested by the DIP Agent in connection with such exercise of rights and remedies, the Debtors shall cooperate with the DIP Agent to, among

other things, (i) make reasonable efforts to collect accounts receivable, without setoff by any account debtor, (ii) provide at all reasonable times access to the Debtors' premises to representatives or agents of the DIP Agent (including any collateral liquidator or consultant), (iii) provide the DIP Agent and its representatives or agents, at all reasonable times access to the Debtors' books and records and any information or documents requested by the DIP Agent or their respective representatives, (iv) perform all other obligations set forth in the DIP Documents, and (v) take reasonable steps to safeguard and protect the DIP Collateral.

4.5 Release of DIP Secured Parties. Subject to entry of the Final Order, each of the Releasors hereby forever, unconditionally, permanently, and irrevocably release, discharge, and acquit each of the DIP Secured Parties and their respective successors and assigns, and their present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees and other representatives (collectively, the "**DIP Releasees**") of and from any and all claims, demands, liabilities, damages, expenses, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, of every kind, nature and description, whether arising in law or otherwise, and whether known or unknown, matured, or contingent that any of the Releasors had, have or hereafter can or may have against any DIP Releasees as of the date hereof, in respect of events that occurred on or prior to the date hereof with respect to the Debtors, the Prepetition Obligations, the Prepetition Loan Documents, the DIP Obligations, the RSA, the Plan, the Backyard Sale, the DIP Documents and any DIP Loans or other financial accommodations made by DIP Agent and/or DIP Lender to the Debtors pursuant to the Prepetition Loan Documents or the DIP Documents including, without limitation, any so-called "lender liability" claims or defenses, (a) any so-called "lender liability" or equitable subordination claims or defenses, (b) any and all "claims" (as defined in the Bankruptcy Code) and causes of action arising under the Bankruptcy Code, and (c) any and all offsets, defenses, claims, counterclaims,



set off rights, objections, challenges, causes of action, and/or choses in action of any kind or nature whatsoever, whether arising at law or in equity, including any recharacterization, recoupment, subordination, avoidance, or other claim or cause of action arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state, federal, or foreign law, including, without limitation, any right to assert any disgorgement or recovery, in each case, with respect to the extent, amount, validity, enforceability, priority, security, and perfection of any of the DIP Obligations, the DIP Documents, or the DIP Liens.

Section 5. Other Rights and DIP Obligations.

5.1 No Modification or Stay of This Second Interim Order. The DIP Agent and DIP Lender have acted in good faith in connection with the DIP Facility and with this Second Interim Order, and their reliance on this Second Interim Order is in good faith, and the DIP Agent and DIP Lender are hereby entitled to the full protections of section 364(e) of the Bankruptcy Code. Notwithstanding (a) any stay, modification, amendment, supplement, vacating, revocation or reversal of the Interim Orders, the DIP Documents or any term hereunder or thereunder, (b) the failure to obtain a Final Order pursuant to Bankruptcy Rule 4001(c)(2), or (c) the dismissal or conversion of one or more of the Chapter 11 Cases (each, a “**Subject Event**”), (x) the acts taken by each of DIP Agent and DIP Lender in accordance with the applicable Interim Orders, and (y) the DIP Obligations incurred or arising prior to DIP Agent’s actual receipt of written notice from the Debtors expressly describing the occurrence of such Subject Event shall, in each instance, be governed in all respects by the original provisions of the applicable Interim Orders, and the acts taken by DIP Agent and DIP Lender in accordance with the Interim Orders, and the liens granted to DIP Agent and DIP Lender in the DIP Collateral, and all other rights, remedies, privileges, and benefits in favor of DIP Agent and DIP Lender pursuant to the Interim Orders and the DIP Documents shall remain valid and in full force and effect pursuant to section 364(e) of the

Bankruptcy Code. For purposes of this Second Interim Order, the term “appeal”, as used in section 364(e) of the Bankruptcy Code, shall be construed to mean any proceeding for reconsideration, amending, rehearing, or re-evaluating this Second Interim Order by the Court or any other tribunal.

5.2 Power to Waive Rights; Duties to Third Parties. DIP Agent and Prepetition Agent, as applicable, shall have the right to waive any of the terms, rights and remedies provided or acknowledged in the applicable Interim Orders that are in favor of the DIP Secured Parties and Prepetition Secured Parties, respectively (the “*Lender Rights*”), and shall have no obligation or duty to any other party with respect to the exercise or enforcement, or failure to exercise or enforce, any Lender Right(s). Any waiver by DIP Agent or Prepetition Agent of any Lender Rights shall not be or constitute a continuing waiver unless expressly provided therein. Any delay in or failure to exercise or enforce any Lender Right shall neither constitute a waiver of such Lender Right, subject any of the DIP Secured Parties or Prepetition Secured Parties to any liability to any other party, nor cause or enable any party other than the Debtors to rely upon or in any way seek to assert as a defense to any obligation owed by the Debtors to any of the DIP Secured Parties or Prepetition Secured Parties.

5.3 Disposition of DIP Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral outside the ordinary course of business, other than pursuant to the terms of the DIP Term Sheet, this Second Interim Order, and the Approved Budget, without the prior written consent of DIP Agent (and no such consent shall be implied, from any other action, inaction or acquiescence by DIP Agent or DIP Lender) and, in each case, an order of the Court.

5.4 Inventory. The Debtors shall not, without the consent of DIP Agent, (a) enter into any agreement to return any inventory to any of their creditors for application against any prepetition indebtedness under any applicable provision of section 546 of the Bankruptcy Code, or (b) consent to any creditor taking any setoff against any of its prepetition indebtedness based upon any such return pursuant to section 553(b)(1) of the Bankruptcy Code or otherwise.

5.5 Reservation of Rights.

(a) The terms, conditions and provisions of this Second Interim Order are in addition to and without prejudice to the rights of each DIP Secured Party and Prepetition Secured Party to pursue any and all rights and remedies under the Bankruptcy Code, the DIP Documents, the Prepetition Loan Documents, or any other applicable agreement or law, including, without limitation, rights to seek adequate protection and/or additional or different adequate protection, to seek relief from the automatic stay, to seek an injunction, to oppose any request for use of cash collateral or granting of any interest in the DIP Collateral or Prepetition Collateral, as applicable, or priority in favor of any other party, to object to any sale of assets, and to object to applications for allowance and/or payment of compensation of Professional Persons or other parties seeking compensation or reimbursement from the Estates and to pursue any and all rights and remedies against any Non-Debtor Loan Party.

(b) Likewise, the terms, conditions and provisions of this Second Interim Order are without prejudice to the rights of the Committee to object to entry of a final order and to pursue any and all rights, including those under the Bankruptcy Code.

5.6 Binding Effect.

(a) The provisions of the Interim Orders and the DIP Documents, the DIP Obligations, the Prepetition Adequate Protection Superpriority Claim, the DIP Superpriority

Claim and any and all rights, remedies, privileges and benefits in favor of each of DIP Agent and DIP Lender provided or acknowledged in the Interim Orders and any actions taken pursuant thereto, shall be effective immediately upon entry of this Second Interim Order notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h) and 7062, shall continue in full force and effect, and shall survive entry of any such other order converting one or more of the Chapter 11 Cases to any other chapter under the Bankruptcy Code, or dismissing one or more of the Chapter 11 Cases.

(b) Any order dismissing one or more of the Chapter 11 Cases under section 1112 or otherwise shall be deemed to provide (in accordance with §§ 105 and 349 of the Bankruptcy Code) that (a) the DIP Superpriority Claim and DIP Agent's and DIP Lender's liens on and security interests in the DIP Collateral and all other claims, liens, adequate protections and other rights granted pursuant to the terms of the Interim Orders shall continue in full force and effect notwithstanding such dismissal until Repayment in Full, and (b) the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing all such claims, liens, protections and rights.

(c) In the event the Court modifies any of the provisions of this Second Interim Order or the DIP Documents following a Final Hearing, such modifications shall not affect the rights or priorities of DIP Agent and DIP Lender pursuant to this Second Interim Order with respect to the DIP Collateral or any portion of the DIP Obligations which arises or is incurred or is advanced prior to such modifications, and this Second Interim Order shall otherwise remain in full force and effect to such extent.

(d) This Second Interim Order shall be binding upon the Debtors, all parties in interest in the Chapter 11 Cases and their respective successors and assigns, including any trustee or other fiduciary appointed in the Chapter 11 Cases or any subsequently converted

bankruptcy case(s) of any Debtor. This Second Interim Order shall also inure to the benefit of the Debtors, DIP Agent, DIP Lender, and each of their respective successors and assigns.

5.7 Restrictions on Cash Collateral Use; Additional Financing; Plan Treatment.

(a) All post-petition advances and other financial accommodations under the DIP Term Sheet and the other DIP Documents are made in reliance on the Interim Orders and there shall not at any time be entered in the Chapter 11 Cases, or in any Successor Case, any order (other than the Final Order) which authorizes the use of Cash Collateral, or the sale, lease, or other disposition of property of any Estate in which DIP Agent or DIP Lender have a lien or security interest, except as expressly permitted hereunder or in the DIP Documents, or authorizes under section 364 of the Bankruptcy Code the obtaining of credit or the incurring of indebtedness secured by a lien or security interest which is equal or senior to a lien or security interest in property in which DIP Agent or DIP Lender hold a lien or security interest, or which is entitled to priority administrative claim status which is equal or superior to that granted to DIP Agent and DIP Lender herein; unless, in each instance (x) DIP Agent shall have given its express prior written consent with respect thereto, no such consent being implied from any other action, inaction or acquiescence by DIP Agent or DIP Lender, or (y) such other order requires Repayment in Full. The security interests and liens granted to or for the benefit of DIP Agent and DIP Lender hereunder and the rights of DIP Agent and DIP Lender pursuant to the Interim Orders and the DIP Documents with respect to the DIP Obligations and the DIP Collateral are cumulative.

(b) All DIP Obligations and Prepetition Obligations shall receive treatment under the Plan as set forth in the RSA, Plan Term Sheet, and DIP Term Sheet.

5.8 No Owner/Operator Liability. In determining to make any loan under the DIP Documents (including the negotiation thereof) and authorizing the use of Cash Collateral,

none of the DIP Secured Parties or the Prepetition Secured Parties shall be deemed to (i) be in control of the operations of the Debtors or to be acting as a “controlling person,” “responsible person,” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the Internal Revenue Code, the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended, or any similar federal or state statute) or (ii) owe any fiduciary duty to any of the Debtors. Furthermore, nothing in the Interim Orders shall in any way be construed or interpreted to impose or allow the imposition upon any of the DIP Secured Parties or the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their respective affiliates (as defined in section 101(2) of the Bankruptcy Code).

5.9 Marshalling; 552(b) Waiver. Subject to entry of the Final Order, (a) none of the DIP Secured Parties or the Prepetition Secured Parties shall be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral, as applicable, and all proceeds of DIP Collateral shall be received and applied in accordance with the DIP Documents and the Prepetition Credit Agreements as applicable, (b) the DIP Secured Parties and the Prepetition Secured Parties are and shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and (c) the “equities of the case” exception under section 552(b) shall not apply to any of the Prepetition Secured Parties, DIP Secured Parties, DIP Obligations, or Prepetition Obligations.

5.10 Right of Setoff. To the extent any funds were on deposit with Prepetition Agent as of the Petition Date, including, without limitation, all funds deposited in, or credited to, an account of any Debtor with Prepetition Agent or Prepetition Lender immediately prior to the

filing of the Chapter 11 Cases (regardless of whether, as of the Petition Date, such funds had been collected or made available for withdrawal by any such Debtor), such funds (the “*Deposited Funds*”) are subject to rights of setoff. By virtue of such setoff rights, the Deposited Funds are subject to a lien in favor of Prepetition Agent and/or Prepetition Lender, as applicable, pursuant to §§ 506(a) and 553 of the Bankruptcy Code.

5.11 Right to Credit Bid.

(a) To the fullest extent permitted by section 363(k) of the Bankruptcy Code, in connection with any sale or other disposition of the DIP Collateral or Prepetition Collateral (as applicable) including any Sale: (a) DIP Agent (on behalf of DIP Lender) shall have the right to credit bid on a dollar-for-dollar basis, in accordance with the DIP Documents, up to the full amount of the DIP Obligations, (b) subject to the challenge rights set forth in Section 4.1 hereof, Prepetition Agent (on behalf of the Prepetition Lender) shall have the right to credit bid, in accordance with the Prepetition Loan Documents, up to the full amount of the Prepetition Secured Obligations, (c) each of the DIP Agent and Prepetition Agent shall have the absolute right (at the direction of their respective secured parties) to assign, transfer, sell or otherwise dispose of its rights to credit bid in connection with the assignment, transfer, sale, or disposition of the corresponding DIP Obligations, except as may be set forth in the DIP Documents, and (d) each of the Debtors, the Prepetition Secured Parties, and DIP Secured Parties acknowledge and agree that they shall not object, or support any objection, to or limit, or support any limitation on, any other such DIP Secured Parties’ or Prepetition Secured Parties’ rights to credit bid, up to the full amount of their respective DIP Obligations and/or Prepetition Obligations,

5.12 Payment and Review of Lender Professional Fees and Expenses. Each Debtor shall pay all reasonable and documented professional fees and other expenses of the

Prepetition Secured Parties and the DIP Secured Parties, whether incurred before or after the Petition Date; provided, that the Debtors shall pay all such reasonable and documented fees and expenses within ten (10) business days of delivery of a statement or invoice for such fees and expenses (it being understood that such statements or invoices may be in summary form and shall not be required to be maintained in accordance with the U.S. Trustee Guidelines, nor shall any such counsel or other professional be required to file any interim or final fee applications with the Court or otherwise seek the Court's approval of any such payments) to the Debtors, the U.S. Trustee and the Committee, unless, within such seven (7) business day period, the Debtors or the Committee serve a written objection upon the requesting party, in which case, the Debtors shall immediately pay such amounts that are not the subject of any objection and pay the withheld amount as subsequently agreed by the parties or ordered by the Court to be paid.

5.13 Access to DIP Collateral. Notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of DIP Agent and DIP Lender contained in the Interim Orders, the DIP Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Term Sheet, upon reasonable prior written notice to the landlord of any leased premises that an Event of Default has occurred and is continuing, DIP Agent may, subject to the applicable notice provisions, if any, in this Second Interim Order and any separate applicable agreement by and between such landlord and DIP Agent, enter upon any leased premises of the Debtors or any other party for the purpose of exercising any remedy with respect to DIP Collateral located thereon and shall be entitled to all of the Debtors' rights and privileges as lessee under such lease without interference from the landlords thereunder, provided that DIP Agent shall be obligated only to pay rent of the Debtors that first accrues after the written notice referenced above and that is payable during the period of such occupancy by DIP Agent, calculated on a daily per



diem basis. Nothing herein shall require DIP Agent to assume any lease as a condition to the rights afforded in this paragraph. For the avoidance of doubt, subject to (and without waiver of) the rights of DIP Agent under applicable nonbankruptcy law, DIP Agent can only enter upon a leased premises after an Event of Default in accordance with (i) a separate agreement with the landlord at the applicable leased premises, or (ii) upon entry of an order of the Court obtained by motion of DIP Agent on such notice to the landlord as shall be required by the Court.

5.14 Indefeasible Payment. All payments made to or for the benefit of any of the DIP Secured Parties or Prepetition Secured Parties after the Petition Date shall be indefeasible and shall not be subject to disgorgement, counterclaim, set-off, subordination, recharacterization, defense, disallowance, recovery or avoidance by any party for any reason except as may occur pursuant to application of Section 4.1 of the applicable Interim Orders, Reservation of Third-Party Challenge Rights.

5.15 Term; Termination. Notwithstanding any provision of the Interim Orders to the contrary, the term of the financing arrangements among the Debtors, DIP Agent and DIP Lender authorized by this Second Interim Order may be terminated pursuant to the terms of the DIP Term Sheet.

5.16 Limited Effect. In the event of a conflict between the terms and provisions of any of the DIP Documents, the Motion, and this Second Interim Order, the terms and provisions of this Second Interim Order shall govern.

5.17 Objections Overruled. All objections to the entry of this Second Interim Order are (to the extent not withdrawn, waived, or settled) hereby overruled.

5.18 Retention of Jurisdiction. The Court retains jurisdiction and power with respect to all matters arising from or related to the implementation or interpretation of this Second Interim Order, the DIP Term Sheet, and the other DIP Documents.

Section 6. Final Hearing and Objection Deadline.

The Final Hearing on the Motion pursuant to Bankruptcy Rule 4001(c)(2) is scheduled for June 13, 2024 at 9:30 a.m. (Central Time) before the Court. The Debtors shall promptly mail copies of this Second Interim Order to the Notice Parties, and to any other party that has filed a request for notices with the Court and to the Committee’s counsel. Such notice is deemed good and sufficient and that no further notice need be given. The Committee shall have until June 11, 2024, at 5:00 p.m. (Central Time) to serve and file written objections (the “*Committee Objection Deadline*”).

**### End of Order ###**

**Order submitted by:**

**VINSON & ELKINS LLP**

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**PROPOSED ATTORNEYS FOR  
THE DEBTORS AND DEBTORS IN POSSESSION**

**EXHIBIT A**

**DIP Term Sheet**

**KIDKRAFT, INC.**

**Priming Superpriority Debtor-In-Possession Financing  
Term Sheet**

**Dated as of April 25, 2024**

This Priming Superpriority Debtor-in-Possession Financing Term Sheet (including all schedules, annexes and exhibits hereto, this “**Term Sheet**”) describes the principal terms and conditions of a proposed DIP Facility to be provided by the DIP Lender to the Borrower in connection with cases (collectively, the “**Chapter 11 Cases**”) to be filed by the Debtors in the United States Bankruptcy Court for the Northern District of Texas (the “**Bankruptcy Court**”) pursuant to chapter 11 of title 11 of the United States Code (as amended, the “**Bankruptcy Code**”) on or around May 6, 2024 (the date of filing, the “**Petition Date**”) and proceedings to be commenced pursuant to Part IV of the *Companies’ Creditors Arrangement Act* (Canada) (“**CCAA**” and the related recognition proceedings, the “**CCAA Recognition Proceedings**”) in the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**”).

The parties contemplate the sale of the Debtors’ assets to Backyard Products, LLC or its designee (the “**Backyard Sale**”) pursuant to that certain Asset Purchase Agreement (the “**APA**”) dated as of the date hereof between KidKraft, Inc., and certain of its affiliates and Backyard Products, LLC (the “**Purchaser**”) and an orderly wind down pursuant to a chapter 11 plan (the “**Plan**”) to be consummated in the Chapter 11 Cases pursuant to that certain Restructuring Support Agreement to which this Term Sheet is attached (the “**RSA**”) and the Plan Term Sheet attached thereto (the “**Plan Term Sheet**”).

This Term Sheet is being provided on a confidential basis and it, along with its contents and existence, may not be distributed, disclosed or discussed with any other party. This Term Sheet is not an offer for the purchase, sale or subscription or invitation of any offer to buy, sell or to subscribe for any securities. The terms and conditions set forth in this Term Sheet do not constitute or create an agreement, obligation or commitment of any kind by or on behalf of any party, unless and until executed by each of the undersigned parties hereto.

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| <b>BORROWER:</b>       | KidKraft, Inc. (“ <b>KidKraft</b> ” or “ <b>Borrower</b> ”)  |
| <b>GUARANTORS:</b>     | The affiliates of KidKraft listed on Schedule 1 hereto (such affiliates and KidKraft, Inc., each a “ <b>Debtor</b> ” and collectively, the “ <b>Debtors</b> ”), as may be modified with the consent of the DIP Agent and any additional guarantor. |
| <b>DIP LENDER:</b>     | 1903 Partners, LLC (the “ <b>DIP Lender</b> ”)   |
| <b>DIP AGENT:</b>      | GB Funding, LLC (the “ <b>DIP Agent</b> ”, and together with the DIP Lender, the “ <b>DIP Secured Parties</b> ”)   |
| <b>DIP COMMITMENT:</b> | The DIP Lender agrees to make senior secured superpriority priming debtor-in-possession loans (each, a “ <b>DIP Loan</b> ” and   |

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|                                    | <p>in the aggregate, the “<b>DIP Loans</b>”) to Borrower from time to time pursuant to a multi-draw debtor-in-possession term loan facility (the “<b>DIP Facility</b>”) in an aggregate amount (i) not to exceed at any time outstanding aggregate commitments of \$10.5 million (the “<b>DIP Commitment</b>”) consisting of a \$4.0 million DIP Commitment as of the Interim Closing Date (the “<b>Interim Commitment</b>”) and an incremental \$6.5 million DIP Commitment as of the Final Closing Date (the “<b>Final Commitment</b>”) <i>plus</i> (ii) the Roll-Up Amount.</p>  |
| <b>PURCHASE PRICE CALCULATION:</b> | <p>Every Wednesday beginning the first full calendar week following the Petition Date, the Debtors shall deliver an updated calculation of the “Purchase Price at close” in accordance with Exhibit B of the APA as though the Backyard Sale was closing on such date (each such calculation, a “<b>Purchase Price Calculation</b>”) to the DIP Agent and the Purchaser. If the aggregate “Purchase Price at close” in any such Purchase Price Calculation is 20% or more below the Example Purchase Price Calculation set forth in the Exhibit B of the APA, it shall be deemed a “<b>Negative Purchase Variance.</b>”</p>   |
| <b>ROLL UP:</b>                    | <p>Upon entry of the Interim Order, \$23.3 million of the Prepetition Obligations shall be “rolled up” and converted into DIP Loans on a dollar-for-dollar cashless basis (the “<b>Roll-Up Amount</b>”).</p>  |
| <b>CASH COLLATERAL:</b>            | <p>“<b>Cash Collateral</b>” consists of: (i) cash collateral (as such term is defined in section 363(a) of the Bankruptcy Code, including, without limitation, any accounts receivable and general intangible and any other cash or right that would be included in such definition of “cash collateral” within the meaning of section 363(a) of the Bankruptcy Code) including, without limitation, all cash or cash equivalents and other amounts, including the cash in any deposit or securities accounts, wherever located; (ii) any cash or cash equivalents received as proceeds of Prepetition Collateral or DIP Collateral; and (iii) all other cash or cash equivalents of the Debtors.</p> <p>Subject to the terms of the DIP Documents, the Prepetition Secured Parties (as defined below) shall consent to the Debtors’ use of Cash Collateral during the Chapter 11 Cases and CCAA Recognition Proceedings to fund (i) working capital, (ii) general corporate purposes, (iii) restructuring costs and expenses, and (iv) any other fees required under the DIP Documents and the other definitive documentation during the pendency of the Chapter 11 Cases and CCAA Recognition</p> |

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|                                       | <p>Proceedings, in each case, subject to the Approved Budget (as defined below), including the Permitted Variances.</p> <p>To the extent any amounts required to be funded under this Term Sheet, the DIP Documents, the RSA, the Plan, or the APA or any other document or order (including the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount, Post-Sale Reserve, and Foreign Sale Reserve) are not actually expended, such amounts shall be deemed Cash Collateral and distributed to the DIP Agent or Prepetition Agent, as applicable.</p>   |
| <p><b>CLOSING DATES:</b></p>          | <p>“<b>Interim Closing Date</b>” means the date on which the “Conditions Precedent to Each Interim DIP Loan” (including, without limitation, entry of the Interim Order) are satisfied or waived in accordance with this Term Sheet.</p> <p>“<b>Final Closing Date</b>” means the date on which the “Conditions Precedent to Each Final DIP Loan” as set forth below (including, without limitation, entry of the Final Order) shall have been satisfied or waived in accordance with this Term Sheet.</p>  |
| <p><b>DIP LOAN DOCUMENTATION:</b></p> | <p>At the option of the DIP Lender in its sole discretion, Debtors shall execute definitive financing documentation with respect to the DIP Loans, including, without limitation, all guaranties thereof, satisfactory in form and substance to each of the DIP Lender and Debtors (and together with this Term Sheet and other documents governing the DIP Facility, the “<b>DIP Documents</b>”). The provisions of the DIP Documents shall, upon execution, supersede the provisions of this Term Sheet. The provisions of the DIP Documents shall be substantially the same as the Prepetition Loan Documents with such changes as are necessary to reflect the terms of this Term Sheet, the DIP Orders and the Canadian DIP Recognition Orders (once entered).</p> <p>“<b>Canadian DIP Recognition Orders</b>” shall mean, as applicable, an order (after hearing on notice to all parties having or asserting a lien on all or any portion of the DIP Collateral situated in Canada), recognizing and giving effect in Canada to: (i) the Interim Order (the “<b>Interim DIP Recognition Order</b>,” and together with the Interim Order, the “<b>Interim Orders</b>”), and (ii) the Final Order (the “<b>Final DIP Recognition Order</b>” and together with the Final Order, the “<b>Final Orders</b>”).</p> |

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|  | <p>In addition to the provisions set forth herein, the DIP Orders and the Canadian DIP Recognition Orders shall contain additional customary protections for the DIP Lenders. Each of the parties’ rights and obligations hereunder shall be subject to entry of the DIP Orders and the Canadian DIP Recognition Orders.</p>  |
| <p><b>ACKNOWLEDGMENT;<br/>                 RATIFICATION:</b></p> | <p>Each Debtor hereby acknowledges, confirms, and agrees that:</p> <p>(i) as of the Petition Date, the Debtors are jointly and severally indebted under and in connection with that certain <i>Amended and Restated First Lien Credit Agreement</i> dated as of April 3, 2020, among KidKraft and KidKraft Netherlands B.V. as borrowers, KidKraft Intermediate Holdings, LLC (“<b>Holdings</b>”), the subsidiaries of Holdings that are guarantors thereto (collectively, with Holdings, the “<b>Guarantors</b>”) GB Funding, LLC in its capacity as administrative agent and collateral agent (the “<b>Prepetition Agent</b>”), and 1903 Partners, LLC in its capacity as Lender (the “<b>Prepetition Secured Lender</b>”, and together with the Prepetition Agent, the “<b>Prepetition Secured Parties</b>”) (as may be amended, supplemented or otherwise modified from time to time, the “<b>Prepetition Credit Agreement</b>”, and together with all related security agreements, collateral agreements, pledge agreements, control agreements, guarantees, the “<b>Prepetition Loan Documents</b>”) in the aggregate principal amount of not less than \$144.9 million (together with any other amounts outstanding under the Prepetition Credit Agreement, including interest costs, expenses, indemnification obligations, and fees (including attorneys’ fees and legal expenses) (collectively, the “<b>Prepetition Obligations</b>”));</p> <p>(ii) the Prepetition Obligations constitute the legal, valid and binding obligations of each Debtor enforceable against it in accordance with the terms thereof, and each Debtor has no valid defense, offset or counterclaim to the enforcement of such obligations;</p> <p>(iii) the Prepetition Obligations are secured by valid, enforceable and perfected (except, in the case of perfection, for (A) Excluded Accounts and (B) commercial tort claims, letter of credit rights, certificate of title vehicles, and other assets, in each case of this clause (B), to the extent expressly excluded from the requirement to perfect liens thereon pursuant to the Prepetition Loan Documents) first priority and senior security interests in and liens (subject in priority only to those “Liens” permitted under Section 7.01 of the</p> |



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|                                 | <p>Prepetition Credit Agreement (the “<b>Prepetition Permitted Liens</b>”) and the DIP Liens) upon all of the Debtors’ assets and property other than Excluded Assets, Excluded Receivables and Consumer Goods (as each such term is defined in the Prepetition Credit Agreement) (collectively, the “<b>Prepetition Collateral</b>”), including Cash Collateral;</p> <p>(iv) each of the Prepetition Loan Documents to which it is a party was duly executed and delivered by such Debtor, and each is in full force and effect as of the date hereof;</p> <p>(v) the Prepetition Secured Parties are and shall be entitled to all of the rights, remedies and benefits provided for in the Prepetition Loan Documents and the DIP Orders; and</p> <p>(vi) all of the terms and conditions of the Prepetition Loan Documents, as amended and supplemented pursuant hereto and pursuant to the DIP Orders and the Canadian DIP Recognition Orders, are ratified, restated, assumed, adopted and affirmed, and each Debtor agrees (a) to be fully bound, as debtor and debtor-in-possession, by the terms of the Prepetition Loan Documents to which such Debtor is a party, (b) to pay all of the Prepetition Obligations in accordance with the terms of such Prepetition Loan Documents and in accordance with the DIP Orders, and (c) each of the Prepetition Loan Documents are hereby incorporated herein by reference and hereby are and shall be deemed adopted and assumed in full by each Debtor, each as Debtor and debtor-in-possession, and considered as agreements between such Debtor, on the one hand, and the Prepetition Secured Parties on the other hand.</p> <p>The Interim Order and Final Order shall include typical acknowledgments regarding the validity and priority of the Prepetition Secured Parties and Prepetition Obligations.</p> |
| <p><b>CHALLENGE PERIOD:</b></p> | <p>The “ACKNOWLEDGMENT; RATIFICATION” section of this Term Sheet and portion of the “RELEASES” sections of this Term Sheet pertaining to the Prepetition Obligations, Prepetition Loan Documents, and Prepetition Secured Parties shall be subject to a typical “challenge period” (the “<b>Challenge Period</b>”) to be set forth in the Interim Order and Final Order, which Challenge Period shall expire prior to the date that the Plan is confirmed by the Bankruptcy Court.</p>   |

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| <p><b>CARVE-OUT:</b></p> | <p>“<b>Carve-Out</b>” shall mean the sum of:</p> <p>(i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code <i>plus</i> interest at the statutory rate;</p> <p>(ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code;</p> <p>(iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise all unpaid fees, costs, disbursements and expenses (the “<b>Allowed Professional Fees</b>”) incurred or earned by persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the “<b>Debtor Professionals</b>”) and the Committee (if any) pursuant to sections 328 or 1103 of the Bankruptcy Code (the “<b>Committee Professionals</b>,” and, together with the Debtor Professionals, the “<b>Professional Persons</b>”) at any time on or before the first business day following delivery by the DIP Lender to the Debtors of a Carve-Out Trigger Notice (as defined in the Interim Order and Final Order), but shall not include any restructuring, sale, transaction or other “success” fee except for such fee earned by Robert W. Baird &amp; Co. Inc. in its capacity as investment banker to the Debtors during such time;</p> <p>(a) Commencing on the Friday of the first full calendar week following the Petition Date and on a weekly basis thereafter, the DIP Secured Parties shall loan and the Debtors shall fund, using borrowings from the DIP Facility or cash on hand, a segregated account (the “<b>Funded Reserve Account</b>”) held by the Debtors in trust for the benefit of the Debtor Professionals in an amount equal to the amount of applicable Professional Fees set forth in the Approved Budget, subject to the objection procedures herein in the “Debtor Professional Budget and Reporting” section.</p> <p>(iv) Allowed Professional Fees of the Professional Persons in an aggregate amount not to exceed \$150,000 accrued after the first business day following delivery by the DIP Agent of a Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, final order, or otherwise; and</p> <p>(v) an amount up to the amount secured by and necessary to fund the Administration Charge (as defined below) for the</p> |
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|   | <p>beneficiaries thereof (without duplication) in the CCAA Recognition Proceedings.</p>   |
| <p><b>USE OF PROCEEDS:</b></p>  | <p>Proceeds of the DIP Loans (and Cash Collateral) will be used solely in accordance with the Approved Budget (as defined below) for (a) working capital and general corporate purposes of the Debtors, (b) restructuring costs and expenses, (c) costs and expenses related to the DIP Facility, (d) payment of interest on the DIP Loans, and (e) other costs to ensure consummation of the Plan.</p> <p>Neither proceeds of the DIP Loans nor any Cash Collateral shall be used (i) to permit the Borrower, the Guarantors or any other party-in-interest or any of their representatives to challenge or otherwise contest or institute any proceeding to determine (x) the validity, perfection or priority of security interests in favor of any of the DIP Secured Parties or the Prepetition Secured Parties, or (y) the enforceability of the obligations of the Debtors under the DIP Documents or the Prepetition Loan Documents, (ii) to investigate, commence, prosecute or defend any claim, motion, proceeding or cause of action against any of the DIP Secured Parties or the Prepetition Secured Parties, each in such capacity, and their respective agents, attorneys, advisors or representatives.</p>   |
| <p><b>APPROVED BUDGET; APPROVED CASH FLOW PROJECTION; AND VARIANCE REPORTS:</b></p> | <p>By no later than two (2) Business Days before the Petition Date, Debtors shall deliver to the DIP Lender a weekly budget for the 9-week period commencing on the Petition Date, and such weekly budget shall be approved by the DIP Lender and the Purchaser (such consent, which shall not be unreasonably withheld, conditioned, or delayed, other than line items of the budget pertaining to the Reimbursement Amounts (as defined in the APA) or which impact the Purchase Price (as defined in the APA), for which such consent shall be in the discretion of the Purchaser) and shall set forth, among other things, all projected cash receipts, sales, and cash disbursements, a copy of which is attached as <b><u>Exhibit A</u></b> hereto (the “<b>Approved Budget</b>”).</p> <p>Commencing on the Monday of the first full calendar week after the Petition Date at 5:00 p.m. (Central Time) and continuing on the two (2)-week anniversary thereafter (or such other time as the Debtors may elect with the consent of the DIP Lender), the weekly budget shall be updated, and if such updated budget is in form and substance satisfactory to the DIP Lender and the Purchaser (such consent, which shall not be unreasonably withheld, conditioned, or delayed, other</p> |

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|  | <p>than line items of the budget pertaining to the Reimbursement Amounts or which impact the Purchase Price, for which such consent shall be in the discretion of the Purchaser), it shall become the “Approved Budget” for purposes of this Term Sheet and the DIP Orders. Commencing on the Wednesday of the first full calendar week after the Petition Date at 5:00 p.m. (Central Time), and on a weekly basis thereafter (or at such other times as the Debtors may elect with the consent of the DIP Lender) the Debtors shall deliver to the DIP Lender a variance report in form and substance reasonably acceptable to the DIP Lender (an “<b>Approved Variance Report</b>”) showing comparisons of actual results for each line item against such line item in the Approved Budget. Thereafter, Debtors shall deliver to the DIP Lender, an Approved Variance Report on a weekly basis for (a) the preceding week, and (b) the trailing four (4) week period (or, if fewer than four (4) weeks have lapsed since the Petition Date, then for the trailing one, two or three week period, as applicable).</p> <p>Each Approved Variance Report shall indicate whether there are any adverse variances that exceed any of the Permitted Variances.</p> <p>“<b>Permitted Variances</b>” shall mean variances: (a) up to 15% of the aggregate for all cash disbursements (other than fees and expenses of counsel to the DIP Secured Parties and Professional Persons) line-items in the Approved Budget, (b) less than 20% of the aggregate for all cash receipts in the Approved Budget, and (c) up to 15% of all fees and expenses incurred on a per-Professional Person basis (the “<b>Professional Fee Variance</b>”) in each case calculated weekly on a rolling four (4) week basis commencing as of the Petition Date, with the first such testing to begin three (3) weeks from the Petition Date, except that the Professional Fee Variance shall be calculated weekly and not on a rolling four (4) week basis. Any amendments, supplements or modifications to the Approved Budget or an Approved Variance Report shall be subject to the prior written approval of the DIP Lender in its sole discretion prior to the implementation thereof.</p> <p>Other than as set forth below in the “Debtor Professional Budgeting and Reporting” section of this term sheet, if any Professional Person exceeds the Professional Fee Variance, such Professional Person will, if requested by the DIP Lender within two (2) Business Days of receipt of such adverse variance report, make a representative available to meet and</p> |
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|   | <p>confer with the DIP Lender as soon as practicable and no later than two (2) Business Days after delivery of such Approved Variance Report, to discuss a good faith modification to the Approved Budget (the “<b>Meet and Confer</b>”). If the DIP Lender and such Professional Person cannot mutually agree on a modification following the Meet and Confer, the DIP Lender may, in its sole discretion, declare an Event of Default, consistent with the provisions herein.</p> <p>To the extent the amount of actual fees and expenses of any Professional Person is less than the amount set forth in the Approved Budget on a weekly basis, such amount for such Professional Person may be rolled forward to increase the amount available to the applicable Professional Person in any subsequent week.</p>   |
| <p><b>DEBTOR PROFESSIONAL BUDGETING AND REPORTING</b></p> | <p>Notwithstanding anything to the contrary herein, the following requirements shall apply to each Debtor Professional.</p> <p>(i) Commencing on the Monday of the first full calendar week after the Petition Date and continuing weekly thereafter, each Debtor Professional shall submit a report of the prior week’s accrued fees and expenses to the DIP Agent (the “<b>Debtor Professional Report</b>”).</p> <p>(ii) The DIP Agent shall review the Debtor Professional Reports, may test the accrued fees and expenses in the Debtor Professional Report against the Professional Fee Variance, and must submit a written objection (if any) to the applicable Debtor Professional no later than two (2) Business Days following delivery of the Debtor Professional Report (the “<b>Review Period</b>”).</p> <p>(a) If the DIP Agent does not submit a written objection at the close of the Review Period, the Debtors shall fund the full amount of accrued fees and expenses in such Debtor Professional Report into the Funded Reserve Account.</p> <p>(b) If the DIP Agent submits a written objection to the Debtor Professional Report prior to the end of the Review Period, the DIP Agent and the applicable Debtor Professional shall conduct a Meet and Confer within two (2) Business Days.</p> <p>(c) At the conclusion of the Meet and Confer, if the DIP Agent elects to declare an Event of Default, the Debtors</p> |

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|   | <p>shall only fund an amount not to exceed 150% of such Debtor Professional’s budgeted amount as set forth in the Approved Budget for the period covered by such Debtor Professional Report. For the avoidance of doubt, any Event of Default or other action taken by the DIP Agent shall not impact any amounts previously funded in the Funded Reserve Account in compliance with the procedures herein.</p> <p>For the avoidance of doubt, the DIP Agent’s request for a Meet and Confer shall not (in and of itself absent an Event of Default declaration) impact any terms of the DIP Documentation, including any subsequent reporting and testing as set forth herein, nor the DIP Secured Parties’ obligations to loan and the Debtors’ obligations to fund the Funded Reserve Account in accordance with the DIP Term Sheet after a Meet and Confer is requested.</p>  |
| <p><b>ADMINISTRATIVE EXPENSE CLAIM, PRIORITY TAX CLAIM, AND OTHER PRIORITY CLAIM BACKSTOP AMOUNT:</b></p> | <p>The amount, to be agreed upon by the Debtors and both the DIP Lender and Backyard Products, LLC, each in its sole discretion, and funded by cash on hand of the Debtors and the proceeds of the DIP Facility prior to the Confirmation Date, sufficient to satisfy the agreed upon estimated amount of the Allowed Administrative Expense Claims, Allowed Priority Tax Claims, and Allowed Other Priority Claims excluding Allowed Professional Fee Claims; <i>provided, that</i> in no event will the DIP Lender’s obligation to provide such funding exceed the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount (as defined and set forth in the Plan).</p>   |
| <p><b>FIRST PRIORITY SECURITY INTEREST:</b></p>   | <p>All DIP Loans and other liabilities and obligations of Debtors to the DIP Secured Parties under or in connection with this Term Sheet, the DIP Documents, and the DIP Orders (collectively, the “<b>DIP Obligations</b>”) shall be:</p> <p>(i) pursuant to section 364(c)(1) of the Bankruptcy Code, constitute an allowed superpriority administrative expense claim (the “<b>DIP Superpriority Claim</b>”) in the Chapter 11 Cases of the Debtors with priority over any and all administrative expenses, whether heretofore or hereafter incurred, of the kind specified in sections 503(b) or 507(a) of the Bankruptcy Code but shall be subject to the Carve-Out and, shall be payable from the proceeds of DIP Collateral;</p> <p>(ii) pursuant to sections 364(c)(2), secured by a perfected first priority lien on the DIP Collateral, to the extent that such DIP</p> |

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|  | <p>Collateral is not subject to valid, perfected, and non-avoidable liens as of the Petition Date (but in all cases subject to the Carve-Out);</p> <p>(iii) pursuant to section 364(c)(3), secured by a perfected junior lien on DIP Collateral (as defined below), to the extent such DIP Collateral is subject to a Permitted Lien;</p> <p>(iv) pursuant to section 364(d) of the Bankruptcy Code, secured by the DIP Liens, which shall constitute a perfected, senior secured superpriority priming security interest and lien on the DIP Collateral (but in all cases subject to the Carve-Out); and</p> <p>(v) pursuant to the Canadian DIP Recognition Orders, secured by a super-priority CCAA Court-ordered charge upon DIP Collateral which is property of a Debtor formed under the laws of Canada (the “<b>Canadian Debtors</b>”) or DIP Collateral situated in Canada (all such collateral, the “<b>Canadian Collateral</b>”).</p> <p>For clarity, all existing liens, including the liens granted in connection with the Prepetition Loan Documents shall be primed and made subject to and subordinate to the DIP Liens.</p> <p>The DIP Liens shall not be <i>pari passu</i> with or subordinated to any other liens or security interests (whether currently existing or hereafter created), except (i) the Carve-Out, (ii) such liens or interests expressly agreed upon in writing by the DIP Agent in its sole discretion, (iii) with respect to the Canadian Collateral, (A) the super-priority administration charge to be established by the CCAA Court on the Canadian Collateral in the Supplemental Order (Foreign Main Proceeding) as security for the professional fees and disbursements of Canadian counsel to the Debtors, the information officer appointed by the CCAA Court in the CCAA Recognition Proceedings (the “<b>Information Officer</b>”) and legal counsel to the Information Officer incurred in respect of the CCAA Recognition Proceedings in an amount not to exceed C\$750,000 (the “<b>Administration Charge</b>”), and (B) the super-priority charge to be established by the CCAA Court on the Canadian Collateral in the Supplemental Order (Foreign Main Proceeding), securing an indemnity by KidKraft and the Canadian Debtors in favor of their directors and officers against certain Canadian obligations or liabilities that they may incur as directors and officers of KidKraft and the Canadian Debtors on or after the commencement of the</p> |
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|   | <p>CCAA Recognition Proceedings in an amount not to exceed C\$100,000 (the “<b>Directors’ Charge</b>, and together with the Administration Charge, the “<b>Canadian Priority Charges</b>”) or (iv) such priming liens or interests imposed by applicable non-bankruptcy law and disclosed to the DIP Agent prior to the entry of the Interim Order, are in existence as of the Petition Date, and otherwise unavoidable (collectively, the “<b>Permitted Liens</b>”). For the avoidance of doubt, the Permitted Liens shall not include any liens which are junior in priority to the liens held by the Prepetition Secured Parties.</p>   |
| <p><b>GRANT OF SECURITY INTEREST:</b></p> | <p>As collateral security for the prompt performance, observance, and payment in full of the DIP Obligations, each Debtor, as debtor and debtor-in-possession, hereby grants, pledges, and assigns to the DIP Agent, for the benefit of the DIP Lender, continuing security interests in and liens upon, and rights of setoff against, all of the DIP Collateral (the “<b>DIP Liens</b>”).</p> <p>As collateral security for the prompt performance, observance, and payment in full of the Adequate Protection Superpriority Claim (as defined below), each Debtor, as debtor and debtor-in-possession, hereby grants, pledges, and assigns to Prepetition Agent, for the benefit of the Prepetition Secured Lender, continuing security interests in and liens upon, and rights of setoff against, all of the DIP Collateral (the “<b>Replacement Lien</b>”).</p>  |
| <p><b>ADEQUATE PROTECTION:</b></p>        | <p>As adequate protection for any diminution of the Prepetition Secured Parties’ interest in the Prepetition Collateral resulting from the use of Cash Collateral, the subordination of their existing liens to the DIP Liens, and the imposition of the Carve-Out, the Prepetition Secured Parties shall receive:</p> <p>(i) pursuant to sections 361, 363(e), and 364(d)(l) of the Bankruptcy Code, the Replacement Lien, which shall be subject and subordinated only to the Carve-Out, the DIP Liens, and the Permitted Liens;</p> <p>(ii) an administrative expense claim, junior and subordinate only to the Carve-Out and the DIP Superpriority Claim with priority over any and all other administrative expenses (the “<b>Adequate Protection Superpriority Claim</b>”); and</p> <p>(iii) payment of all reasonable, documented out-of-pocket costs and expenses of the Prepetition Secured Parties relating to the DIP Facility, the Debtors’ Chapter 11 Cases, and the CCAA Recognition Proceedings (including, without</p> |



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|                               | <p>limitation, prepetition and post-petition reasonable and documented fees and disbursements of counsel and advisors).</p> <p>Such adequate protection shall in all cases be subject to the Carve-Out and shall be entitled to the full protections of Section 507(b) of the Bankruptcy Code and shall be payable from Avoidance Actions upon entry of the Interim Order.</p> <p>The Prepetition Secured Parties reserve all rights with respect to additional adequate protection, including adequate protection payments substantially equal to interest on the Prepetition Obligations.</p>  |
| <p><b>DIP COLLATERAL:</b></p> | <p>“<b>DIP Collateral</b>” means, collectively, all assets and property (whether tangible, intangible, real, personal or mixed), wherever located, whether now owned or owing to, or hereafter acquired by, or arising in favor of each Debtor and its respective chapter 11 estate, and any and all proceeds therefrom, including, without limiting the generality of the foregoing, all cash, Cash Collateral, accounts, accounts receivable, inventory, property, plant and equipment, real estate, leaseholds, equity interests, intellectual property, and upon entry of the Final Order, avoidance actions under chapter 5 of the Bankruptcy Code and proceeds thereof (collectively, the “<b>Avoidance Actions</b>”).</p> <p>For the avoidance of doubt, any amounts paid by Purchaser to the Debtors in the event of a breach or termination of the APA shall be Cash Collateral.</p> <p>The DIP Collateral shall also include any rents, issues, products, proceeds, and profits generated by any item of DIP Collateral, without the necessity of any further action of any kind or nature by the DIP Agent in order to claim or perfect such rents, issues, products, or proceeds.</p> <p>The Debtors shall take all action that may be reasonably necessary or desirable or that the DIP Agent may reasonably request, to at all times maintain the validity, perfection, enforceability and priority of the security interest and liens of the DIP Agent in the DIP Collateral, or to enable the DIP Agent to protect, exercise or enforce its rights hereunder, under the DIP Orders, the Canadian DIP Recognition Orders and in the DIP Collateral.</p> |
| <p><b>DIP FEES:</b></p>       | <p>The Debtors shall pay the (A) DIP Lender (i) an origination fee of 2.00% of the DIP Commitment, which shall be fully</p>  |

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|                       | earned and non-refundable on the Interim Closing Date, and shall be paid from the proceeds of the initial funding of DIP Loans, and (ii) an exit fee of 2.00% of the DIP Commitment, which shall be fully earned and non-refundable upon consummation of the Plan and (B) the DIP Agent, a weekly administrative fee of \$7,500.   |
| <b>INTEREST RATE:</b> | The interest rate on the DIP Loans shall be a rate per annum equal to Adjusted Term SOFR for an Interest Period (as such terms are defined in the Prepetition Credit Agreement) of one month plus 8.50%. Interest shall be paid at the end of each Interest Period in cash, using Cash Collateral or proceeds of the DIP Loans. On the last day of each Interest Period the interest rate on the outstanding DIP Loans will be automatically deemed continued at Adjusted Term SOFR for an Interest Period of one month determined as of such date. Interest shall be paid monthly on the DIP Loans in cash, using Cash Collateral or proceeds of the DIP Loans.   |
| <b>DEFAULT RATE:</b>  | At all times following the occurrence and during the continuance of an Event of Default, principal, interest and other amounts due on the DIP Loans shall bear interest at a rate equal to the “Interest Rate” section above <i>plus</i> 3.00%.  |
| <b>MATURITY DATE:</b> | The DIP Loans (together with all other DIP Obligations) shall mature and be due and payable on the earliest to occur of the following (such date, the “ <b>Maturity Date</b> ”):<br><br>(i) the date that is sixty (60) days after the Petition Date (the “ <b>Outside Date</b> ”), which may be extended in the sole discretion of the DIP Lender;<br><br>(ii) the date which is thirty (30) days following the entry of the Interim Order if the Bankruptcy Court has not entered the Final Order on or prior to such date;<br><br>(iii) the date of the Debtors’ receipt of notice of the acceleration of any of the DIP Loans and the termination of the commitments to make the DIP Loans resulting from the occurrence of an Event of Default (including, without limitation, the failure to meet any Chapter 11 Milestone set forth in the RSA (collectively, the “ <b>Chapter 11 Milestones</b> ”));<br><br>(iv) the effective date of the Plan; |

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|  | <p>(v) a sale of all or substantially all of the Debtors’ assets is consummated under Section 363 of the Bankruptcy Code (which for the avoidance of doubt shall include the Backyard Sale after the occurrence of the Sale Toggle (as defined in the Plan Term Sheet)); and</p> <p>(vi) the filing of a motion by the Debtors seeking dismissal or termination of any or all of the Chapter 11 Cases or the CCAA Recognition Proceedings, the dismissal or termination of any or all of the Chapter 11 Cases or the CCAA Recognition Proceedings, the filing of a motion by the Debtors seeking to convert any or all of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, the conversion of any or all of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code or entry of an order appointing a trustee under chapter 11 of the Bankruptcy Code, a responsible officer or examiner with enlarged powers relating to the operation of the Debtors’ business (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106 of the Bankruptcy Code, the making of an assignment in bankruptcy by or entry by any Canadian court of a bankruptcy order in respect of any of the Debtors under the <i>Bankruptcy and Insolvency Act</i> (Canada) (“<b>BIA</b>”), or the entry of an order of any Canadian court appointing a receiver under the BIA over any DIP Collateral, in each case without the prior written consent of the DIP Agent.</p> |
| <p><b>OPTIONAL PREPAYMENTS:</b></p>                              | <p>The Debtors may prepay the DIP Loans in whole or in part at any time without premium or penalty. All optional prepayments shall be applied to the DIP Loans in accordance with the Prepayment Waterfall set forth below. Any amounts so prepaid may not be reborrowed.</p>   |
| <p><b>MANDATORY PREPAYMENTS; APPLICATION OF PREPAYMENTS:</b></p> | <p>The Debtors shall pay or prepay the DIP Loans and all other DIP Obligations (together with a cash reserve established for the benefit of the DIP Agent to cover asserted contingent and indemnity obligations) in accordance with the Prepayment Waterfall, in each case after funding the Carve-Out, reserving proceeds sufficient to pay accrued and unpaid expenses to the extent set forth in the Approved Budget, and reserving for amount secured by and necessary to fund the Canadian Priority Charges (without duplication), upon receipt of any of the following (each, a “<b>Mandatory Prepayment Event</b>”):</p> <p>(i) net proceeds of any sale or disposition of all or substantially all of Debtors’ assets pursuant to section 363 of</p>   |

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|  | <p>the Bankruptcy Code simultaneous with the consummation thereof, other than the Backyard Sale.</p> <p>(ii) net proceeds of any other sale or other disposition by any Debtor of any assets, in a single transaction or series of related transactions, having a value in excess of \$10,000 (except for the sale of goods or services in the ordinary course of business, sales contemplated by the Approved Budget, and certain other sales to be agreed on); and</p> <p>(iii) 100% of the net proceeds of extraordinary receipts (including tax refunds, indemnity payments, pension reversions, acquisition purchase price adjustments and insurance proceeds not included as proceeds of asset dispositions) by any Debtor, excluding any tax refunds contemplated to be received by any of the Debtors as set forth in the Approved Budget.</p> <p>Any amounts so paid or prepaid may not be reborrowed. No reinvestment of the proceeds of any extraordinary receipts, asset sales or other proceeds described above shall be permitted without the prior written consent of the DIP Lender.</p> <p>All payments or prepayments and proceeds of DIP Collateral received by the Debtors outside the ordinary course of business (other than the Backyard Sale) will be applied in the following order of priority (the “<b>Prepayment Waterfall</b>” (unless otherwise determined by the DIP Lender in its sole discretion)), in each case after funding the Carve-Out, reserving proceeds sufficient to pay accrued and unpaid expenses to the extent set forth in the Approved Budget, and reserving for amount secured by and necessary to fund the Canadian Priority Charges (without duplication):</p> <p>(i) <i>first</i>, to pay all reasonable documented out-of-pocket expenses of the DIP Secured Parties (including, without limitation, reasonable and documented out-of-pocket fees and expenses of counsel and external advisors);</p> <p>(ii) <i>second</i>, to pay an amount equal to all accrued and unpaid interest (including, without limitation, any interest that accrued and was “paid in kind”) owing to the DIP Secured Parties;</p> |
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|  | <p>(iii) <i>third</i>, to repay any principal amounts outstanding in respect of the DIP Loans (including any amounts, other interest, that have been added to the principal balance); and</p> <p>(iv) <i>fourth</i>, all other amounts owing to the DIP Secured Parties.</p> <p>Proceeds from the Backyard Sale shall be distributed in accordance with the Plan.</p>   |
| <p><b>INDEFEASIBLE PAYMENT:</b></p>                          | <p>All payments made to or for the benefit of any of the DIP Secured Parties or Prepetition Secured Parties after the Petition Date shall be indefeasible and shall not be subject to disgorgement, counterclaim, set-off, subordination, recharacterization, defense, disallowance, recovery or avoidance by any party for any reason.</p>   |
| <p><b>CONDITIONS PRECEDENT TO EACH INTERIM DIP LOAN:</b></p> | <p>The obligations of the DIP Lender to make any Interim DIP Loans will be subject to satisfaction, or written waiver, by the DIP Lender in its sole and absolute discretion, of each of the following conditions precedent in connection with each draw request:</p> <p>(i) DIP Agent shall have received a request in writing in form approved by DIP Agent, in each case signed by Borrower, not later than 5:00 p.m. New York time (or such later time as DIP Agent may consent to in its discretion) three (3) business days prior to the date of the proposed borrowing of such Interim DIP Loan;</p> <p>(ii) Debtors shall have timely delivered to the DIP Lender the Approved Budget or any update thereto required to be delivered in accordance with this Term Sheet;</p> <p>(iii) Debtors shall have delivered to the DIP Agent a Closing Certificate, duly executed by the chief executive officer, president, or chief financial officer of the Borrower and appropriately completed, by which such officer shall certify to the DIP Agent all of the conditions precedent to the Interim DIP Loans have been satisfied (at any time delivered, a “<b>Closing Certificate</b>”);</p> <p>(iv) the Debtor shall have delivered all Purchase Price Calculations as required hereunder, and there shall have been no Negative Purchase Variances;</p> |

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|  | <p>(v) Debtors shall be in compliance with and satisfied the applicable Chapter 11 Milestones;</p> <p>(vi) the interim order has been entered by the Bankruptcy Court (after a hearing on notice to all parties having or asserting a lien on all or any portion of the DIP Collateral) and shall not have been reversed, modified, amended, stayed or vacated, or in the case of any modification or amendment, in a manner without the consent of the DIP Lender (the “<b>Interim Order</b>”), and the Debtors shall be in compliance in all respects with the Interim Order;</p> <p>(vii) the DIP Lender shall be satisfied that the DIP Liens have been properly perfected and shall constitute first-priority liens (subject only to Permitted Liens);</p> <p>(viii) all reasonable, documented fees and out-of-pocket expenses of the DIP Secured Parties relating to the DIP Facility (including, without limitation, the reasonable, documented fees and out-of-pocket expenses of their counsel and external advisors) shall have been paid in full to the extent invoiced at least two (2) business days prior;</p> <p>(ix) Debtors shall have insurance (including, without limitation, commercial general liability and property insurance) with respect to the DIP Collateral in such amounts and scope as is customary for companies similarly-situated to the Debtors and otherwise reasonably acceptable to the DIP Agent, and the DIP Agent shall have received additional insured and loss payee endorsements, as applicable, with respect thereto, in form and substance reasonably acceptable to the DIP Agent;</p> <p>(x) the DIP Agent shall have received the results of a recent lien, tax, and judgment search in each relevant jurisdiction with respect to Debtors, and such search shall reveal no liens on any of the assets of Debtors other than Permitted Liens and Permitted Prepetition Liens;</p> <p>(xi) no Event of Default shall have occurred and be continuing on the Interim Closing Date, or after giving effect to the Interim DIP Loan;</p> <p>(xii) all representations and warranties of the Debtors hereunder shall be true and correct in all material respects;</p> |
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|  | <p>(xiii) subject to Bankruptcy Court approval, (i) each Debtor shall have the corporate power and authority to make, deliver and perform its obligations under this Term Sheet and the Interim Order, and (ii) no consent or authorization of, or filing with, any person (including, without limitation, any governmental authority) shall be required in connection with the execution, delivery or performance by each Debtor, or for the validity or enforceability in accordance with its terms against such Debtor, of this Term Sheet and the Interim Order, except for consents, authorizations and filings which shall have been obtained or made and are in full force and effect, relating to the CCAA Recognition Proceedings, or, the failure to obtain or perform, could not reasonably be expected to cause a Material Adverse Change;</p> <p>(xiv) no Material Adverse Change shall have occurred;</p> <p>(xv) each of the non-Debtor borrower and the non-Debtor guarantors under the Prepetition Loan Documents shall have executed a reaffirmation and ratification agreement ratifying and confirming its obligations under each of the Prepetition Loan Documents to which it is a party and each grant of a security interest contained therein, which agreement shall be in form and substance acceptable to the Prepetition Secured Parties;</p> <p>(xvi) DIP Agent shall have received, such certificates of good standing (to the extent such concept exists) from the applicable secretary of state (or equivalent) of the state (or other jurisdiction) of organization of each Debtor, certificates of resolutions or other corporate or limited liability company action, incumbency certificates and/or other certificates of responsible officers of each Debtor as the DIP Agent may reasonably require evidencing the identity, authority and capacity of each responsible officer thereof authorized to act as a responsible officer in connection with this DIP Term Sheet and the other DIP Documents to which such Debtor is a party or is to be a party on the Interim Closing Date and certifying the organization documents of each Debtor; and</p> <p>(xvii) the DIP Secured Parties shall have received such other information and/or deliverables as they may reasonably require or request consistent with the Prepetition Loan Documents.</p> <p><b>“Material Adverse Change”</b> means a material adverse effect on and/or material adverse developments arising after the</p> |
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|  | <p>Petition Date with respect to (i) the business operations, properties, assets, or financial conditions of the Debtors and their subsidiaries taken as a whole; (ii) the validity, perfection or priority of the DIP Liens granted by the Borrower and the Guarantors in favor of the DIP Secured Parties, (iii) the rights, remedies and benefits available to, or conferred upon, the DIP Secured Parties, taken as a whole; <i>provided that</i> the filing and administration of the Chapter 11 Cases and the CCAA Recognition Proceedings and related events shall not constitute a Material Adverse Change, or (iv) the Backyard Sale; <i>provided that</i> the filing and administration of the Chapter 11 Cases and the CCAA Recognition Proceedings and related events shall not constitute a Material Adverse Change.</p>   |
| <p><b>CONDITIONS PRECEDENT TO EACH FINAL DIP LOAN:</b></p> | <p>The obligations of the DIP Lender to make any Final DIP Loans shall be subject to satisfaction or waiver of each of the following conditions:</p> <ul style="list-style-type: none"> <li>(i) all representations and warranties of the Debtors hereunder being true and correct in all material respects;</li> <li>(ii) no Event of Default shall exist or would immediately result from such proposed Final DIP Loan or from the application of the proceeds therefrom;</li> <li>(iii) all reasonable, documented fees and out-of-pocket expenses, including reasonable, documented and out-of-pocket attorney’s fees of the DIP Secured Parties, shall have been paid in full;</li> <li>(iv) the applicable Chapter 11 Milestones shall have been satisfied;</li> <li>(v) a final order approving the DIP Facility shall have been entered, which final order shall not have been reversed, modified, amended, stayed or vacated or in the case of any modification or amendment, in a manner without the consent of the DIP Lender (the “<b>Final Order</b>,” and together with the Interim Order, the “<b>DIP Orders</b>”) and the Debtors shall be in compliance in all respects with the Final Order;</li> <li>(vi) no Material Adverse Change shall have occurred;</li> <li>(vii) the Debtors shall have delivered to the DIP Agent a Closing Certificate certifying all of the conditions precedent to such Final DIP Loan have been satisfied;</li> </ul> |



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|   | <p>(viii) DIP Agent shall have received a request in writing in form approved by DIP Agent, in each case signed by Borrower, not later than 5:00 p.m. New York time (or such later time as DIP Agent may consent to in its discretion) three (3) business days prior to the date of the proposed borrowing of such Final DIP Loan;</p> <p>(ix) DIP Agent shall have received with respect to the week in which such Final DIP Loan is to be made, an Approved Budget for such week, including an Approved Variance Report;</p> <p>(x) the Debtor shall have delivered all Purchase Price Calculations as required hereunder, and there shall have been no Negative Purchase Variances; and</p> <p>(xi) the DIP Secured Parties shall have received such other information and/or deliverables as they may reasonably require or request consistent with the Prepetition Loan Documents.</p> <p>Any modifications of the Final Orders shall require the prior written consent of the DIP Secured Parties.</p> |
| <p><b>REPRESENTATIONS AND WARRANTIES:</b></p> | <p>The representations and warranties set forth in Sections 5.01 through 5.04, 5.06 through 5.10, 5.12, 5.13, 5.15, 5.17, and 5.18 of the Prepetition Credit Agreement are incorporated herein by reference and shall be deemed made by the Debtors for the benefit of the DIP Secured Parties in respect of the DIP Facility and DIP Obligations, <i>mutatis mutandis</i>, as if fully set forth herein, on the Interim Closing Date, on the Final Closing Date and on the date of each credit extension hereunder. Each Debtor further represents that the proceeds of each advance hereunder shall be used solely in accordance with the “Use of Proceeds” section of this Term Sheet.</p>  |
| <p><b>AFFIRMATIVE COVENANTS:</b></p>          | <p>From and after the Closing Date, each Debtor shall:</p> <p>(i) comply with the affirmative covenants set forth in Sections 6.04 through 6.08, 6.11 and 6.12 of the Prepetition Credit Agreement which are incorporated herein by reference for the benefit of the DIP Secured Parties in respect of the DIP Facility and DIP Obligations, <i>mutatis mutandis</i>, as if fully set forth herein;</p> <p>(ii) timely deliver, or cause to be timely delivered, to the DIP Lender the Approved Budget and Approved Variance</p>   |

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|  | <p>Reports, and all other financial reports, budgets, forecasts, and legal and financial documentation requested by the DIP Lender (or their respective legal advisors), all in accordance with the provisions set forth herein;</p> <p>(iii) deliver, or continue to deliver, to the DIP Lender all financial and other information required to be delivered by any Debtor under Sections 6.01, 6.02, and 6.03 of the Prepetition Credit Agreement which are incorporated herein by reference for the benefit of the DIP Secured Parties in respect of the DIP Facility and DIP Obligations, mutatis mutandis, as if fully set forth herein;</p> <p>(iv) (a) keep proper books, records and accounts in accordance with GAAP in which full, true and correct entries shall be made of all dealings and transactions in relation to their business and activities and consistent with Section 6.09 of the Prepetition Credit Agreement, (b) cooperate, consult with, and provide to the DIP Secured Parties all such information as required or as reasonably requested by the DIP Secured Parties, (c) permit, upon three (3) business days' notice, representatives of the DIP Secured Parties to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral audit and analysis of their respective inventory and accounts, to tour the Debtors' business premises and other properties, and to discuss, and provide advice with respect to, their respective affairs, finances, properties, business operations and accounts with their respective officers, employees and independent public accountants as often as may reasonably be desired, and (d) permit representatives of the DIP Secured Parties to consult with and advise the Debtors' management on matters concerning the general status of the Debtors' business, financial condition and operations;</p> <p>(v) comply with the Approved Budget (subject to the Permitted Variances) and with provisions of this Term Sheet, DIP Orders and the Canadian DIP Recognition Orders (as applicable);</p> <p>(vi) except to the extent (a) contemplated by the Approved Budget, (b) the failure to do so could not reasonably be expected to cause a Material Adverse Change, or (c) otherwise consented to by the DIP Lender in writing, continue, and cause to be continued, the business of the Debtors, maintain, and cause to be maintained, the Debtors'</p> |
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|  | <p>existence and material relationships, rights and privileges, and comply with all material contractual obligations;</p> <p>(vii) take, or cause to be taken, all appropriate action, to do or cause to be done all things necessary, proper or advisable, to pursue and consummate the Plan in accordance with the Chapter 11 Milestones, and provide the DIP Lender with copies of any bids (including, without limitation, any information, financial or otherwise, submitted in connection with any bids) upon receipt by the Debtors;</p> <p>(viii) do or cause to be done all things reasonably necessary, proper or advisable under applicable law, and to execute and deliver such documents and other papers, as may be reasonably requested by the DIP Secured Parties to carry out the provisions of this Term Sheet, the Interim Order, the Final Order or the Canadian DIP Recognition Orders;</p> <p>(ix) take, or cause to be taken, all appropriate action to remain the sole owner of the DIP Collateral, free of liens other than Permitted Liens and Permitted Prepetition Liens;</p> <p>(x) take, or cause to be taken, all appropriate action to comply with all material applicable laws with respect to the DIP Collateral;</p> <p>(xi) pay when due all U.S. Trustee fees;</p> <p>(xii) provide all notices received from the Purchaser under the APA, and exercise or refrain from exercising, as applicable, such rights, in each case, in accordance with the written instructions (emails suffice) of the DIP Agent, and otherwise allow the DIP Agent to participate and audit any of the Debtors' rights under the APA;</p> <p>(xiii) the Debtors shall not release or otherwise terminate, or cause to be released or otherwise terminated, any security interest granted by the Debtors' non-debtor affiliates under the Prepetition Loan Documents before a substitute, valid right of pledge or similar charge has been created, consented to and perfected by such affiliate in favor of the Prepetition Secured Parties (which substitute shall include a right, pledge or charge against any proceeds of the asset on which the security interest has been released or terminated); and</p> <p>(xiv) promptly provide such additional information concerning the Debtors, the Plan, or the DIP Collateral as the</p> |
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|                                   | <p>DIP Secured Parties may reasonably request and access to Debtors’ officers, directors, and advisors to discuss such information at reasonable times during normal business hours (and such officers, directors, and advisors shall be directed to discuss such information with the DIP Secured Parties).</p>   |
| <p><b>NEGATIVE COVENANTS:</b></p> | <p>Unless otherwise provided in the Approved Budget, this Term Sheet or as part of the Plan, no Debtor shall, without the express, prior written consent of the DIP Agent, do, or cause to be done, any of the following:</p> <p>(i) create, incur, assume or suffer to exist any lien (other than a Prepetition Permitted Lien) upon any of its property, assets, income or profits, whether now owned or hereafter acquired, except valid, perfected and unavoidable liens existing as of the Petition Date which, other than Permitted Liens, are junior to the liens securing the DIP Facility, and shall not cause, or permit to be caused, any direct or indirect subsidiary of Borrower that is not a Debtor to, create, incur, assume or suffer to exist any such liens;</p> <p>(ii) convey, sell, lease, assign, transfer or otherwise dispose of (including through a transaction of merger or consolidation) any of its property, business or assets, whether now owned or hereafter acquired, out of the ordinary course of business;</p> <p>(iii) incur or make any expenditure, investment or other payment, or any Restricted Payment (as defined in the Prepetition Credit Agreement), other than in accordance with the Approved Budget, subject to the Permitted Variances;</p> <p>(iv) create, or acquire any ownership interest in, any subsidiaries (whether direct or indirect) other than those existing on the Petition Date;</p> <p>(v) create, incur assume or suffer to exist any indebtedness other than (A) indebtedness of the Debtors under this Term Sheet, (B) indebtedness contemplated by the Approved Budget and (D) indebtedness permitted under Section 7.03(l), (o), (v) or (z) of the Prepetition Credit Agreement;</p> <p>(vi) enter into any transaction of any kind with any Affiliate of Borrower without the DIP Agent’s prior written consent or as otherwise permitted by the order of the Bankruptcy Court governing the Debtors’ authorization to continue using its cash management system; or</p> |

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|                                  | <p>(vi) consummate any amendment, restatement, supplement or other modification to or waiver of any of its organization documents.</p>   |
| <p><b>EVENTS OF DEFAULT:</b></p> | <p>Each of the following shall constitute an “Event of Default”:</p> <p>(i) after the first applicable testing date, the occurrence of any deviation from the Approved Budget that is greater than the Permitted Variances; <i>provided, that</i>, the DIP Lender may only declare an Event of Default arising from any deviation from the Professional Fee Variance if the DIP Lender and such Professional Person cannot mutually agree to a good faith modification during the Meet and Confer;</p> <p>(ii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents, DIP Orders, the Canadian DIP Recognition Orders or Approved Budget;</p> <p>(iii) any modification by the Debtors of the DIP Secured Parties’ rights under the DIP Documents, DIP Orders or the Canadian DIP Recognition Orders;</p> <p>(iv) failure of any of the Chapter 11 Milestones to be satisfied;</p> <p>(v) failure by any Debtor to be in compliance in all material respects with the sections of the Term Sheet entitled “Affirmative Covenants” (and five (5) business days shall have elapsed since the DIP Lender shall have given notice to the Debtors of such failure) and “Negative Covenants” or failure to otherwise be in compliance in all material respects with any other provision of this Term Sheet, the DIP Orders and the Canadian DIP Recognition Orders;</p> <p>(vi) failure of any representation or warranty to be true and correct in all material respects when made;</p> <p>(vii) the filing of any application by the Debtors for the approval of (or an order is entered by the Court approving) any claim arising under Section 507(b) of the Bankruptcy Code or any other provision of the Bankruptcy Code or any security, mortgage, collateral interest or other lien in any of the Chapter 11 Cases or CCAA Recognition Proceedings which is <i>pari passu</i> with or senior to the DIP Superpriority Claims or the DIP Liens, excluding liens arising under the DIP Orders or the Canadian DIP Recognition Orders, or</p> |

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|  | <p>pursuant to any other financing agreement made with the prior written consent of the DIP Agent;</p> <p>(viii) the filing of any application by the Debtors for the approval of (or an order is entered by the Court authorizing) compensation or other amounts under any employee or executive incentive or retention plans (or any similar sort of retention or incentive program) without the prior written consent of the DIP Secured Parties in their sole discretion;</p> <p>(ix) any request made by the Debtors for, or the reversal, modification, amendment, stay, reconsideration or vacatur of the DIP Orders, as entered by the Bankruptcy Court or the Canadian DIP Recognition Orders, as entered by the CCAA Court, as applicable, without the prior written consent of the DIP Secured Parties;</p> <p>(x) the commencement of any action by the Debtors or other authorized person (other than an action permitted by the DIP Orders or the Canadian DIP Recognition Orders) against any of the DIP Secured Parties or its agents and employees, to subordinate or avoid any liens made in connection with the DIP Orders or the Canadian DIP Recognition Orders;</p> <p>(xi) (1) the assertion by the Debtors in any pleading filed in any court that any material provision of the DIP Orders, the Canadian DIP Recognition Orders or this Term Sheet is not valid and binding for any reason, or (2) any material provision of the DIP Orders, the Canadian DIP Recognition Orders or this Term Sheet shall for any reason, or any other order of this Court approving the Debtors' use of Cash Collateral (as defined in the DIP Orders), cease to be valid and binding (without the prior written consent of the DIP Secured Parties);</p> <p>(xii) the filing with the Bankruptcy Court of a plan of reorganization or liquidation in any of the Chapter 11 Cases other than the Plan;</p> <p>(xiii) the appointment or entry of an order in any of the Chapter 11 Cases of a trustee, receiver, examiner, or responsible officer with enlarged powers relating to the operation of the business of any Debtor (powers beyond those set forth in sections 1106(a)(3) and (a)(4) of the Bankruptcy Code), unless such appointment or order has not been</p> |
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|  | <p>reversed, stayed, or vacated within thirty (30) days after the entry of such order;</p> <p>(xiv) the granting of relief from the automatic stay by the Bankruptcy Court or of the stay ordered by the CCAA Court to any other creditor or party in interest in the Chapter 11 Cases with respect to any portion of the DIP Collateral exceeding \$100,000 in value in the aggregate;</p> <p>(xv) failure to pay principal, interest or other DIP Obligations in full in cash when due, including without limitation, on the Maturity Date;</p> <p>(xvi) the allowance of any claim or claims under section 506(c) or 552(b) of the Bankruptcy Code against or with respect to any DIP Collateral;</p> <p>(xvii) withdrawal or material modification by the Debtors of any motion in connection with the Backyard Sale, without the consent of the DIP Secured Parties;</p> <p>(xviii) the Debtors seek to consummate an Alternative Transaction (as defined in the APA) without the prior written consent of the DIP Secured Parties;</p> <p>(xix) the Plan is not confirmed or is changed without the DIP Secured Parties' consent, or the Plan Sponsor breaches (or is anticipated to breach) its obligations under the Plan;</p> <p>(xx) the occurrence of any Material Adverse Change;</p> <p>(xxi) any termination of the RSA or the APA;</p> <p>(xxii) the actual amount of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, and Allowed Other Priority Claims (each as defined in the Plan) exceeds or is expected to exceed the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount;</p> <p>(xxiii) the occurrence of any Negative Purchase Variance under any Purchase Price Calculation;</p> <p>(xxiv) such other events of default to be included in the DIP Orders as reasonably specified by the DIP Secured Parties with the reasonable consent of the Debtors; and</p> |
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|   | <p>(xxv) the conversion of any Chapter 11 Case to a Chapter 7 case(s), or any Debtor shall file a motion or other pleading seeking the conversion of any Chapter 11 Case to chapter 7 of the Bankruptcy Code or the making of an assignment bankruptcy by or entry by any Canadian court of a bankruptcy order in respect of any of the Debtors under the BIA, or the entry of an order of any Canadian court appointing a receiver under the BIA over any DIP Collateral, in each case, without the prior written consent of DIP Agent.</p>  |
| <p><b>REMEDIES UPON EVENT OF DEFAULT:</b></p> | <p>Upon the occurrence and during the continuance of any Event of Default and delivery of a Carve-Out Trigger Notice (as defined in the Interim DIP Order or the Final DIP Order, as applicable) and delivery by the DIP Agent of five (5) business days' notice to the Debtors (the "Notice Period"), during which time the Debtors may seek an emergency hearing before the Bankruptcy Court, the DIP Secured Parties may not exercise rights or remedies; <i>provided, that</i>, if a hearing cannot be scheduled prior to the expiration of the Notice Period solely as a result of the Bankruptcy Court's unavailability, the Notice Period shall be automatically extended to the date that is one (1) business day after the first date that the Bankruptcy Court is available.</p> <p>After the expiration of the Notice Period, the DIP Secured Parties may (except as otherwise ordered by the Bankruptcy Court or the CCAA Court):</p> <ul style="list-style-type: none"> <li>(i) declare all DIP Obligations (including principal of and accrued interest on any outstanding DIP Loans) to be immediately due and payable;</li> <li>(ii) terminate the DIP Facility and/or any further commitment to lend to Borrower; and</li> <li>(iii) exercise rights and remedies pursuant to the terms of the DIP Documents, the DIP Orders, the Canadian DIP Recognition Orders or applicable law, and if requested by the DIP Agent in connection with such exercise of rights and remedies, the Debtors shall cooperate with the DIP Agent to, among other things, (A) make reasonable efforts to collect accounts receivable, without setoff by any account debtor, (B) provide at all reasonable times access to the Debtors' premises to representatives or agents of the DIP Agent (including any collateral liquidator or consultant), (B) provide the DIP Agent and their representatives or agents, at all reasonable times access to the Debtors' books and records</li> </ul> |



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|  | <p>and any information or documents requested by the DIP Agent or their respective representatives, (C) perform all other obligations set forth in the DIP Documents, and (D) take reasonable steps to safeguard and protect the DIP Collateral, and</p> <p>(iv) the Debtors shall not otherwise interfere with or actively encourage others to interfere with the DIP Agent’s enforcement of rights including, without limitation, the right to (W) take any actions reasonably calculated to preserve or safeguard the DIP Collateral or to prepare the DIP Collateral for sale; (X) foreclose or otherwise enforce the DIP Liens on any or all of the DIP Collateral; (Y) immediately set off any and all amounts held as Cash Collateral (including, without limitation, in any Cash Collateral account held for the benefit of the DIP Agent and DIP Lenders); and/or (Z) exercise any other default-related rights and remedies under the under the DIP Facility Documents, this Interim Order the DIP Orders, the Canadian DIP Recognition Orders or applicable law.</p> |
| <p><b>DIP SECURED PARTIES’ EXPENSES:</b></p> | <p>All reasonable, documented out-of-pocket costs and expenses of the DIP Secured Parties relating to the DIP Facility, the Debtors’ Chapter 11 Cases, and the CCAA Recognition Proceedings (including, without limitation, prepetition and post-petition reasonable and documented fees and disbursements of counsel and advisors) shall be payable by Borrower promptly upon written demand (together with summary backup documentation supporting such reimbursement request) and without the requirement for Bankruptcy Court or CCAA Court approval.</p> <p>A copy of summary invoices for the U.S. advisors to the DIP Secured Parties and Prepetition Secured Parties shall be provided by the Debtors to the Office of the U.S. Trustee, and counsel for any statutory committee, subject to customary review periods.</p>  |
| <p><b>RELEASES:</b></p>                      | <p>The Interim Order and Final Order shall provide customary releases for each of the DIP Secured Parties and the Prepetition Secured Parties and each of their respective each of their respective former, current or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates and successors and predecessors in interest (in their respective capacities as such) (collectively, the “<b>Released Parties</b>”) with respect to all claims and liabilities arising from</p>  |

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|  | the DIP Facility, the DIP Liens, the DIP Superpriority Claims, the DIP Documents and the Prepetition Secured Parties with respect to the Prepetition Obligations and the Prepetition Loan Documents; <i>provided that</i> , with respect to the Prepetition Secured Parties, such releases shall be subject to the Challenge Period.   |
| <b>INDEMNITY:</b>                      | Each Debtor shall indemnify, pay and hold harmless the DIP Secured Parties (and each of their directors, officers, members, employees and agents) against any loss, liability, cost, or expense incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof (except to the extent resulting from the gross negligence, or willful misconduct, bad faith, or a material breach of DIP Documents of the indemnified party, as determined by a final, nonappealable judgment of a court of competent jurisdiction). |
| <b>CREDIT BID:</b>                     | The DIP Agent shall have the right to credit bid the outstanding DIP Obligations on a dollar-for-dollar basis in any sale of DIP Collateral, subject to the requirement that the DIP Agent fund all Allowed Administrative Expenses, up to the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount and the Carve-Out, and the amount secured by and necessary to fund the Canadian Priority Charges (without duplication).  |
| <b>DIP ORDERS GOVERN:</b>              | To the extent of any conflict or inconsistency between this Term Sheet and the DIP Orders, the DIP Orders shall govern.  |
| <b>AMENDMENT AND WAIVER:</b>           | No provision of this Term Sheet or the DIP Orders may be amended other than by an instrument in writing signed by the DIP Secured Parties and Debtors, provided, however on the Petition Date, the Parties agree to update the amounts set forth in (i) of the “Acknowledgment; Ratification” section herein and the “Roll-Up” section herein.   |
| <b>GOVERNING LAW AND JURISDICTION:</b> | The laws of the State of New York (except as governed by mandatory provisions of the Bankruptcy Code or the CCAA) shall govern this Term Sheet.<br><br>The parties to this Term Sheet shall submit to the exclusive jurisdiction of the Bankruptcy Court and shall waive any right to trial by jury. Notwithstanding the foregoing, the CCAA Court shall have exclusive jurisdiction of the CCAA Recognition Proceedings.  |

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| <p><b>NOTICES:</b></p>                                  | <p>All notices required to be provided hereunder shall be delivered to:</p> <p>(i) if to Debtors to:<br/>                 KidKraft, Inc.<br/>                 Attention: Geoffrey Walker<br/>                 Email: Geoff.W@kidkraft.com</p> <p>with a copy (which shall not constitute notice) to:</p> <p>Vinson &amp; Elkins LLP<br/>                 Attention: David Meyer; William Wallander; Lauren Kanzer<br/>                 Email: dmeyer@velaw.com; bwallander@velaw.com;<br/>                 lkanzer@velaw.com</p> <p>(ii) if to Prepetition Secured Parties or DIP Secured Parties to:</p> <p>GB Funding, LLC<br/>                 Attention: David Braun and Kyle Shonak<br/>                 Email: dbraun@gordonbrothers.com;<br/>                 kshonak@gordonbrothers.com</p> <p>with a copy (which shall not constitute notice) to:</p> <p>Katten Muchin Rosenman LLP<br/>                 Attention: Steven Reisman; Cindi Giglio<br/>                 Email: sreisman@katten.com; cgiglio@katten.com</p> |
| <p><b>COUNTERPARTS AND ELECTRONIC TRANSMISSION:</b></p> | <p>This Term Sheet may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which when so executed and delivered, shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Term Sheet by facsimile, "PDF" or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Term Sheet.</p>  |

### Schedule 1

1. KidKraft, Inc.
2. KidKraft Intermediate Holdings, LLC
3. KidKraft International Holdings, Inc.
4. KidKraft Europe, LLC
5. KidKraft International IP Holdings, LLC
6. KidKraft Partners, LLC
7. Solowave Design Corp.
8. Solowave Design Inc.
9. Solowave Design LP
10. Solowave Design Holdings Limited
11. Solowave International Inc.

**Exhibit A**

**Approved Budget**

KidKraft, Inc. DIP Budget (9 Weeks)

DIP Week>>  
 Week End>>

|  | 1         | 2           | 3         | 4           | 5           | 6           | 7           | 8         | 9         | Total        |
|--|-----------|-------------|-----------|-------------|-------------|-------------|-------------|-----------|-----------|--------------|
|  | 5/10/2024 | 5/17/2024   | 5/24/2024 | 5/31/2024   | 6/7/2024    | 6/14/2024   | 6/21/2024   | 6/28/2024 | 7/5/2024  |              |
| <b>Total Inflows</b>                             | 2,000,000 | 2,097,889   | 1,796,228 | 1,079,983   | 1,810,476   | 2,048,180   | 2,120,225   | 2,160,181 | 2,565,020 | 17,678,181   |
| <b>Operating Cash Flow:</b>                      |           |             |           |             |             |             |             |           |           |              |
| Factory Payments                                 | 1,089,533 | 1,041,389   | 733,769   | 594,427     | 1,796,758   | 1,806,739   | 1,737,717   | 762,125   | 694,866   | 10,257,323   |
| Cost of Sales (Shipping, Testings, etc.)         | 301,795   | 314,211     | 444,969   | 195,409     | 203,911     | 161,007     | 387,578     | 188,353   | 214,588   | 2,411,821    |
| Employee Costs                                   | 295,450   | 392,554     | 291,039   | 39,254      | 291,039     | 39,254      | 291,039     | 39,254    | 291,039   | 1,715,874    |
| Operating Expenses                               | 518,985   | 377,348     | 266,077   | 410,319     | 797,084     | 535,720     | 217,965     | 378,859   | 545,151   | 4,097,506    |
| Intercompany (from)/to China                     | 342,000   | 660,000     | -         | -           | -           | 225,000     | 570,000     | -         | -         | 1,925,226    |
| <b>Total Operational Outflows</b>                | 2,547,763 | 2,432,202   | 1,735,853 | 1,239,408   | 3,088,792   | 2,767,720   | 3,204,299   | 1,368,591 | 1,745,643 | 20,407,750   |
| <b>Restructuring Fees:</b>                       |           |             |           |             |             |             |             |           |           |              |
| Professional Fees - BK Restructuring             | 30,000    | 626,545     | 574,878   | 408,212     | 424,878     | 408,212     | 633,212     | 429,878   | 526,545   | 5,287,361    |
| Professional Fees - Trustee Fees (est)           | -         | -           | -         | -           | -           | -           | -           | -         | -         | 250,000      |
| Other  | 27,250    | 7,500       | 7,500     | 7,500       | 7,500       | 7,500       | 7,500       | 7,500     | 7,500     | 87,250       |
| <b>Total Restructuring Outflows</b>              | 57,250    | 634,045     | 582,378   | 415,712     | 432,378     | 415,712     | 640,712     | 437,378   | 534,045   | 5,624,611    |
| <b>Other Obligations</b>                         |           |             |           |             |             |             |             |           |           |              |
| Other Employee Obligations                       | -         | -           | -         | -           | -           | -           | -           | -         | 58,905    | 58,905       |
| Priority Tax Claims                              | -         | -           | -         | 300,700     | -           | -           | -           | -         | 175,000   | 750,700      |
| Severance  | 93,257    | -           | -         | -           | -           | -           | -           | -         | 57,848    | 151,105      |
| Post Sale Reserve                                | -         | -           | -         | -           | -           | -           | -           | -         | -         | 643,000      |
| Pre-Petition Vendor Payments - CV/503b9/Shippers | -         | 525,000     | -         | 425,000     | -           | -           | -           | -         | -         | 950,000      |
| Utility Deposit                                  | -         | 20,000      | -         | -           | -           | -           | -           | -         | -         | 20,000       |
| <b>Total Incremental Outflows</b>                | 93,257    | 545,000     | -         | 725,700     | -           | -           | -           | -         | 291,753   | 2,573,710    |
| <b>Net Cash Flow</b>                             | (698,270) | (1,513,359) | (522,004) | (1,300,837) | (1,710,695) | (1,135,251) | (1,724,786) | 354,211   | (6,421)   | (10,927,891) |
| <b>Cash Requirement</b>                          |           |             |           |             |             |             |             |           |           |              |
| Beginning Book Balance                           | 2,129,070 | 1,430,800   | 2,129,070 | 2,129,070   | 2,129,070   | 2,129,070   | 2,129,070   | 2,129,070 | 2,129,070 | 2,129,070    |
| Net Cash Flow                                    | (698,270) | (1,513,359) | (522,004) | (1,300,837) | (1,710,695) | (1,135,251) | (1,724,786) | 354,211   | (6,421)   | (10,927,891) |
| DIP Financing                                    | -         | 2,211,629   | 522,004   | 1,300,837   | 1,710,695   | 1,135,251   | 1,724,786   | (354,211) | 6,421     | 8,798,821    |
| Ending Cash                                      | 1,430,800 | 2,129,070   | 2,129,070 | 2,129,070   | 2,129,070   | 2,129,070   | 2,129,070   | 2,129,070 | 2,129,070 | -            |
| <b>DIP Financing</b>                             |           |             |           |             |             |             |             |           |           |              |
| Interest/Origination Fee/Exit Fee                | -         | 210,000     | -         | -           | -           | -           | -           | -         | 841,994   | 1,051,994    |
| DIP Financing                                    | -         | 2,211,629   | 522,004   | 1,300,837   | 1,710,695   | 1,135,251   | 1,724,786   | (354,211) | 6,421     | 8,798,821    |
| Ending Balance                                   | -         | 2,421,629   | 522,004   | 1,300,837   | 1,710,695   | 1,135,251   | 1,724,786   | (354,211) | 848,416   | 9,850,815    |

**Schedule “C”**

**Bar Dates Order**



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed June 7, 2024

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:**

**KIDKRAFT, INC., et al.,**

**Debtors.<sup>1</sup>**

§  
§  
§  
§  
§  
§  
§

**Case No. 24-80045-mvl11**

**(Chapter 11)**

**(Jointly Administered)**

**Re: Docket No. 34**

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft Partners, LLC (3268), KidKraft International IP Holdings, LLC (1841), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc. (4302). The location of the Debtors' U.S. corporate headquarters and the Debtors' service address is: 4630 Olin Road, Dallas, TX 75244.



**ORDER (I) ESTABLISHING BAR DATES AND PROCEDURES  
AND (II) APPROVING THE FORM AND MANNER OF NOTICE**

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Upon the motion (the “*Motion*”)<sup>2</sup> filed by the above-referenced debtors and debtors in possession (collectively, the “*Debtors*”) for entry of an order (this “*Order*”) establishing bar dates and procedures and approving the form and manner of notice thereof, all as more fully set forth in the Motion; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final 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 the Court having reviewed the Motion; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is HEREBY ORDERED THAT:

1. The General Bar Date shall be fixed as **June 28, 2024 at 5:00 p.m. (Prevailing Central Time)**.
2. The Governmental Bar Date shall be fixed as **November 6, 2024 at 5:00 p.m. (Prevailing Central Time)**.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

3. The Amended Schedules Bar Date shall be fixed as the **later of (i) the General Bar Date or the Governmental Bar Date, as applicable, and (ii) 5:00 p.m. (Prevailing Central Time), on the date that is 21 days from the date on which the Debtors provide notice of the previously unfiled Schedule or amendment or supplement to the Schedules.**

4. The Rejection Damages Bar Date shall be fixed as the **later of (i) the General Bar Date or the Governmental Bar Date, as applicable, and (ii) 5:00 p.m. (Prevailing Central Time) on the date that is 21 days following service of an order approving the rejection of any executory contract or unexpired lease of the Debtors.**<sup>3</sup>

5. The forms of the Bar Dates Notice, the Proof of Claim Form, the Publication Notice, and the manner of providing notice of the Bar Dates proposed in the Motion are approved in all respects. The form and manner of notice of the Bar Dates approved herein satisfy the notice requirements of the Bankruptcy Code and the Bankruptcy Rules.

6. Subject to terms described in this Order for holders of claims subject to the Governmental Bar Date, the following entities must file proofs of claim on or before the General Bar Date:

- (i) any person or entity whose claim against a Debtor is not listed in the applicable Debtor's Schedules, or is listed in such Schedules as "contingent," "unliquidated," or "disputed," if such person or entity desires to participate in any of these chapter 11 cases or share in any distribution in any of these chapter 11 cases;
- (ii) any person or entity who believes that its claim is improperly classified in the Schedules or is listed in an incorrect amount and who desires to have its claim allowed in a different classification or amount other than that identified in the Schedules;
- (iii) any person or entity who believes that its prepetition claim as listed in the Schedules is not an obligation of the specific Debtor against which the claim

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<sup>3</sup> To the extent any executory contract or unexpired lease is rejected pursuant to the terms of the Plan, the order confirming the Plan shall provide a separate bar date as the deadline on or before which claimants holding claims for damages arising from such rejection must file proofs of claim with respect to such rejection, which date will be 21 days after service of a notice of the Plan effective date.

is listed and who desires to have its claim allowed against a Debtor other than that identified in the Schedules; and

- (iv) any person or entity who believes that its claim against a Debtor is or may be an administrative expense pursuant to section 503(b)(9) of the Bankruptcy Code.

7. The following entities, whose claims otherwise would be subject to the General Bar

Date or the Governmental Bar Date, need not file proofs of claim in these chapter 11 cases:

- (i) any person or entity who has already filed a signed proof of claim against the respective Debtor(s) with the Clerk of the Court or with Stretto, the Debtors' claims and noticing agent, in a form substantially similar to Official Form 410;
- (ii) any person or entity whose claim is listed on the Schedules if: (a) the claim is *not* scheduled as any of "disputed," "contingent," or "unliquidated;" (b) such person or entity agrees with the amount, nature, and priority of the claim as set forth in the Schedules; and (c) such person or entity does not dispute that its claim is an obligation only of the specific Debtor against which the claim is listed in the Schedules;
- (iii) any person or entity whose claim has previously been allowed by order of the Court on or before the applicable Bar Date;
- (iv) any person or entity whose claim has been paid in full by the Debtors pursuant to the Bankruptcy Code or in accordance with an order of the Court;
- (v) any Debtor having a claim against another Debtor;
- (vi) any person or entity whose claim is based on an equity interest in any of the Debtors;
- (vii) any current officer or director of any of the Debtors for claims based on indemnification, contribution, or reimbursement;
- (viii) any person or entity holding a claim for which a separate deadline is fixed by this Court;
- (ix) any person or entity holding a claim allowable under sections 503(b) or 507(a)(2) of the Bankruptcy Code as an expense of administration incurred in the ordinary course; *provided, however*, that any person or entity asserting a claim entitled to priority under section 503(b)(9) of the Bankruptcy Code must assert such claim by filing a request for payment or a proof of claim on or prior to the General Bar Date;
- (x) Gordon Brothers, for claims arising from or relating to the DIP Facility, the Prepetition First Lien Term Facility, or the Prepetition First Lien Revolving Facility, respectively; and
- (xi) the Office of the United States Trustee for the Northern District of Texas.

8. Parties asserting claims against the Debtors that accrued before the Petition Date must use a proof of claim form (the “***Proof of Claim Form***”) substantially in the form attached as **Exhibit C** to the Motion.

9. The following procedures for the filing of a proof of claim shall apply:

- (i) Each proof of claim must be filed so that it is received on or before the applicable Bar Dates either (a) electronically through Stretto’s website, using the interface available on such website located at <https://www.cases.stretto.com/kidkraft> (the “***Electronic Filing System***”) or (b) by delivering the original proof of claim to:

**If by First-Class Mail, Hand Delivery or Overnight Mail:**

KidKraft, Inc.  
Claim Processing Center  
c/o Stretto, Inc.  
410 Exchange, Suite 100  
Irvine, CA 92602

- (ii) A proof of claim will be deemed filed when **actually received** by Stretto or by the Clerk of the Court.
- (iii) Proofs of claim may not be delivered via facsimile or electronic mail transmission (the Electronic Filing System not being considered electronic mail transmission). Any facsimile or electronic mail submissions **will not be accepted** and will not be considered properly or timely filed for any purpose in these chapter 11 cases.
- (iv) Proofs of claim will be collected, docketed, and maintained by Stretto.
- (v) All proofs of claim must be signed by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant. The Proof of Claim Form must be completed in English and be denominated in United States currency. Claimants should set forth with specificity the legal and factual basis for the alleged claim and attach to the completed Proof of Claim Form any documents on which the claim is based (or, if such documents are voluminous, attach a summary) or an explanation as to why the documents are not available.
- (vi) Any person or entity asserting claims against multiple Debtors must file a separate proof of claim with respect to each Debtor. In addition, any person or entity filing a proof of claim must identify on its Proof of Claim Form the particular Debtor against which the entity asserts its claim. Any proof of claim filed under the Debtors’ joint administration case number, or that otherwise fails to identify a Debtor shall be deemed as filed only against Debtor KidKraft, Inc. If an entity lists more than one Debtor on any one

proof of claim, the relevant claims will be treated as filed only against the first listed Debtor.

10. Any entity holding an interest in the Debtors (an “*Interest Holder*”), which interest is based exclusively upon the ownership of: (i) a membership interest in a limited liability company; (ii) common or preferred stock in a corporation; or (iii) warrants or rights to purchase, sell or subscribe to such a security or interest (any such security or interest being referred to herein as an “*Interest*”), need not file a proof of interest on or before the General Bar Date; *provided, however*, Interest Holders who want to assert claims against the Debtors that arise out of or relate to the ownership or purchase of an Interest, including claims arising out of or relating to the sale, issuance or distribution of the Interest, must file a proof of claim by the applicable Bar Date, unless another exception identified in this Order applies.

11. Pursuant to Bankruptcy Rule 3003(c)(2), any person or entity that is required to file a proof of claim in these chapter 11 cases pursuant to the Bankruptcy Code, the Bankruptcy Rules or this Order with respect to a particular claim against the Debtors, but that fails to do so properly by the applicable Bar Date, shall not be treated as a creditor with respect to (i) such claim for purposes of voting upon any plan in these chapter 11 cases and (ii) distribution from property of the Debtors’ estates.

12. The Debtors shall retain the right to: (i) dispute, or assert offsets or defenses against, any filed proofs of claim, or any claim listed or reflected in the Schedules, as to nature, amount, liability, classification or otherwise; (ii) subsequently designate any scheduled claim as disputed, contingent, or unliquidated; and (iii) otherwise amend or supplement the Schedules.

13. Within 2 business days after entry of this Order, the Debtors, through Stretto or otherwise, shall serve the Bar Dates Notice Package, including a copy of the Bar Date Notice and the Proof of Claim Form, substantially in the forms attached to the Motion as **Exhibit B** and

**Exhibit C**, respectively, by first-class mail, postage prepaid, on: (i) all holders of claims or potential claims; (ii) the Office of the United States Trustee for the Northern District of Texas; (iii) counsel to the official committee of unsecured creditors, if any; (iv) all parties that have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002 as of the date of the entry of the Order; (v) all known creditors and other known holders of potential claims against any of the Debtors; (vi) all counterparties to executory contracts and unexpired leases of the Debtors listed in the Schedules or their designated representatives; (vii) all parties to pending litigation with the Debtors; (viii) all current and former employees of the Debtors (to the extent that contact information for former employees is available in the Debtors' records); (ix) the Internal Revenue Service and all other taxing authorities for the jurisdictions in which the Debtors conduct business; (x) all relevant state attorneys general; (xi) all identified registered holders of any Interests in any of the Debtors as of the Petition Date (although copies of the Proof of Claim Form will not be provided to them); (xii) all other entities listed on the Debtors' respective creditor matrices; and (xiii) counsel to any of the foregoing, if known. The Debtors may also mail the Bar Dates Notice package by first-class United States mail, postage prepaid (or equivalent service) to any additional holders of claims or potential claims listed in the Debtors' Schedules, as soon as practicable but no later than three 2 business days after the Debtors file the Schedules.

14. The Debtors shall post the Bar Date Notice and Proof of Claim Form on Stretto's website at <https://www.cases.stretto.com/kidkraft>.

15. Pursuant to Bankruptcy Rule 2002(1) and 9008, the Debtors shall publish the Publication Notice in *The New York Times* (national edition), the national edition of *The Globe and Mail* in Canada, or such other publications as the Debtors may deem appropriate in their discretion as a means to provide notice of the Bar Dates to such unknown potential claimants. The

Debtors will cause such publication to occur 2 business days after serving the Bar Dates Notice Package or as soon as reasonably practicable thereafter.

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

17. Entry of this Order is without prejudice to the right of the Debtors to seek a further order of this Court fixing the date by which holders of claims not subject to the Bar Dates established herein must file such claims against the Debtor or be forever barred from so doing.

18. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

**### End of Order ###**

**Order submitted by:**

**VINSON & ELKINS LLP**

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Matthew D. Struble (Texas Bar No. 24102544)  
Kiran Vakamudi (Texas Bar No. 24106540)  
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- and -

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dmeyer@velaw.com;  
lkanzer@velaw.com

**PROPOSED ATTORNEYS FOR  
THE DEBTORS AND DEBTORS IN POSSESSION**



IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

**AND IN THE MATTER OF KIDKRAFT, INC., SOLOWAVE DESIGN HOLDINGS LIMITED., SOLOWAVE DESIGN INC.,  
SOLOWAVE INTERNATIONAL INC. AND SOLOWAVE DESIGN LP**

**APPLICATION OF KIDKRAFT, INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.  
1985, c. C-36 AS AMENDED**

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**RECOGNITION ORDER  
(Bar Dates Order, Second Interim DIP Order, and  
Final Customer Programs Order, and Related Relief)**

**OSLER, HOSKIN & HARCOURT LLP**

1 First Canadian Place, P.O. Box 50  
Toronto, ON M5X 1B8  
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Lawyers for the Applicant

THIS IS **EXHIBIT “E”** REFERRED TO IN THE AFFIDAVIT OF  
GEOFFREY WALKER SWORN BEFORE ME over video  
teleconference this 11<sup>th</sup> day of July, 2024 pursuant to O. Reg 431/20,  
Administering Oath or Declaration Remotely. The affiant was located in  
the City of Dallas, in the State of Texas, while the Commissioner was  
located in the City of Toronto, in the Province of Ontario.



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Commissioner for Taking Affidavits  
EMILIE DILLON (LSO # 85199L)



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-24-00720035-00CL

DATE: June 19, 2024

NO. ON LIST: 2

TITLE OF PROCEEDING: KIDKRAFT, INC.

BEFORE: JUSTICE CAVANAGH

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

| Name of Person Appearing | Name of Party                               | Contact Info   |
|--------------------------|---|--|
| Mark Sheeley             | Counsel to the KidKraft, Inc.,<br>Applicant | <a href="mailto:msheeley@osler.com">msheeley@osler.com</a> |

**For Defendant, Respondent, Responding Party:**

| Name of Person Appearing | Name of Party  | Contact Info   |
|--------------------------|--|--|
| Mitch Stephenson         | Counsel for Gordon Brothers                                    | <a href="mailto:mstephenson@fasken.com">mstephenson@fasken.com</a>                     |
| Virginie Gauthier        | Counsel for the Information<br>Officer, KSV Restructuring Inc. | <a href="mailto:virginie.gauthier@gowlingwlg.com">virginie.gauthier@gowlingwlg.com</a> |
| Heather Meredith         | Counsel for Backyard Products<br>LLC                           | <a href="mailto:hmeredith@mccarthy.ca">hmeredith@mccarthy.ca</a>                       |

**ENDORSEMENT OF JUSTICE CAVANAGH:**

- [1] KidKraft, in its capacity as the foreign representative of itself and four other debtors in possession moves for an order recognizing and enforcing certain orders entered by the United States Bankruptcy Court for the Northern District of Texas, Dallas Division pursuant to section 49 of the *Companies' Creditors Arrangement Act*.

- [2] I have reviewed the motion materials and the applicants' factum. I am satisfied that the requested order should be made. There is no opposition.
- [3] Order to issue in form of Order signed by me today.

 Mr. Justice  
Cavanagh

THIS IS **EXHIBIT “F”** REFERRED TO IN THE AFFIDAVIT OF  
GEOFFREY WALKER SWORN BEFORE ME over video  
teleconference this 11<sup>th</sup> day of July, 2024 pursuant to O. Reg 431/20,  
Administering Oath or Declaration Remotely. The affiant was located in  
the City of Dallas, in the State of Texas, while the Commissioner was  
located in the City of Toronto, in the Province of Ontario.



---

Commissioner for Taking Affidavits  
EMILIE DILLON (LSO # 85199L)

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:** § **Case No. 24-80045-mvl11**  
§  
**KIDKRAFT, INC., et al.,** § **Chapter 11**  
§  
**Debtors.<sup>1</sup>** § **(Jointly Administered)**  
§  
§ **(Emergency Hearing Requested)**

**EMERGENCY JOINT MOTION  
OF THE DEBTORS AND PREPETITION AND  
DIP SECURED PARTIES FOR AN ORDER (I) APPROVING  
LIMITED MODIFICATIONS TO THE CONFIRMED PLAN  
PURSUANT TO 11 U.S.C. § 1127(B); AND (II) GRANTING RELATED RELIEF**

**EMERGENCY RELIEF HAS BEEN REQUESTED. RELIEF IS REQUESTED NOT LATER THAN JULY 9, 2024.**

**IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU MUST APPEAR AT THE HEARING IF ONE IS SET, OR FILE A WRITTEN RESPONSE PRIOR TO THE DATE THAT RELIEF IS REQUESTED IN THE PRECEDING PARAGRAPH. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON JULY 9, 2024, AT 2:30 P.M. (CENTRAL TIME) IN COURTROOM #2, FLOOR 14, UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, 1100 COMMERCE STREET, DALLAS, TX 75242.**

**PARTICIPATION AT THE HEARING WILL ONLY BE PERMITTED BY AN AUDIO AND VIDEO CONNECTION.**

**AUDIO COMMUNICATION WILL BE BY USE OF THE COURT'S DIAL-IN FACILITY. YOU MAY ACCESS THE FACILITY AT 1-650-479-3207. VIDEO COMMUNICATION WILL BE BY USE OF THE CISCO WEBEX PLATFORM. CONNECT VIA THE CISCO WEBEX APPLICATION OR CLICK THE LINK ON JUDGE LARSON'S HOME PAGE. THE MEETING CODE IS 160 135 6015.**

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft Partners, LLC (3268), KidKraft International IP Holdings, LLC (1841), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc. (4302). The location of the Debtors' U.S. corporate headquarters and the Debtors' service address is: 4630 Olin Road, Dallas, TX 75244.

**CLICK THE SETTINGS ICON IN THE UPPER RIGHT CORNER AND ENTER YOUR NAME UNDER THE PERSONAL INFORMATION SETTING.**

**HEARING APPEARANCES MUST BE MADE ELECTRONICALLY IN ADVANCE OF ELECTRONIC HEARINGS. TO MAKE YOUR APPEARANCE, CLICK THE “ELECTRONIC APPEARANCE” LINK ON JUDGE LARSON’S HOME PAGE. SELECT THE CASE NAME, COMPLETE THE REQUIRED FIELDS AND CLICK “SUBMIT” TO COMPLETE YOUR APPEARANCE.**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), together with GB Funding, LLC and 1903 Partners, LLC (together the “Prepetition and DIP Secured Parties” and together with the Debtors, the “Movants”), respectfully state as follows in support of this joint motion (the “Motion”):<sup>2</sup>

### **PRELIMINARY STATEMENT**

1. On June 24, 2024, the Court entered the Confirmation Order and Sale Order, approving, among other things, the sale of substantially all of the Debtors’ assets to Backyard Products, LLC (the “Purchaser” and such sale, the “Backyard Sale”) and confirming the Debtors’ Plan, including the releases contemplated therein. *See* Docket Nos. 241-242. Since then, the Debtors, the Prepetition and DIP Secured Parties, and the Purchaser have been working expeditiously to close the Backyard Sale. The Movants are pleased to report the Backyard Sale closed July 5, 2024.

2. As part of the preparation for closing, and after entry of the Confirmation Order and the Sale Order, the Prepetition and DIP Secured Parties formed a belief that certain financial reporting and payment issues occurred, including (i) inaccuracies in the Purchase Price Calculations delivered to the Prepetition and DIP Secured Parties pursuant to the DIP Documents, and (ii) the Debtors’ payment of approximately \$1,000,000 in prepetition claims outside of, at minimum, the Approved Budget (the “Vendor Payments”). Out of an abundance of caution, the

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<sup>2</sup> Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the *Debtors’ Amended Joint Prepackaged Chapter 11 Plan* [Docket No. 220].

Prepetition and DIP Secured Parties seek to amend the releases they are providing under Article VIII.F of the Plan, as outlined below.

3. The Debtors support this limited modification to the Plan. As stated throughout these chapter 11 cases (the “Chapter 11 Cases”), the Debtors believe the Backyard Sale and the Plan are the best option to maximize value for the Debtors and their stakeholders. Moreover, the proposed amendments in the Modified Post-Confirmation Plan (as defined below) are solely related to preserving potential claims and causes of action the Prepetition and DIP Secured Parties may allege against (i) the Debtors; (ii) certain of their officers; and (iii) SierraConstellation Partners, LLC (“SCP”), the Debtors’ financial advisor. These proposed amendments do not in any way affect the scope of other releases or the recoveries of any creditors under the Global Settlement among the Debtors, the Prepetition and DIP Secured Parties, the Purchaser, the Official Committee of Unsecured Creditors, and MidOcean. Given the limited nature of the proposed amendments and lack of prejudice to other parties, the Movants believe the Modified Post-Confirmation Plan should be confirmed. Indeed, the Debtors stand ready to make distributions under the Plan, effectuate the Global Settlement, and go effective as soon as the requested modifications to the Plan are approved.

#### **JURISDICTION AND VENUE**

4. The United States Bankruptcy Court for the Northern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The Movants confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined



that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The statutory bases for the relief requested herein are sections 105(a) and 1127(b) of title 11 of the United States Code (the “Bankruptcy Code”).

### **EMERGENCY CONSIDERATION**

7. In accordance with the Bankruptcy Local Rules for the Northern District of Texas and the General Order Regarding Procedures for Complex Chapter 11 Cases, the Movants respectfully request emergency consideration of this Motion. The Movants submit that emergency relief in connection with this Motion is essential to the success of these Chapter 11 Cases. As discussed herein, any delay in granting the relief requested could hinder the ultimate success of the Debtors’ Chapter 11 Cases and implementation of the Global Settlement. The Movants therefore submit that emergency consideration is necessary and respectfully request that this Motion be heard at the at the Court’s earliest convenience.

### **RELIEF REQUESTED**

8. By this Motion, the Movants seek entry of an order (the “Order”), substantially in the form attached hereto as **Exhibit A**, (a) confirming the modified Plan (the “Modified Post-Confirmation Plan”) attached to the Order as Exhibit 1, and (b) granting related relief. A redline of the differences between the Plan, as confirmed, and the Modified Post-Confirmation Plan is attached to the Order as Exhibit 2.

### **BACKGROUND REGARDING VENDOR PAYMENTS**

9. After the Confirmation Hearing and prior to closing the Backyard Sale, consistent with that certain *Asset Purchase Agreement*, dated as of April 25, 2024, by and among certain of

the Debtors and the Purchaser (the “Purchase Agreement”), the Debtors prepared an Estimated Closing Statement, that among other things required a review of reimbursable expenses under the Purchase Agreement and related payments made during the Chapter 11 Cases. In preparing the Estimated Closing Statement, the Debtors reported to the Prepetition and DIP Secured Parties that approximately \$1,000,000 of payments made to vendors on a postpetition basis, which were intended for the production of postpetition goods, were in fact paid for goods delivered prepetition. The Debtors further reported that this error was inadvertent and resulted from the use of individual components from multiple vendors to produce finished goods in the ordinary course of operations.

10. Out of an abundance of caution, the Movants are disclosing the Vendor Payments to the Court. To the extent any of the Vendor Payments may be voidable under section 549 of the Bankruptcy Code, such potential causes of action are within the scope of “Transferred Assets” and were sold to the Purchaser under section 2.1(k) of the Purchase Agreement. This provision of the Purchase Agreement was negotiated prior to the Petition Date in order to allow the Purchaser to maintain commercial relationships with its go-forward vendors. Accordingly, the Vendor Payments do not prejudice any of the Debtors’ stakeholders – other than, potentially, the Prepetition and DIP Secured Parties, who have requested the modifications to the Plan, in part, to address these payments.

### **DESCRIPTION OF THE MODIFICATIONS<sup>3</sup>**

11. The Movants seek to amend the Plan for the limited purpose of carving out certain Claims and Causes of Action against the Debtors, certain of the Debtors' officers, and SCP from the releases given by the Prepetition and DIP Secured Parties.<sup>4</sup>

12. Specifically, under the Modified Post-Confirmation Plan, the Prepetition and DIP Secured Parties (each in their capacity as such) will not release the Debtors, the Debtors' officers as of the Petition Date (except for any officers the Purchaser hires for as long as the Purchaser employs them) (the "Debtors' Officers"), and SCP. Such carve-out applies solely with respect to any and all potential Claims and Causes of Action arising from (i) the Debtors' reporting obligations under the DIP Approval Order or the DIP Facility Documents, and (ii) any payment in violation of the Prepetition Credit Agreement Documents, the Restructuring Support Agreement, and/or the DIP Documents.

13. Further, any recovery by the Prepetition and DIP Secured Parties against the Debtors and the Debtors' Officers shall be limited to the amount recoverable from the Debtors' insurance policies, including the D&O Liability Insurance; *provided, that* such insurance limitation shall not apply to Claims and Causes of Action that may arise from gross negligence, fraud, or willful misconduct.

14. There are no other modifications in the Modified Post-Confirmation Plan.

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<sup>3</sup> The descriptions provided herein are for summary purposes only. To the extent of any ambiguity between the terms of the Motion and the Modified Post-Confirmation Plan, the terms of the Modified Post-Confirmation Plan shall control.

<sup>4</sup> Consistent with the relief requested herein, the Movants have agreed to modify the treatment of DIP Claims in Article II.C of the Plan to allow the Prepetition Secured Parties and DIP Secured Parties to allocate recovery received on the DIP Claims against Prepetition Secured Party Claims and vice versa, which the Prepetition and DIP Secured Parties believe may be necessary to support their pursuit of potential Claims or Causes of Action. This modification to the treatment of potential DIP Claims will not affect the Global Settlement or the rights of other parties.

**BASIS FOR RELIEF**

15. Section 1127(b) of the Bankruptcy Code provides that “[t]he proponent of a plan or the reorganized debtor may modify such plan at any time after confirmation of such plan and before substantial consummation of such plan. . . .” See 11 U.S.C. § 1127(b). Accordingly, post-substantial consummation “modifications” of a plan are not allowed. See *Airadigm Communs., Inc. v FCC (In re Airadigm Communs., Inc.)*, 547 F.3d 763, 769 (7th Cir. 2008) (“a plan cannot be modified for any reason after substantial consummation”).

16. The Plan has not yet been substantially consummated, and thus may still be modified. Pursuant to Bankruptcy Code § 1101(2), “substantial consummation” means:

- (A) transfer of all or substantially all of the property proposed by the plan to be transferred;
- (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and
- (C) commencement of distribution under the plan.

11 U.S.C. § 1101(2). As is clear from the statute, substantial consummation requires that all three of the above requirements be met.

17. Here, while the Backyard Sale has closed, the Debtors have not begun distributing proceeds from the Backyard Sale under the Plan. Thus, the Plan has not been substantially consummated and the Court may approve the Modified Post-Confirmation Plan.

18. Bankruptcy Code § 1127(c) states that the proponent of a modification shall comply with the disclosure requirements of Bankruptcy Code § 1125 with respect to a modification. Bankruptcy Code § 1127(d) states that any holder of a claim that has accepted or rejected a plan is deemed to accept or reject the plan as modified unless the holder changes its vote prior to a time fixed by the Court.

19. The modification contained in the Modified Post-Confirmation Plan does not affect any voting creditor other than the Prepetition Secured Parties. The Prepetition Secured Parties voted to confirm the Plan and, by supporting this Motion, affirm their vote in favor of confirmation of the Modified Post-Confirmation Plan. Moreover, the modifications contained in the Modified Post-Confirmation Plan do not change the Global Settlement and Holders of Allowed General Unsecured Claims are still entitled to receive the negotiated benefits of the Global Settlement. All changes to the Plan are clearly set forth in the redline attached to the Order as Exhibit 2. For those reasons, the Movants assert that no further disclosure is necessary.

### CONCLUSION

20. The Modified Post-Confirmation Plan continues to meet the requirements of sections 1122 and 1123 of the Bankruptcy Code. As explained above, the Plan has not been substantially consummated because distributions have not yet begun, thus the Court may approve the Modified Post-Confirmation Plan. No creditor other than the Prepetition and DIP Secured Parties, who voted to accept the Plan, will be affected by the changes contained in the Modified Post-Confirmation Plan. No further disclosure is required to meet the requirements of Bankruptcy Code § 1127(c). Finally, because no creditor other than the Prepetition Secured Parties are affected by the modification contained in the Modified Post-Confirmation Plan, the Court need not grant creditors time to change their votes. Based on the forgoing, the Court should approve the Modified Post-Confirmation Plan.

*[Remainder of page intentionally left blank.]*

WHEREFORE, the Movants request that the Court, on an expedited basis, enter the Order substantially in the form attached hereto as **Exhibit A**, (a) confirming the Modified Post-Confirmation Plan attached to the Order as **Exhibit 1**, and (b) granting related relief.

/s/ Lauren R. Kanzer

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**ATTORNEYS FOR GB FUNDING, LLC AND 1903 PARTNERS, LLC**

**CERTIFICATE OF SERVICE**

I certify that on July 6, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ Matthew D. Struble  
One of Counsel

**EXHIBIT A**

**Proposed Order**



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:** § **Case No. 24-80045-mvl11**  
§  
**KIDKRAFT, INC., et al.,** § **Chapter 11**  
§  
**Debtors.**<sup>1</sup> § **(Jointly Administered)**  
§  
§ **Re: Docket. No. \_\_\_\_\_**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
GRANTING EMERGENCY JOINT MOTION OF THE DEBTORS  
AND PREPETITION AND DIP SECURED PARTIES FOR AN ORDER  
(I) APPROVING LIMITED MODIFICATIONS TO THE CONFIRMED PLAN  
PURSUANT TO 11 U.S.C. § 1127(B); AND (II) GRANTING RELATED RELIEF**

Upon the joint Motion<sup>2</sup> filed by the above-referenced debtors and debtors in possession (collectively, the “Debtors”) and GB Funding, LLC and 1903 Partners, LLC (together the

---

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft Partners, LLC (3268), KidKraft International IP Holdings, LLC (1841), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc. (4302). The location of the Debtors’ U.S. corporate headquarters and the Debtors’ service address is: 4630 Olin Road, Dallas, TX 75244.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

“Prepetition and DIP Secured Parties”), and for entry of an order: (a) confirming the modified Plan (the “Modified Post-Confirmation Plan”) attached hereto as Exhibit 1, and (b) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final 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 the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that under the circumstances proper and adequate notice of the Motion and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, the Court hereby makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Modified Post-Confirmation Plan does not include any modification that materially affects or alters either the classification or treatment of any creditor that voted to accept the Plan [Docket No. 220].
2. At the time of the hearing on the Motion, the Plan had not been substantially consummated and the Court may approve the Modified Post-Confirmation Plan under 11 U.S.C. § 1127(b).
3. Due, timely, proper, and adequate notice of the Motion and the Modified Post-Confirmation Plan was provided.

4. The Modified Post-Confirmation Plan does not violate sections 1122 or 1123 of the Bankruptcy Code.

5. The Modified Post-Confirmation Plan meets all of the requirements of section 1129 of the Bankruptcy Code.

6. All creditors who voted to accept the Plan (and prior versions of the plan) are deemed to have accepted the Modified Post-Confirmation Plan.

### **ORDER**

It is therefore ordered that:

7. The Modified Post-Confirmation Plan is now the confirmed plan in these chapter 11 cases under 11 U.S.C. § 1127(b).

8. Except as expressly stated otherwise in this Order, all findings of fact and conclusions of law in the *Findings of Fact, Conclusions of Law, and Order (I) Approving the Disclosure Statement; and (II) Confirming the Debtors' Amended Joint Prepackaged Chapter 11 Plan* [Docket No. 241] shall be deemed applicable to the Modified Post-Confirmation Plan.

9. The requirements of Bankruptcy Rule 6004(a) are waived.

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

11. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

**Order submitted by:**

**VINSON & ELKINS LLP**

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**ATTORNEYS FOR GB FUNDING, LLC  
AND 1903 PARTNERS, LLC**

**Exhibit 1**

**Modified Post-Confirmation Plan**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:** § **Case No. 24-80045-mvl11**  
§  
**KIDKRAFT, INC., et al.,** § **(Chapter 11)**  
§  
**Debtors.<sup>1</sup>** § **(Jointly Administered)**  
§

**DEBTORS' SECOND AMENDED JOINT PREPACKAGED CHAPTER 11 PLAN**

---

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**ATTORNEYS FOR THE DEBTORS AND  
DEBTORS IN POSSESSION**

**Dated: July 6, 2024**

---

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft Partners, LLC (3268), KidKraft International IP Holdings, LLC (1841), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc (4302). The location of the Debtors' U.S. corporate headquarters and the Debtors' service address is: 4630 Olin Road, Dallas, TX 75244.

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## INTRODUCTION

KidKraft and its affiliated debtors, as Debtors and debtors in possession in the above-captioned chapter 11 cases, jointly propose this prepackaged chapter 11 plan for the resolution of outstanding Claims against, and Interests in, the Debtors. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims against, and Interests in, such Debtor. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in Article I.A of the Plan or the Bankruptcy Code or Bankruptcy Rules. Holders of Claims and Interests should refer to the Disclosure Statement for a discussion of the Debtors' history, businesses, Assets, results of operations, and historical financial information, as well as a summary and description of the Plan. The Debtors are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

**ALL HOLDERS OF CLAIMS WHO ARE ELIGIBLE TO VOTE ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.**

### ARTICLE I. DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW

#### A. *Defined Terms*

As used in the Plan, capitalized terms have the meanings set forth below.

1. “**363 Sale**” means the sale of the Transferred Assets pursuant to section 363 of the Bankruptcy Code in accordance with the terms of the Purchase Agreement and Sale Approval Order.

2. “**503(b)(9) Claim**” means a Claim pursuant to section 503(b)(9) of the Bankruptcy Code for the value of goods received by the Debtors in the 20 days immediately prior to the Petition Date and sold to the Debtors in the ordinary course of the Debtors' business.

3. “**Adequate Protection Claim**” means any Claim for adequate protection within the meaning of section 361 of the Bankruptcy Code arising under applicable law or pursuant to Final Order of the Bankruptcy Court.

4. “**Administrative Expense Claim**” means any Claim (other than any Adequate Protection Claims or DIP Claims) for costs and expenses of administration of the Debtors' Estates pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (i) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Debtors' Estates and operating the Debtors' businesses, (ii) any Allowed requests for compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Cases pursuant to sections 503(b)(3), (4), and (5) of the Bankruptcy Code, and (iii) any Unpaid Employee Severance Obligations.

5. “**Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount**” means the amount set forth in the Approved Budget (or as otherwise agreed upon by the Debtors, the DIP Secured Parties, and the Purchaser), and funded by cash on hand of the Debtors and the proceeds of the DIP Facility prior to the Confirmation Date, sufficient to satisfy the agreed upon estimated amount of the Allowed Administrative Expense Claims, Allowed Priority Tax Claims, and Allowed Other Priority Claims; *provided that* in no event will the DIP Secured Parties’ obligations to provide such funding exceed the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount.

6. “**Administrative Expense Claims Bar Date**” means the deadline for Filing requests for payment of Administrative Expense Claims (other than 503(b)(9) Claims), which: (a) with respect to Administrative Expense Claims other than Professional Fee Claims, shall be 30 days after the Effective Date; and (b) with respect to Professional Fee Claims of Professionals, shall be 45 days after the Effective Date.

7. “**Affiliate**” shall have the meaning set forth in section 101(2) of the Bankruptcy Code when used in reference to a Debtor, and when used in reference to an Entity other than a Debtor, means any other Entity that controls, is controlled by, or is under common control with such Entity, other than a Debtor.

8. “**Allowed**” means with reference to any Claim or Interest, (i) any Claim or Interest arising on or before the Effective Date (a) as to which no objection to allowance has been interposed within the time period set forth in the Plan and such Claim or Interest is not Disputed or (b) as to which any objection has been determined by a Final Order of the Bankruptcy Court to the extent such objection is determined in favor of the respective Holder, (ii) any Claim or Interest as to which the liability of the Debtors and the amount thereof are determined by a Final Order of a court of competent jurisdiction other than the Bankruptcy Court, or (iii) any Claim or Interest expressly allowed under the Plan; *provided, however*, that notwithstanding the foregoing, the Wind Down Estate (to the extent applicable) will retain all claims and defenses with respect to Allowed Claims that are Reinstated or otherwise Unimpaired pursuant to the Plan.

9. “**Approved Budget**” means the weekly budget, as defined in paragraph G(iv) of the DIP Approval Order.

10. “**Assets**” means all of the Debtors’ property, rights, and interests that are property of the Estates pursuant to section 541 of the Bankruptcy Code.

11. “**Assigned Avoidance Actions**” means all Avoidance Actions other than those against (i) any parties identified on Schedule 1 to the Global Settlement Term Sheet, unless any such party makes a GUC Settlement Opt-In Election, (ii) any other “Designated Parties” (as that term is defined in the Purchase Agreement) under Section 2.1(k)(ii) through (iv) of the Purchase Agreement, and (iii) any Released Parties.

12. “**Assumed Liabilities**” shall have the meaning set forth in Section 2.3 of the Purchase Agreement.

13. “**Avoidance Actions**” means any and all actual or potential Claims and Causes of Action to avoid a transfer of property or an obligation incurred by the Debtors arising under

chapter 5 of the Bankruptcy Code, including sections 502, 510, 544, 545, 547 through 553, and 724(a) of the Bankruptcy Code or under similar or related state or federal statutes and common law, including fraudulent transfer and preference laws.

14. “**Ballots**” means the ballots distributed to certain Holders of Impaired Claims entitled to vote on the Plan upon which such Holders shall, among other things, indicate their acceptance or rejection of the Plan in accordance with the Plan and the procedures governing the solicitation process.

15. “**Bankruptcy Code**” means title 11 of the United States Code, as amended and in effect during the pendency of the Chapter 11 Cases.

16. “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure promulgated under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court, in each case, as amended from time to time.

17. “**Bankruptcy Court**” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division.

18. “**Bar Date Order**” means the order entered by the Bankruptcy Court setting the Claims Bar Date and the Governmental Bar Date.

19. “**Bidder Protections**” means, collectively, the Break-Up Fee and Expense Reimbursement.

20. “**Break-Up Fee**” shall have the meaning set forth in Section 9.3(a) of the Purchase Agreement, as may be modified by a subsequent order of the Bankruptcy Court.

21. “**Business Day**” means any day other than a Saturday, Sunday, or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

22. “**Canadian Debtors**” means, collectively, the following Debtors: Solowave Design Holdings Limited, Solowave Design LP, Solowave Design Inc., and Solowave International Inc. Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Canadian Debtors shall mean the Wind Down Estate to the extent context requires.

23. “**Canadian Property**” means the assets, undertakings and property of the Canadian Debtors and any other assets, undertakings and property of the Debtors that may be located in Canada.

24. “**Canadian Transferred Assets**” means the Transferred Assets of the Canadian Debtors and any other Transferred Assets of the Debtors that may be located in Canada.

25. “**Cash**” means cash in legal tender of the United States of America and cash equivalents, including bank deposits, checks, and other similar items.

26. “**Cause of Action**” means any action, claim, cause of action, controversy, third-party claim, dispute, demand, right, action, Lien, indemnity, contribution, guaranty, suit,

obligation, liability, loss, debt, fee or expense, damage, interest, judgment, account, defense, remedy, power, privilege, license, and franchise of any kind or character whatsoever, whether known, unknown, foreseen or unforeseen, existing or hereafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, Disputed or undisputed, Secured or Unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract, in tort, in law, or in equity or pursuant to any other theory of law. For the avoidance of doubt, a “Cause of Action” includes: (a) any right of setoff, counterclaim, or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Interests; (c) any Claim pursuant to section 362 or chapter 5 of the Bankruptcy Code (including Avoidance Actions); (d) any claim or defense including fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any state or foreign law fraudulent transfer or similar claim.

27. “**CCAA Court**” means the Ontario Superior Court of Justice (Commercial List).

28. “**CCAA Recognition Proceedings**” means the recognition proceedings commenced pursuant to Part IV of the *Companies’ Creditors Arrangement Act* (Canada) in respect of the Chapter 11 Cases of KidKraft and the Canadian Debtors.

29. “**Chapter 11 Cases**” means each individual case or the jointly administered cases pending under chapter 11 of the Bankruptcy Code for each individual Debtor or the Debtors, as applicable, in the Bankruptcy Court.

30. “**Claim**” shall have the meaning set forth in section 101(5) of the Bankruptcy Code, against any Debtor.

31. “**Claims Bar Date**” means such time and date established pursuant to the Bar Date Order by which Proofs of Claim (other than for Administrative Expense Claims and Claims held by Governmental Units), including 503(b)(9) Claims, must be Filed.

32. “**Claims Objection Deadline**” means the deadline for objecting to a Claim against a Debtor, which shall be on the date that is the later of (a) 120 days after the Effective Date, subject to extension by order of the Bankruptcy Court, (b) 90 days after the Filing of a Proof of Claim, or (c) such other period of limitation as may be fixed by the Plan, the Confirmation Order, the Bankruptcy Rules, or a Final Order for objecting to a Claim.

33. “**Claims Register**” means the official register of Claims against and Interests in the Debtors maintained by the Noticing and Claims Agent.

34. “**Class**” means a category of Claims against or Interests in the Debtors as set forth in Article III of the Plan pursuant to section 1122(a) of the Bankruptcy Code.

35. “**Committee**” means the official committee of unsecured creditors of the Debtors appointed by the U.S. Trustee in the Chapter 11 Cases on May 23, 2024, pursuant to section 1102 of the Bankruptcy Code.

36. “**Confirmation**” means the entry of the Confirmation Order on the docket of the Chapter 11 Cases.

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

38. “**Confirmation Hearing**” means the hearing held by the Bankruptcy Court to consider Confirmation of the Plan pursuant to section 1128(a) of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

39. “**Confirmation Order**” means the Order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code, which Order may include the Sale Approval Order.

40. “**Confirmation Recognition Order**” means an Order of the CCAA Court in the CCAA Recognition Proceedings recognizing and giving effect in Canada to the Confirmation Order.

41. “**Consummation**” means the occurrence of the Effective Date.

42. “**Cure Claim**” means a monetary Claim based upon a Debtor’s defaults under an Executory Contract or Unexpired Lease at the time such contract or lease is assumed, or assumed and assigned by such Debtor pursuant to section 365 of the Bankruptcy Code.

43. “**Cure Notice**” means a notice of a proposed amount to be paid on account of a Cure Claim in connection with an Executory Contract or Unexpired Lease to be assumed under the Plan pursuant to section 365 of the Bankruptcy Code, which notice shall include (a) procedures for objecting to proposed assumptions of Executory Contracts and Unexpired Leases, (b) Cure Claims to be paid in connection therewith and (c) procedures for resolution by the Bankruptcy Court of any related disputes.

44. “**D&O Liability Insurance Policies**” means all unexpired directors’, managers’, and officers’ liability insurance policies (including any “tail policy”) maintained by any of the Debtors with respect to directors, managers, officers, and employees of the Debtors.

45. “**Debtors**” means, collectively, the following: KidKraft, Inc.; KidKraft Europe, LLC; KidKraft Intermediate Holdings, LLC; KidKraft International Holdings, Inc.; KidKraft International IP Holdings, LLC; KidKraft Partners, LLC; Solowave Design Corp.; Solowave Design Holdings Limited; Solowave Design Inc.; Solowave Design LP; and Solowave International Inc. Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors shall mean the Wind Down Estate to the extent context requires.

46. “**Debtors’ Officers**” means the Debtors’ officers as of the Petition Date; *provided*, that any such officer shall be deemed not to be a Debtors’ Officer for so long as such officer is employed by the Purchaser.

47. “**Definitive Documentation**” means, without limitation, the following definitive documents and agreements: (a) this Plan and all exhibits hereto, including the Plan Supplement documents; (b) the Confirmation Order and Confirmation Recognition Order; (c) the Disclosure Statement; (d) the solicitation materials with respect to the Plan; (e) the Purchase Agreement,

including the exhibits and schedules thereto; (f) the Sale Order, if not incorporated as part of the Confirmation Order and Confirmation Recognition Order, as applicable; (g) any documentation or budget related to the Post-Sale Reserve and Foreign Sale Reserve; (h) the DIP Order; (i) all “first day” motions, applications, and other documents that any Debtor intends to file with the Bankruptcy Court and seeks to have heard on an expedited basis at the “first-day hearing” in the Chapter 11 Cases and any proposed orders related thereto; (j) all motions, applications, and other documents that any Debtor (including a foreign representative appointed by the Bankruptcy Court for any Debtor) or any Canadian Affiliates of Debtors intend to file with the CCAA Court in the CCAA Recognition Proceedings, and any proposed orders related thereto; (k) any provision in any documentation regarding (i) releases of Claims, causes of action, and avoidance actions or (ii) Assumed Liabilities or Transferred Contracts under the Purchase Agreement; (l) such other agreements, instruments, and documentation as may be necessary or reasonably desirable to consummate and document the Restructuring and Sale Transaction (including, without limitation, in connection with the CCAA Recognition Proceedings); and (m) to the extent not included, any motions and related proposed orders seeking approval of each of the above. For the avoidance of doubt, the Definitive Documentation shall be in form and substance acceptable to the Debtors, the Prepetition Secured Parties, the Purchaser, and with respect to MidOcean, solely with respect to any provision therein having a material effect on MidOcean or releasing Claims or causes of action by or against MidOcean or its affiliates thereunder.

48. “*De Minimis Assets*” means assets with a total transaction value, as calculated within the Debtors’ or Wind Down Administrator’s reasonable discretion, in consultation with the Prepetition Secured Parties, less than or equal to \$50,000.

49. “*DIP Agent*” means GB Funding, LLC, in its capacity as administrative agent and collateral agent under the DIP Facility.

50. “*DIP Approval Order*” means the interim order entered by the Bankruptcy Court approving the DIP Facility and the Final DIP Approval Order.

51. “*DIP Claim*” means any Claim of the DIP Agent or any DIP Lender on account of or arising from, under or in connection with the DIP Facility.

52. “*DIP Facility*” means the senior secured superpriority debtor-in-possession financing facility to be provided by the DIP Lenders, all as set forth in, and consistent with and subject to, the terms and conditions of the DIP Facility Documents.

53. “*DIP Facility Documents*” means the DIP Facility Term Sheet, the DIP Credit Agreement (as applicable) and all other agreements, documents, instruments, and amendments related thereto, including any DIP Order, and any guaranty agreements, pledge and collateral agreements, UCC financing statements, or other perfection documents, subordination agreements, fee letters, and any other security agreements.

54. “*DIP Facility Term Sheet*” means that certain term sheet regarding the terms of debtor-in-possession financing between KidKraft, Inc., as borrower, certain of KidKraft’s subsidiaries and affiliates, as guarantors, the DIP Agent, and the DIP Lender, attached as Exhibit A to the DIP Approval Order.

55. “**DIP Lender**” means 1903 Partners, LLC, in its capacity as lender under the DIP Facility.

56. “**DIP Liens**” mean the Liens granted to the DIP Agent under the DIP Order to secure the DIP Claims.

57. “**DIP Order**” means the DIP Approval Order and the DIP Recognition Order, as applicable.

58. “**DIP Recognition Order**” means one or more orders of the CCAA Court in the CCAA Recognition Proceedings recognizing and giving effect in Canada to the DIP Approval Order, including the Final DIP Recognition Order.

59. “**DIP Secured Parties**” means collectively, the DIP Lender and the DIP Agent, in their respective capacities under the DIP Facility.

60. “**DIP Secured Parties Advisors**” means Katten Muchin Rosenman LLP, as counsel to the DIP Secured Parties and Fasken Martineau DuMoulin LLP as Canadian Counsel to the DIP Secured Parties.

61. “**Disallowed**” means, with respect to any Claim, or any portion thereof, that such Claim, or such portion thereof, is not Allowed; *provided, however*, that a Disputed Claim shall not be considered Disallowed until so determined by entry of a Final Order.

62. “**Disbursing Agent**” means the Debtors, the Wind Down Estate, the GUC Trust, or the Entity or Entities selected by the Debtors, the Wind Down Estate, or the GUC Trust as applicable, to make or facilitate distributions pursuant to the Plan.

63. “**Disclosure Statement**” means the *Disclosure Statement for the Debtors’ Joint Prepackaged Chapter 11 Plan*, dated as of May 8, 2024, as may be amended, supplemented, or modified from time to time, including all exhibits and schedules thereto and references therein that relate to the Plan, that is prepared and distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law.

64. “**Disputed**” means, with respect to any Claim or Interest, that such Claim or Interest (a) is not yet Allowed, (b) is not Disallowed by the Plan, the Bankruptcy Code, or a Final Order, as applicable, (c) as to which a dispute is being adjudicated by a court of competent jurisdiction in accordance with non-bankruptcy law, or (d) is or is hereafter listed in the Schedules as contingent, unliquidated, or disputed and for which a Proof of Claim is or has been timely Filed in accordance with the Bar Date Order.

65. “**Dissolution Transactions**” means the transactions that the Debtors or Wind Down Administrator, with the consent of the Prepetition Secured Parties, determine to be necessary or appropriate to implement the terms of the Plan, and ultimately result in the dissolution or other termination of the corporate entities that comprise the Debtors.

66. “**Distributable Value**” means (a) the Purchase Price *plus* (b) any of the Debtors’ cash on hand as of the Effective Date *plus* (c) proceeds of the monetization of any Excluded Assets



of the Debtors, whenever received by the Debtors or the Wind Down Estates *plus* (d) surrender of collateral or proceeds of any other collateral securing the DIP Claims or Prepetition Secured Party Claims, whenever received by the Debtors or the Wind Down Estates; *minus* (e) amounts held-back to secure any purchase price adjustments pursuant to the Purchase Agreement (unless and until distributed to the Debtors in accordance therewith); *minus* (f) amounts necessary to fund the Professional Fee Escrow Account in the Professional Fee Reserve Amount; *minus* (g) amounts necessary to satisfy Restructuring Expenses; *minus* (h) amounts necessary to fund the Post-Sale Reserve; *minus* (g) amounts necessary to fund the Foreign Sale Reserve; *provided that* any unused amounts remaining from the Professional Fee Escrow Account, the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount, and the Post-Sale Reserve shall be considered Distributable Value; *provided that*, for the avoidance of doubt, no GUC Trust Assets shall be included as Distributable Value.

67. “**Distribution Record Date**” means the record date for purposes of making distributions under the Plan on account of Allowed Claims, which date shall be the Confirmation Date or such other date as designated in an order of the Bankruptcy Court.

68. “**Effective Date**” means the date selected by the Debtors on which: (a) no stay of the Confirmation Order, Confirmation Recognition Order or Sale Order (if separately entered) is in effect; (b) all conditions precedent specified in Article IX have been satisfied or waived (in accordance with Article IX.C); and (c) the Plan becomes effective; *provided, however*, that if such date does not occur on a Business Day, the Effective Date shall be deemed to occur on the first Business Day after such date.

69. “**Entity**” shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

70. “**Estate**” means, as to each Debtor, the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

71. “**Excluded Assets**” shall have the meaning set forth in Section 2.2 of the Purchase Agreement.

72. “**Exculpated Party**” means each of the following solely in its capacity as such and to the maximum extent permitted by law: (a) the Debtors; (b) the Committee; and (c) the members of the Committee, solely in their capacities as such.

73. “**Executory Contract**” means a contract to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

74. “**Expense Reimbursement**” shall have the meaning set forth in Section 9.3(a) of the Purchase Agreement, as may be modified by a subsequent order of the Bankruptcy Court.

75. “**Federal Judgment Rate**” means the federal judgment rate in effect as of the Petition Date, compounded annually.

76. “**File**,” “**Filed**,” or “**Filing**” means file, filed, or filing in the Chapter 11 Cases with the Bankruptcy Court or, with respect to the filing of a Proof of Claim, the Noticing and Claims Agent or the Bankruptcy Court through the PACER or CM/ECF website.

77. “**Final Decree**” means the decree contemplated under Bankruptcy Rule 3022.

78. “**Final DIP Approval Order**” means the Final Order entered by the Bankruptcy Court approving the DIP Facility.

79. “**Final DIP Recognition Order**” means the Final Order of the CCAA Court recognizing and giving effect in Canada to the Final DIP Approval Order.

80. “**Final Order**” means an order or judgment of a court of competent jurisdiction that has been entered on the docket maintained by the clerk of such court, which has not been reversed, vacated, or stayed and as to which (i) the time to appeal, petition for certiorari, or move for a new trial, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for a new trial, reargument, or rehearing shall then be pending, or (ii) if an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought, such order or judgment shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari, or move for a new trial, reargument, or rehearing shall have expired; provided, however, that no order or judgment shall fail to be a “Final Order” solely because of the possibility that a motion under Rules 59 or 60 of the Federal Rules of Civil Procedure or any analogous Bankruptcy Rule (or any analogous rules applicable in another court of competent jurisdiction) or sections 502(j) or 1144 of the Bankruptcy Code has been or may be filed with respect to such order or judgment.

81. “**Foreign Sale Reserve**” means the amount of the Purchase Price allocated to the inventory transferred from the Netherlands Subsidiaries to facilitate the Sale Transaction, which amount will be distributed from Debtors to the Netherlands Subsidiaries pursuant to the Plan.

82. “**General Unsecured Claim**” means any Claim that is not secured, subordinated, or entitled to priority under the Bankruptcy Code or any Final Order of the Bankruptcy Court (other than an Intercompany Claim or a Subordinated Claim).

83. “**Global Settlement**” means the global settlement between the Global Settlement Parties pursuant to the term sheet (the “**Global Settlement Term Sheet**”) attached to the *Notice of Filing Global Settlement Term Sheet* [Docket No. 195].

84. “**Global Settlement Parties**” means the Debtors, the Committee, the DIP Secured Parties, the Prepetition Secured Parties, the Purchaser, and MidOcean.

85. “**Governmental Bar Date**” means such time and date established pursuant to the Bar Date Order by which Proofs of Claim of Governmental Units must be Filed.

86. “**Governmental Unit**” shall have the meaning set forth in section 101(27) of the Bankruptcy Code.

87. “**GUC Critical Vendor Cash**” means any amounts permitted to be paid under the *Final Order (I) Authorizing the Debtors to Pay (A) Critical Vendors, (B) Lien Claimants, and (C) 503(b)(9) Claimants; (II) Confirming Administrative Expense Priority of Outstanding Orders; and (III) Granting Related Relief* [Docket No. 200] that are unused as of the Effective Date (with the Debtors having sole discretion to pay amounts authorized under such order, except that any Allowed Claims entitled to priority status under section 503(b)(9) of the Bankruptcy Code shall be paid in full to the Holders thereof).

88. “**GUC L/C Cash**” means 40% of any cash collateral recovered from the former prepetition agent pursuant to the Assignment and Assumption dated as of January 31, 2024 by and between (i) Antares AssetCo LP, Antares Capital LP, Antares Holdings LP, Antares CLO 2017-2, LTD., Antares CLO 2018-1, LTD., Fifth Third Bank, N.A., and PNC Bank, N.A., as assignors, and (ii) 1903 Partners, LLC, as assignee.

89. “**GUC Purchase Price Cash**” means (i) \$350,000 if, on the Effective Date, the calculation of the Purchase Price Calculation is within a 0-5% variance of \$39,322,916; (ii) \$250,000 if, on the Effective Date, the Purchase Price Calculation is within a 6-10% variance of \$39,322,916; (iii) \$200,000 if, on the Effective Date, the Purchase Price Calculation is within a 11-20% variance of \$39,322,916; or (iv) \$150,000 if, on the Effective Date, the Purchase Price Calculation is a more than 20% variance of \$39,322,916.

90. “**GUC Settlement Opt-In Election**” means the affirmative election by a Holder of a General Unsecured Claim to opt-in to the settlement under the Global Settlement Term Sheet and receive its Pro Rata share of 100% of the GUC Trust Interests.

91. “**GUC Settlement Opt-In Election Deadline**” means the date that is thirty (30) days after the Effective Date.

92. “**GUC Settlement Opt-In Form**” means the form by which a potential holder of a General Unsecured Claim may make a GUC Settlement Opt-In Election, which form shall be included in the Plan Supplement.

93. “**GUC Settlement Opt-In Procedures**” means the procedures set forth in the GUC Settlement Opt-In Form for a potential holder of an Allowed General Unsecured Claim to make a GUC Settlement Opt-In Election.

94. “**GUC Trust**” means the trust established pursuant to Article IV.C of the Plan to, among other things, hold and liquidate the GUC Trust Assets and make distributions to Holders of Allowed General Unsecured Claims that make a GUC Settlement Opt-In Election pursuant to the Plan.

95. “**GUC Trust Accounts**” means the bank accounts to be held in the name of the GUC Trustee that are created pursuant to Article IV.C of the Plan.

96. “**GUC Trust Agreement**” means the agreement establishing and governing the GUC Trust, which agreement shall be included in the Plan Supplement and executed as of the Effective Date, and which agreement shall be acceptable in form and substance to the Debtors, the Committee, and the Prepetition Secured Parties.

97. “**GUC Trust Assets**” means, in the aggregate, (i) the GUC Trust Expense Reserve; (ii) \$125,000 in Cash; (iii) the Sponsor Cash Contribution; (iv) the GUC L/C Cash; (v) the GUC Purchase Price Cash; (vi) any unused amounts in the Approved Budget that are designated for fees and expenses of the Committee’s professionals; (vii) the GUC Critical Vendor Cash, if any; (viii) all commercial tort claims (as that term is defined in Article 9 of the Uniform Commercial Code) of the Debtors other than any such claims against any Released Party under the Plan; and (ix) the Assigned Avoidance Actions.

98. “**GUC Trust Assets Transfer**” means the assignment, conveyance, or other transfer of the GUC Trust Assets to the GUC Trust, which shall occur on the next Business Day following the GUC Settlement Opt-In Election Deadline.

99. “**GUC Trust Beneficiaries**” means any Holder of an Allowed General Unsecured Claim that has made a GUC Settlement Opt-In Election and thereby obtained one or more GUC Trust Interests and the Prepetition Secured Parties. For the avoidance of doubt, the Prepetition Secured Parties shall be deemed to have made a GUC Settlement Opt-In Election and shall be GUC Trust Beneficiaries without the need to submit any opt-in election or otherwise comply with the GUC Settlement Opt-In Procedures.

100. “**GUC Trust Expense Reserve**” means a reserve in the amount of \$75,000 funded from Cash on hand of the U.S. Debtors to the GUC Trust on the Effective Date to allow the GUC Trustee to maintain and administer the GUC Trust Assets.

101. “**GUC Trust Interests**” means the beneficial interests in the GUC Trust.

102. “**GUC Trustee**” means the trustee appointed pursuant to Article IV.C of the Plan (or any successor trustee), in its capacity as the trustee of the GUC Trust, who shall be solely responsible for overseeing the reconciliation, objection, settlement, or other disposition of General Unsecured Claims asserted in these Chapter 11 Cases.

103. “**Holder**” means a Person or Entity holding a Claim against or Interest in a Debtor, as applicable.

104. “**Impaired**” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is not Unimpaired.

105. “**Indemnification Obligations**” means each of the Debtors’ indemnification obligations, whether in the bylaws, certificates of incorporation or formation, limited liability company agreements, other organizational or formation documents, board resolutions, management or indemnification agreements, or employment contracts, for the current and former directors and the officers of the Debtors.

106. “**Intercompany Claim**” means any Claim against a Debtor held by another Debtor.

107. “**Intercompany Interest**” means any Interest in a Debtor held by another Debtor.

108. “**Interest**” means any equity interest (as defined in section 101(16) of the Bankruptcy Code) in any Debtor, including all ordinary shares, units, common stock, preferred

stock, membership interest, partnership interest, or other instrument, evidencing any fixed or contingent ownership interest in the Debtors, whether or not transferable, including any option, warrant, or other right, contractual or otherwise, to acquire any such interest, that existed immediately before the Effective Date.

109. “**Internal Revenue Code**” means the Internal Revenue Code of 1986, as amended.

110. “**IRS**” means the Internal Revenue Service.

111. “**Judicial Code**” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001.

112. “**KidKraft**” means KidKraft, Inc.

113. “**Lender Retained Causes of Action**” means any and all potential Claims and Causes of Action held by the DIP Secured Parties or the Prepetition Secured Parties against (i) the Debtors; (ii) the Debtors’ Officers; or (iii) SierraConstellation Partners, LLC, in each case related solely to: (a) the Debtors’ reporting obligations under the DIP Approval Order or DIP Facility Documents; or (b) any payment in violation of the Prepetition Credit Agreement Documents, the Restructuring Support Agreement, and/or the DIP Documents; *provided*, that any potential recovery against the Debtors and the Debtors’ Officers shall be limited to insurance proceeds (if any) available from the Debtors’ insurance policies, including the D&O Liability Insurance Policies; *provided, further*, that such insurance limitation shall not apply to Claims and Causes of Action arising as a result of gross negligence, fraud, or willful misconduct. Notwithstanding any other releases provided herein by the DIP Secured Parties or the Prepetition Secured Parties, the Lender Retained Causes of Action shall not be released; *provided, further*, that any and all potential Claims and causes of action held by the DIP Secured Parties or the Prepetition Secured Parties against any Released Party other than those parties specifically identified in clauses (i), (ii), and (iii) above shall not constitute Lender Retained Causes of Action.

114. “**Lien**” shall have the meaning set forth in section 101(37) of the Bankruptcy Code.

115. “**List of Retained Causes of Action**” means the schedule of certain Causes of Action of the Debtors which shall be included in the Plan Supplement.

116. “**Local Rules**” means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas.

117. “**MidOcean**” means MidOcean Partners IV, L.P. in its capacity as the holder of Preferred A Units and Preferred C Units in KidKraft Group Holdings, LLC and party to that certain *Note Purchase Agreement* dated as of January 13, 2023, pursuant to which, KidKraft agreed to issue and sell to and MidOcean agreed to purchase, notes in the aggregate principal amount of up to \$5,000,000 and MidOcean US Advisor, L.P. as party to that certain *Professional Services Agreement* dated as of July 15, 2015 by and among KidKraft Group Holdings, LLC, KidKraft, and MidOcean US Advisor, L.P., as amended by that First Amendment to the Professional Services Agreement dated as of September 30, 2016.

118. “**Netherlands Asset Sale**” has the meaning set forth in Article IV.A.3. of the Plan.

119. “*Netherlands Liquidation*” has the meaning set forth in Article IV.A.3. of the Plan.
120. “*Netherlands Subsidiaries*” means non-debtors KidKraft Netherlands C.V., KidKraft Holdings B.V., and KidKraft Netherlands B.V.
121. “*Note Purchase Agreement Documents*” means that certain *Note Purchase Agreement* dated as of January 13, 2023 by and among certain of the Debtors and MidOcean and all other agreements, documents, instruments, and amendments related thereto.
122. “*Noticing and Claims Agent*” means Stretto Inc., the noticing, claims, and solicitation agent proposed to be retained by the Debtors in the Chapter 11 Cases.
123. “*Other Priority Claim*” means any Claim that is entitled to priority of payment under section 507(a) of the Bankruptcy Code other than an Administrative Expense Claim or a Priority Tax Claim.
124. “*Other Secured Claims*” means Secured Claims other than Priority Tax Claims, DIP Claims, or Prepetition Secured Party Claims.
125. “*Person*” shall have the meaning set forth in section 101(41) of the Bankruptcy Code.
126. “*Petition Date*” means the date on which each Debtor Filed its voluntary petition for relief commencing the Chapter 11 Cases.
127. “*Plan*” means this chapter 11 plan, as it may be altered, amended, modified, or supplemented from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the terms of the Plan, including the Plan Supplement and all exhibits, supplements, appendices, and schedules to the Plan, which shall be consistent with, and subject to the approvals and consents as to form and substance set forth in, the Restructuring Support Agreement.
128. “*Plan Supplement*” means, to the extent applicable, the compilation of documents and forms of documents, and all exhibits, attachments, schedules, agreements, documents and instruments referred to therein, ancillary or otherwise, including, without limitation, the Purchase Agreement, the Schedule of Assumed Executory Contracts and Unexpired Leases, the GUC Trust Agreement, the Global Settlement Term Sheet, the GUC Settlement Opt-In Form, the identity of the Wind Down Administrator, and the List of Retained Causes of Action all of which shall be incorporated by reference into, and are an integral part of, the Plan, as may be amended, modified, replaced and/or supplemented from time to time, subject to the consent of the Prepetition Secured Parties.
129. “*Post-Sale Reserve*” means a cash reserve in the amount of \$650,000 to fund the reasonably anticipated costs necessary for the wind down of the Wind Down Estate, including an estimated amount of reasonable fees and expenses that may be incurred by professionals for services rendered after the Effective Date and statutory fees, which cash reserve shall be funded into a segregated account on the Effective Date.

130. “**Prepetition Credit Agreement**” means that certain *Amended and Restated First Lien Credit Agreement*, dated as of April 3, 2020 (as amended from time to time), by and among KidKraft, Inc. and KidKraft Netherlands B.V., jointly and severally, as borrowers, the guarantors thereto, GB Funding, LLC, as Prepetition Credit Agreement Agent, and 1903 Partners, LLC, as Lender.

131. “**Prepetition Credit Agreement Agent**” means GB Funding, LLC, in its capacity as Administrative Agent and Collateral Agent (as such terms are defined in the Prepetition Credit Agreement) under the Prepetition Credit Agreement.

132. “**Prepetition Credit Agreement Documents**” means the Prepetition Credit Agreement and all other agreements, documents, instruments, and amendments related thereto, including any guaranty agreements, pledge and collateral agreements, UCC financing statements, or other perfection documents, subordination agreements, fee letters, and any other security agreements.

133. “**Prepetition Secured Parties**” means GB Funding, LLC, as Administrative Agent and Collateral Agent, and 1903 Partners, LLC, as Lender, in their respective capacities under the Prepetition Credit Agreement.

134. “**Prepetition Secured Party Advisors**” means Katten Muchin Rosenman LLP, as counsel to the Prepetition Secured Parties and Fasken Martineau DuMoulin LLP as Canadian counsel to the Prepetition Secured Parties.

135. “**Prepetition Secured Party Claims**” means all Claims, including “Parallel Debts” (as defined in the Prepetition Credit Agreement Documents) held by the Prepetition Secured Parties on account of, arising under, or relating to their respective capacities as lender or agent under the Prepetition Credit Agreement Documents.

136. “**Prepetition Secured Parties’ Deficiency Claims**” means the deficiency Claims held by the Prepetition Secured Parties. Solely for purposes of any distributions to be made from the GUC Trust Assets to GUC Trust Beneficiaries, the Prepetition Secured Parties’ Deficiency Claims shall be capped at \$55 million.

137. “**Prepetition Secured Party Liens**” means all Liens granted to the Prepetition Credit Agreement Agent to secure the Prepetition Secured Party Claims.

138. “**Priority Tax Claim**” means a Claim held by a Governmental Unit of the kind entitled to priority of payment as specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

139. “**Pro Rata**” means the proportion that an Allowed Claim or an Allowed Interest bears to the aggregate amount of Allowed Claims, Allowed Interests, or other matter so referenced, as the context requires.

140. “**Professional**” means an Entity employed pursuant to a Bankruptcy Court order in accordance with sections 327 or 1103 of the Bankruptcy Code and to be compensated for services

rendered before or on the Effective Date, pursuant to sections 327, 328, 329, 330, or 331 of the Bankruptcy Code.

141. “**Professional Fee Claims**” means a Claim for the compensation of the Professionals and other professionals (including, for certainty, professionals to be compensated pursuant to the orders of the CCAA Court in the CCAA Recognition Proceedings) and the reimbursement of expenses incurred by such professionals through and including the Effective Date to the extent such fees and expenses have not been previously paid, including, for the avoidance of doubt, any costs, fees, expenses, or commissions (including with respect to any investment banking transaction fees or commissions) incurred in connection with the Restructuring; *provided that* to the extent a Debtor Professional (as defined in the DIP Approval Order) agrees with the DIP Lender to a modification to the Debtor Professional fees in accordance with Section 1.8 of the DIP Approval Order, the Claim as modified shall be included in the applicable Professional Fee Claim. Professional Fee Claims of the Committee’s Professionals shall not exceed the aggregate amounts set forth in the Approved Budget, consistent with the Global Settlement Term Sheet.

142. “**Professional Fee Escrow Account**” means an interest-bearing account funded by the Debtors on the Effective Date in an amount equal to the Professional Fee Reserve Amount, pursuant to Article II.B.

143. “**Professional Fee Reserve Amount**” means the total amount of Professional Fee Claims estimated in accordance with Article II.B.

144. “**Professional Services Agreement Documents**” means that certain *Professional Services Agreement* dated as of July 15, 2015 by and among certain of the Debtors and MidOcean and all other agreements, documents, instruments, and amendments related thereto.

145. “**Proof of Claim**” means a proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

146. “**Purchase Agreement**” means that certain Asset Purchase Agreement dated as of April 25, 2024, as amended, modified, or supplemented from time to time, among Purchaser and certain of the Debtors, including all schedules and exhibits thereto, which shall be Filed with the Plan Supplement.

147. “**Purchase Price**” shall have the meaning set forth in the Purchase Agreement.

148. “**Purchase Price Calculation**” means the calculation of the “Purchase Price at close” in accordance with Exhibit B of the Purchase Agreement.

149. “**Purchaser**” means Backyard Products, LLC, and permitted successors, assigns, and designees, as applicable.

150. “**Qualifying Alternative Transaction**” shall have the meaning set forth in the Purchase Agreement.



151. “**Reinstated**” or “**Reinstatement**” means, with respect to Claims and Interests, the treatment provided for in section 1124 of the Bankruptcy Code, which, in all instances, shall be acceptable to the Prepetition Secured Parties and the Purchaser in their sole and absolute discretion.

152. “**Released Party**” means each of the following solely in its capacity as such: (a) the Debtors; (b) the DIP Agent; (c) the DIP Lender; (d) MidOcean; (e) the Prepetition Secured Parties; (f) the Purchaser; (g) the Committee; and (h) with respect to each of the foregoing under (a) through (g) such Entity and its current and former Affiliates, and such Entity’s and its current and former Affiliates’ current and former directors, managers, officers, employees, managed accounts and funds, predecessors, successors, assigns, subsidiaries, equity Holders, members, agents, attorneys, accountants, investment bankers, consultants, and other professionals, each solely in their capacity as such.

153. “**Releasing Party**” means each of the following solely in its capacity as such: (a) all Released Parties; (b) all Holders of Claims who affirmatively cast a timely ballot to accept the Plan and did not affirmatively opt out of the releases set forth in Article VIII.F herein; (c) all Holders of Claims and Interests that were given notice of the opportunity to opt out of granting the releases set forth in Article VIII.F herein but did not otherwise affirmatively opt out of such releases; and (d) all GUC Trust Beneficiaries.

154. “**Restructuring**” means all actions that may be necessary or appropriate to effectuate the transactions described in, approved by, contemplated by, or necessary to effectuate, the Plan.

155. “**Restructuring Expenses**” means the reasonable and documented professional fees and expenses incurred by the DIP Secured Party Advisors, the DIP Secured Parties, the Prepetition Secured Party Advisors and the Prepetition Secured Parties, in each case, in connection with or arising as a result of the Restructuring, the Restructuring Support Agreement, Sale Transaction, the Plan, or the Chapter 11 Cases.

156. “**Restructuring Support Agreement**” means that certain *Restructuring Support Agreement*, dated April 25, 2024, by and among the Debtors, the Prepetition Secured Parties, the DIP Secured Parties, the Purchaser, and MidOcean, as may be further amended, restated, modified, supplemented, or replaced from time to time in accordance with the terms thereof.

157. “**Retained Causes of Action**” means those Causes of Action identified on the List of Retained Causes of Action that are not released, waived, or transferred pursuant to the Plan or any Sale Transaction.

158. “**RSA Parties**” mean, collectively, the Debtors, the Prepetition Secured Parties, the DIP Secured Parties, the Purchaser, and MidOcean.

159. “**Sale Approval Order**” means the order of the Bankruptcy Court approving the Purchase Agreement and the Sale Transaction, which order may be, but is not required to be, part of the Confirmation Order.

160. “**Sale Hearing**” means the hearing held by the Bankruptcy Court to consider Confirmation of the Sale Order, as such hearing may be adjourned or continued from time to time.

161. “**Sale Order**” means the Sale Approval Order and the Sale Recognition Order, as applicable.

162. “**Sale Recognition Order**” means an order of the CCAA Court in the CCAA Recognition Proceedings recognizing and giving effect in Canada to the Sale Approval Order, which order may be, but is not required to be, part of the Confirmation Recognition Order.

163. “**Sales Process**” means the marketing and sales process for the Debtors’ Assets.

164. “**Sale Transaction**” means the sale by the Debtors that are party to the Purchase Agreement of all of their respective right, title, and interest in, to and under the Transferred Assets to the Purchaser in accordance with the terms of the Purchase Agreement and the Sale Order.

165. “**Sale Transaction Documents**” means the Sale Order, the Purchase Agreement, and all other documents required to consummate the Sale Transaction (with respect to such other documents required to consummate the Sale Transaction, in form and substance acceptable to each party thereto).

166. “**Schedule of Assumed Executory Contracts and Unexpired Leases**” means the schedule of Executory Contracts and Unexpired Leases to be assumed and assigned to Purchaser pursuant to the Plan, as set forth in the Plan Supplement, as may be amended from time to time prior to the Effective Date.

167. “**Schedules**” means, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs Filed by the Debtors pursuant to section 521 of the Bankruptcy Code and in substantial conformance with the official bankruptcy forms, as the same may have been amended, modified, or supplemented from time to time.

168. “**SEC**” means the United States Securities and Exchange Commission.

169. “**Secured Claim**” means a Claim (i) secured by a lien on collateral to the extent of the value of such collateral as (a) set forth in the Plan, (b) agreed to by the Holder of such Claim and the Debtors, or (c) determined by a Final Order in accordance with section 506(a) of the Bankruptcy Code, or (ii) secured by the amount of any right of setoff of the Holder thereof in accordance with section 553 of the Bankruptcy Code.

170. “**Security**” shall have the meaning set forth in section 101(49) of the Bankruptcy Code.

171. “**Special Committee**” means the Special Committee of the Board of Directors of KidKraft, Inc.

172. “**Sponsor Cash Contribution**” has the meaning set forth in Article IV.C.8 of the Plan.

173. “**Sponsor Claims Waiver**” has the meaning set forth in Article IV.C.8 of the Plan.

174. “**Subordinated Claim**” means any Claim against a Debtor arising from (a) rescission of a purchase or sale of a Security in any Debtor or an Affiliate of any Debtor, (b) purchase or sale of such a Security, or (c) reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim.

175. “**Transferred Assets**” shall have the meaning set forth in Section 2.1 of the Purchase Agreement, *provided, however*, the Assigned Avoidance Actions shall not be Transferred Assets.

176. “**Transferred Contracts**” shall have the meaning set forth in Section 2.1(e) of the Purchase Agreement.

177. “**Unclaimed Property**” means any distribution under the Plan on account of an Allowed Claim whose Holder has not: (a) accepted such distribution or, in the case of distributions made by check, negotiated such check; (b) given notice to the Wind Down Estate of an intent to accept such distribution; (c) responded to the Debtors’, Wind Down Administrator’s, or GUC Trustee’s (as applicable) requests for information necessary to facilitate such distribution; or (d) taken any other action necessary to facilitate such distribution.

178. “**Unexpired Lease**” means a lease of nonresidential real property to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

179. “**Unimpaired**” means, with respect to a Class of Claims or Interests, a Class consisting of Claims or Interests that are not “impaired” within the meaning of section 1124 of the Bankruptcy Code, including through payment in full in Cash or Reinstatement.

180. “**Unpaid Employee Severance Obligations**” means those obligations owed to certain eligible employees who were terminated prior to the Petition Date and who executed a separation agreement after the Petition Date and prior to the Effective Date, which obligations shall be deemed to have been incurred after the Petition Date and treated as Administrative Expense Claims for purposes of this Plan.

181. “**Unsecured**” means, with respect to a Claim, not Secured.

182. “**U.S. Trustee**” means the Office of the United States Trustee for the Northern District of Texas.

183. “**U.S. Trustee Fees**” means fees arising under 28 U.S.C. § 1930(a)(6) and, to the extent applicable, accrued interest thereon arising under 31 U.S.C. § 3717.

184. “**Wind Down Administrator**” means the Person or Persons identified in the Plan Supplement (as determined by the Debtors), if known, and appointed on the Effective Date, who will serve as the trustee and administrator overseeing the Wind Down Estate and dissolution of the Debtors and their Estates in accordance with the Plan.

185. “**Wind Down Claims**” means the Prepetition Secured Party Claims that remain outstanding on the Effective Date, in an amount not to exceed \$10,000,000, and the Prepetition

Secured Party Liens securing such Prepetition Secured Party Claims, which Prepetition Secured Party Claims and Liens shall be automatically released and discharged following the orderly wind down of the Debtors and the other borrower and guarantors under the Prepetition Credit Agreement and after the proceeds of the Netherlands Asset Sale and Netherlands Liquidation, if any, are indefeasibly distributed in Cash to the Prepetition Secured Parties as provided in Article IV of the Plan.

186. “**Wind Down Estate**” means, collectively, (i) the Estates of the Debtors and (ii) the Debtors’ non-Debtor affiliates, as applicable, following the Effective Date.

187. “**Wind Down Estate Assets**” means (i) any Assets of the Debtors’ Estates that are not GUC Trust Assets and not sold pursuant to the Sale Transaction, including, but not limited to, the Excluded Assets, Interests in the Debtors’ non-Debtor affiliates, and any Cause of Action specifically enumerated in the List of Retained Causes of Action and (ii) Cash in the amount set forth in the Post-Sale Reserve; *provided that* proceeds of any Wind Down Estate Assets, including without limitation, Excluded Assets and such Retained Causes of Action shall become Distributable Value. For the avoidance of doubt, no GUC Trust Assets shall be Wind Down Estate Assets.

188. “**Wind Down Estate Expenses**” means any and all reasonable and documented fees, costs, and expenses incurred by the Wind Down Estate or the Wind Down Administrator (or any Person, entity, or professional engaged to assist the Wind Down Administrator) in connection with the Wind Down Transactions, including, without limitation, any reasonable and documented administrative fees, attorneys’ or other professionals’ fees and expenses, insurance fees, taxes, escrow expenses and fees payable under 28 U.S.C. § 1930, costs associated with any maintenance of any going concern as part of the wind down of such going concern’s business operations, or costs to maintain certain assets while they are held, in each case, in accordance with and subject to the Post-Sale Reserve.

189. “**Wind Down Transactions**” means the transactions that the Debtors or Wind Down Administrator, as applicable, with the consent of the Prepetition Secured Parties, determines to be necessary or appropriate to implement the terms of the Plan, and that ultimately result in the dissolution or other termination of KidKraft and its Affiliates.

#### B. *Rules of Interpretation*

For purposes herein: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) except as otherwise provided, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified, or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (3) except as otherwise provided, any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, restated, supplemented, or otherwise modified in accordance with the terms of the Plan; (4) unless otherwise specified, all references herein to “Articles” are references to Articles

of the Plan; (5) unless otherwise stated, the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (6) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (7) the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, and shall be deemed to be followed by the words “without limitation;” (8) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (9) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (10) any docket number references in the Plan shall refer to the docket number of any document Filed with the Bankruptcy Court in the Chapter 11 Cases.

C. *Computation of Time*

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction, action, or event shall or may occur pursuant to the Plan is a day that is not a Business Day, then such transaction, action, or event shall instead occur on the next succeeding Business Day.

D. *Governing Law*

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated herein, the laws of the State of New York without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); *provided that* the corporate or limited liability company governance matters relating to the Debtors shall be governed by the laws of the state of incorporation or formation (as applicable) of the applicable Debtor.

E. *Reference to Monetary Figures*

All references in the Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided herein.

F. *Reference to the Debtors or the Wind Down Estate*

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or the Wind Down Estate shall mean the Debtors and the Wind Down Estate, as applicable, to the extent the context requires.

G. *Controlling Document*

In the event of an inconsistency between the Plan, the Disclosure Statement, or any other Final Order (other than the Confirmation Order or Sale Approval Order, as applicable) referenced in the Plan (or any exhibits, schedules, appendices, supplements or amendments to any of the

foregoing, other than the Plan Supplement), the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and the Plan Supplement, the terms of the relevant document in the Plan Supplement shall control (unless stated otherwise in such Plan Supplement document or in the Confirmation Order). In the event of an inconsistency between the Confirmation Order or Sale Approval Order and the Plan, the Confirmation Order or Sale Approval Order, as applicable, shall control.

## **ARTICLE II. ADMINISTRATIVE EXPENSE CLAIMS AND PRIORITY CLAIMS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, Professional Fee Claims, DIP Claims, Adequate Protection Claims, and Priority Tax Claims have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in Article III of the Plan.

### *A. Administrative Expense Claims*

Except (i) with respect to Administrative Expense Claims that are Professional Fee Claims and Bidder Protections, or (ii) to the extent that (x) an Administrative Expense Claim has already been paid during the Chapter 11 Cases or a Holder of an Allowed Administrative Expense Claim and the applicable Debtor(s) or (y) Wind Down Administrator (as applicable) agrees to less favorable treatment, each Holder of an Allowed Administrative Expense Claim shall be paid in full in Cash; on the latest of: (a) on or as soon as reasonably practicable after the Effective Date if such Administrative Expense Claim is Allowed as of the Effective Date; (b) on or as soon as reasonably practicable after the date such Administrative Expense Claim is Allowed; and (c) the date such Allowed Administrative Expense Claim becomes due and payable, or as soon thereafter as is reasonably practicable; *provided that* in no event shall the amount paid in the aggregate to Administrative Expense Claims (excluding Professional Fee Claims) in accordance with this Article II.A, Priority Tax Claims under Article II.E hereof, and Other Priority Claims under Article III.B hereof exceed the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount. For the avoidance of doubt, the Bidder Protections shall be an Administrative Expense Claim in accordance with any applicable orders of the Bankruptcy Court.

Except as otherwise provided in this Article II.A of the Plan and except with respect to Administrative Expense Claims that are Professional Fee Claims, Unpaid Employee Severance Obligations, or Bidder Protection Claims, requests for allowance and payment of Administrative Expense Claims must be Filed and served on the Debtors, the Wind Down Estate, or the Wind Down Administrator (as applicable), pursuant to the procedures specified in the Bar Date Order, the Confirmation Order, and the notice of entry of the Confirmation Order no later than the Administrative Expense Claims Bar Date. Holders of Administrative Expense Claims that are required to, but do not, File and serve on the Debtors, the Wind Down Estate, or the Wind Down Administrator (as applicable) a request for allowance and payment of such Administrative Expense Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Expense Claims against the Debtors, the Wind Down Estate, or their respective assets or property and such Administrative Expense Claims shall be deemed discharged as of the Effective Date. Objections to such requests, if any, must be Filed and served on the Debtors, the Wind Down Estate, or the Wind Down Administrator (as applicable) and the requesting party no

later than 90 days after the Effective Date or such other date fixed by the Bankruptcy Court. Notwithstanding the foregoing, no request for payment of an Administrative Expense Claim need be Filed with respect to an Administrative Expense Claim previously Allowed.

B. *Professional Compensation*

1. Final Fee Applications

All final requests for payment of Professional Fee Claims of Professionals, including such Professional Fee Claims incurred during the period from the Petition Date through and including the Effective Date, shall be Filed and served on the Debtors, the Wind Down Estate, or the Wind Down Administrator, as applicable, no later than 45 days after the Effective Date. Each such final request will be subject to approval by the Bankruptcy Court after notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Bankruptcy Court in the Chapter 11 Cases, and once approved by the Bankruptcy Court, such Allowed Professional Fee Claims shall be promptly paid in Cash from the Professional Fee Escrow Account up to its full Allowed amount.

Objections to any Professional Fee Claim of Professionals must be Filed and served on the Debtors, the Wind Down Estate, or the Wind Down Administrator, as applicable, and the applicable Professional no later than 24 days after such Professional Fee Claim is Filed with the Bankruptcy Court.

2. Professional Fee Escrow Account

On the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the “Professional Fee Reserve Amount” described in Article II.B.3 herein. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and the other professionals with Professional Fee Claims. The Debtors shall utilize the Funded Reserve Account (as defined in the DIP Approval Order) to fund the Professional Fee Escrow Account, *provided that* the Funded Reserve Account is not a limitation on the amount funded to the Professional Fee Escrow Account. The Professional Fee Escrow Account and funds therein shall not be considered property of the Estates of the Debtors or the Wind Down Estate. The amount of Allowed Professional Fee Claims shall be paid in Cash to the Professionals by the Disbursing Agent or the Wind Down Administrator from the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed, and the amount of all other Professional Fee Claims shall be paid in Cash to the applicable professionals by the Disbursing Agent or the Wind Down Administrator from the Professional Fee Escrow Account on the Effective Date. After all such Professional Fee Claims have been paid in full, any remaining amount in the Professional Fee Escrow Account shall promptly be distributed to the Wind Down Estate and deemed Distributable Value and distributed to the holders of Prepetition Secured Party Claims without any further action or order of the Bankruptcy Court.

3. Professional Fee Reserve Amount

No later than five Business Days prior to the Effective Date, the Debtors shall solicit Professionals and the other professionals with Professional Fee Claims for estimates of their unpaid Professional Fee Claims before and as of the Effective Date, and such Professionals and

other professionals shall deliver such estimate to the Debtors in writing via email two Business Days prior to the Effective Date; *provided, however*, that such estimate shall not be deemed to limit the amount of the fees and expenses that are the subject of any such professional's final request for payment of Professional Fee Claims. If any professional does not timely provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such professional.

4. Post-Effective Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Effective Date, the Disbursing Agent, the Wind Down Estate, or the Wind Down Administrator (as applicable) shall, in the ordinary course of business and without any further notice or application to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable, actual, and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred on or after the Effective Date by the Professionals and other professionals (including any fees related to the preparation of Professional fee applications). Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors, the Wind Down Estate, or the Wind Down Administrator (as applicable) may employ and pay any Professional or other professional for fees and expenses incurred after the Effective Date in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court. Notwithstanding the foregoing, in no circumstances shall the payment of any post-Effective Date fees and/or expenses and other Wind Down Estate Expenses exceed the amount of the Post-Sale Reserve.

C. *DIP Claims*

Notwithstanding anything to the contrary herein, in full and final satisfaction, settlement, release, and discharge of and in exchange for release of all DIP Claims, on the Effective Date, the DIP Claims shall: (i) be indefeasibly paid in Cash in full, or (ii) receive such other treatment as agreed by the Debtors and the applicable Holder of a DIP Claim. Notwithstanding anything herein, the Prepetition Secured Parties and DIP Secured Parties may, in their sole discretion, apply any recovery received on the DIP Claims against the Prepetition Secured Party Claims and vice versa; provided that any such application shall not affect the Prepetition Secured Parties' Deficiency Claims or the agreements set forth in the Global Settlement Term Sheet.

D. *Adequate Protection Claims*

On the Effective Date, the Adequate Protection Claims shall (i) be paid in Cash in full or (ii) receive such other treatment as agreed by (a) to the extent such Adequate Protection Claims are held by the Prepetition Secured Parties, the Debtors and the Prepetition Secured Parties or (b) to the extent such Adequate Protection Claims are not held by a Prepetition Secured Party, the Debtors and the applicable Holder of such Adequate Protection Claims.

E. *Priority Tax Claims*

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim



shall receive Cash in an amount equal to such Allowed Priority Tax Claim on the Effective Date or as soon as practicable thereafter or such other treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.

F. *Statutory Fees*

All Statutory Fees due and payable prior to, and that remain unpaid as of, the Effective Date shall be paid by the applicable Debtors on the Effective Date. No statutory fees shall be paid on the initial funding of the Post-Sale Reserve or the GUC Trust. Statutory fees shall only be paid on subsequent disbursement of Cash by the Wind Down Estate or the GUC Trust, as applicable. Any Statutory Fees that may be owed by the Debtors, the Wind Down Estate, or the GUC Trust, as applicable, after the Confirmation Date related to the reduction to Cash of non-Cash assets shall be paid by the Debtors, the Wind Down Estate, or the GUC Trust, as applicable, until the case is closed, dismissed, or converted. If no disbursements are made by the Debtors, the Wind Down Estate, or the GUC Trust for any quarter post-confirmation, only the minimum statutory fee will be owed in accordance with 28 U.S.C. § 1930(a)(6). The Wind Down Estate and the GUC Trust shall file post-confirmation operating reports with respect to their respective operations and disbursements until these Chapter 11 Cases are closed, dismissed, or converted to cases under chapter 7 of the Bankruptcy Code.

G. *Restructuring Expenses*

The Debtors will promptly pay in full in Cash any Restructuring Expenses in accordance with the terms of the Restructuring Support Agreement and the DIP Approval Order. To the extent any Restructuring Expenses remain unpaid on the Effective Date, such Restructuring Expenses shall constitute Allowed Administrative Expense Claims and shall be paid in full in Cash, subject to the Restructuring Support Agreement and the DIP Approval Order without the need to file a proof of such Claim and without further order of the Court. On the Effective Date, the Disbursing Agent or the Wind Down Estate, as applicable, shall pay the Restructuring Expenses that have accrued and are unpaid as of the Effective Date.

**ARTICLE III.  
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

A. *Classification of Claims*

The Plan constitutes a separate Plan proposed by each Debtor. Except for the Claims addressed in Article II of the Plan, all Claims and Interests are classified in the Classes set forth below in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest fits within the description of that Class and is classified in other Class(es) to the extent that any portion of the Claim or Interest fits within the description of such other Class(es). A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

The classification of Claims and Interests against the Debtors pursuant to the Plan is as follows:

| <u>Class</u> | <u>Claim or Interest</u>                      | <u>Status</u>       | <u>Voting Rights</u>                |
|--------------|---|---------------------|-------------------------------------|
| 1            | Other Priority Claims                         | Unimpaired          | Presumed to Accept                  |
| 2            | Other Secured Claims                          | Unimpaired          | Presumed to Accept                  |
| 3            | Prepetition Secured Party Claims              | Impaired            | Entitled to Vote                    |
| 4            | General Unsecured Claims                      | Impaired            | Deemed to Reject                    |
| 5            | Intercompany Claims                           | Unimpaired/Impaired | Presumed to Accept/Deemed to Reject |
| 6            | Intercompany Interests                        | Unimpaired/Impaired | Presumed to Accept/Deemed to Reject |
| 7            | KidKraft Intermediate Holdings, LLC Interests | Impaired            | Deemed to Reject                    |

B. *Treatment of Claims and Interests*

1. Class 1 — Other Priority Claims

- a. *Classification:* Class 1 consists of all Other Priority Claims.
- b. *Treatment:* Except to the extent that a Holder of an Allowed Other Priority Claim agrees to less favorable treatment, in full and final satisfaction of such Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim will, (i) be paid in full in Cash or (ii) otherwise receive treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code, payable on the later of the Effective Date and the date that is 10 business days after the date on which such Other Priority Claim becomes an Allowed Other Priority Claim, in each case, or as soon as reasonably practicable thereafter; *provided that* in no event shall the amount paid in the aggregate for Administrative Expense Claims (excluding Professional Fee Claims) in accordance with Article II.A hereof, Priority Tax Claims under Article II.E hereof, and Other Priority Claims under this Article III.B exceed the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount.
- c. *Voting:* Class 1 is Unimpaired under the Plan. Holders of Class 1 Other Priority Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject the Plan.

2. Class 2 — Other Secured Claims

- a. *Classification:* Class 2 consists of all Other Secured Claims.

- b. *Treatment:* Except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment, in full and final satisfaction of such Allowed Other Secured Claim, at the option of Debtors or the Wind Down Estate, as applicable, each Holder shall receive either (i) cash equal to the full allowed amount of its claim, (ii) reinstatement of such holder's claim, (iii) the return to or abandonment of the collateral securing such holder's claim, or (iv) such other treatment as may otherwise be agreed to by such Holder and the Debtors.
- c. *Voting:* Class 2 is Unimpaired under the Plan. Holders of Class 2 Other Secured Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject the Plan.

3. Class 3 — Prepetition Secured Party Claims

- a. *Classification:* Class 3 consists of all Prepetition Secured Party Claims.
- b. *Treatment:* Except to the extent that the Holder of Prepetition Secured Party Claims agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and discharge of each Allowed Prepetition Secured Party Claim (which satisfaction, settlement, release, and discharge shall occur (i) on the Effective Date for all Prepetition Secured Party Claims other than the Wind Down Claims, and (ii) after the orderly wind down of the Debtors and other borrower and guarantors under the Prepetition Credit Agreement for all Wind Down Claims), each Holder of an Allowed Prepetition Secured Party Claim shall receive the remaining Distributable Value following payment of Administrative Expense Claims and Priority Tax Claims, DIP Claims, Other Priority Claims, Other Secured Claims, (which amount may be paid directly by the Purchaser on the Effective Date), and GUC Trust Interests (subject to the terms of the Global Settlement) on the Effective Date and any Distributable Value that is available for distribution after the Effective Date shall be promptly distributed by the Debtors or Wind Down Estate to holders of Prepetition Secured Party Claims.
- c. *Voting:* Class 3 is Impaired under the Plan. Holders of Class 3 Secured Party Claims will be entitled to vote to accept or reject the Plan.

4. Class 4 — General Unsecured Claims

- a. *Classification:* Class 4 consists of all General Unsecured Claims.
- b. *Treatment:* On the Effective Date, all General Unsecured Claims will be canceled, released, extinguished and discharged, and Holders of General Unsecured Claims will receive no recovery or distribution on account of such claims; *provided, however,* that any Holder of Allowed General Unsecured Claims who timely makes a GUC Settlement Opt-In Election in

compliance with the GUC Settlement Opt-In Procedures shall receive its Pro Rata share of 100% of the GUC Trust Interests.

- c. *Voting:* Class 4 is Impaired under the Plan. Holders of Class 4 General Unsecured Claims will be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such Holders will not be entitled to vote to accept or reject the Plan.

5. Class 5 — Intercompany Claims

- a. *Classification:* Class 5 consists of all Intercompany Claims.
- b. *Treatment:* All Intercompany Claims will be unaltered and otherwise unaffected by the Plan, or canceled on the Effective Date, in the Debtors' discretion, with the consent of Purchaser.
- c. *Voting:* Class 5 is Unimpaired/Impaired under the Plan. Holders of Class 5 Intercompany Claims are proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code. Therefore, the vote of such Holders to accept or reject the Plan will not be solicited.

6. Class 6 — Intercompany Interests

- a. *Classification:* Class 6 consists of all Intercompany Interests.
- b. *Treatment:* All Intercompany Interests shall be maintained under the Plan, solely for purposes of administrative convenience or canceled on the Effective Date, in the Debtors' discretion, subject to the consent of the Prepetition Secured Parties and the Purchaser.
- c. *Voting:* Class 6 is Unimpaired/Impaired under the Plan. Holders of a Class 6 Intercompany Interests are proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code. Therefore, the vote of such Holders to accept or reject the Plan will not be solicited.

7. Class 7 — KidKraft Intermediate Holdings, LLC Interests

- a. *Classification:* Class 7 consists of all KidKraft Intermediate Holdings, LLC Interests.
- b. *Treatment:* All prepetition Interests in KidKraft Intermediate Holdings, LLC will be canceled on the Effective Date and Holders shall receive no recovery or distribution on account of their Interests.
- c. *Voting:* Class 7 is Impaired under the Plan. For purposes of solicitation, it is presumed that Holders of Class 7 KidKraft Intermediate Holdings, LLC Interests shall not receive any distribution on account of such KidKraft Intermediate Holdings, LLC Interests and will be conclusively deemed to

have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such Holders will not be entitled to vote to accept or reject the Plan.

C. *Special Provision Governing Unimpaired or Reinstated Claims*

Nothing under the Plan shall affect the Debtors', the Wind Down Estate's, or the Wind Down Administrator's (as applicable) claims, Causes of Action, rights, or defenses in respect of any Unimpaired Claims or Reinstated Claims, including all rights in respect of legal and equitable defenses to or setoffs or recoupment against any such Unimpaired Claims or Reinstated Claims.

D. *Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code*

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by one or more of the Classes entitled to vote pursuant to Article III.B of the Plan. The Debtors reserve the right to modify the Plan in accordance with Article X of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

E. *Elimination of Vacant Classes*

Any Class of Claims that does not contain an Allowed Claim or a Claim temporarily Allowed by the Bankruptcy Court for voting purposes as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

F. *Voting Classes; Presumed Acceptance by Non-Voting Classes*

If a Class contains Claims eligible to vote and no Holder of Claims eligible to vote in such Class votes to accept or reject the Plan, the Plan shall be presumed accepted by such Class.

G. *Controversy Concerning Impairment*

If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date

H. *Subordinated Claims*

The allowance, classification, and treatment of all Claims and Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors, Wind Down Estate, the Wind Down

Administrator, the GUC Trust, or the GUC Trustee (as applicable) reserve(s) the right to reclassify any Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

**ARTICLE IV.  
MEANS FOR IMPLEMENTATION OF THE PLAN**

A. *Means for Implementation*

1. Sale Transaction

On the Effective Date, the applicable Debtors shall consummate the Sale Transaction and the Transferred Assets shall vest in the Purchaser free and clear of all Liens, Claims, charges, or encumbrances pursuant to section 1123 of the Bankruptcy Code and the CCAA and the Sale Transaction Documents; *provided*, that, the conditions precedent set forth in the Purchase Agreement shall have been satisfied or waived in accordance with the terms thereof. Upon entry of the Sale Approval Order by the Bankruptcy Court and the Sale Recognition Order by the CCAA Court, all matters provided for under the Purchase Agreement and the other Sale Transaction Documents will be deemed authorized and approved without any requirement of further act or action by the Debtors or the Debtors' governing bodies. The applicable Debtors are authorized to execute and deliver, and to consummate the transactions contemplated by the Sale Transaction Documents, as well as to execute, deliver, file, record and issue any documents, or agreements in connection therewith, without further notice to or order of the Bankruptcy Court or the CCAA Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity.

In the alternative, the Plan shall serve as a motion under section 363 of the Bankruptcy Code to authorize the sale of the Transferred Assets pursuant to the terms of the Sale Transaction Documents. Section 363(f) of the Bankruptcy Code provides that the Debtors' assets may be sold free and clear of any and all liens, claims, interests, and encumbrances with any such liens, claims, interests, and encumbrances attaching to the proceeds of the Sale Transaction. The Debtors submit that the Sale Transaction satisfies the requirements of section 363(f) of the Bankruptcy Code. To the extent a party objects to Sale Transaction on the basis that it holds a lien or encumbrance on the Transferred Assets, the Debtors believe that any such party could be compelled to accept a monetary satisfaction of such claims under section 365(f)(5) of the Bankruptcy Code and the CCAA. In addition, to the extent the Debtors discover any party may hold a lien on all, or a portion of, the Assets, the Debtors have provided such party with notice of, and an opportunity to object to, the Sale Transaction. Absent objection, each such party will be deemed to have consented to the sale of the Transferred Assets.

Except as otherwise expressly provided in the Sale Transaction Documents, (a) the Purchaser and all of its Affiliates shall not be liable for any Claims against the Debtors or any of their predecessors or direct or indirect subsidiaries, and (b) neither the Purchaser nor any of its affiliates shall have successor or vicarious liabilities of any kind or character, including under any theory of successor or transferee liability, labor, employment, tort, products liability, or benefits law, whether known or unknown as of the closing, then existing or hereafter arising, whether fixed or contingent, asserted or unasserted, liquidated or unliquidated, in each case, with respect to the

Debtors or any obligations of the Debtors arising prior to the closing, including liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Debtors prior to the closing (except as otherwise expressly provided in the Sale Transaction Documents). For the avoidance of doubt, any Avoidance Actions purchased by the Purchaser will not be pursued by the Purchaser.

The transactions contemplated by the Sale Transaction Documents are undertaken by the applicable Debtors and the Purchaser without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided therein to consummate the Sale Transaction shall not affect the validity of such sale, unless such authorization and consummation of such sale are duly stayed pending such appeal. 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.

2. Break-Up Fee and Expense Reimbursement

Consistent with the Sale Transaction Documents, the payment of the Break-Up Fee and Expense Reimbursement for the Purchaser are hereby authorized in the event: (i) the Debtors that are party to the Purchase Agreement consummate or enter into a Qualifying Alternative Transaction and the Purchase Agreement is terminated in connection therewith; (ii) the Debtors that are party to the Purchase Agreement publicly announce or support any plan of reorganization or plan of liquidation other than the Plan and other than a plan that includes a conversion of any of the Chapter 11 Cases to chapter 7 of the Bankruptcy Code or that would not prevent or materially delay consummation of the Closing (as defined in the Purchase Agreement) in accordance with the terms of the Purchase Agreement; or (iii) the board of directors or board of managers, as applicable, of any Debtor that is party to the Purchase Agreement determines, in good faith based upon advice of outside legal counsel, that proceeding with the Purchase Agreement or the transactions contemplated thereunder (including the Plan or solicitation of the Plan) or taking any action (or refraining from taking any action) in relation thereto, would be inconsistent with the exercise of its fiduciary duties under applicable law, and the Purchase Agreement is terminated in connection therewith (in each of the foregoing cases as further set forth in and subject to the terms of the Purchase Agreement). The potential remedy of the Break-Up Fee and Expense Reimbursement was a condition of the Purchaser entering into the Purchase Agreement, which is the best option for the Debtors to maximize the value of their estates. The Break-Up Fee and Expense Reimbursement are the product of arm's-length, good faith negotiations among the Debtors and the Purchaser, and as a result, the Debtors believe that the agreement to pay such fees to the Purchaser (if and when the same become due to the Purchaser pursuant to, and in accordance with the terms and conditions in, the Purchase Agreement) is a valid exercise of their business judgment and should be approved if required under the Sale Transaction Documents.

3. Transactions with Netherlands Affiliates

On or prior to the closing of the transactions contemplated by the Purchase Agreement, the assets of the Netherlands Subsidiaries that would otherwise be Transferred Assets under the Purchase Agreement if such assets were owned by a Seller (as defined in the Purchase Agreement) shall be sold to KidKraft, or another Debtor designated by KidKraft, in exchange for the portion

of the Purchase Price attributable to such assets (the “*Netherlands Asset Sale*”). The transactions contemplated by the Netherlands Asset Sale are undertaken by the Netherlands Subsidiaries and the Debtors without collusion and in good faith. The Netherlands Subsidiaries’ assets that do not become Transferred Assets shall be liquidated with the consent of the Prepetition Secured Parties and the Netherlands Subsidiaries (the “*Netherlands Liquidation*”). The Netherlands Subsidiaries will create a right of pledge in favor of the Prepetition Secured Parties over the proceeds of the Netherlands Asset Sale and the proceeds of the Netherlands Liquidation.

The proceeds of the Netherlands Asset Sale (i.e. the Foreign Sale Reserve) and proceeds of the Netherlands Liquidation, in each case with the consent of the Prepetition Secured Parties, shall be used to implement the orderly out-of-court wind down of the Netherlands Subsidiaries (the “*Netherlands Wind Down*,” collectively, with the Netherlands Asset Sale and Netherlands Liquidation, the “*Netherlands Transactions*”).

To the extent proceeds of the Netherlands Asset Sale (i.e. the Foreign Sale Reserve) or Netherlands Liquidation remain, after the Netherlands Wind Down is complete, such proceeds shall be distributed to the Prepetition Secured Parties in a manner to be determined by the Prepetition Secured Parties, the Debtors, and the Wind Down Administrator, as applicable, and the Netherlands Subsidiaries. Following the distribution of such proceeds, the Prepetition Secured Parties and the Netherlands Subsidiaries shall execute a mutual release of all Claims and Causes of Action.

Upon the Bankruptcy Court entering the Sale Approval Order, the Netherlands Asset Sale will be deemed authorized and approved without any requirement or further act or action by the Debtors or the Debtors’ governing bodies.

#### 4. Vesting of Wind Down Estate Assets in the Wind Down Estate

Except as otherwise provided in the Plan, the Plan Supplement, or the Confirmation Order, on the Effective Date, all Wind Down Estate Assets (including all interests, rights, and privileges related thereto) and all GUC Trust Assets (solely until the GUC Trust Assets Transfer occurs) in each Estate and all Causes of Action that are retained under the Plan shall vest in the Wind Down Estate, to be administered by the Wind Down Administrator in accordance with the Plan, free and clear of all Claims, Liens, and encumbrances (except for the Wind Down Claims) to the fullest extent provided by section 363 or 1123 of the Bankruptcy Code; *provided that*, for the avoidance of doubt, no Assets that are, or shall be, transferred to Purchaser as Transferred Assets before or after the Effective Date in accordance with the Purchase Agreement and the Sale Approval Order shall vest in the Wind Down Estate.

The vesting of the Wind Down Estate Assets, as authorized by the Plan, shall not be construed to destroy or limit any such Assets or rights or be construed as a waiver of any right, and such rights may be asserted by the Wind Down Estate as if such Asset or right was still held by the Debtors.

On the next Business Day following the GUC Settlement Opt-In Election Deadline, the Wind Down Estate shall complete the GUC Trust Assets Transfer.



5. Wind Down Administrator

The Wind Down Administrator shall be selected by the Debtors, with the consent of the Prepetition Secured Parties and the DIP Secured Parties. The Wind Down Administrator shall be the successor to and representative of the Estate of each of the Debtors appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The powers, rights, and responsibilities of the Wind Down Administrator shall include the authority and responsibility to fulfill the obligations of the Plan consistent with the Confirmation Order.

On the Effective Date, the authority, power, and incumbency of the Persons acting as managers, directors, and officers of the Debtor entities comprising the Wind Down Estate shall vest in the Wind Down Administrator. The Wind Down Administrator shall be appointed the sole manager, sole director, and sole officer of the Debtor entities comprising the Wind Down Estate, as applicable, and shall succeed to the powers of the Debtors' managers, directors, and officers. From and after the Effective Date, the Wind Down Administrator shall be the sole Representative of the Wind Down Estate and shall have the authority to sell, liquidate, or otherwise dispose of any and all of the Wind Down Estate Assets without any additional notice to or approval from the Bankruptcy Court.

In the event the Wind Down Administrator becomes incapacitated or unable to continue serving in such role for any reason, the Prepetition Secured Parties shall select a suitable replacement Wind Down Administrator as promptly as possible without the need for any further action or order of the Bankruptcy Court.

6. Wind Down Transactions

The Wind Down Administrator shall retain the authority to take all necessary actions to wind down the operations of the Wind Down Estate and dissolve the entities comprising the Wind Down Estate, to the extent required by applicable law. Subject in all respects to the terms of this Plan, the Wind Down Administrator shall have the power and authority to take any action necessary to dissolve the entities comprising the Wind Down Estate, and may: (i) file a certificate of dissolution for the Wind Down Estate, together with all other necessary corporate and company documents, to effect the dissolution of the Wind Down Estate under applicable laws; (ii) complete and file all final or otherwise required federal, state, and local tax returns and pay all required taxes, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of any of the Debtors, their respective Estates, or the entities comprising the Wind Down Estate for any tax incurred during the administration of these Chapter 11 Cases, as determined under applicable tax laws; and (iii) represent the interests of the Debtors, their respective Estates, and entities comprising the Wind Down Estate before any taxing authority in all tax matters, including any action, suit, proceeding, or audit.

Any applicable filing by the Wind Down Administrator of any certificates of dissolution (or similar documentation) of the entities comprising the Wind Down Estate shall be authorized and approved in all respects without further action under applicable law, regulation, order, or rule, including any action by the stockholder, members, officers, board of directors, or board of managers of the Debtors or any of their respective Affiliates. As the entities comprising the Wind

Down Estate will be dissolved upon completion of the administration of this Plan, no new corporate organizational documents will be executed by the Wind Down Administrator.

For the avoidance of doubt, the Wind Down Administrator shall not be empowered to perform any actions designated to the GUC Trust or the GUC Trustee under the Plan or the GUC Trust Agreement.

7. Fees and Expenses of the Wind Down Administrator

The Wind Down Estate Expenses shall be paid after the Effective Date solely using the Post-Sale Reserve. The Wind Down Administrator, on behalf of the Wind Down Estate, may employ, without further order of the Bankruptcy Court, professionals (including professionals previously employed by the Debtors) to assist in carrying out duties for the Wind Down Estate and may compensate and reimburse the expenses of such professionals in the ordinary course, without further order of the Bankruptcy Court, subject to the Post-Sale Reserve.

8. Settlement of Claims

Except as otherwise provided in the Plan, on and after the Effective Date, the Wind Down Administrator may compromise or settle any Claims related to the Wind Down Estate Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules and may pay the charges that it incurs on or after the Effective Date for Wind Down Estate Expenses, professionals' fees, disbursements, expenses, or related support services (including fees relating to the preparation of Professional fee applications) without application to the Bankruptcy Court.

9. Sales of Assets by the Wind Down Estate

The Wind Down Administrator may conduct any sales or liquidations of De Minimis Assets on any terms it deems reasonable, subject to the consent of the Prepetition Secured Parties (with such consent not to be unreasonably withheld), without further order of the Bankruptcy Court. In lieu of conducting sales or liquidating its assets, with the consent of the Prepetition Secured Parties, the Wind Down Administrator may transfer any Wind Down Estate Assets to the Prepetition Secured Parties free and clear of all liens, claims, and encumbrances after the Effective Date.

10. Abandonment of Assets by the Wind Down Estate

The Wind Down Administrator may, with the consent of the Prepetition Secured Parties, on no less than 14 days' written notice to the U.S. Trustee, abandon any Wind Down Estate Assets which the Wind Down Administrator determines are burdensome to the Wind Down Estate, including any pending adversary proceeding or other legal action commenced or commenceable by any Debtor prior to the Effective Date; *provided that* if the U.S. Trustee provides a written objection to the Wind Down Administrator prior to the expiration of such 14 day period with respect to the proposed abandonment of any Wind Down Estate Asset, then such property may be abandoned only pursuant to an order by the Bankruptcy Court.

11. Plan Distributions

a. Sources of Consideration for Plan Distributions

On the Effective Date, the Debtors will fund the Debtors' distributions under the Plan with (i) the proceeds of the Sale Transaction, subject in all respects to amounts held-back in accordance with the Purchase Agreement, (ii) the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount, (iii) the Debtors' available Cash on hand, and (iv) with the consent of the DIP Secured Parties, the proceeds of the DIP Facility. After the Effective Date, other than with respect to funds held in the Professional Fee Escrow Account, the Post-Sale Reserve shall be held in a separate account from any other funds held by the Wind Down Estate.

b. Professional Fee Escrow Account

The Professional Fee Reserve Amount shall be held in trust in a segregated Professional Fee Escrow Account by the Wind Down Administrator for distributions or payment in accordance with the terms of Article II of the Plan.

12. Corporate Existence

On or after the Effective Date, each of the Debtors will be subject to a Dissolution Transaction. The equity or membership interests of each Debtor entity that is not subject to a Dissolution Transaction on the Effective Date will vest in the Wind Down Estate pursuant to this Plan. For the avoidance of doubt, the Debtor entities that are not subject to a Dissolution Transaction on the Effective Date will continue to exist after the Effective Date for the limited purpose of completing the GUC Trust Assets Transfer and the Wind Down Transactions. Promptly after completing the Wind Down Transactions, such entities shall be dissolved by the Wind Down Administrator.

13. Dissolution Transactions

On or after the Effective Date, the Debtors or the Wind Down Administrator will enter into such Dissolution Transactions and will take such actions as may be necessary or appropriate to merge, dissolve, or otherwise terminate the corporate existence of the Debtors. The actions to effect the Dissolution Transactions may include: (i) the execution and delivery of appropriate agreements or other documents of transfer, merger, consolidation, disposition, liquidation, or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law, as well as other terms to which these entities may agree; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, duty or obligation on terms consistent with the terms of the Plan and having such other terms as these entities may agree; (iii) the filing of appropriate certificates or articles of merger, consolidation, continuance, or dissolution or similar instruments with the applicable governmental authorities; and (iv) the taking of all other actions that the Wind Down Administrator determines to be necessary or appropriate, including making other filings or recordings that may be required by applicable law in connection with the Dissolution Transactions.

14. Recourse Solely to Wind Down Estate Assets

All Claims against the Debtors and against the GUC Trust are deemed satisfied, waived, and released as to the Debtors and the GUC Trust, as applicable, in exchange for the treatment of such Claims under the Plan or the distributions made from the GUC Trust, and Holders of Allowed Claims against any Debtor will have recourse solely to the Wind Down Estate Assets (and, in the case of the Prepetition Secured Parties, to the unused amounts, if any, of the Post-Sale Reserve and Professional Fee Escrow Account) for the payment of their Allowed Claims in accordance with the terms of the Plan. There will be no recourse for claims other than as to non-Debtors.

15. Cancellation of Existing Securities and Agreements

On the Effective Date, except to the extent otherwise expressly provided in the Plan (including with respect to the Prepetition Credit Agreement Documents), (i) all notes, bonds, debentures, instruments, certificates, credit agreements, indentures, collateral documents, guarantees, filings, recordings, registrations, and other documents and instruments evidencing, securing, or governing Claims or Interests, and any Interests that are not represented by certificates or other instruments, shall be canceled, terminated, released, and surrendered automatically without any action on the part of any party, (ii) all Liens of any nature or any assets of any Debtor securing, or purporting to secure, such Claims shall be fully, finally, and irrevocably released and extinguished automatically without any action on the part of any party (and (x) the Debtors are hereby irrevocably authorized to make such filings, recordings, registrations, and notifications, and take such other actions, as the Debtors shall deem necessary or advisable to carry out such release and extinguishment and (y) the holders of such Claims shall take such actions and execute such instruments as the Debtors may reasonably request to carry out such release and extinguishment) and (iii) the obligations of the Debtors in respect of such Claims or in any way related thereto or arising therefrom (except with respect to any Indemnification Obligations, which obligations shall be assumed and assigned as set forth in Article V.G of the Plan) shall be deemed satisfied in full, terminated, canceled, released, and of no force or effect against the Debtors or the Wind Down Estate, without any further action on the part of the Debtors, the Wind Down Estate, or any other Person. Holders of or parties to such canceled instruments, Securities, and other documentation will have no rights arising from or relating to such instruments, Securities, and other documentation, or the cancellation thereof, except the rights provided for pursuant to the Plan. To the extent applicable, the Debtors' corporate charters shall be deemed amended by the Confirmation Order to provide that no nonvoting equity securities will be issued and to otherwise comply with the requirements of section 1123(a)(6) of the Bankruptcy Code.

Notwithstanding anything to the contrary herein, but subject to any applicable provisions of Articles IV and VI of the Plan, the Prepetition Credit Agreement Documents shall continue in effect as between all Debtors and the non-Debtors party thereto until the wind down of the Debtors and the Netherlands Wind Down is complete. Following completion of the wind down of the Debtors and the Netherlands Wind Down and distribution of the proceeds after the Netherlands Wind Down is complete, if any, to the Prepetition Secured Parties, as provided in Article IV of the Plan, the Prepetition Credit Agreement Documents shall be canceled and surrendered and the obligations of the Debtors thereunder or in any way related thereto shall be deemed satisfied in full, canceled, and of no force or effect against the Debtors or the Wind Down Estate, without any further action on the part of the Debtors, the Wind Down Estate, or any other Person. Except as

provided in the Plan (including Article VI of the Plan), on the Effective Date, the Prepetition Credit Agreement Agent, its respective agents, successors, and assigns shall be automatically and fully discharged of all of their duties and obligations associated with the Prepetition Credit Agreement Documents (as applicable). The commitments and obligations (if any) of the Prepetition Credit Agreement Lenders to extend any further or future credit or financial accommodations to any of the Debtors, any of their respective subsidiaries, including, any non-Debtors, or any of their respective successors or assigns under the Prepetition Credit Agreement Documents shall fully terminate and be of no further force or effect on the Effective Date.

16. Release of Liens

Except for the Wind Down Claims (which include the Prepetition Secured Party Liens securing such Claims), and as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date concurrently and consistent with the treatment provided for Claims and Interests in Article III, all mortgages, deeds of trust, Liens against, security interests in, or other encumbrances or interests in property of any Estate shall be deemed fully released and discharged. After the wind down of the Debtors and the Netherlands Wind Down is complete and after the proceeds of the Netherlands Asset Sale and Netherlands Liquidation, if any, are indefeasibly distributed in Cash to the Prepetition Secured Parties as provided in Article IV of the Plan, all mortgages, deeds of trust, Liens against, security interests in, or other encumbrances or interests in property of any Estate on account of the Wind Down Claims shall be deemed fully released and discharged. Notwithstanding anything contained herein to the contrary, until completion of the wind down of the Debtors and the Netherlands Wind Down and distribution of the proceeds after the Netherlands Wind Down is complete, if any, to the Prepetition Secured Parties, as provided in Article IV of the Plan, the Plan shall not operate as a waiver of any right, power or remedy of the Prepetition Agent or Prepetition Lenders, or constitute a waiver of any provision of the Prepetition Credit Agreement Documents in respect of any non-Debtor affiliate of the Debtors party thereto and the obligations of the non-Debtor affiliates thereunder shall remain in full force and effect.

17. Corporate Governance, Directors and Officers.

a. Certificates of Incorporation and Bylaws

Consistent with the Plan, all existing certificates of incorporation and by-laws will be canceled; accordingly, no new certificates of incorporation and by-laws will be necessary for any Debtors. Certain of the Debtor entities comprising the Wind Down Estate will continue to exist after the Effective Date for the purpose of completing the GUC Trust Assets Transfer and the Wind Down Transactions.

b. Directors and Officers

As of the Effective Date, the term of the current members of the boards of directors or boards of managers, as applicable, of KidKraft and its Debtor Affiliates shall expire automatically and each person serving as a director of KidKraft and each of its Debtor Affiliates shall be removed and shall be deemed to have resigned and cease to serve automatically. Consistent with the Plan, each of the Estates will vest in the Wind Down Estate effective as of the Effective Date and, thus,

no individuals will serve as directors, officers, or voting trustees after the Effective Date for any Debtors. The Wind Down Administrator will be the sole member, manager, director, officer, or other governing body or controlling authority of each Debtor entity that is not subject to a Dissolution Transaction on the Effective Date.

18. Insurance Policies

To the extent that any of the Debtors' insurance policies constitute Executory Contracts, such insurance policies and any agreements, documents, or instruments relating thereto, are treated as and deemed to be Executory Contracts under the Plan and shall be assumed by the Debtors and assigned to the Wind Down Estate on the Effective Date. All other insurance policies shall vest in the Wind Down Estate.

19. D&O Liability Insurance Policies

Notwithstanding anything in the Plan to the contrary, as of the Effective Date, the Debtors shall be deemed to assume and vest in the Wind Down Estate all D&O Liability Insurance Policies (including tail coverage liability insurance) pursuant to section 365(a) of the Bankruptcy Code, to the extent they are Executory Contracts. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Debtors' assumption of each of the D&O Liability Insurance Policies, to the extent they are Executory Contracts. Notwithstanding anything to the contrary contained in the Plan, Confirmation of the Plan shall not discharge, impair, or otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O Liability Insurance Policies, and each such indemnity obligation will be deemed and treated as an Executory Contract that has been assumed by the Debtors under the Plan as to which no Proof of Claim need be Filed, and shall survive the Effective Date. On the Effective Date, all D&O Liability Insurance Policies shall vest in the Wind Down Estate consistent with the Confirmation Order without further order of the Bankruptcy Court.

20. Preservation of Causes of Action

Except as provided in the Plan, or in any contract, instrument, release, or other agreement entered into or delivered in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, the Wind Down Estate will retain and may enforce any claims, demands, rights, and causes of action that any Estate may hold against any Person to the extent not satisfied, settled, and released under the Plan or otherwise, including the Retained Causes of Action; *provided that*, the Wind Down Estate will not retain any Causes of Action (including Avoidance Actions) that are assigned to Purchaser as Transferred Assets in connection with the Sale Transaction that may be included in the GUC Trust Assets and transferred to the GUC Trust or are transferred to the GUC Trust in accordance with the Plan. The Wind Down Administrator may pursue any such retained claims, demands, rights, or causes of action, as appropriate, in accordance with the best interests of the Wind Down Estate. Except to the extent any such claim is specifically satisfied, settled, and released herein, in accordance with and subject to any applicable law, the Debtor's inclusion or failure to include any Cause of Action on the List of Retained Causes of Action shall not be deemed an admission, denial, or waiver of any claims, demands, rights, or causes of action that the Debtor or Estate may hold against any Person. Except to the extent any such claim is specifically satisfied, settled, and released herein, the Debtor intends to preserve those claims,

demands, rights, or causes of action designated as Retained Causes of Action. For the avoidance of doubt, in no instance will any Cause of Action preserved pursuant to this Article IV.A.20 include any claim or Cause of Action with respect to, or against, a Released Party.

21. Substitution in Pending Legal Actions

On the Effective Date, the Wind Down Estate or the Wind Down Administrator, as applicable, shall be deemed to be substituted as the party to any litigation in which the Debtors are a party, including (but not limited to) (i) pending contested matters or adversary proceedings in the Bankruptcy Court or the CCAA Court, (ii) any appeals of orders of the Bankruptcy Court, and (iii) any state court or federal or state administrative proceedings or equivalent in Canada or any other applicable jurisdiction pending as of the Petition Date. The Wind Down Administrator and its professionals are not required to, but may, take such steps as are appropriate to provide notice of such substitution.

22. Effectuating Documents; Further Transactions

The Debtors (prior to the Effective Date) and the Wind Down Administrator (on or after the Effective Date) are authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and evidence the terms and conditions of the Plan, the Purchase Agreement, and the Dissolution Transactions, in each case, in the name of and on behalf of any Debtor or the Wind Down Estate, as applicable, without the need for any approvals, authorizations, or consents except those expressly required pursuant to the Plan.

Pursuant to section 1146(a) of the Bankruptcy Code, the following will not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales or use tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee or other similar tax or governmental assessment: (a) any transfer made by the Debtors to the Wind Down Estate; (b) any transfer made by the Debtors and, if applicable, the Wind Down Estate to the Purchaser pursuant to the Plan, the Purchase Agreement, and/or the Sale Order; (c) any sales made by the Wind Down Estate to liquidate such assets in the trust and convert such assets into Cash; (d) the making or assignment of any lease or sublease; (e) any Dissolution Transaction; and (f) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including any merger agreements, agreements of consolidation, restructuring, disposition, liquidation or dissolution, deeds, bills of sale, or assignments executed in connection with any of the foregoing or pursuant to the Plan.

B. *Restructuring Support Agreement*

Upon the later of (i) the Effective Date or (ii) the consummation of the Sale Transaction, any surviving obligations under the Restructuring Support Agreement shall terminate on a final basis.

C. *Global Settlement*

1. GUC Trust

On the Effective Date, the GUC Trust will be established with the primary purpose of liquidating the GUC Trust Assets and making distributions to GUC Trust Beneficiaries on account of their Allowed General Unsecured Claims.

Subject to and to the extent set forth in the Plan, the Confirmation Order, the GUC Trust Agreement, or any other order of the Bankruptcy Court entered in connection therewith, the GUC Trust shall be empowered to: (a) perform all actions and execute all agreements, instruments, and other documents necessary to implement the terms of the Plan to the extent applicable to the GUC Trust; (b) establish, maintain, and administer the GUC Trust Accounts; (c) accept, preserve, receive, collect, manage, invest, sell, liquidate, transfer, supervise, and protect, as applicable, the GUC Trust Assets (directly or through its professionals or a Disbursing Agent), in accordance with the Plan; (d) subject to the GUC Trust Agreement, the Plan, and the Confirmation Order, as applicable, review, reconcile, settle, or object to all General Unsecured Claims that are not Allowed Claims as of the Effective Date pursuant to the procedures for allowing or disputing Claims prescribed in the Plan; (e) calculate and make distributions of the proceeds of the GUC Trust Assets to Holders of Allowed General Unsecured Claims that are GUC Trust Beneficiaries in accordance with the terms of the Plan and the GUC Trust Agreement and otherwise implement the terms of the Plan to the extent applicable to the GUC Trust; (f) retain, compensate, and employ professionals to represent or advise the GUC Trust; (g) file, in accordance with the GUC Trust Agreement, appropriate tax returns on behalf of the GUC Trust and pay any and all taxes or other obligations arising in connection therewith; (h) exercise such other powers as may be vested in the GUC Trust under the GUC Trust Agreement and the Plan, or as are deemed by the GUC Trustee to be necessary and proper to implement the provisions of the Plan and the GUC Trust Agreement; and (i) terminate the GUC Trust in accordance with the terms of the GUC Trust Agreement. For the avoidance of doubt, the GUC Trust shall not be empowered with performing any actions designated to the Wind Down Estate created pursuant to Article IV.A of the Plan and shall have no authority to pursue any Claims or Causes of Action against Released Parties or Exculpated Parties.

Notwithstanding anything to the contrary in this Article IV.C, the GUC Trust shall have no objective to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, the GUC Trust's purpose as described herein and in the GUC Trust Agreement and as may be reasonably necessary to conserve and protect the GUC Trust Assets and provide for the orderly liquidation and distribution thereof. Accordingly, the GUC Trustee shall, in an orderly manner, liquidate the GUC Trust Assets and make timely distributions pursuant to the Plan and not unduly prolong the duration of the GUC Trust.

The GUC Trust Beneficiaries, who will be treated as grantors and deemed owners for federal income tax purposes, will be holders of GUC Trust Interests. The GUC Trust shall file federal income tax returns for the GUC Trust as a grantor trust pursuant to Section 671 of the Tax Code and the Treasury Regulations promulgated thereunder. The parties shall not take any position on their respective tax returns with respect to any other matter related to taxes that is inconsistent with treating the GUC Trust as a "liquidating trust" within the meaning of Treasury Regulation



Section 301.7701-4(d), unless any party receives definitive guidance from the Internal Revenue Service.

The GUC Trust shall be responsible for paying any (i) U.S. Trustee fees accruing in relation to disbursements by the GUC Trust and (ii) taxes related to the GUC Trust Assets or the liquidation thereof. Any professionals hired by the GUC Trustee will be compensated for services in such capacity solely from the GUC Trust Assets or proceeds thereof.

2. Funding of and Transfer of Assets into the GUC Trust

Except as otherwise provided in the Plan or the Confirmation Order, on the next Business Day following the GUC Settlement Opt-In Election Deadline, the Wind Down Estate shall complete the GUC Trust Assets Transfer, and all such assets shall vest in the GUC Trust on such date, to be administered by the GUC Trustee in accordance with the Plan and the GUC Trust Agreement. Except as set forth in the Plan, the GUC Trust Assets shall be transferred to the GUC Trust free and clear of all Claims, Liens, and encumbrances to the fullest extent provided by section 363 or 1123 of the Bankruptcy Code. All Cash amounts funded into the GUC Trust from the Debtors shall be funded by the U.S. Debtors.

For all federal and applicable state and local income tax purposes, all Persons (including without limitation the Debtors, the GUC Trustee and the GUC Trust Beneficiaries) will treat the transfers and assignment of the GUC Trust Assets to the GUC Trust for the benefit of the GUC Trust Beneficiaries as (a) a transfer of the GUC Trust Assets directly to the GUC Trust Beneficiaries followed by (b) the transfer of the GUC Trust Assets by the GUC Trust Beneficiaries to the GUC Trust. The GUC Trust will be treated as a grantor trust for federal tax purposes and, to the extent permitted under applicable law, for state and local income tax purposes. The GUC Trust Beneficiaries will be treated as the grantors and deemed owners of their allocable portion of the GUC Trust Assets for federal income tax purposes.

The fair market value of the portion of the GUC Trust Assets that is treated for U.S. federal income tax purposes as having been transferred to each GUC Trust Beneficiary will be determined by the GUC Trustee, and all parties (including, without limitation, the GUC Trustee and the GUC Trustee Beneficiaries) must utilize such fair market values determined by the GUC Trustee for federal and applicable state and local income tax purposes.

The GUC Trust's taxable income, gain, loss, deduction or credit will be allocated to the GUC Trust Beneficiaries in accordance with their relative beneficial interests in the GUC Trust during the applicable taxable period. Such allocation will be binding on all parties for federal and applicable state and local income tax purposes, and the parties will be responsible for the payment of any federal, state and local income tax due on the income and gain so allocated to them.

The act of transferring the GUC Trust Assets, as authorized by the Plan, shall not be construed to destroy or limit any such assets or rights or be construed as a waiver of any right, and such rights may be asserted by the GUC Trust as if the asset or right was still held by the Debtors.

3. GUC Trustee

Solely with respect to the GUC Trust Assets and the administration of General Unsecured Claims, the GUC Trustee shall be the successor to and representative of the Estate of each of the Debtors appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The powers, rights, and responsibilities of the GUC Trustee shall be specified in the GUC Trust Agreement and shall include the authority and responsibility to fulfill the items identified in the Plan. Other rights and duties of the GUC Trustee and the GUC Trust Beneficiaries shall be as set forth in the GUC Trust Agreement.

The Committee shall select the GUC Trustee, subject to the consent, not to be unreasonably withheld, of the Debtors and the Prepetition Secured Parties.

4. GUC Trust Agreement

The GUC Trust Agreement will contain certain provisions to comply with Internal Revenue Service guidance for trusts treated as liquidating trusts. Among other things, the GUC Trust Agreement will require that the GUC Trust terminate no later than three years from the Effective Date; *provided, however*, that the Bankruptcy Court, upon motion by the GUC Trustee, may extend the term of the GUC Trust for a reasonable finite period if (a) such extension is necessary to the purpose of the GUC Trust, (b) the GUC Trustee receives an opinion of counsel or a ruling from the IRS stating that such an extension would not adversely affect the status of the GUC Trust as a liquidating trust for federal income tax purposes, and (c) such an extension is obtained within the six (6) month period prior to the GUC Trust's third (3rd) anniversary or the end of the immediately preceding extension period, as applicable; *provided, however*, each finite extension may be no more than six months (and such extension shall not exceed a total of four extensions unless the GUC Trustee received a favorable ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the GUC Trust as a grantor trust for U.S. federal income tax purposes. The GUC Trust Agreement generally will also provide for, among other things: (i) the payment of reasonable and documented compensation to the GUC Trustee; (ii) the payment of other expenses of the GUC Trust; (iii) the retention of counsel, accountants, financial advisors, or other professionals and the payment of their compensation; (iv) the investment of Cash by the GUC Trustee within certain limitations; (v) the preparation and filing of appropriate tax returns and other reports on behalf of the GUC Trust and the Debtors and the payment of taxes or other obligations owed by the GUC Trust, if any; (vi) the distribution at least annually to the GUC Trust Beneficiaries the GUC Trust's net Cash income and all other Cash proceeds received by the GUC Trust in excess of an amount reasonably necessary to meet Claims and contingent liabilities and to maintain the value of the GUC Trust Assets; (vii) the orderly liquidation of the GUC Trust Assets; and (viii) any reconciliation, administration, objection, resolution, and distribution on account of General Unsecured Claims. For the avoidance of doubt, any payments to be made by the GUC Trust shall be paid solely from the GUC Trust Assets or the proceeds thereof.

Additional terms of the GUC Trust and Obligations of the GUC Trustee, if any, will be addressed in the Plan Supplement or GUC Trust Agreement, as applicable.

5. Settlement of Claims and Causes of Action

Except as otherwise provided in the Plan or the GUC Trust Agreement, on and after the Effective Date, the GUC Trustee may compromise or settle any General Unsecured Claims or any Causes of Action that are GUC Trust Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules and may pay the charges that it incurs on or after the Effective Date for GUC Trust Expenses, professionals' fees, disbursements, expenses, or related support services (including fees relating to the preparation of Professional fee applications) without application to the Bankruptcy Court.

6. Recourse Solely to GUC Trust Assets

All Claims against the Debtors are deemed satisfied, waived, and released as to the Debtors in exchange for the treatment of such Claims under the Plan, and Holders of Allowed General Unsecured Claims against any Debtor will have recourse solely to the GUC Trust Assets for the payment of their Allowed General Unsecured Claims, and only if such Holder made a GUC Settlement Opt-In Election, all in accordance with the terms of the Plan and the GUC Trust Agreement. A Holder of Allowed General Unsecured Claims that does not make a GUC Settlement Opt-In Election will receive no recovery or distribution on account of such claims, as set forth in Article III.B.4 of the Plan.

Potential Avoidance Actions against a Holder of General Unsecured Claims that is listed on Schedule 1 to the Global Settlement Term Sheet will (i) be purchased by the Purchaser as part of the Sale Transaction, subject to the occurrence of the GUC Settlement Election Opt-In Deadline, (ii) be held by the Wind Down Administrator pending the occurrence of the GUC Settlement Election Opt-In Deadline, (iii) to the extent any such Holder does not make a GUC Settlement Opt-In Election, will be conveyed to the Purchaser on the next Business Day following the GUC Settlement Opt-In Election Deadline, and (iv) will not be pursued by the Purchaser. **For the avoidance of doubt, if a Holder of General Unsecured Claims that is listed on Schedule 1 makes a GUC Settlement Opt-In Election, any potential Avoidance Actions against such Holder will not be conveyed to the Purchaser and instead will become GUC Trust Assets, and such potential Avoidance Actions may be pursued against such Holder.**

7. Distribution of GUC Trust Assets

The GUC Trust Assets, including any proceeds received by the GUC Trust on account of the prosecution or settlement of any commercial tort claims or Avoidance Actions that are GUC Trust Assets, net of any GUC Trust expenses (including professional fees) not covered by the GUC Trust Expense Reserve, shall be distributed at least annually as follows:

(i) Holders of Allowed General Unsecured Claims that are GUC Trust Beneficiaries other than the Prepetition Secured Parties and/or DIP Secured Parties shall receive their Pro Rata share of 100% of the GUC Trust Assets up to \$1,000,000; and

(ii) thereafter, all Holders of Allowed General Unsecured Claims that are GUC Trust Beneficiaries (including the Prepetition Secured Parties' Deficiency Claims) shall receive their Pro Rata share of 100% of the GUC Trust Assets.

8. MidOcean Waiver of Claims and Cash Contribution

On the Effective Date, MidOcean will (i) contribute \$100,000 in Cash to the GUC Trust (the “*Sponsor Cash Contribution*”) and (ii) waive any General Unsecured Claims it may have against the Debtors, including any claims under the subordinated note and services agreement (the “*Sponsor Claims Waiver*”); *provided, however*, that nothing in the foregoing shall result in any of the Debtors’ directors that are MidOcean designees waiving or releasing any rights to assert indemnification claims against the Debtors or any of its insurance carriers or any rights as beneficiaries of any insurance policies.

MidOcean is a Released Party under the Plan and has provided valuable consideration to the Estates in the form of the Sponsor Cash Contribution and the Sponsor Claims Waiver. Accordingly, notwithstanding anything set forth in the Plan, neither the GUC Trust nor the Debtors (nor any entity on behalf of the Debtors’ Estates, including the Wind Down Estate) shall bring or be entitled to bring any claims or Causes of Action against (i) the Debtors’ current and former directors and officers appointed and/or designated by MidOcean or (ii) MidOcean or any of its current and former Affiliates or it or its current and former Affiliates’ current and former directors, managers, officers, employees, managed accounts and funds, predecessors, successors, assigns, subsidiaries, equity holders, members, agents, attorneys, accountants, investment bankers, consultants, and other professionals, each solely in their capacity as such, and all such claims shall be deemed and hereby are waived and released, and each of the foregoing Persons shall be a “Released Party” for purposes of the Plan.

**ARTICLE V.**

**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

A. *Assumption and Rejection of Executory Contracts and Unexpired Leases*

On the Effective Date, except as otherwise provided herein or in any contract, instrument, release, or other agreement or document entered into in connection with the Plan, the Plan shall serve as a motion under sections 365 and 1123(b)(2) of the Bankruptcy Code to assume, assume and assign, or reject Executory Contracts and Unexpired Leases, and all Executory Contracts or Unexpired Leases shall be rejected as of the Effective Date without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease: (i) is designated on a schedule of assumed contracts by the Purchaser; (ii) is designated as a Transferred Contract pursuant to the Purchase Agreement on the Schedule of Assumed Executory Contracts and Unexpired Leases in the Plan Supplement; (iii) was previously assumed or rejected by the Debtors, pursuant to a Final Order of the Bankruptcy Court; (iv) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (v) is the subject of a motion to reject filed by the Debtors on or before the Confirmation Date; or (vi) is subject to a motion to reject pursuant to which the requested effective date of such rejection is after the Effective Date.

Entry of the Confirmation Order and/or Sale Approval Order, as applicable, shall constitute the Bankruptcy Court’s order approving the assumptions, assumptions and assignments, or rejections, as applicable, of Executory Contracts or Unexpired Leases as set forth in the Plan pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Each Executory Contract or

Unexpired Lease comprising a Transferred Contract shall re-vest in and be fully enforceable by the Purchaser in accordance with its terms, except as such terms may have been modified by the provisions of the Plan or any order of the Bankruptcy Court. Notwithstanding anything to the contrary in the Plan, the Debtors reserve the right to, with the consent of the Purchaser, alter, amend, modify, or supplement the Schedule of Assumed Executory Contracts and Unexpired Leases at any time prior to the Effective Date on no less than two business days' notice to the applicable non-Debtor counterparties.

Unless otherwise indicated, assumptions, assumptions and assignments, or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Any motions to reject Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by the Bankruptcy Court on or after the Effective Date.

B. *Claims Based on Rejection of Executory Contracts or Unexpired Leases*

Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be Filed with the Bankruptcy Court in accordance with the Bar Date Order. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, the Wind Down Estate, the Estates, or their property (as applicable), without the need for any objection by the Wind Down Estate or Wind Down Administrator (as applicable), or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied and released, notwithstanding anything in the Proof of Claim to the contrary.** All Allowed Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims and shall be treated in accordance with Article III.B of the Plan.

C. *Cure of Defaults for Assumed Executory Contracts and Unexpired Leases*

Any monetary defaults under an Executory Contract or Unexpired Lease, as reflected on the applicable Cure Notice, shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the proposed cure amount (if any) in Cash by the Debtors, the Wind Down Estate, or for the Transferred Contracts, by the Purchaser, as applicable, on the Effective Date or as soon as reasonably practicable thereafter, subject to the limitations described below or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree.

1. Cure of Defaults for Transferred Contracts Under the Purchase Agreement

Consistent with the Purchase Agreement and subject to the terms and conditions therein, within three business days after the Petition Date the Debtors shall deliver a Cure Notice, in form and substance reasonably acceptable to Buyer, of potential assumption and assignment and proposed cure of the Transferred Contracts to the applicable counterparty (each a "**Contract Counterparty**"), which shall specify: (a) that such contract is contemplated to be assumed and assigned to Purchaser as a Transferred Contract in connection with the Sale Transactions; (b) the

proposed Cure Claim with respect to each Transferred Contract; (c) that each respective Contract Counterparty may file an objection (a “**Contract Objection**”) to the proposed assumption and assignment of the applicable Transferred Contract or the proposed Cure Claim, if any. Such Contract Objection must (i) be in writing; (ii) comply with the Federal Rules of Bankruptcy Procedure and any applicable local rules of the U.S. Bankruptcy Court; (iii) be Filed with the Bankruptcy Court, together with proof of service, on or before 5:00 p.m. (Central Time) on the date that is 21 days after the date the Debtors delivered the Cure Notice (the “**Cure Notice Objection Deadline**”); (iv) be served, so such objection is actually received on or before the Cure Notice Objection Deadline on counsel to the Debtors, counsel to the DIP Secured Parties, counsel to the Purchaser, and the Office of the U.S. Trustee for the Northern District of Texas; and (v) state with specificity the grounds for such objection, including, without limitation, the asserted amount of the fully liquidated Cure Claim and the legal and factual bases for any unliquidated portion of the Cure Claim that the Contract Counterparty believes is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code for the applicable Transferred Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise to any such defaults. If a Contract Counterparty files a Contract Objection in a manner that is consistent with the requirements set forth above and the parties are unable to consensually resolve the dispute prior to the Sale Hearing, the amount to be paid or reserved with respect to such Contract Objection will be determined at the Confirmation Hearing or such other date determined by the U.S. Bankruptcy Court.

2. Cure of Defaults for Other Assumed Executory Contracts and Unexpired Leases

For all other Executory Contracts or Unexpired Leases not deemed “Transferred Contracts,” at least 14 days before the Confirmation Hearing, the Debtors shall distribute, or cause to be distributed, Cure Notices of proposed assumption and proposed cure amounts to the applicable third parties. Unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption or related cure amount paid or proposed to be paid by the Debtors or the Wind Down Estate to such counterparty must be filed with the Bankruptcy Court and served on and actually received by the Debtors at least 7 days before the Confirmation Hearing. **Any counterparty that fails to timely object to the proposed assumption or proposed cure amount shall be deemed to have assented to such assumption and cure amount, and any such objection shall be Disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against the Debtors or the Wind Down Estate, without the need for any objection by the Wind Down Estate or any other party in interest or any further notice to or action, order, or approval of the Bankruptcy Court.**

Any Cure Claim shall be deemed fully satisfied, released, and discharged upon payment by the Debtors or the Wind Down Estate of the amount set forth in the applicable Cure Notice or, if the Allowed Cure Claim with respect to any Executory Contract or Unexpired Lease is determined by a Final Order to be greater than the applicable amount set forth in the Cure Notice, the amount of such Allowed Cure Claim; *provided, however*, that following entry of a Final Order resolving any such dispute, the applicable Debtor shall, with the consent of the Purchaser, have the right to reject any Executory Contract or Unexpired Lease within thirty (30) days of such resolution; *provided further, however*, that nothing herein shall prevent the Wind Down Estate from paying any Cure Claim despite the failure of the relevant counterparty to file such request for

payment of such Cure Claim. The Wind Down Estate also may settle any Cure Claim without any further notice to or action, order, or approval of the Bankruptcy Court.

If there is any dispute regarding any Cure Claim, the ability of the Wind Down Estate or any assignee to provide “adequate assurance of future performance” within the meaning of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption, then payment of the Cure Claim shall occur as soon as reasonably practicable after entry of a Final Order resolving such dispute, approving such assumption (and, if applicable, assignment), or as may be agreed upon by the Debtors or the Wind Down Estate, as applicable, and the counterparty to the Executory Contract or Unexpired Lease, in each case with the consent of the Purchaser. Notwithstanding the foregoing, to the extent the dispute relates solely to any Cure Claims, the applicable Debtor may, with the consent of the Purchaser, assume the Executory Contract or Unexpired Lease prior to the resolution of any such dispute; *provided, however*, that the Debtor reserves Cash in an amount sufficient to pay the full amount reasonably asserted as the required Cure Claim by the contract counterparty; *provided further, however*, that following entry of a Final Order resolving any such dispute, the applicable Debtor shall, with the consent of the Purchaser, have the right to reject any Executory Contract or Unexpired Lease within 30 days of such resolution.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy or insolvency-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the date that the Debtors assume such Executory Contract or Unexpired Lease. Any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed, including pursuant to the Confirmation Order, shall be deemed Disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court.

D. *Modifications, Amendments, Supplements, Restatements, or Other Agreements*

Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed or assumed and assigned shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and Executory Contracts and Unexpired Leases related thereto, if any, including easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

E. *Reservation of Rights*

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Schedule of Assumed Executory Contracts and Unexpired Leases, nor anything contained in the

Plan or the Sale Transaction Documents, shall constitute an admission by the Debtors, the Wind Down Estate, the Purchaser, or the Wind Down Administrator (as applicable) that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Debtor, Wind Down Estate, the Purchaser, or the Wind Down Administrator (as applicable) has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors, or, after the Effective Date, the Wind Down Estate, the Purchaser, or the Wind Down Administrator (as applicable) shall have 30 days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

F. *Nonoccurrence of Effective Date*

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

G. *Indemnification Obligations*

All Indemnification Obligations shall not be discharged or impaired by Confirmation of the Plan or entry of the Confirmation Order and shall be assumed by the Wind Down Estate and remain intact, irrevocable, and shall survive the entry of the Confirmation Order and Effective Date of the Plan on terms no less favorable to such current and former directors, officers, managers, equity holders, employees, attorneys, accountants, investment bankers, and other professionals of any of the Debtors and such current and former directors', officers', and managers' respective Affiliates than the Indemnification Obligations in place prior to the Petition Date, and to the extent any such Indemnification Obligations are obligations of a non-Debtor Affiliate of any of the Debtors, such Indemnification Obligations shall be assigned on the Effective Date to the Wind Down Estate.

**ARTICLE VI.  
PROVISIONS GOVERNING DISTRIBUTIONS**

A. *Timing and Calculation of Amounts to Be Distributed*

Unless otherwise provided in the Plan, on the Effective Date or as soon as reasonably practicable thereafter (or, if a Claim is not an Allowed Claim on the Effective Date, on the date that such Claim becomes Allowed or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim, including any portion of a Claim that is an Allowed Claim notwithstanding that other portions of such Claim are a Disputed Claim, shall receive the full amount of the distributions that the Plan provides for Allowed Claims in each applicable Class. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article VII of the Plan. Except as otherwise provided in the Plan, Holders of Claims shall not be entitled to interest, dividends, or



accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

B. *Disbursing Agent.*

All distributions under the Plan shall be made by the Disbursing Agent. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. Additionally, in the event that the Disbursing Agent is so otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Wind Down Estate or the GUC Trust (as applicable).

a. Powers of the Disbursing Agent

The Disbursing Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions of the Plan.

b. Expenses Incurred On or After the Effective Date

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable and documented fees and expenses incurred by the Disbursing Agent on or after the Effective Date, and any reasonable and documented compensation and expense reimbursement claims (including reasonable and documented attorney fees and expenses), made by the Disbursing Agent shall be paid in Cash by the Purchaser, the Wind Down Estate, or the Wind Down Administrator (as applicable).

c. No Liability

Except on account of gross negligence, fraud, or willful misconduct, the Disbursing Agent shall have no (a) liability to any party for actions taken in accordance with the Plan or in reliance upon information provided to it in accordance with the Plan or (b) obligation or liability to any party who does not hold a Claim against the Debtors as of the Distribution Record Date or any other date on which a distribution is made or who does not otherwise comply with the terms of the Plan.

C. *Delivery of Distributions and Undeliverable or Unclaimed Property*

1. Delivery of Distributions

a. Distribution Record Date

As of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims and Interests maintained by the Debtors, or their respective agents, shall be deemed closed, and there shall be no further changes in the record Holders of any

of the Claims and Interests. The Disbursing Agent shall have no obligation to recognize any transfer of the Claims or Interests occurring on or after the Distribution Record Date.

b. Delivery of Distributions in General

Except as otherwise provided herein, the Disbursing Agent shall make distributions to Holders of Allowed Claims and Allowed Interests as of the Distribution Record Date at the address for each such Holder as indicated on the Debtors' records as of the date of any such distribution; *provided, however*, that the manner of such distributions shall be determined at the discretion of the Debtors, the Purchaser, the Wind Down Administrator, or the GUC Trustee (as applicable).

c. Delivery of Distributions on Secured Party Claims.

The Prepetition Credit Agreement Agent shall be deemed to be the Holder of all Secured Party Claims for purposes of distributions to be made hereunder, and all distributions on account of such Allowed Claims shall be made to the Prepetition Credit Agreement Agent. As soon as practicable following compliance with the requirements set forth in Article VI of the Plan, the Prepetition Credit Agreement Agent shall arrange to deliver or direct the delivery of such distributions to or on behalf of the Holders of Allowed Secured Party Claims in accordance with the terms of the Prepetition Credit Agreement Documents, subject to any modifications to such distributions in accordance with the terms of the Plan.

d. Delivery of Distributions on DIP Claims

The DIP Agent shall be deemed to be the Holder of all DIP Claims for purposes of distributions to be made hereunder, and all distributions on account of such DIP Claims shall be made to the DIP Agent. As soon as practicable following compliance with the requirements set forth in Article VI of the Plan, the DIP Agent shall arrange to deliver or direct the delivery of such distributions to or on behalf of the Holders of DIP Claims in accordance with the terms of the DIP Facility Documents, subject to any modifications to such distributions in accordance with the terms of the Plan.

e. Minimum Distributions

No Distribution shall be made by the Disbursing Agent on account of an Allowed Claim if the amount to be distributed to the Holder of such Claim on the applicable Distribution Date has an economic value of less than \$250.

2. Undeliverable Distributions and Unclaimed Property

In the event that any distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Debtors or the Wind Down Estate, as applicable, shall have determined the then-current address of such Holder, at which time such distribution shall be made to such Holder without interest; *provided that* such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one year from the Effective Date. After such date, all unclaimed property or interests in property shall be redistributed Pro Rata (it being understood that, for purposes of this Article VI.C, "Pro Rata" shall be determined as if the Claim underlying such unclaimed distribution had been Disallowed)

without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal, provincial, or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any Holder to such property or interest in property shall be discharged and forever barred.

D. *Compliance with Tax Requirements*

In connection with the Plan, to the extent applicable, the Debtors, Wind Down Administrator, GUC Trustee, Disbursing Agent, and any applicable withholding agent shall comply with all applicable tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, such parties shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions until receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. For these purposes, all distributions made on behalf of the Debtors pursuant to the Plan shall if applicable be first in satisfaction of the portion of Claims that are not subject to any withholding tax obligation. All Persons holding Claims against any Debtor shall be required to provide any additional information reasonably necessary for the Debtors, Wind Down Administrator, GUC Trustee, Disbursing Agent, and any applicable withholding agent to comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, including an IRS Form W-8 or W-9, as applicable, and any other applicable tax forms. The Debtors, Wind Down Estate, Wind Down Administrator, GUC Trustee, and Disbursing Agent (as applicable) reserve the right to allocate all distributions made under the Plan in a manner that complies with all other legal requirements, such as applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances. Any amounts withheld pursuant to the Plan shall be deemed to have been distributed to and received by the applicable recipient for all purposes of the Plan. Notwithstanding any other provision of the Plan to the contrary, each Holder of an Allowed Claim or Allowed Interest shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any Governmental Unit, including income, withholding and other tax obligations, on account of such distribution.

E. *Foreign Currency Exchange Rate*

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in The Wall Street Journal, National Edition, on the Effective Date.

F. *Surrender of Cancelled Instruments or Securities*

As a condition precedent to receiving any distribution on account of its Allowed Claim, each Holder of a Claim shall be deemed to have surrendered the certificates or other documentation underlying each such Claim, and all such surrendered certificates and other documentation shall be deemed to be cancelled pursuant to Article IV of the Plan, except to the extent otherwise provided in the Plan.

G. *Allocations*

The aggregate consideration to be distributed to each Holder of an Allowed Claim will be allocated first to the principal amount of such Allowed Claim, with any excess allocated to unpaid interest that accrued on such Allowed Claims, if any.

H. *No Postpetition Interest on Claims*

Unless otherwise specifically provided for in an order of the Bankruptcy Court, the Plan, or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims or Interests and no Holder of a Claim or Interest shall be entitled to interest accruing on or after the Petition Date on any such Claim.

I. *Setoffs and Recoupment*

The Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), may, but shall not be required to, set off against, or recoup from, any Allowed Claim (other than an Allowed General Unsecured Claim) against a Debtor of any nature whatsoever that the applicable Debtor, Wind Down Estate, Wind Down Administrator, GUC Trust, or GUC Trustee (as applicable) may have against the Holder of such Claim, but neither the failure to do so nor the allowance of any Claim against a Debtor hereunder shall constitute a waiver or release by the applicable Debtor, Wind Down Estate, Wind Down Administrator, GUC Trust, or GUC Trustee (as applicable) of any such Claim it may have against the Holder of such Allowed Claim.

J. *Claims Paid or Payable by Third Parties*

1. Claims Paid by Third Parties

The Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), shall reduce in full an Allowed Claim (including any applicable Cure Claim of a Transferred Contract paid by the Purchaser), and such Claim shall be Disallowed without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor, Wind Down Estate, the Wind Down Administrator, GUC Trust, or the GUC Trustee (as applicable); *provided that* the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) shall provide 21 days' notice to the Holder prior to any disallowance of such Claim during which period the Holder may object to such disallowance, and if the parties cannot reach an agreed resolution, the matter shall be decided by the Bankruptcy Court. Subject to the last sentence of this paragraph, to the extent a Holder of a Claim receives a distribution on account of such Claim and thereafter receives payment from a party that is not a Debtor, Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) on account of such Claim, such Holder shall, within 14 days of receipt thereof, repay or return the distribution to the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the Petition Date. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing

the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the 14-day grace period specified above until the amount is repaid.

2. Claims Payable by Insurers

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim, then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without an objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court; *provided that* the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), shall provide 21 days' notice to the Holder of such Claim prior to any disallowance of such Claim during which period the Holder may object to such disallowance, and if the parties cannot reach an agreed resolution, the matter shall be decided by the Bankruptcy Court.

3. Applicability of Insurance Policies

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity may hold against any insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

**ARTICLE VII.  
PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED, AND DISPUTED CLAIMS**

A. *Allowance of Claims*

On or after the Effective Date, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) shall have and retain any and all rights and defenses that the Debtors had with respect to any Claim immediately prior to the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim. All settlements of Claims approved prior to the Effective Date pursuant to a Final Order of the Bankruptcy Court, pursuant to Bankruptcy Rule 9019, or otherwise shall be binding on all parties.

B. *Claims and Interests Administration Responsibilities*

Except as otherwise specifically provided in the Plan and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, after the Effective Date, the

Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), by order of the Bankruptcy Court, shall together have the sole authority to: (1) File, withdraw, or litigate to judgment objections to Claims or Interests; (2) settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court. In any action or proceeding to determine the existence, validity, or amount of any General Unsecured Claim, any and all claims or defenses that could have been asserted by the applicable Debtor(s) or the Entity holding such General Unsecured Claim are preserved as if the Chapter 11 Cases had not been commenced.

C. *Adjustment to Claims or Interests Without Objection*

Any duplicate Claim or Interest or any Claim or Interest that has been paid or satisfied, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register without the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) having to File an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

D. *Time to File Objections to Claims*

Any objections to Claims, which, prior to the Effective Date, may be Filed by any party, shall be Filed on or before the Claims Objection Deadline.

E. *Disallowance of Claims*

Any Claims held by Entities from which property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims until such time as such Causes of Action (other than Causes of Action that constitute a Transferred Asset under the Purchase Agreement) against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid to the Debtors, the Wind Down Estate or the Wind Down Administrator (as applicable).

**ANY CLAIM THAT HAS BEEN LISTED IN THE SCHEDULES AS DISPUTED, CONTINGENT, OR UNLIQUIDATED, AND FOR WHICH NO PROOF OF CLAIM HAS BEEN TIMELY FILED, SHALL BE DEEMED DISALLOWED AND SHALL BE EXPUNGED WITHOUT FURTHER ACTION AND WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT.**

**EXCEPT AS PROVIDED HEREIN, IN AN ORDER OF THE BANKRUPTCY COURT, OR OTHERWISE AGREED, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE APPLICABLE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND**

**HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS AT OR PRIOR TO THE CONFIRMATION HEARING SUCH LATE CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

F. *Amendments to Claims*

On or after the Effective Date, except as provided in the Plan or the Confirmation Order, a Claim may not be Filed or amended without the prior authorization of the Bankruptcy Court and any such new or amended Claim Filed shall be deemed Disallowed in full and expunged without any further action, order, or approval of the Bankruptcy Court.

G. *No Distributions Pending Allowance*

Notwithstanding any other provision of this Plan to the contrary, no payment or distribution of any kind or nature provided under the Plan shall be made to the extent that all or any portion of any Claim is a Disputed Claim, including if an objection to a Claim or portion thereof is Filed as set forth in Article VII, unless and until such Disputed Claim becomes an Allowed Claim; *provided that* any portion of a Claim that is an Allowed Claim shall receive the payment or distribution provided under the Plan thereon notwithstanding that any other portion of such Claim is a Disputed Claim.

H. *Single Satisfaction of Claims*

Holders of Allowed Claims may assert such Claims against each Debtor obligated with respect to such Claim, and such Claims shall be entitled to share in the recovery provided for the applicable Class of Claims against each obligated Debtor based upon the full Allowed amount of the Claim. Notwithstanding the foregoing, in no case shall the aggregate value of all property received or retained under the Plan on account of any Allowed Claim exceed 100% of such Allowed Claim.

**ARTICLE VIII.  
SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS**

A. *Compromise and Settlement of Claims, Interests, and Controversies*

Pursuant to sections 363 and 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions, releases, and other benefits provided pursuant to the Plan, which distributions, releases, and other benefits shall be irrevocable and not subject to challenge upon the Effective Date, the provisions of the Plan, and the distributions, releases, and other benefits provided hereunder, shall constitute a good-faith compromise and settlement of all Claims and Interests and controversies resolved pursuant to the Plan.

The Plan shall be deemed a motion to approve the good-faith compromise and settlement of all such Claims, Interests, and controversies pursuant to Bankruptcy Rule 9019, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise and settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that all such compromises and settlements are in the best interests of the Debtors,

their Estates, and Holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) may compromise and settle Claims against, and Interests in, the Debtors and their Estates and Causes of Action against other Entities.

In accordance with Bankruptcy Rule 9019, the Plan constitutes the good-faith compromise and settlement among the Global Settlement Parties regarding the matters set forth in the Global Settlement Term Sheet, and reflects and implements such compromise and settlement, including by the establishment and funding of the GUC Trust. Such compromise and settlement is made in exchange for consideration and is in the best interests of the Global Settlement Parties and the Holders of General Unsecured Claims, is within the reasonable range of possible litigation outcomes, is fair, equitable, and reasonable, and is an essential element of the resolution of these Chapter 11 Cases.

B. *Discharge of Claims and Termination of Interests*

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Sale Order, the Plan and/or the Plan Supplement, the distributions, rights, and treatment that are provided in the Sale Order or the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Wind Down Estate or the Wind Down Administrator, as applicable), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and interests in, the Debtors or any of their assets or properties, regardless of whether any property, including, without limitation, the Transferred Assets, shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (a) a Proof of Claim based upon such debt or right is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (b) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (c) the Holder of such a Claim or Interest has accepted the Plan. Any default or “event of default” by the Debtors or Affiliates with respect to any Claim or Interest that existed immediately before or on account of the Filing of the Chapter 11 Cases shall be deemed cured (and no longer continuing) as of the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring.

C. *Term of Injunctions or Stays*

Unless otherwise provided herein, the Confirmation Order, the Confirmation Recognition Order or in a Final Order, all injunctions or stays arising under or entered during the Chapter 11 Cases under section 362 of the Bankruptcy Code or otherwise, or ordered by the CCAA Court in the CCAA Recognition Proceeding, and in existence on the Confirmation Date, shall remain in



full force and effect until the later of the Effective Date and the date set forth in the order providing for such injunction or stay.

D. *Release of Liens*

**Except as otherwise specifically provided in the Sale Order (solely with respect to any Permitted Encumbrances and Assumed Liabilities), the Plan, and/or the Plan Supplement, on the Effective Date and concurrently with the applicable distributions or other treatment made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates, including, without limitation, the Transferred Assets, shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Wind Down Estate or the GUC Trust and its successors and assigns, in each case, without any further approval or order of the Bankruptcy Court or the CCAA Court and without any action or Filing being required to be made by the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable).**

E. *Releases by the Debtors*

**Pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, on and after the Effective Date, each Released Party is hereby released and discharged by the Debtors, their Estates, and the Wind Down Estate (as applicable) from any and all Claims, Causes of Action, Avoidance Actions, obligations, suits, judgments, damages, demands, losses, liabilities, and remedies whatsoever (including any derivative claims, asserted or assertable on behalf of the Debtors, their Estates, or the Wind Down Estate), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, accrued or unaccrued, existing or hereinafter arising, in law, equity, contract, tort, or otherwise, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), their Estates, the Wind Down Estate, the Debtors' in- or out-of-court restructuring efforts, the Debtors' intercompany transactions, the Prepetition Credit Agreement Documents, the Note Purchase Agreement Documents, the Professional Services Agreement Documents, the DIP Facility Documents (and any payments or transfers in connection therewith), the Sale Transaction, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the formulation, preparation, dissemination, negotiation, or Filing of the Restructuring Support Agreement, the restructuring of any Claim or Interest before or during the Chapter 11 Cases, or any Restructuring, contract, instrument, document, release, or other agreement or document (including any legal opinion regarding any such transaction, contract, instrument, document, release, or other agreement or the reliance by any Released Party on the Sale Order, the Plan, the Confirmation Order, or Confirmation Recognition Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, the Plan, the Plan Supplement, the DIP Facility, the DIP Facility Documents, the Sale Transaction, and other documents (including the Definitive Documentation), the Chapter 11 Cases, the CCAA Recognition Proceedings, the filing of the**

**Chapter 11 Cases, the filing of the CCAA Recognition Proceedings, the Sales Process, the Global Settlement, the pursuit of Confirmation, the pursuit of Consummation, the solicitation of votes with respect to the Plan, the administration and implementation of the Plan and the Sales Process, including the issuance or distribution of any property pursuant to the Plan and the Sales Process, the Definitive Documentation, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to the foregoing. Notwithstanding anything to the contrary in the foregoing, (i) the releases set forth in this Article VIII.E do not release any post-Effective Date obligations of any party or Entity under the Plan, including any such obligations created in connection with the Restructuring or the assumption of the Indemnification Obligations as set forth in the Plan; (ii) nothing in this Article VIII.E shall, nor shall it be deemed to, release any Released Party from any Claims or Causes of Action arising from any obligations of any party under the Purchase Agreement; (iii) nothing in this Article VIII.E shall, nor shall it be deemed to, release any Released Party from any Claims or Causes of Action that are found, pursuant to a Final Order, to be the result of such Released Party's gross negligence, fraud or willful misconduct; (iv) nothing in this Article VIII.E shall, nor shall it be deemed to, release any Causes of Action specifically enumerated in the List of Retained Causes of Action.**

**Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases by the Debtors set forth in this Article VIII.E, which includes by reference each of the related provisions and definitions contained herein, and, further, shall constitute the Bankruptcy Court's finding that such releases are: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the Claims and Causes of Action released by such releases; (3) in the best interests of the Debtors and their Estates; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors or their Estates asserting any Claim or Cause of Action released pursuant to such releases.**

*F. Releases by Releasing Parties*

**As of the Effective Date, each Releasing Party hereby releases and discharges each Debtor, Estate, Wind Down Estate, and Released Party from any and all Claims, Causes of Action, Avoidance Actions, obligations, suits, judgments, damages, demands, losses, liabilities, and remedies whatsoever (including any derivative claims, asserted or assertable on behalf of the Debtors, the Wind Down Estate, or their Estates), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, accrued or unaccrued, existing or hereinafter arising, in law, equity, contract, tort, or otherwise, that such Releasing Party or its estate, heirs, executors, administrators, successors, or assigns would have been legally entitled to assert in his, her, or its own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), their Estates, the Wind Down Estate, the Debtors' in- or out-of-court restructuring efforts, the Debtors' intercompany transactions, the Prepetition Credit Agreement Documents, the Note Purchase Agreement Documents, the Professional Services Agreement Documents, the DIP**

Facility Documents (and any payments or transfers in connection therewith), the Sale Transaction, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Releasing Party, the formulation, preparation, dissemination, negotiation, or Filing of the Restructuring Support Agreement, the restructuring of any Claim or Interest before or during the Chapter 11 Cases, or any Restructuring, contract, instrument, document, release, or other agreement or document (including any legal opinion regarding any such transaction, contract, instrument, document, release, or other agreement or the reliance by any Releasing Party on the Sale Order, the Plan, the Confirmation Order, or the Confirmation Recognition Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, the Plan, the Plan Supplement, the DIP Facility, the DIP Facility Documents, the related agreements, instruments, and other documents (including the Definitive Documentation), the Chapter 11 Cases, the CCAA Recognition Proceedings, the filing of the Chapter 11 Cases, the filing of the CCAA Recognition Proceedings, the Sales Process, the Global Settlement, the pursuit of Confirmation, the pursuit of Consummation, the solicitation of votes with respect to the Plan, the administration and implementation of the Plan and the Sales Process, including the issuance or distribution of any property pursuant to the Plan and the Sales Process, the Definitive Documentation, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to the foregoing; *provided, however*, that except as expressly provided under the Plan, the foregoing releases shall not release obligations of the Debtors on account of any Allowed Claims that are treated under the Plan. Notwithstanding anything to the contrary in the foregoing, (i) the releases set forth in this Article VIII.F do not release any post-Effective Date obligations of any party or Entity under the Plan, including any such obligations created in connection with the Restructuring or the Global Settlement or the assumption of the Indemnification Obligations as set forth in the Plan; (ii) nothing in this Article VIII.F shall, nor shall it be deemed to, release any Released Party from any Claims or Causes of Action arising from any obligations of any party under the Purchase Agreement; (iii) nothing in this Article VIII.F shall, nor shall it be deemed to, release any Released Party from any Claims or Causes of Action that are found, pursuant to a Final Order, to be the result of such Released Party's gross negligence, fraud, or willful misconduct; (iv) nothing in this Article VIII.F shall, nor shall it be deemed to, release any of the Lender Retained Causes of Action; and (v) nothing herein shall, nor shall it be deemed to, release any of the non-Debtor Affiliates of the Released Parties party to the Prepetition Credit Agreement Documents from the Wind Down Claims. For the avoidance of doubt, nothing in this Article VIII.F shall, nor shall it be deemed to, release any Causes of Action specifically enumerated in the List of Retained Causes of Action.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases by Holders of Claims and Interests set forth in this Article VIII.F, which includes by reference each of the related provisions and definitions contained herein, and, further, shall constitute the Bankruptcy Court's finding that such releases are: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the Claims and Causes of Action released by such releases; (3) in the best interests of the Debtors and their Estates;

(4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; (6) an essential component of the Plan and the Restructuring; and (7) a bar to any of the Releasing Parties asserting any Claim or Cause of Action released pursuant to such releases.

G. *Exculpation*

Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur liability for, and each Exculpated Party is hereby exculpated from, any Claim, Cause of Action, obligation, suit, judgment, damage, demand, loss, or liability for any claim related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, Filing, or termination of the Restructuring Support Agreement and related prepetition transactions, the Disclosure Statement, the Plan, the Sale Process, the Sale Transaction, the related agreements, instruments, and other documents (including the Definitive Documentation), the solicitation of votes with respect to the Plan, or the Restructuring, or any related contract, instrument, release or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Person on the Plan or the Confirmation Order or Confirmation Recognition Order in lieu of such legal opinion) created or entered into in connection with the Debtors' in or out-of-court restructuring efforts, the Sale Process, the Disclosure Statement, the Plan, the Restructuring Support Agreement, the related agreements, instruments, and other documents (including the Definitive Documentation), the Chapter 11 Cases, the CCAA Recognition Proceedings, the filing of the Chapter 11 Cases, the filing of the CCAA Recognition Proceedings, the Sales Process, the Global Settlement, solicitation of votes with respect to the Plan, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan and the Sales Process, including the issuance of or distribution of any property pursuant to the Plan and the Sales Process, the related agreements, instruments, and other documents (including the Definitive Documentation), or any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related to the foregoing, except for claims related to any act or omission that is determined in a Final Order to have constituted fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Confirmation Order shall provide that the Exculpated Parties (to the extent applicable) have, and upon completion of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of, and distribution of, consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan. For the avoidance of doubt, nothing in this Article VIII.G shall, nor shall it be deemed to, exculpate the Debtors from any Lender Retained Causes of Action or any Exculpated Party from any Causes of Action (i) arising from any obligations of any party under the Purchase Agreement; or (ii) specifically enumerated in the List of Retained Causes of Action.

H. *Injunction*

Except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or Confirmation Order, all Entities who have held, hold, or may hold Claims, Interests, or Causes of Action that have been released pursuant to Article VIII.E or Article VIII.F, discharged pursuant to Article VIII.B, or are subject to exculpation pursuant to Article VIII.G, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Wind Down Estate, the Released Parties, or the Exculpated Parties: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (c) creating, perfecting, or enforcing any Lien or encumbrance of any kind against such Entities or the property, including, without limitation, the Transferred Assets, or the estates of such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; or (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action. Notwithstanding anything to the contrary in the foregoing, this injunction does not enjoin any party under the Plan or under any document, instrument, or agreement (including the Disclosure Statement or set forth in the Plan Supplement, to the extent finalized) executed to implement the Plan from bringing an action in the Bankruptcy Court to enforce the terms of the Plan or such document, instrument, or agreement (including those attached to the Disclosure Statement or set forth in the Plan Supplement, to the extent finalized) executed to implement the Plan. Subject in all respects to Article XI, no entity or person may commence or pursue a Claim or Cause of Action of any kind against any Released Party or Exculpated Party that arose or arises from, in whole or in part, the Chapter 11 Cases, the CCAA Recognition Proceedings, the Debtors, the Wind Down Estate, the Plan, the Plan Supplement, the Disclosure Statement, the Restructuring Support Agreement, the Sale Process, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Plan, the Disclosure Statement, the Chapter 11 Cases, the CCAA Recognition Proceedings, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the distribution of property under the Plan, or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such Claim or Cause of Action represents a colorable Claim or Cause of Action of any kind, including negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Released Party or Exculpated Party and (ii) specifically authorizing such entity or person to bring such Claim or Cause of Action against any such Released Party or Exculpated Party. The Bankruptcy Court shall have sole and exclusive jurisdiction to determine whether a Claim or Cause of Action is colorable and, only to the extent legally permissible and as provided for in Article XI, shall have jurisdiction to adjudicate the underlying colorable Claim or Cause of Action.

I. *Protection Against Discriminatory Treatment*

Consistent with section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against the Wind Down Estate or the Wind Down Administrator (as applicable) or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Wind Down Estate or the Wind Down Administrator (as applicable), or another Entity with whom the Wind Down Estate or the Wind Down Administrator (as applicable) have been associated, solely because each Debtor has been a debtor under chapter 11 of the Bankruptcy Code, has been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtors are granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

J. *Recoupment*

In no event shall any Holder of Claims or Interests be entitled to recoup any Claim or Interest against any Claim, right, or Cause of Action of the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), unless such Holder actually has performed such recoupment and provided notice thereof in writing to the Debtors on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

K. *Subordination Rights*

Any distributions under the Plan shall be received and retained free from any obligations to hold or transfer the same to any other Holder and shall not be subject to levy, garnishment, attachment, or other legal process by any Holder by reason of claimed contractual subordination rights. Any such subordination rights shall be waived, and the Confirmation Order shall constitute an injunction enjoining any Entity from enforcing or attempting to enforce any contractual, legal, or equitable subordination rights to property distributed under the Plan, in each case other than as provided in the Plan.

L. *Reimbursement or Contribution*

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Confirmation Date: (1) such Claim has been adjudicated as non-contingent; or (2) the relevant Holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered prior to the Confirmation Date determining such Claim as no longer contingent.

M. *Document Retention.*

On and after the Effective Date, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) may maintain documents in accordance with their standard document retention policy, as may be altered, amended, modified, or supplemented by the Wind Down Estate or the Wind Down Administrator (as applicable).

**ARTICLE IX.  
CONDITIONS PRECEDENT TO CONFIRMATION  
AND CONSUMMATION OF THE PLAN**

*A. Conditions Precedent to Confirmation*

It shall be a condition to Confirmation of the Plan that the following conditions, as determined by the Debtors with the consent of the DIP Agent, the Prepetition Secured Parties, and the Purchaser shall have been satisfied (or waived pursuant to the provisions of Article IX.C of the Plan):

1. the Restructuring Support Agreement shall not have been breached or terminated and shall be in full force and effect;
2. the Bankruptcy Court shall have entered a Final Order approving the Disclosure Statement with respect to the Plan as containing adequate information within the meaning of section 1125 of the Bankruptcy Code;
3. a Final DIP Approval Order shall have been entered by the Bankruptcy Court and the Final DIP Recognition Order shall have been entered by the CCAA Court, and each shall not have been breached or terminated, shall be in full force and effect, and no stay thereof shall be in effect;
4. the Purchase Agreement shall have been executed by the parties thereto, shall not have been breached or terminated and shall be in full force and effect;
5. all provisions, terms, and conditions hereof shall have been approved in the Confirmation Order;
6. the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount shall have been funded by cash on hand of the Debtors and the proceeds of the DIP Facility into a reserve account and shall be added to the outstanding obligations under the DIP Facility (less cash on hand);
7. the Special Committee's investigation shall have concluded; and
8. a motion (including any exhibits, schedules, amendments, modifications or supplements thereto) shall have been filed in the CCAA Recognition Proceedings seeking the issuance of the Sale Recognition Order pursuant the Purchase Agreement and consistent with the terms of the Restructuring Support Agreement and the Restructuring Support Agreement Documentation.

*B. Conditions Precedent to the Effective Date*

It shall be a condition to the occurrence of the Effective Date that the following conditions, as determined by the Debtors with the consent of the DIP Agent, the Prepetition Secured Parties, and the Purchaser shall have been satisfied (or waived pursuant to the provisions of Article IX.C of the Plan):

1. the Restructuring Support Agreement shall not have been breached or terminated and shall be in full force and effect;
2. the Confirmation Order and Confirmation Recognition Order shall have been entered and neither the Confirmation Order nor the Confirmation Recognition Order shall have been stayed, modified, or vacated on appeal;
3. the Sale Order shall have been entered (whether or not included as a part of the Confirmation Order and Confirmation Recognition Order, as applicable), and shall not have been stayed, modified, or vacated on appeal;
4. the Sale Transaction (including with respect to the sale of the Canadian Transferred Assets to Purchaser pursuant to the CCAA Recognition Proceedings) shall have been consummated in accordance with the terms of the Purchase Agreement;
5. a Final DIP Approval Order shall have been entered by the Bankruptcy Court and Final DIP Recognition Order shall have been entered by the CCAA Court, and each shall not have been breached or terminated, shall be in full force and effect, and no stay thereof shall be in effect;
6. the Professional Fee Escrow Account shall be funded using cash on hand of the Debtors, proceeds of the DIP Facility, or proceeds of the Sale Transaction, as applicable, in an amount equal to the Professional Fee Reserve Amount;
7. all required governmental and third-party approvals and consents, including Bankruptcy Court approval, necessary in connection with the transactions provided for in the Plan shall have been obtained, shall not be subject to unfulfilled conditions, and shall be in full force and effect, and all applicable waiting periods shall have expired without any action having been taken by any competent authority that would restrain or prevent such transactions;
8. all documents and agreements necessary to implement the Plan and the Restructuring shall have been (a) tendered for delivery and (b) effected or executed by all Entities party thereto, and all conditions precedent to the effectiveness of such documents and agreements (other than any conditions related to the occurrence of the Effective Date) shall have been satisfied or waived pursuant to the terms of such documents or agreements;
9. the Bankruptcy Court shall have approved the Plan's releases and such approval shall have been recognized and given effect in Canada by the CCAA Court;
10. all Restructuring Expenses shall have been paid in Cash in full;
11. the GUC Trust shall have been created and funded in accordance with the Plan;
12. the Post-Sale Reserve shall have been funded using cash on hand of the Debtors, proceeds of the DIP Facility, or the Sale Transaction proceeds, as applicable; and
13. the Foreign Sale Reserve shall have been funded using Sale Transaction proceeds and distributed to the Netherlands Subsidiaries.



C. *Waiver of Conditions*

The conditions precedent to Confirmation of the Plan and to the Effective Date of the Plan set forth in Article IX.A and Article IX.B may be amended, modified, supplemented, or waived in writing by mutual agreement of the Debtors, the DIP Secured Parties, the Prepetition Secured Parties, and the Purchaser without notice, leave, or order of the Bankruptcy Court or any formal action other than proceedings to confirm or consummate the Plan.

**ARTICLE X.  
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

A. *Modification and Amendments*

Subject to the limitations contained herein, in the Global Settlement, and in the Restructuring Support Agreement, the Debtors reserve the right to alter, amend, or modify the Plan, subject to the consent of the Prepetition Secured Parties, and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code, Bankruptcy Rule 3019, and the restrictions on modifications set forth in the Plan and the Restructuring Support Agreement, the Debtors expressly reserve their rights to alter, amend, or modify the Plan, one or more times, after Confirmation, and, to the extent necessary, initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan.

B. *Effect of Confirmation on Modifications*

Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and shall constitute a finding that such modifications or amendments to the Plan do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

C. *Revocation or Withdrawal of the Plan*

Subject to the conditions and limitations set forth in the Restructuring Support Agreement, the Debtors reserve the right to revoke or withdraw the Plan with respect to any or all Debtors prior to the Confirmation Date and to File subsequent plans of reorganization. If the Debtors revoke or withdraw the Plan, or if Confirmation and Consummation do not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (3) nothing contained in the Plan shall: (i) constitute a waiver or release of any Claims or Interests; (ii) prejudice in any manner the rights of the Debtors or any other Entity, including the Holders of Claims; (iii) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors or any other Entity; or (iv) be used by the Debtors or any other Entity as evidence (or in any other way) in any litigation, including with regard to the strengths or

weaknesses of any of the parties' positions, arguments, or claims; *provided that*, the foregoing reservation of rights shall not in any way amend, nullify, or void any action, act, or right ratified upon the Bankruptcy Court's entry of the Sale Approval Order.

## **ARTICLE XI. RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases and all matters, arising out of, or related to, the Chapter 11 Cases and the Plan, including jurisdiction to:

1. Allow, Disallow, determine, liquidate, classify, estimate, or establish the priority, Secured, Unsecured, or subordinated status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections relating to any of the foregoing;

2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals;

3. resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Cures pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; and (c) any dispute regarding whether a contract or lease is or was executory or expired;

4. ensure that distributions to Holders of Allowed Claims or Interests are accomplished pursuant to the provisions of the Plan;

5. consider any modifications of the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code, the Confirmation Order, the Sale Approval Order or any contract, instrument, release, or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement, the Confirmation Order, or the Sale Approval Order in each case, to remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order, the Sale Approval Order, or any contract, instrument, release, or other agreement or document entered into, delivered, or created in connection with the Plan, the Disclosure Statement, the Confirmation Order, or the Sale Approval Order in such manner as may be necessary or appropriate to consummate the Plan;

6. adjudicate, decide, or resolve any motions, adversary proceedings, contested, or litigated matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

7. adjudicate, decide, or resolve any and all matters related to Causes of Action by or against a Debtor, the GUC Trust, or GUC Trustee;

8. adjudicate, decide, or resolve any and all matters related to sections 1141, 1145, and 1146 of the Bankruptcy Code;

9. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan, and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan;

10. enter and enforce any order for the sale of property pursuant to sections 363 or 1123 of the Bankruptcy Code, including for the avoidance of doubt the Sale Approval Order;

11. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

12. adjudicate, decide, or resolve any dispute and all matters related to the Sale Transaction and Sale Transaction Documents;

13. adjudicate, decide, or resolve any dispute and all matters arising under the GUC Trust Agreement;

14. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

15. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, discharges, releases, injunctions, exculpations, and other provisions contained in Article VIII of the Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

16. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid pursuant to Article VII of the Plan;

17. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

18. determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, the Plan Supplement, or the Sale Approval Order;

19. adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein, including any Restructuring Transactions;

20. determine requests for the payment of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code;

21. hear and determine matters concerning state, local, and U.S. federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

22. hear and determine matters concerning section 1145 of the Bankruptcy Code;
23. hear and determine all disputes involving the existence, nature, or scope of the release provisions set forth in the Plan, including any dispute or matter relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;
24. enforce all orders previously entered by the Bankruptcy Court;
25. enter a final decree concluding or closing the Chapter 11 Cases;
26. enforce the injunction, release, and exculpation provisions set forth in Article VIII of the Plan;
27. hear any other matter not inconsistent with the Bankruptcy Code; and
28. the CCAA Court shall retain jurisdiction over the CCAA Recognition Proceedings and all matters, arising out of, or related to, the CCAA Recognition Proceedings including the orders of the CCAA Court.

## **ARTICLE XII. MISCELLANEOUS PROVISIONS**

### **A. *Immediate Binding Effect***

Subject to Article IX.B of the Plan and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the final versions of the documents contained in the Plan Supplement, the Confirmation Order, and the Sale Approval Order shall be immediately effective and enforceable and deemed binding upon the Debtors or the Wind Down Estate, as applicable, and any and all Holders of Claims or Interests (regardless of whether the Holders of such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions provided for in the Plan, each Entity acquiring property under the Plan or the Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases. All Claims and debts shall be fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

### **B. *Additional Documents***

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee, as applicable, and all Holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

C. *Reservation of Rights*

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court enters the Confirmation Order, and the Confirmation Order shall have no force or effect unless the Effective Date occurs. Prior to the Effective Date, neither the Plan, any statement or provision contained in the Plan, nor any action taken or not taken by any Debtor with respect to the Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Interests.

D. *Successors and Assigns*

The rights, benefits, and obligations of any Entity named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, manager, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

E. *Service of Documents*

Any pleading, notice, or other document required by the Plan to be served on or delivered to the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee as applicable, shall be served on:

**Debtors or the  
Wind Down Estate**

**KidKraft Inc.**  
4630 Olin Road  
Dallas, TX 75244  
Attn: Geoffrey Walker

**Attorneys to the Debtors**

**Vinson & Elkins LLP**  
2001 Ross Avenue, Suite 3900  
Dallas, TX 75201  
Attn: William L. Wallander  
Matthew D. Struble  
Kiran Vakamudi

and

**Vinson & Elkins LLP**  
1114 Avenue of the Americas, 32nd Floor  
New York, NY 10036  
Attn: David S. Meyer  
Lauren R. Kanzer

**Wind Down Administrator**

**SierraConstellation Partners, LLC**  
3090 Olive St., 3rd Floor  
Dallas, TX 75219  
Attn: Carl Moore

**GUC Trustee**

**Jiangang Ou, Esq.**  
1222 Howard Lane  
Bellaire, Texas 77401

**United States Trustee**

**Office of the United States Trustee  
for the Northern District of Texas**  
Earle Cabell Federal Building  
1100 Commerce Street, Room 976  
Attn: Meredyth Kippes

**Prepetition Credit Agreement  
Agent and DIP Agent**

**GB Funding, LLC**  
101 Huntington Avenue, Suite 1100  
Boston, Massachusetts 02199  
Attn: David Braun  
Kyle Shonak

**Counsel to the Prepetition Credit  
Agreement Agent and DIP Agent**

**Katten Muchin Rosenman LLP**  
50 Rockefeller Plaza  
New York, NY 10020  
Attn: Cindi M. Giglio  
Lucy F. Kweskin

**Purchaser**

**Backyard Products LLC**  
317 S. Main Street  
Ann Arbor, MI 48104  
Attn: Thomas van der Meulen

**Counsel to Purchaser**

**King & Spalding LLP**  
1185 6th Avenue  
New York, NY 10036  
Attn: Spencer Stockdale  
Michael Fishel  
Jeff Dutson

**MidOcean**

**MidOcean Partners**  
245 Park Avenue  
38th Floor  
New York, NY 10167  
Attn: Daniel Penn

**Counsel to MidOcean**

**Gibson Dunn & Crutcher LLP**

200 Park Avenue  
New York, NY 10166  
Attn: Andrew Herman

F. *Term of Injunctions or Stays*

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court or the CCAA Court, and existing on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan, the Confirmation Order, the Confirmation Recognition Order or the Sale Order shall remain in full force and effect in accordance with their terms.

G. *Entire Agreement*

Except as otherwise indicated, and without limiting the effectiveness of the Global Settlement and the Restructuring Support Agreement and any related agreements thereto, on the Effective Date, the Plan, the Plan Supplement, and the Confirmation Order shall supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

H. *Exhibits*

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the Debtors' restructuring website at <https://www.stretto.com/kidkraft> or the Bankruptcy Court's website at <https://www.txnb.uscourts.gov/>. To the extent any exhibit or document is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall control.

I. *Nonseverability of Plan Provisions*

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such terms or provision shall then be applicable as altered or interpreted, *provided that* any such alteration or interpretation shall be acceptable to the Debtors, the DIP Agent, the Prepetition Secured Parties, and the Purchaser. Notwithstanding any such alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such alteration or

interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtors', the Prepetition Secured Parties', and the Purchaser's consent; and (3) nonseverable and mutually dependent.

J. *Votes Solicited in Good Faith*

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities (if any) offered and sold under the Plan and any previous plan, and, therefore, neither any of such parties or individuals nor the Wind Down Estate or Wind Down Administrator (as applicable) will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities (if any) offered and sold under the Plan and any previous plan.

K. *Request for Expedited Determination of Taxes*

The Debtors, the Wind Down Estate, the Wind Down Administrator, or the GUC Trustee, as the case may be, shall have the right to request an expedited determination under section 505(b) of the Bankruptcy Code with respect to tax returns filed, or to be filed, for any and all taxable periods ending after the Petition Date through the Effective Date.

L. *Closing of Chapter 11 Cases*

The Wind Down Estate or the Wind Down Administrator (as applicable) shall, promptly after the full administration of the Chapter 11 Cases, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to issue a final decree closing the Chapter 11 Cases and file materials with the CCAA Court to terminate the CCAA Recognition Proceedings.

M. *No Stay of Confirmation Order*

The Confirmation Order and Confirmation Recognition Order shall contain a waiver of any stay of enforcement otherwise applicable, including pursuant to Bankruptcy Rules 3020(e) and 7062.

N. *Waiver or Estoppel*

Each Holder of a Claim or Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement or the Debtors', Wind Down Estate's, or the Wind Down Administrator's (as applicable) right to enter into settlements was not



disclosed in the Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court or the Noticing and Claims Agent prior to the Confirmation Date.

O. *Dissolution of Statutory Committees*

On the Effective Date, any statutory committee formed in connection with the Chapter 11 Cases shall dissolve automatically and all members thereof (solely in their capacities as such) shall be released and discharged from all rights, duties, and responsibilities arising from, or related to, the Chapter 11 Cases.

\* \* \* \*

Respectfully submitted, as of the date first set forth below,

Dated: July 6, 2024  
Dallas, Texas

KIDKRAFT, INC.  
on behalf of itself and all other Debtors

*/s/ Geoffrey Walker*

Geoffrey Walker  
President & Chief Executive Officer

**Exhibit 2**

**Redline**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:** § **Case No. 24-80045-mvl11**  
§  
**KIDKRAFT, INC., et al.,** § **(Chapter 11)**  
§  
**Debtors.<sup>1</sup>** § **(Jointly Administered)**  
§

**DEBTORS' SECOND AMENDED JOINT PREPACKAGED CHAPTER 11 PLAN**

---

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New York, NY 10036

**~~PROPOSED~~ ATTORNEYS FOR THE  
DEBTORS AND DEBTORS IN POSSESSION**

**Dated: ~~June 20~~July 6, 2024**

---

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft Partners, LLC (3268), KidKraft International IP Holdings, LLC (1841), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc (4302). The location of the Debtors' U.S. corporate headquarters and the Debtors' service address is: 4630 Olin Road, Dallas, TX 75244.

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## INTRODUCTION

KidKraft and its affiliated debtors, as Debtors and debtors in possession in the above-captioned chapter 11 cases, jointly propose this prepackaged chapter 11 plan for the resolution of outstanding Claims against, and Interests in, the Debtors. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims against, and Interests in, such Debtor. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in Article I.A of the Plan or the Bankruptcy Code or Bankruptcy Rules. Holders of Claims and Interests should refer to the Disclosure Statement for a discussion of the Debtors' history, businesses, Assets, results of operations, and historical financial information, as well as a summary and description of the Plan. The Debtors are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

**ALL HOLDERS OF CLAIMS WHO ARE ELIGIBLE TO VOTE ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.**

## ARTICLE I. DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW

### A. *Defined Terms*

As used in the Plan, capitalized terms have the meanings set forth below.

1. “**363 Sale**” means the sale of the Transferred Assets pursuant to section 363 of the Bankruptcy Code in accordance with the terms of the Purchase Agreement and Sale Approval Order.

2. “**503(b)(9) Claim**” means a Claim pursuant to section 503(b)(9) of the Bankruptcy Code for the value of goods received by the Debtors in the 20 days immediately prior to the Petition Date and sold to the Debtors in the ordinary course of the Debtors' business.

3. “**Adequate Protection Claim**” means any Claim for adequate protection within the meaning of section 361 of the Bankruptcy Code arising under applicable law or pursuant to Final Order of the Bankruptcy Court.

4. “**Administrative Expense Claim**” means any Claim (other than any Adequate Protection Claims or DIP Claims) for costs and expenses of administration of the Debtors' Estates pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (i) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Debtors' Estates and operating the Debtors' businesses, (ii) any Allowed requests for compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Cases pursuant to sections 503(b)(3), (4), and (5) of the Bankruptcy Code, and (iii) any Unpaid Employee Severance Obligations.



5. “**Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount**” means the amount set forth in the Approved Budget (or as otherwise agreed upon by the Debtors, the DIP Secured Parties, and the Purchaser), and funded by cash on hand of the Debtors and the proceeds of the DIP Facility prior to the Confirmation Date, sufficient to satisfy the agreed upon estimated amount of the Allowed Administrative Expense Claims, Allowed Priority Tax Claims, and Allowed Other Priority Claims; *provided that* in no event will the DIP Secured Parties’ obligations to provide such funding exceed the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount.

6. “**Administrative Expense Claims Bar Date**” means the deadline for Filing requests for payment of Administrative Expense Claims (other than 503(b)(9) Claims), which: (a) with respect to Administrative Expense Claims other than Professional Fee Claims, shall be 30 days after the Effective Date; and (b) with respect to Professional Fee Claims of Professionals, shall be 45 days after the Effective Date.

7. “**Affiliate**” shall have the meaning set forth in section 101(2) of the Bankruptcy Code when used in reference to a Debtor, and when used in reference to an Entity other than a Debtor, means any other Entity that controls, is controlled by, or is under common control with such Entity, other than a Debtor.

8. “**Allowed**” means with reference to any Claim or Interest, (i) any Claim or Interest arising on or before the Effective Date (a) as to which no objection to allowance has been interposed within the time period set forth in the Plan and such Claim or Interest is not Disputed or (b) as to which any objection has been determined by a Final Order of the Bankruptcy Court to the extent such objection is determined in favor of the respective Holder, (ii) any Claim or Interest as to which the liability of the Debtors and the amount thereof are determined by a Final Order of a court of competent jurisdiction other than the Bankruptcy Court, or (iii) any Claim or Interest expressly allowed under the Plan; *provided, however*, that notwithstanding the foregoing, the Wind Down Estate (to the extent applicable) will retain all claims and defenses with respect to Allowed Claims that are Reinstated or otherwise Unimpaired pursuant to the Plan.

9. “**Approved Budget**” means the weekly budget, as defined in paragraph G(iv) of the DIP Approval Order.

10. “**Assets**” means all of the Debtors’ property, rights, and interests that are property of the Estates pursuant to section 541 of the Bankruptcy Code.

11. “**Assigned Avoidance Actions**” means all Avoidance Actions other than those against (i) any parties identified on Schedule 1 to the Global Settlement Term Sheet, unless any such party makes a GUC Settlement Opt-In Election, (ii) any other “Designated Parties” (as that term is defined in the Purchase Agreement) under Section 2.1(k)(ii) through (iv) of the Purchase Agreement, and (iii) any Released Parties.

12. “**Assumed Liabilities**” shall have the meaning set forth in Section 2.3 of the Purchase Agreement.

13. “**Avoidance Actions**” means any and all actual or potential Claims and Causes of Action to avoid a transfer of property or an obligation incurred by the Debtors arising under

chapter 5 of the Bankruptcy Code, including sections 502, 510, 544, 545, 547 through 553, and 724(a) of the Bankruptcy Code or under similar or related state or federal statutes and common law, including fraudulent transfer and preference laws.

14. “**Ballots**” means the ballots distributed to certain Holders of Impaired Claims entitled to vote on the Plan upon which such Holders shall, among other things, indicate their acceptance or rejection of the Plan in accordance with the Plan and the procedures governing the solicitation process.

15. “**Bankruptcy Code**” means title 11 of the United States Code, as amended and in effect during the pendency of the Chapter 11 Cases.

16. “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure promulgated under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court, in each case, as amended from time to time.

17. “**Bankruptcy Court**” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division.

18. “**Bar Date Order**” means the order entered by the Bankruptcy Court setting the Claims Bar Date and the Governmental Bar Date.

19. “**Bidder Protections**” means, collectively, the Break-Up Fee and Expense Reimbursement.

20. “**Break-Up Fee**” shall have the meaning set forth in Section 9.3(a) of the Purchase Agreement, as may be modified by a subsequent order of the Bankruptcy Court.

21. “**Business Day**” means any day other than a Saturday, Sunday, or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

22. “**Canadian Debtors**” means, collectively, the following Debtors: Solowave Design Holdings Limited, Solowave Design LP, Solowave Design Inc., and Solowave International Inc. Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Canadian Debtors shall mean the Wind Down Estate to the extent context requires.

23. “**Canadian Property**” means the assets, undertakings and property of the Canadian Debtors and any other assets, undertakings and property of the Debtors that may be located in Canada.

24. “**Canadian Transferred Assets**” means the Transferred Assets of the Canadian Debtors and any other Transferred Assets of the Debtors that may be located in Canada.

25. “**Cash**” means cash in legal tender of the United States of America and cash equivalents, including bank deposits, checks, and other similar items.

26. “**Cause of Action**” means any action, claim, cause of action, controversy, third-party claim, dispute, demand, right, action, Lien, indemnity, contribution, guaranty, suit,

obligation, liability, loss, debt, fee or expense, damage, interest, judgment, account, defense, remedy, power, privilege, license, and franchise of any kind or character whatsoever, whether known, unknown, foreseen or unforeseen, existing or hereafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, Disputed or undisputed, Secured or Unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract, in tort, in law, or in equity or pursuant to any other theory of law. For the avoidance of doubt, a “Cause of Action” includes: (a) any right of setoff, counterclaim, or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Interests; (c) any Claim pursuant to section 362 or chapter 5 of the Bankruptcy Code (including Avoidance Actions); (d) any claim or defense including fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any state or foreign law fraudulent transfer or similar claim.

27. “**CCA Court**” means the Ontario Superior Court of Justice (Commercial List).

28. “**CCA Recognition Proceedings**” means the recognition proceedings commenced pursuant to Part IV of the *Companies’ Creditors Arrangement Act* (Canada) in respect of the Chapter 11 Cases of KidKraft and the Canadian Debtors.

29. “**Chapter 11 Cases**” means each individual case or the jointly administered cases pending under chapter 11 of the Bankruptcy Code for each individual Debtor or the Debtors, as applicable, in the Bankruptcy Court.

30. “**Claim**” shall have the meaning set forth in section 101(5) of the Bankruptcy Code, against any Debtor.

31. “**Claims Bar Date**” means such time and date established pursuant to the Bar Date Order by which Proofs of Claim (other than for Administrative Expense Claims and Claims held by Governmental Units), including 503(b)(9) Claims, must be Filed.

32. “**Claims Objection Deadline**” means the deadline for objecting to a Claim against a Debtor, which shall be on the date that is the later of (a) 120 days after the Effective Date, subject to extension by order of the Bankruptcy Court, (b) 90 days after the Filing of a Proof of Claim, or (c) such other period of limitation as may be fixed by the Plan, the Confirmation Order, the Bankruptcy Rules, or a Final Order for objecting to a Claim.

33. “**Claims Register**” means the official register of Claims against and Interests in the Debtors maintained by the Noticing and Claims Agent.

34. “**Class**” means a category of Claims against or Interests in the Debtors as set forth in Article III of the Plan pursuant to section 1122(a) of the Bankruptcy Code.

35. “**Committee**” means the official committee of unsecured creditors of the Debtors appointed by the U.S. Trustee in the Chapter 11 Cases on May 23, 2024, pursuant to section 1102 of the Bankruptcy Code.

36. “**Confirmation**” means the entry of the Confirmation Order on the docket of the Chapter 11 Cases.

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

38. “**Confirmation Hearing**” means the hearing held by the Bankruptcy Court to consider Confirmation of the Plan pursuant to section 1128(a) of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

39. “**Confirmation Order**” means the Order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code, which Order may include the Sale Approval Order.

40. “**Confirmation Recognition Order**” means an Order of the CCAA Court in the CCAA Recognition Proceedings recognizing and giving effect in Canada to the Confirmation Order.

41. “**Consummation**” means the occurrence of the Effective Date.

42. “**Cure Claim**” means a monetary Claim based upon a Debtor’s defaults under an Executory Contract or Unexpired Lease at the time such contract or lease is assumed, or assumed and assigned by such Debtor pursuant to section 365 of the Bankruptcy Code.

43. “**Cure Notice**” means a notice of a proposed amount to be paid on account of a Cure Claim in connection with an Executory Contract or Unexpired Lease to be assumed under the Plan pursuant to section 365 of the Bankruptcy Code, which notice shall include (a) procedures for objecting to proposed assumptions of Executory Contracts and Unexpired Leases, (b) Cure Claims to be paid in connection therewith and (c) procedures for resolution by the Bankruptcy Court of any related disputes.

44. “**D&O Liability Insurance Policies**” means all unexpired directors’, managers’, and officers’ liability insurance policies (including any “tail policy”) maintained by any of the Debtors with respect to directors, managers, officers, and employees of the Debtors.

45. “**Debtors**” means, collectively, the following: KidKraft, Inc.; KidKraft Europe, LLC; KidKraft Intermediate Holdings, LLC; KidKraft International Holdings, Inc.; KidKraft International IP Holdings, LLC; KidKraft Partners, LLC; Solowave Design Corp.; Solowave Design Holdings Limited; Solowave Design Inc.; Solowave Design LP; and Solowave International Inc. Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors shall mean the Wind Down Estate to the extent context requires.

46. “**Debtors’ Officers**” means the Debtors’ officers as of the Petition Date; *provided*, that any such officer shall be deemed not to be a Debtors’ Officer for so long as such officer is employed by the Purchaser.

47. ~~46.~~ “**Definitive Documentation**” means, without limitation, the following definitive documents and agreements: (a) this Plan and all exhibits hereto, including the Plan Supplement documents; (b) the Confirmation Order and Confirmation Recognition Order; (c) the Disclosure Statement; (d) the solicitation materials with respect to the Plan; (e) the Purchase

Agreement, including the exhibits and schedules thereto; (f) the Sale Order, if not incorporated as part of the Confirmation Order and Confirmation Recognition Order, as applicable; (g) any documentation or budget related to the Post-Sale Reserve and Foreign Sale Reserve; (h) the DIP Order; (i) all “first day” motions, applications, and other documents that any Debtor intends to file with the Bankruptcy Court and seeks to have heard on an expedited basis at the “first-day hearing” in the Chapter 11 Cases and any proposed orders related thereto; (j) all motions, applications, and other documents that any Debtor (including a foreign representative appointed by the Bankruptcy Court for any Debtor) or any Canadian Affiliates of Debtors intend to file with the CCAA Court in the CCAA Recognition Proceedings, and any proposed orders related thereto; (k) any provision in any documentation regarding (i) releases of Claims, causes of action, and avoidance actions or (ii) Assumed Liabilities or Transferred Contracts under the Purchase Agreement; (l) such other agreements, instruments, and documentation as may be necessary or reasonably desirable to consummate and document the Restructuring and Sale Transaction (including, without limitation, in connection with the CCAA Recognition Proceedings); and (m) to the extent not included, any motions and related proposed orders seeking approval of each of the above. For the avoidance of doubt, the Definitive Documentation shall be in form and substance acceptable to the Debtors, the Prepetition Secured Parties, the Purchaser, and with respect to MidOcean, solely with respect to any provision therein having a material effect on MidOcean or releasing Claims or causes of action by or against MidOcean or its affiliates thereunder.

48. ~~47.~~ “*De Minimis Assets*” means assets with a total transaction value, as calculated within the Debtors’ or Wind Down Administrator’s reasonable discretion, in consultation with the Prepetition Secured Parties, less than or equal to \$50,000.

49. ~~48.~~ “*DIP Agent*” means GB Funding, LLC, in its capacity as administrative agent and collateral agent under the DIP Facility.

50. ~~49.~~ “*DIP Approval Order*” means the interim order entered by the Bankruptcy Court approving the DIP Facility and the Final DIP Approval Order.

51. ~~50.~~ “*DIP Claim*” means any Claim of the DIP Agent or any DIP Lender on account of or arising from, under or in connection with the DIP Facility.

52. ~~51.~~ “*DIP Facility*” means the senior secured superpriority debtor-in-possession financing facility to be provided by the DIP Lenders, all as set forth in, and consistent with and subject to, the terms and conditions of the DIP Facility Documents.

53. ~~52.~~ “*DIP Facility Documents*” means the DIP Facility Term Sheet, the DIP Credit Agreement (as applicable) and all other agreements, documents, instruments, and amendments related thereto, including any DIP Order, and any guaranty agreements, pledge and collateral agreements, UCC financing statements, or other perfection documents, subordination agreements, fee letters, and any other security agreements.

54. ~~53.~~ “*DIP Facility Term Sheet*” means that certain term sheet regarding the terms of debtor-in-possession financing between KidKraft, Inc., as borrower, certain of KidKraft’s subsidiaries and affiliates, as guarantors, the DIP Agent, and the DIP Lender, attached as Exhibit A to the DIP Approval Order.

55. ~~54.~~ “**DIP Lender**” means 1903 Partners, LLC, in its capacity as lender under the DIP Facility.

56. ~~55.~~ “**DIP Liens**” mean the Liens granted to the DIP Agent under the DIP Order to secure the DIP Claims.

57. ~~56.~~ “**DIP Order**” means the DIP Approval Order and the DIP Recognition Order, as applicable.

58. ~~57.~~ “**DIP Recognition Order**” means one or more orders of the CCAA Court in the CCAA Recognition Proceedings recognizing and giving effect in Canada to the DIP Approval Order, including the Final DIP Recognition Order.

59. ~~58.~~ “**DIP Secured Parties**” means collectively, the DIP Lender and the DIP Agent, in their respective capacities under the DIP Facility.

60. ~~59.~~ “**DIP Secured Parties Advisors**” means Katten Muchin Rosenman LLP, as counsel to the DIP Secured Parties and Fasken Martineau DuMoulin LLP as Canadian Counsel to the DIP Secured Parties.

61. ~~60.~~ “**Disallowed**” means, with respect to any Claim, or any portion thereof, that such Claim, or such portion thereof, is not Allowed; *provided, however*, that a Disputed Claim shall not be considered Disallowed until so determined by entry of a Final Order.

62. ~~61.~~ “**Disbursing Agent**” means the Debtors, the Wind Down Estate, the GUC Trust, or the Entity or Entities selected by the Debtors, the Wind Down Estate, or the GUC Trust as applicable, to make or facilitate distributions pursuant to the Plan.

63. ~~62.~~ “**Disclosure Statement**” means the *Disclosure Statement for the Debtors’ Joint Prepackaged Chapter 11 Plan*, dated as of May 8, 2024, as may be amended, supplemented, or modified from time to time, including all exhibits and schedules thereto and references therein that relate to the Plan, that is prepared and distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law.

64. ~~63.~~ “**Disputed**” means, with respect to any Claim or Interest, that such Claim or Interest (a) is not yet Allowed, (b) is not Disallowed by the Plan, the Bankruptcy Code, or a Final Order, as applicable, (c) as to which a dispute is being adjudicated by a court of competent jurisdiction in accordance with non-bankruptcy law, or (d) is or is hereafter listed in the Schedules as contingent, unliquidated, or disputed and for which a Proof of Claim is or has been timely Filed in accordance with the Bar Date Order.

65. ~~64.~~ “**Dissolution Transactions**” means the transactions that the Debtors or Wind Down Administrator, with the consent of the Prepetition Secured Parties, determine to be necessary or appropriate to implement the terms of the Plan, and ultimately result in the dissolution or other termination of the corporate entities that comprise the Debtors.

66. ~~65.~~ “**Distributable Value**” means (a) the Purchase Price *plus* (b) any of the Debtors’ cash on hand as of the Effective Date *plus* (c) proceeds of the monetization of any Excluded Assets



of the Debtors, whenever received by the Debtors or the Wind Down Estates *plus* (d) surrender of collateral or proceeds of any other collateral securing the DIP Claims or Prepetition Secured Party Claims, whenever received by the Debtors or the Wind Down Estates; *minus* (e) amounts held-back to secure any purchase price adjustments pursuant to the Purchase Agreement (unless and until distributed to the Debtors in accordance therewith); *minus* (f) amounts necessary to fund the Professional Fee Escrow Account in the Professional Fee Reserve Amount; *minus* (g) amounts necessary to satisfy Restructuring Expenses; *minus* (h) amounts necessary to fund the Post-Sale Reserve; *minus* (g) amounts necessary to fund the Foreign Sale Reserve; *provided that* any unused amounts remaining from the Professional Fee Escrow Account, the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount, and the Post-Sale Reserve shall be considered Distributable Value; *provided that*, for the avoidance of doubt, no GUC Trust Assets shall be included as Distributable Value.

67. ~~66.~~ “**Distribution Record Date**” means the record date for purposes of making distributions under the Plan on account of Allowed Claims, which date shall be the Confirmation Date or such other date as designated in an order of the Bankruptcy Court.

68. ~~67.~~ “**Effective Date**” means the date selected by the Debtors on which: (a) no stay of the Confirmation Order, Confirmation Recognition Order or Sale Order (if separately entered) is in effect; (b) all conditions precedent specified in Article IX have been satisfied or waived (in accordance with Article IX.C); and (c) the Plan becomes effective; *provided, however*, that if such date does not occur on a Business Day, the Effective Date shall be deemed to occur on the first Business Day after such date.

69. ~~68.~~ “**Entity**” shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

70. ~~69.~~ “**Estate**” means, as to each Debtor, the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

71. ~~70.~~ “**Excluded Assets**” shall have the meaning set forth in Section 2.2 of the Purchase Agreement.

72. ~~71.~~ “**Exculpated Party**” means each of the following solely in its capacity as such and to the maximum extent permitted by law: (a) the Debtors; (b) the Committee; and (c) the members of the Committee, solely in their capacities as such.

73. ~~72.~~ “**Executory Contract**” means a contract to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

74. ~~73.~~ “**Expense Reimbursement**” shall have the meaning set forth in Section 9.3(a) of the Purchase Agreement, as may be modified by a subsequent order of the Bankruptcy Court.

75. ~~74.~~ “**Federal Judgment Rate**” means the federal judgment rate in effect as of the Petition Date, compounded annually.

76. ~~75.~~ “**File,**” “**Filed,**” or “**Filing**” means file, filed, or filing in the Chapter 11 Cases with the Bankruptcy Court or, with respect to the filing of a Proof of Claim, the Noticing and Claims Agent or the Bankruptcy Court through the PACER or CM/ECF website.

77. ~~76.~~ “**Final Decree**” means the decree contemplated under Bankruptcy Rule 3022.

78. ~~77.~~ “**Final DIP Approval Order**” means the Final Order entered by the Bankruptcy Court approving the DIP Facility.

79. ~~78.~~ “**Final DIP Recognition Order**” means the Final Order of the CCAA Court recognizing and giving effect in Canada to the Final DIP Approval Order.

80. ~~79.~~ “**Final Order**” means an order or judgment of a court of competent jurisdiction that has been entered on the docket maintained by the clerk of such court, which has not been reversed, vacated, or stayed and as to which (i) the time to appeal, petition for certiorari, or move for a new trial, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for a new trial, reargument, or rehearing shall then be pending, or (ii) if an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought, such order or judgment shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari, or move for a new trial, reargument, or rehearing shall have expired; provided, however, that no order or judgment shall fail to be a “Final Order” solely because of the possibility that a motion under Rules 59 or 60 of the Federal Rules of Civil Procedure or any analogous Bankruptcy Rule (or any analogous rules applicable in another court of competent jurisdiction) or sections 502(j) or 1144 of the Bankruptcy Code has been or may be filed with respect to such order or judgment.

81. ~~80.~~ “**Foreign Sale Reserve**” means the amount of the Purchase Price allocated to the inventory transferred from the Netherlands Subsidiaries to facilitate the Sale Transaction, which amount will be distributed from Debtors to the Netherlands Subsidiaries pursuant to the Plan.

82. ~~81.~~ “**General Unsecured Claim**” means any Claim that is not secured, subordinated, or entitled to priority under the Bankruptcy Code or any Final Order of the Bankruptcy Court (other than an Intercompany Claim or a Subordinated Claim).

83. ~~82.~~ “**Global Settlement**” means the global settlement between the Global Settlement Parties pursuant to the term sheet (the “**Global Settlement Term Sheet**”) attached to the *Notice of Filing Global Settlement Term Sheet* [Docket No. 195].

84. ~~83.~~ “**Global Settlement Parties**” means the Debtors, the Committee, the DIP Secured Parties, the Prepetition Secured Parties, the Purchaser, and MidOcean.

85. ~~84.~~ “**Governmental Bar Date**” means such time and date established pursuant to the Bar Date Order by which Proofs of Claim of Governmental Units must be Filed.



86. ~~85.~~ “**Governmental Unit**” shall have the meaning set forth in section 101(27) of the Bankruptcy Code.

87. ~~86.~~ “**GUC Critical Vendor Cash**” means any amounts permitted to be paid under the *Final Order (I) Authorizing the Debtors to Pay (A) Critical Vendors, (B) Lien Claimants, and (C) 503(b)(9) Claimants; (II) Confirming Administrative Expense Priority of Outstanding Orders; and (III) Granting Related Relief* [Docket No. 200] that are unused as of the Effective Date (with the Debtors having sole discretion to pay amounts authorized under such order, except that any Allowed Claims entitled to priority status under section 503(b)(9) of the Bankruptcy Code shall be paid in full to the Holders thereof).

88. ~~87.~~ “**GUC L/C Cash**” means 40% of any cash collateral recovered from the former prepetition agent pursuant to the Assignment and Assumption dated as of January 31, 2024 by and between (i) Antares AssetCo LP, Antares Capital LP, Antares Holdings LP, Antares CLO 2017-2, LTD., Antares CLO 2018-1, LTD., Fifth Third Bank, N.A., and PNC Bank, N.A., as assignors, and (ii) 1903 Partners, LLC, as assignee.

89. ~~88.~~ “**GUC Purchase Price Cash**” means (i) \$350,000 if, on the Effective Date, the calculation of the Purchase Price Calculation is within a 0-5% variance of \$39,322,916; (ii) \$250,000 if, on the Effective Date, the Purchase Price Calculation is within a 6-10% variance of \$39,322,916; (iii) \$200,000 if, on the Effective Date, the Purchase Price Calculation is within a 11-20% variance of \$39,322,916; or (iv) \$150,000 if, on the Effective Date, the Purchase Price Calculation is a more than 20% variance of \$39,322,916.

90. ~~89.~~ “**GUC Settlement Opt-In Election**” means the affirmative election by a Holder of a General Unsecured Claim to opt-in to the settlement under the Global Settlement Term Sheet and receive its Pro Rata share of 100% of the GUC Trust Interests.

91. ~~90.~~ “**GUC Settlement Opt-In Election Deadline**” means the date that is thirty (30) days after the Effective Date.

92. ~~91.~~ “**GUC Settlement Opt-In Form**” means the form by which a potential holder of a General Unsecured Claim may make a GUC Settlement Opt-In Election, which form shall be included in the Plan Supplement.

93. ~~92.~~ “**GUC Settlement Opt-In Procedures**” means the procedures set forth in the GUC Settlement Opt-In Form for a potential holder of an Allowed General Unsecured Claim to make a GUC Settlement Opt-In Election.

94. ~~93.~~ “**GUC Trust**” means the trust established pursuant to Article IV.C of the Plan to, among other things, hold and liquidate the GUC Trust Assets and make distributions to Holders of Allowed General Unsecured Claims that make a GUC Settlement Opt-In Election pursuant to the Plan.

95. ~~94.~~ “**GUC Trust Accounts**” means the bank accounts to be held in the name of the GUC Trustee that are created pursuant to Article IV.C of the Plan.

96. ~~95.~~ “**GUC Trust Agreement**” means the agreement establishing and governing the GUC Trust, which agreement shall be included in the Plan Supplement and executed as of the Effective Date, and which agreement shall be acceptable in form and substance to the Debtors, the Committee, and the Prepetition Secured Parties.

97. ~~96.~~ “**GUC Trust Assets**” means, in the aggregate, (i) the GUC Trust Expense Reserve; (ii) \$125,000 in Cash; (iii) the Sponsor Cash Contribution; (iv) the GUC L/C Cash; (v) the GUC Purchase Price Cash; (vi) any unused amounts in the Approved Budget that are designated for fees and expenses of the Committee’s professionals; (vii) the GUC Critical Vendor Cash, if any; (viii) all commercial tort claims (as that term is defined in Article 9 of the Uniform Commercial Code) of the Debtors other than any such claims against any Released Party under the Plan; and (ix) the Assigned Avoidance Actions.

98. ~~97.~~ “**GUC Trust Assets Transfer**” means the assignment, conveyance, or other transfer of the GUC Trust Assets to the GUC Trust, which shall occur on the next Business Day following the GUC Settlement Opt-In Election Deadline.

99. ~~98.~~ “**GUC Trust Beneficiaries**” means any Holder of an Allowed General Unsecured Claim that has made a GUC Settlement Opt-In Election and thereby obtained one or more GUC Trust Interests and the Prepetition Secured Parties. For the avoidance of doubt, the Prepetition Secured Parties shall be deemed to have made a GUC Settlement Opt-In Election and shall be GUC Trust Beneficiaries without the need to submit any opt-in election or otherwise comply with the GUC Settlement Opt-In Procedures.

100. ~~99.~~ “**GUC Trust Expense Reserve**” means a reserve in the amount of \$75,000 funded from Cash on hand of the U.S. Debtors to the GUC Trust on the Effective Date to allow the GUC Trustee to maintain and administer the GUC Trust Assets.

101. ~~100.~~ “**GUC Trust Interests**” means the beneficial interests in the GUC Trust.

102. ~~101.~~ “**GUC Trustee**” means the trustee appointed pursuant to Article IV.C of the Plan (or any successor trustee), in its capacity as the trustee of the GUC Trust, who shall be solely responsible for overseeing the reconciliation, objection, settlement, or other disposition of General Unsecured Claims asserted in these Chapter 11 Cases.

103. ~~102.~~ “**Holder**” means a Person or Entity holding a Claim against or Interest in a Debtor, as applicable.

104. ~~103.~~ “**Impaired**” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is not Unimpaired.

105. ~~104.~~ “**Indemnification Obligations**” means each of the Debtors’ indemnification obligations, whether in the bylaws, certificates of incorporation or formation, limited liability company agreements, other organizational or formation documents, board resolutions, management or indemnification agreements, or employment contracts, for the current and former directors and the officers of the Debtors.

106. ~~105.~~ “*Intercompany Claim*” means any Claim against a Debtor held by another Debtor.

107. ~~106.~~ “*Intercompany Interest*” means any Interest in a Debtor held by another Debtor.

108. ~~107.~~ “*Interest*” means any equity interest (as defined in section 101(16) of the Bankruptcy Code) in any Debtor, including all ordinary shares, units, common stock, preferred stock, membership interest, partnership interest, or other instrument, evidencing any fixed or contingent ownership interest in the Debtors, whether or not transferable, including any option, warrant, or other right, contractual or otherwise, to acquire any such interest, that existed immediately before the Effective Date.

109. ~~108.~~ “*Internal Revenue Code*” means the Internal Revenue Code of 1986, as amended.

110. ~~109.~~ “*IRS*” means the Internal Revenue Service.

111. ~~110.~~ “*Judicial Code*” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001.

112. ~~111.~~ “*KidKraft*” means KidKraft, Inc.

113. “*Lender Retained Causes of Action*” means any and all potential Claims and Causes of Action held by the DIP Secured Parties or the Prepetition Secured Parties against (i) the Debtors; (ii) the Debtors’ Officers; or (iii) SierraConstellation Partners, LLC, in each case related solely to: (a) the Debtors’ reporting obligations under the DIP Approval Order or DIP Facility Documents; or (b) any payment in violation of the Prepetition Credit Agreement Documents, the Restructuring Support Agreement, and/or the DIP Documents; *provided*, that any potential recovery against the Debtors and the Debtors’ Officers shall be limited to insurance proceeds (if any) available from the Debtors’ insurance policies, including the D&O Liability Insurance Policies; *provided, further*, that such insurance limitation shall not apply to Claims and Causes of Action arising as a result of gross negligence, fraud, or willful misconduct. Notwithstanding any other releases provided herein by the DIP Secured Parties or the Prepetition Secured Parties, the Lender Retained Causes of Action shall not be released; *provided, further*, that any and all potential Claims and causes of action held by the DIP Secured Parties or the Prepetition Secured Parties against any Released Party other than those parties specifically identified in clauses (i), (ii), and (iii) above shall not constitute Lender Retained Causes of Action.

114. ~~112.~~ “*Lien*” shall have the meaning set forth in section 101(37) of the Bankruptcy Code.

115. ~~113.~~ “*List of Retained Causes of Action*” means the schedule of certain Causes of Action of the Debtors which shall be included in the Plan Supplement.

116. ~~114.~~ “*Local Rules*” means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas.

117. ~~115.~~ “*MidOcean*” means MidOcean Partners IV, L.P. in its capacity as the holder of Preferred A Units and Preferred C Units in KidKraft Group Holdings, LLC and party to that certain *Note Purchase Agreement* dated as of January 13, 2023, pursuant to which, KidKraft agreed to issue and sell to and MidOcean agreed to purchase, notes in the aggregate principal amount of up to \$5,000,000 and MidOcean US Advisor, L.P. as party to that certain *Professional Services Agreement* dated as of July 15, 2015 by and among KidKraft Group Holdings, LLC, KidKraft, and MidOcean US Advisor, L.P., as amended by that First Amendment to the Professional Services Agreement dated as of September 30, 2016.

118. ~~116.~~ “*Netherlands Asset Sale*” has the meaning set forth in Article IV.A.3. of the Plan.

119. ~~117.~~ “*Netherlands Liquidation*” has the meaning set forth in Article IV.A.3. of the Plan.

120. ~~118.~~ “*Netherlands Subsidiaries*” means non-debtors KidKraft Netherlands C.V., KidKraft Holdings B.V., and KidKraft Netherlands B.V.

121. ~~119.~~ “*Note Purchase Agreement Documents*” means that certain *Note Purchase Agreement* dated as of January 13, 2023 by and among certain of the Debtors and MidOcean and all other agreements, documents, instruments, and amendments related thereto.

122. ~~120.~~ “*Noticing and Claims Agent*” means Stretto Inc., the noticing, claims, and solicitation agent proposed to be retained by the Debtors in the Chapter 11 Cases.

123. ~~121.~~ “*Other Priority Claim*” means any Claim that is entitled to priority of payment under section 507(a) of the Bankruptcy Code other than an Administrative Expense Claim or a Priority Tax Claim.

124. ~~122.~~ “*Other Secured Claims*” means Secured Claims other than Priority Tax Claims, DIP Claims, or Prepetition Secured Party Claims.

125. ~~123.~~ “*Person*” shall have the meaning set forth in section 101(41) of the Bankruptcy Code.

126. ~~124.~~ “*Petition Date*” means the date on which each Debtor Filed its voluntary petition for relief commencing the Chapter 11 Cases.

127. ~~125.~~ “*Plan*” means this chapter 11 plan, as it may be altered, amended, modified, or supplemented from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the terms of the Plan, including the Plan Supplement and all exhibits, supplements, appendices, and schedules to the Plan, which shall be consistent with, and subject to the approvals and consents as to form and substance set forth in, the Restructuring Support Agreement.

128. ~~126.~~ “*Plan Supplement*” means, to the extent applicable, the compilation of documents and forms of documents, and all exhibits, attachments, schedules, agreements, documents and instruments referred to therein, ancillary or otherwise, including, without limitation, the Purchase Agreement, the Schedule of Assumed Executory Contracts and Unexpired

Leases, the GUC Trust Agreement, the Global Settlement Term Sheet, the GUC Settlement Opt-In Form, the identity of the Wind Down Administrator, and the List of Retained Causes of Action all of which shall be incorporated by reference into, and are an integral part of, the Plan, as may be amended, modified, replaced and/or supplemented from time to time, subject to the consent of the Prepetition Secured Parties.

129. ~~127.~~ “**Post-Sale Reserve**” means a cash reserve in the amount of \$650,000 to fund the reasonably anticipated costs necessary for the wind down of the Wind Down Estate, including an estimated amount of reasonable fees and expenses that may be incurred by professionals for services rendered after the Effective Date and statutory fees, which cash reserve shall be funded into a segregated account on the Effective Date.

130. ~~128.~~ “**Prepetition Credit Agreement**” means that certain *Amended and Restated First Lien Credit Agreement*, dated as of April 3, 2020 (as amended from time to time), by and among KidKraft, Inc. and KidKraft Netherlands B.V., jointly and severally, as borrowers, the guarantors thereto, GB Funding, LLC, as Prepetition Credit Agreement Agent, and 1903 Partners, LLC, as Lender.

131. ~~129.~~ “**Prepetition Credit Agreement Agent**” means GB Funding, LLC, in its capacity as Administrative Agent and Collateral Agent (as such terms are defined in the Prepetition Credit Agreement) under the Prepetition Credit Agreement.

132. ~~130.~~ “**Prepetition Credit Agreement Documents**” means the Prepetition Credit Agreement and all other agreements, documents, instruments, and amendments related thereto, including any guaranty agreements, pledge and collateral agreements, UCC financing statements, or other perfection documents, subordination agreements, fee letters, and any other security agreements.

133. ~~131.~~ “**Prepetition Secured Parties**” means GB Funding, LLC, as Administrative Agent and Collateral Agent, and 1903 Partners, LLC, as Lender, in their respective capacities under the Prepetition Credit Agreement.

134. ~~132.~~ “**Prepetition Secured Party Advisors**” means Katten Muchin Rosenman LLP, as counsel to the Prepetition Secured Parties and Fasken Martineau DuMoulin LLP as Canadian counsel to the Prepetition Secured Parties.

135. ~~133.~~ “**Prepetition Secured Party Claims**” means all Claims, including “Parallel Debts” (as defined in the Prepetition Credit Agreement Documents) held by the Prepetition Secured Parties on account of, arising under, or relating to their respective capacities as lender or agent under the Prepetition Credit Agreement Documents.

136. ~~134.~~ “**Prepetition Secured Parties’ Deficiency Claims**” means the deficiency Claims held by the Prepetition Secured Parties. Solely for purposes of any distributions to be made from the GUC Trust Assets to GUC Trust Beneficiaries, the Prepetition Secured Parties’ Deficiency Claims shall be capped at \$55 million.

137. ~~135.~~ “**Prepetition Secured Party Liens**” means all Liens granted to the Prepetition Credit Agreement Agent to secure the Prepetition Secured Party Claims.

138. ~~136.~~ “**Priority Tax Claim**” means a Claim held by a Governmental Unit of the kind entitled to priority of payment as specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

139. ~~137.~~ “**Pro Rata**” means the proportion that an Allowed Claim or an Allowed Interest bears to the aggregate amount of Allowed Claims, Allowed Interests, or other matter so referenced, as the context requires.

140. ~~138.~~ “**Professional**” means an Entity employed pursuant to a Bankruptcy Court order in accordance with sections 327 or 1103 of the Bankruptcy Code and to be compensated for services rendered before or on the Effective Date, pursuant to sections 327, 328, 329, 330, or 331 of the Bankruptcy Code.

141. ~~139.~~ “**Professional Fee Claims**” means a Claim for the compensation of the Professionals and other professionals (including, for certainty, professionals to be compensated pursuant to the orders of the CCAA Court in the CCAA Recognition Proceedings) and the reimbursement of expenses incurred by such professionals through and including the Effective Date to the extent such fees and expenses have not been previously paid, including, for the avoidance of doubt, any costs, fees, expenses, or commissions (including with respect to any investment banking transaction fees or commissions) incurred in connection with the Restructuring; *provided that* to the extent a Debtor Professional (as defined in the DIP Approval Order) agrees with the DIP Lender to a modification to the Debtor Professional fees in accordance with Section 1.8 of the DIP Approval Order, the Claim as modified shall be included in the applicable Professional Fee Claim. Professional Fee Claims of the Committee’s Professionals shall not exceed the aggregate amounts set forth in the Approved Budget, consistent with the Global Settlement Term Sheet.

142. ~~140.~~ “**Professional Fee Escrow Account**” means an interest-bearing account funded by the Debtors on the Effective Date in an amount equal to the Professional Fee Reserve Amount, pursuant to Article II.B.

143. ~~141.~~ “**Professional Fee Reserve Amount**” means the total amount of Professional Fee Claims estimated in accordance with Article II.B.

144. ~~142.~~ “**Professional Services Agreement Documents**” means that certain *Professional Services Agreement* dated as of July 15, 2015 by and among certain of the Debtors and MidOcean and all other agreements, documents, instruments, and amendments related thereto.

145. ~~143.~~ “**Proof of Claim**” means a proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

146. ~~144.~~ “**Purchase Agreement**” means that certain Asset Purchase Agreement dated as of April 25, 2024, as amended, modified, or supplemented from time to time, among Purchaser and certain of the Debtors, including all schedules and exhibits thereto, which shall be Filed with the Plan Supplement.

147. ~~145.~~ “**Purchase Price**” shall have the meaning set forth in the Purchase Agreement.



148. ~~146.~~ “**Purchase Price Calculation**” means the calculation of the “Purchase Price at close” in accordance with Exhibit B of the Purchase Agreement.

149. ~~147.~~ “**Purchaser**” means Backyard Products, LLC, and permitted successors, assigns, and designees, as applicable.

150. ~~148.~~ “**Qualifying Alternative Transaction**” shall have the meaning set forth in the Purchase Agreement.

151. ~~149.~~ “**Reinstated**” or “**Reinstatement**” means, with respect to Claims and Interests, the treatment provided for in section 1124 of the Bankruptcy Code, which, in all instances, shall be acceptable to the Prepetition Secured Parties and the Purchaser in their sole and absolute discretion.

152. ~~150.~~ “**Released Party**” means each of the following solely in its capacity as such: (a) the Debtors; (b) the DIP Agent; (c) the DIP Lender; (d) MidOcean; (e) the Prepetition Secured Parties; (f) the Purchaser; (g) the Committee; and (h) with respect to each of the foregoing under (a) through (g) such Entity and its current and former Affiliates, and such Entity’s and its current and former Affiliates’ current and former directors, managers, officers, employees, managed accounts and funds, predecessors, successors, assigns, subsidiaries, equity Holders, members, agents, attorneys, accountants, investment bankers, consultants, and other professionals, each solely in their capacity as such.

153. ~~151.~~ “**Releasing Party**” means each of the following solely in its capacity as such: (a) all Released Parties; (b) all Holders of Claims who affirmatively cast a timely ballot to accept the Plan and did not affirmatively opt out of the releases set forth in Article VIII.F herein; (c) all Holders of Claims and Interests that were given notice of the opportunity to opt out of granting the releases set forth in Article VIII.F herein but did not otherwise affirmatively opt out of such releases; and (d) all GUC Trust Beneficiaries.

154. ~~152.~~ “**Restructuring**” means all actions that may be necessary or appropriate to effectuate the transactions described in, approved by, contemplated by, or necessary to effectuate, the Plan.

155. ~~153.~~ “**Restructuring Expenses**” means the reasonable and documented professional fees and expenses incurred by the DIP Secured Party Advisors, the DIP Secured Parties, the Prepetition Secured Party Advisors and the Prepetition Secured Parties, in each case, in connection with or arising as a result of the Restructuring, the Restructuring Support Agreement, Sale Transaction, the Plan, or the Chapter 11 Cases.

156. ~~154.~~ “**Restructuring Support Agreement**” means that certain *Restructuring Support Agreement*, dated April 25, 2024, by and among the Debtors, the Prepetition Secured Parties, the DIP Secured Parties, the Purchaser, and MidOcean, as may be further amended, restated, modified, supplemented, or replaced from time to time in accordance with the terms thereof.

157. ~~155.~~ “**Retained Causes of Action**” means those Causes of Action identified on the List of Retained Causes of Action that are not released, waived, or transferred pursuant to the Plan or any Sale Transaction.

158. ~~156.~~ “**RSA Parties**” mean, collectively, the Debtors, the Prepetition Secured Parties, the DIP Secured Parties, the Purchaser, and MidOcean.

159. ~~157.~~ “**Sale Approval Order**” means the order of the Bankruptcy Court approving the Purchase Agreement and the Sale Transaction, which order may be, but is not required to be, part of the Confirmation Order.

160. ~~158.~~ “**Sale Hearing**” means the hearing held by the Bankruptcy Court to consider Confirmation of the Sale Order, as such hearing may be adjourned or continued from time to time.

161. ~~159.~~ “**Sale Order**” means the Sale Approval Order and the Sale Recognition Order, as applicable.

162. ~~160.~~ “**Sale Recognition Order**” means an order of the CCAA Court in the CCAA Recognition Proceedings recognizing and giving effect in Canada to the Sale Approval Order, which order may be, but is not required to be, part of the Confirmation Recognition Order.

163. ~~161.~~ “**Sales Process**” means the marketing and sales process for the Debtors’ Assets.

164. ~~162.~~ “**Sale Transaction**” means the sale by the Debtors that are party to the Purchase Agreement of all of their respective right, title, and interest in, to and under the Transferred Assets to the Purchaser in accordance with the terms of the Purchase Agreement and the Sale Order.

165. ~~163.~~ “**Sale Transaction Documents**” means the Sale Order, the Purchase Agreement, and all other documents required to consummate the Sale Transaction (with respect to such other documents required to consummate the Sale Transaction, in form and substance acceptable to each party thereto).

166. ~~164.~~ “**Schedule of Assumed Executory Contracts and Unexpired Leases**” means the schedule of Executory Contracts and Unexpired Leases to be assumed and assigned to Purchaser pursuant to the Plan, as set forth in the Plan Supplement, as may be amended from time to time prior to the Effective Date.

167. ~~165.~~ “**Schedules**” means, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs Filed by the Debtors pursuant to section 521 of the Bankruptcy Code and in substantial conformance with the official bankruptcy forms, as the same may have been amended, modified, or supplemented from time to time.

168. ~~166.~~ “**SEC**” means the United States Securities and Exchange Commission.



169. ~~167.~~ “**Secured Claim**” means a Claim (i) secured by a lien on collateral to the extent of the value of such collateral as (a) set forth in the Plan, (b) agreed to by the Holder of such Claim and the Debtors, or (c) determined by a Final Order in accordance with section 506(a) of the Bankruptcy Code, or (ii) secured by the amount of any right of setoff of the Holder thereof in accordance with section 553 of the Bankruptcy Code.

170. ~~168.~~ “**Security**” shall have the meaning set forth in section 101(49) of the Bankruptcy Code.

171. ~~169.~~ “**Special Committee**” means the Special Committee of the Board of Directors of KidKraft, Inc.

172. ~~170.~~ “**Sponsor Cash Contribution**” has the meaning set forth in Article IV.C.8 of the Plan.

173. ~~171.~~ “**Sponsor Claims Waiver**” has the meaning set forth in Article IV.C.8 of the Plan.

174. ~~172.~~ “**Subordinated Claim**” means any Claim against a Debtor arising from (a) rescission of a purchase or sale of a Security in any Debtor or an Affiliate of any Debtor, (b) purchase or sale of such a Security, or (c) reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim.

175. ~~173.~~ “**Transferred Assets**” shall have the meaning set forth in Section 2.1 of the Purchase Agreement, *provided, however*, the Assigned Avoidance Actions shall not be Transferred Assets.

176. ~~174.~~ “**Transferred Contracts**” shall have the meaning set forth in Section 2.1(e) of the Purchase Agreement.

177. ~~175.~~ “**Unclaimed Property**” means any distribution under the Plan on account of an Allowed Claim whose Holder has not: (a) accepted such distribution or, in the case of distributions made by check, negotiated such check; (b) given notice to the Wind Down Estate of an intent to accept such distribution; (c) responded to the Debtors’, Wind Down Administrator’s, or GUC Trustee’s (as applicable) requests for information necessary to facilitate such distribution; or (d) taken any other action necessary to facilitate such distribution.

178. ~~176.~~ “**Unexpired Lease**” means a lease of nonresidential real property to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

179. ~~177.~~ “**Unimpaired**” means, with respect to a Class of Claims or Interests, a Class consisting of Claims or Interests that are not “impaired” within the meaning of section 1124 of the Bankruptcy Code, including through payment in full in Cash or Reinstatement.

180. ~~178.~~ “**Unpaid Employee Severance Obligations**” means those obligations owed to certain eligible employees who were terminated prior to the Petition Date and who executed a separation agreement after the Petition Date and prior to the Effective Date, which obligations

shall be deemed to have been incurred after the Petition Date and treated as Administrative Expense Claims for purposes of this Plan.

181. ~~179.~~ “*Unsecured*” means, with respect to a Claim, not Secured.

182. ~~180.~~ “*U.S. Trustee*” means the Office of the United States Trustee for the Northern District of Texas.

183. ~~181.~~ “*U.S. Trustee Fees*” means fees arising under 28 U.S.C. § 1930(a)(6) and, to the extent applicable, accrued interest thereon arising under 31 U.S.C. § 3717.

184. ~~182.~~ “*Wind Down Administrator*” means the Person or Persons identified in the Plan Supplement (as determined by the Debtors), if known, and appointed on the Effective Date, who will serve as the trustee and administrator overseeing the Wind Down Estate and dissolution of the Debtors and their Estates in accordance with the Plan.

185. ~~183.~~ “*Wind Down Claims*” means the Prepetition Secured Party Claims that remain outstanding on the Effective Date, in an amount not to exceed \$10,000,000, and the Prepetition Secured Party Liens securing such Prepetition Secured Party Claims, which Prepetition Secured Party Claims and Liens shall be automatically released and discharged following the orderly wind down of the Debtors and the other borrower and guarantors under the Prepetition Credit Agreement and after the proceeds of the Netherlands Asset Sale and Netherlands Liquidation, if any, are indefeasibly distributed in Cash to the Prepetition Secured Parties as provided in Article IV of the Plan.

186. ~~184.~~ “*Wind Down Estate*” means, collectively, (i) the Estates of the Debtors and (ii) the Debtors’ non-Debtor affiliates, as applicable, following the Effective Date.

187. ~~185.~~ “*Wind Down Estate Assets*” means (i) any Assets of the Debtors’ Estates that are not GUC Trust Assets and not sold pursuant to the Sale Transaction, including, but not limited to, the Excluded Assets, Interests in the Debtors’ non-Debtor affiliates, and any Cause of Action specifically enumerated in the List of Retained Causes of Action and (ii) Cash in the amount set forth in the Post-Sale Reserve; *provided that* proceeds of any Wind Down Estate Assets, including without limitation, Excluded Assets and such Retained Causes of Action shall become Distributable Value. For the avoidance of doubt, no GUC Trust Assets shall be Wind Down Estate Assets.

188. ~~186.~~ “*Wind Down Estate Expenses*” means any and all reasonable and documented fees, costs, and expenses incurred by the Wind Down Estate or the Wind Down Administrator (or any Person, entity, or professional engaged to assist the Wind Down Administrator) in connection with the Wind Down Transactions, including, without limitation, any reasonable and documented administrative fees, attorneys’ or other professionals’ fees and expenses, insurance fees, taxes, escrow expenses and fees payable under 28 U.S.C. § 1930, costs associated with any maintenance of any going concern as part of the wind down of such going concern’s business operations, or costs to maintain certain assets while they are held, in each case, in accordance with and subject to the Post-Sale Reserve.

189. ~~187.~~ “*Wind Down Transactions*” means the transactions that the Debtors or Wind Down Administrator, as applicable, with the consent of the Prepetition Secured Parties, determines to be necessary or appropriate to implement the terms of the Plan, and that ultimately result in the dissolution or other termination of KidKraft and its Affiliates.

B. *Rules of Interpretation*

For purposes herein: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) except as otherwise provided, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified, or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (3) except as otherwise provided, any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, restated, supplemented, or otherwise modified in accordance with the terms of the Plan; (4) unless otherwise specified, all references herein to “Articles” are references to Articles of the Plan; (5) unless otherwise stated, the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (6) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (7) the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, and shall be deemed to be followed by the words “without limitation;” (8) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (9) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (10) any docket number references in the Plan shall refer to the docket number of any document Filed with the Bankruptcy Court in the Chapter 11 Cases.

C. *Computation of Time*

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction, action, or event shall or may occur pursuant to the Plan is a day that is not a Business Day, then such transaction, action, or event shall instead occur on the next succeeding Business Day.

D. *Governing Law*

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated herein, the laws of the State of New York without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); *provided that* the corporate or limited liability company governance matters relating to the Debtors

shall be governed by the laws of the state of incorporation or formation (as applicable) of the applicable Debtor.

E. *Reference to Monetary Figures*

All references in the Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided herein.

F. *Reference to the Debtors or the Wind Down Estate*

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or the Wind Down Estate shall mean the Debtors and the Wind Down Estate, as applicable, to the extent the context requires.

G. *Controlling Document*

In the event of an inconsistency between the Plan, the Disclosure Statement, or any other Final Order (other than the Confirmation Order or Sale Approval Order, as applicable) referenced in the Plan (or any exhibits, schedules, appendices, supplements or amendments to any of the foregoing, other than the Plan Supplement), the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and the Plan Supplement, the terms of the relevant document in the Plan Supplement shall control (unless stated otherwise in such Plan Supplement document or in the Confirmation Order). In the event of an inconsistency between the Confirmation Order or Sale Approval Order and the Plan, the Confirmation Order or Sale Approval Order, as applicable, shall control.

**ARTICLE II.  
ADMINISTRATIVE EXPENSE CLAIMS AND PRIORITY CLAIMS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, Professional Fee Claims, DIP Claims, Adequate Protection Claims, and Priority Tax Claims have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in Article III of the Plan.

A. *Administrative Expense Claims*

Except (i) with respect to Administrative Expense Claims that are Professional Fee Claims and Bidder Protections, or (ii) to the extent that (x) an Administrative Expense Claim has already been paid during the Chapter 11 Cases or a Holder of an Allowed Administrative Expense Claim and the applicable Debtor(s) or (y) Wind Down Administrator (as applicable) agrees to less favorable treatment, each Holder of an Allowed Administrative Expense Claim shall be paid in full in Cash; on the latest of: (a) on or as soon as reasonably practicable after the Effective Date if such Administrative Expense Claim is Allowed as of the Effective Date; (b) on or as soon as reasonably practicable after the date such Administrative Expense Claim is Allowed; and (c) the date such Allowed Administrative Expense Claim becomes due and payable, or as soon thereafter as is reasonably practicable; *provided that* in no event shall the amount paid in the aggregate to Administrative Expense Claims (excluding Professional Fee Claims) in accordance with this Article II.A, Priority Tax Claims under Article II.E hereof, and Other Priority Claims under Article

III.B hereof exceed the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount. For the avoidance of doubt, the Bidder Protections shall be an Administrative Expense Claim in accordance with any applicable orders of the Bankruptcy Court.

Except as otherwise provided in this Article II.A of the Plan and except with respect to Administrative Expense Claims that are Professional Fee Claims, Unpaid Employee Severance Obligations, or Bidder Protection Claims, requests for allowance and payment of Administrative Expense Claims must be Filed and served on the Debtors, the Wind Down Estate, or the Wind Down Administrator (as applicable), pursuant to the procedures specified in the Bar Date Order, the Confirmation Order, and the notice of entry of the Confirmation Order no later than the Administrative Expense Claims Bar Date. Holders of Administrative Expense Claims that are required to, but do not, File and serve on the Debtors, the Wind Down Estate, or the Wind Down Administrator (as applicable) a request for allowance and payment of such Administrative Expense Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Expense Claims against the Debtors, the Wind Down Estate, or their respective assets or property and such Administrative Expense Claims shall be deemed discharged as of the Effective Date. Objections to such requests, if any, must be Filed and served on the Debtors, the Wind Down Estate, or the Wind Down Administrator (as applicable) and the requesting party no later than 90 days after the Effective Date or such other date fixed by the Bankruptcy Court. Notwithstanding the foregoing, no request for payment of an Administrative Expense Claim need be Filed with respect to an Administrative Expense Claim previously Allowed.

B. *Professional Compensation*

1. Final Fee Applications

All final requests for payment of Professional Fee Claims of Professionals, including such Professional Fee Claims incurred during the period from the Petition Date through and including the Effective Date, shall be Filed and served on the Debtors, the Wind Down Estate, or the Wind Down Administrator, as applicable, no later than 45 days after the Effective Date. Each such final request will be subject to approval by the Bankruptcy Court after notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Bankruptcy Court in the Chapter 11 Cases, and once approved by the Bankruptcy Court, such Allowed Professional Fee Claims shall be promptly paid in Cash from the Professional Fee Escrow Account up to its full Allowed amount.

Objections to any Professional Fee Claim of Professionals must be Filed and served on the Debtors, the Wind Down Estate, or the Wind Down Administrator, as applicable, and the applicable Professional no later than 24 days after such Professional Fee Claim is Filed with the Bankruptcy Court.

2. Professional Fee Escrow Account

On the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the "Professional Fee Reserve Amount" described in Article II.B.3 herein. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and the other professionals with Professional Fee Claims. The Debtors shall utilize

the Funded Reserve Account (as defined in the DIP Approval Order) to fund the Professional Fee Escrow Account, *provided that* the Funded Reserve Account is not a limitation on the amount funded to the Professional Fee Escrow Account. The Professional Fee Escrow Account and funds therein shall not be considered property of the Estates of the Debtors or the Wind Down Estate. The amount of Allowed Professional Fee Claims shall be paid in Cash to the Professionals by the Disbursing Agent or the Wind Down Administrator from the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed, and the amount of all other Professional Fee Claims shall be paid in Cash to the applicable professionals by the Disbursing Agent or the Wind Down Administrator from the Professional Fee Escrow Account on the Effective Date. After all such Professional Fee Claims have been paid in full, any remaining amount in the Professional Fee Escrow Account shall promptly be distributed to the Wind Down Estate and deemed Distributable Value and distributed to the holders of Prepetition Secured Party Claims without any further action or order of the Bankruptcy Court.

3. Professional Fee Reserve Amount

No later than five Business Days prior to the Effective Date, the Debtors shall solicit Professionals and the other professionals with Professional Fee Claims for estimates of their unpaid Professional Fee Claims before and as of the Effective Date, and such Professionals and other professionals shall deliver such estimate to the Debtors in writing via email two Business Days prior to the Effective Date; *provided, however*, that such estimate shall not be deemed to limit the amount of the fees and expenses that are the subject of any such professional's final request for payment of Professional Fee Claims. If any professional does not timely provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such professional.

4. Post-Effective Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Effective Date, the Disbursing Agent, the Wind Down Estate, or the Wind Down Administrator (as applicable) shall, in the ordinary course of business and without any further notice or application to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable, actual, and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred on or after the Effective Date by the Professionals and other professionals (including any fees related to the preparation of Professional fee applications). Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors, the Wind Down Estate, or the Wind Down Administrator (as applicable) may employ and pay any Professional or other professional for fees and expenses incurred after the Effective Date in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court. Notwithstanding the foregoing, in no circumstances shall the payment of any post-Effective Date fees and/or expenses and other Wind Down Estate Expenses exceed the amount of the Post-Sale Reserve.

C. *DIP Claims*

Notwithstanding anything to the contrary herein, in full and final satisfaction, settlement, release, and discharge of and in exchange for release of all DIP Claims, on the Effective Date, the



DIP Claims shall: (i) be indefeasibly paid in Cash in full, or (ii) receive such other treatment as agreed by the Debtors and the applicable Holder of a DIP Claim. Notwithstanding anything herein, the Prepetition Secured Parties and DIP Secured Parties may, in their sole discretion, apply any recovery received on the DIP Claims against the Prepetition Secured Party Claims and vice versa; provided that any such application shall not affect the Prepetition Secured Parties' Deficiency Claims or the agreements set forth in the Global Settlement Term Sheet.

D. *Adequate Protection Claims*

On the Effective Date, the Adequate Protection Claims shall (i) be paid in Cash in full or (ii) receive such other treatment as agreed by (a) to the extent such Adequate Protection Claims are held by the Prepetition Secured Parties, the Debtors and the Prepetition Secured Parties or (b) to the extent such Adequate Protection Claims are not held by a Prepetition Secured Party, the Debtors and the applicable Holder of such Adequate Protection Claims.

E. *Priority Tax Claims*

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall receive Cash in an amount equal to such Allowed Priority Tax Claim on the Effective Date or as soon as practicable thereafter or such other treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.

F. *Statutory Fees*

All Statutory Fees due and payable prior to, and that remain unpaid as of, the Effective Date shall be paid by the applicable Debtors on the Effective Date. No statutory fees shall be paid on the initial funding of the Post-Sale Reserve or the GUC Trust. Statutory fees shall only be paid on subsequent disbursement of Cash by the Wind Down Estate or the GUC Trust, as applicable. Any Statutory Fees that may be owed by the Debtors, the Wind Down Estate, or the GUC Trust, as applicable, after the Confirmation Date related to the reduction to Cash of non-Cash assets shall be paid by the Debtors, the Wind Down Estate, or the GUC Trust, as applicable, until the case is closed, dismissed, or converted. If no disbursements are made by the Debtors, the Wind Down Estate, or the GUC Trust for any quarter post-confirmation, only the minimum statutory fee will be owed in accordance with 28 U.S.C. § 1930(a)(6). The Wind Down Estate and the GUC Trust shall file post-confirmation operating reports with respect to their respective operations and disbursements until these Chapter 11 Cases are closed, dismissed, or converted to cases under chapter 7 of the Bankruptcy Code.

G. *Restructuring Expenses*

The Debtors will promptly pay in full in Cash any Restructuring Expenses in accordance with the terms of the Restructuring Support Agreement and the DIP Approval Order. To the extent any Restructuring Expenses remain unpaid on the Effective Date, such Restructuring Expenses shall constitute Allowed Administrative Expense Claims and shall be paid in full in Cash, subject to the Restructuring Support Agreement and the DIP Approval Order without the need to file a proof of such Claim and without further order of the Court. On the Effective Date, the Disbursing

Agent or the Wind Down Estate, as applicable, shall pay the Restructuring Expenses that have accrued and are unpaid as of the Effective Date.

**ARTICLE III.  
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

A. *Classification of Claims*

The Plan constitutes a separate Plan proposed by each Debtor. Except for the Claims addressed in Article II of the Plan, all Claims and Interests are classified in the Classes set forth below in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest fits within the description of that Class and is classified in other Class(es) to the extent that any portion of the Claim or Interest fits within the description of such other Class(es). A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

The classification of Claims and Interests against the Debtors pursuant to the Plan is as follows:

| <u>Class</u> | <u>Claim or Interest</u>                      | <u>Status</u>       | <u>Voting Rights</u>                |
|--------------|---|---------------------|-------------------------------------|
| 1            | Other Priority Claims                         | Unimpaired          | Presumed to Accept                  |
| 2            | Other Secured Claims                          | Unimpaired          | Presumed to Accept                  |
| 3            | Prepetition Secured Party Claims              | Impaired            | Entitled to Vote                    |
| 4            | General Unsecured Claims                      | Impaired            | Deemed to Reject                    |
| 5            | Intercompany Claims                           | Unimpaired/Impaired | Presumed to Accept/Deemed to Reject |
| 6            | Intercompany Interests                        | Unimpaired/Impaired | Presumed to Accept/Deemed to Reject |
| 7            | KidKraft Intermediate Holdings, LLC Interests | Impaired            | Deemed to Reject                    |

B. *Treatment of Claims and Interests*

1. Class 1 — Other Priority Claims

- a. *Classification:* Class 1 consists of all Other Priority Claims.
- b. *Treatment:* Except to the extent that a Holder of an Allowed Other Priority Claim agrees to less favorable treatment, in full and final satisfaction of such Allowed Other Priority Claim, each Holder of an Allowed Other



Priority Claim will, (i) be paid in full in Cash or (ii) otherwise receive treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code, payable on the later of the Effective Date and the date that is 10 business days after the date on which such Other Priority Claim becomes an Allowed Other Priority Claim, in each case, or as soon as reasonably practicable thereafter; *provided that* in no event shall the amount paid in the aggregate for Administrative Expense Claims (excluding Professional Fee Claims) in accordance with Article II.A hereof, Priority Tax Claims under Article II.E hereof, and Other Priority Claims under this Article III.B exceed the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount.

- c. *Voting:* Class 1 is Unimpaired under the Plan. Holders of Class 1 Other Priority Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject the Plan.

2. Class 2 — Other Secured Claims

- a. *Classification:* Class 2 consists of all Other Secured Claims.
- b. *Treatment:* Except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment, in full and final satisfaction of such Allowed Other Secured Claim, at the option of Debtors or the Wind Down Estate, as applicable, each Holder shall receive either (i) cash equal to the full allowed amount of its claim, (ii) reinstatement of such holder's claim, (iii) the return to or abandonment of the collateral securing such holder's claim, or (iv) such other treatment as may otherwise be agreed to by such Holder and the Debtors.
- c. *Voting:* Class 2 is Unimpaired under the Plan. Holders of Class 2 Other Secured Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject the Plan.

3. Class 3 — Prepetition Secured Party Claims

- a. *Classification:* Class 3 consists of all Prepetition Secured Party Claims.

- b. *Treatment:* Except to the extent that the Holder of Prepetition Secured Party Claims agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and discharge of each Allowed Prepetition Secured Party Claim (which satisfaction, settlement, release, and discharge shall occur (i) on the Effective Date for all Prepetition Secured Party Claims other than the Wind Down Claims, and (ii) after the orderly wind down of the Debtors and other borrower and guarantors under the Prepetition Credit Agreement for all Wind Down Claims), each Holder of an Allowed Prepetition Secured Party Claim shall receive the remaining Distributable Value following payment of Administrative Expense Claims and Priority Tax Claims, DIP Claims, Other Priority Claims, Other Secured Claims, (which amount may be paid directly by the Purchaser on the Effective Date), and GUC Trust Interests (subject to the terms of the Global Settlement) on the Effective Date and any Distributable Value that is available for distribution after the Effective Date shall be promptly distributed by the Debtors or Wind Down Estate to holders of Prepetition Secured Party Claims.
- c. *Voting:* Class 3 is Impaired under the Plan. Holders of Class 3 Secured Party Claims will be entitled to vote to accept or reject the Plan.

4. Class 4 — General Unsecured Claims

- a. *Classification:* Class 4 consists of all General Unsecured Claims.
- b. *Treatment:* On the Effective Date, all General Unsecured Claims will be canceled, released, extinguished and discharged, and Holders of General Unsecured Claims will receive no recovery or distribution on account of such claims; *provided, however,* that any Holder of Allowed General Unsecured Claims who timely makes a GUC Settlement Opt-In Election in compliance with the GUC Settlement Opt-In Procedures shall receive its Pro Rata share of 100% of the GUC Trust Interests.
- c. *Voting:* Class 4 is Impaired under the Plan. Holders of Class 4 General Unsecured Claims will be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such Holders will not be entitled to vote to accept or reject the Plan.

5. Class 5 — Intercompany Claims

- a. *Classification:* Class 5 consists of all Intercompany Claims.
- b. *Treatment:* All Intercompany Claims will be unaltered and otherwise unaffected by the Plan, or canceled on the Effective Date, in the Debtors' discretion, with the consent of Purchaser.
- c. *Voting:* Class 5 is Unimpaired/Impaired under the Plan. Holders of Class 5 Intercompany Claims are proponents of the Plan within the meaning of

section 1129 of the Bankruptcy Code. Therefore, the vote of such Holders to accept or reject the Plan will not be solicited.

6. Class 6 — Intercompany Interests

- a. *Classification:* Class 6 consists of all Intercompany Interests.
- b. *Treatment:* All Intercompany Interests shall be maintained under the Plan, solely for purposes of administrative convenience or canceled on the Effective Date, in the Debtors' discretion, subject to the consent of the Prepetition Secured Parties and the Purchaser.
- c. *Voting:* Class 6 is Unimpaired/Impaired under the Plan. Holders of a Class 6 Intercompany Interests are proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code. Therefore, the vote of such Holders to accept or reject the Plan will not be solicited.

7. Class 7 — KidKraft Intermediate Holdings, LLC Interests

- a. *Classification:* Class 7 consists of all KidKraft Intermediate Holdings, LLC Interests.
- b. *Treatment:* All prepetition Interests in KidKraft Intermediate Holdings, LLC will be canceled on the Effective Date and Holders shall receive no recovery or distribution on account of their Interests.
- c. *Voting:* Class 7 is Impaired under the Plan. For purposes of solicitation, it is presumed that Holders of Class 7 KidKraft Intermediate Holdings, LLC Interests shall not receive any distribution on account of such KidKraft Intermediate Holdings, LLC Interests and will be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such Holders will not be entitled to vote to accept or reject the Plan.

C. *Special Provision Governing Unimpaired or Reinstated Claims*

Nothing under the Plan shall affect the Debtors', the Wind Down Estate's, or the Wind Down Administrator's (as applicable) claims, Causes of Action, rights, or defenses in respect of any Unimpaired Claims or Reinstated Claims, including all rights in respect of legal and equitable defenses to or setoffs or recoupment against any such Unimpaired Claims or Reinstated Claims.

D. *Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code*

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by one or more of the Classes entitled to vote pursuant to Article III.B of the Plan. The Debtors reserve the right to modify the Plan in accordance with Article X of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a

Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

E. *Elimination of Vacant Classes*

Any Class of Claims that does not contain an Allowed Claim or a Claim temporarily Allowed by the Bankruptcy Court for voting purposes as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

F. *Voting Classes; Presumed Acceptance by Non-Voting Classes*

If a Class contains Claims eligible to vote and no Holder of Claims eligible to vote in such Class votes to accept or reject the Plan, the Plan shall be presumed accepted by such Class.

G. *Controversy Concerning Impairment*

If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date

H. *Subordinated Claims*

The allowance, classification, and treatment of all Claims and Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors, Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) reserve(s) the right to reclassify any Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

**ARTICLE IV.  
MEANS FOR IMPLEMENTATION OF THE PLAN**

A. *Means for Implementation*

1. Sale Transaction

On the Effective Date, the applicable Debtors shall consummate the Sale Transaction and the Transferred Assets shall vest in the Purchaser free and clear of all Liens, Claims, charges, or encumbrances pursuant to section 1123 of the Bankruptcy Code and the CCAA and the Sale Transaction Documents; *provided*, that, the conditions precedent set forth in the Purchase Agreement shall have been satisfied or waived in accordance with the terms thereof. Upon entry of the Sale Approval Order by the Bankruptcy Court and the Sale Recognition Order by the CCAA Court, all matters provided for under the Purchase Agreement and the other Sale Transaction

Documents will be deemed authorized and approved without any requirement of further act or action by the Debtors or the Debtors' governing bodies. The applicable Debtors are authorized to execute and deliver, and to consummate the transactions contemplated by the Sale Transaction Documents, as well as to execute, deliver, file, record and issue any documents, or agreements in connection therewith, without further notice to or order of the Bankruptcy Court or the CCAA Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity.

In the alternative, the Plan shall serve as a motion under section 363 of the Bankruptcy Code to authorize the sale of the Transferred Assets pursuant to the terms of the Sale Transaction Documents. Section 363(f) of the Bankruptcy Code provides that the Debtors' assets may be sold free and clear of any and all liens, claims, interests, and encumbrances with any such liens, claims, interests, and encumbrances attaching to the proceeds of the Sale Transaction. The Debtors submit that the Sale Transaction satisfies the requirements of section 363(f) of the Bankruptcy Code. To the extent a party objects to Sale Transaction on the basis that it holds a lien or encumbrance on the Transferred Assets, the Debtors believe that any such party could be compelled to accept a monetary satisfaction of such claims under section 365(f)(5) of the Bankruptcy Code and the CCAA. In addition, to the extent the Debtors discover any party may hold a lien on all, or a portion of, the Assets, the Debtors have provided such party with notice of, and an opportunity to object to, the Sale Transaction. Absent objection, each such party will be deemed to have consented to the sale of the Transferred Assets.

Except as otherwise expressly provided in the Sale Transaction Documents, (a) the Purchaser and all of its Affiliates shall not be liable for any Claims against the Debtors or any of their predecessors or direct or indirect subsidiaries, and (b) neither the Purchaser nor any of its affiliates shall have successor or vicarious liabilities of any kind or character, including under any theory of successor or transferee liability, labor, employment, tort, products liability, or benefits law, whether known or unknown as of the closing, then existing or hereafter arising, whether fixed or contingent, asserted or unasserted, liquidated or unliquidated, in each case, with respect to the Debtors or any obligations of the Debtors arising prior to the closing, including liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Debtors prior to the closing (except as otherwise expressly provided in the Sale Transaction Documents). For the avoidance of doubt, any Avoidance Actions purchased by the Purchaser will not be pursued by the Purchaser.

The transactions contemplated by the Sale Transaction Documents are undertaken by the applicable Debtors and the Purchaser without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided therein to consummate the Sale Transaction shall not affect the validity of such sale, unless such authorization and consummation of such sale are duly stayed pending such appeal. 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.

2. Break-Up Fee and Expense Reimbursement

Consistent with the Sale Transaction Documents, the payment of the Break-Up Fee and Expense Reimbursement for the Purchaser are hereby authorized in the event: (i) the Debtors that are party to the Purchase Agreement consummate or enter into a Qualifying Alternative Transaction and the Purchase Agreement is terminated in connection therewith; (ii) the Debtors that are party to the Purchase Agreement publicly announce or support any plan of reorganization or plan of liquidation other than the Plan and other than a plan that includes a conversion of any of the Chapter 11 Cases to chapter 7 of the Bankruptcy Code or that would not prevent or materially delay consummation of the Closing (as defined in the Purchase Agreement) in accordance with the terms of the Purchase Agreement; or (iii) the board of directors or board of managers, as applicable, of any Debtor that is party to the Purchase Agreement determines, in good faith based upon advice of outside legal counsel, that proceeding with the Purchase Agreement or the transactions contemplated thereunder (including the Plan or solicitation of the Plan) or taking any action (or refraining from taking any action) in relation thereto, would be inconsistent with the exercise of its fiduciary duties under applicable law, and the Purchase Agreement is terminated in connection therewith (in each of the foregoing cases as further set forth in and subject to the terms of the Purchase Agreement). The potential remedy of the Break-Up Fee and Expense Reimbursement was a condition of the Purchaser entering into the Purchase Agreement, which is the best option for the Debtors to maximize the value of their estates. The Break-Up Fee and Expense Reimbursement are the product of arm's-length, good faith negotiations among the Debtors and the Purchaser, and as a result, the Debtors believe that the agreement to pay such fees to the Purchaser (if and when the same become due to the Purchaser pursuant to, and in accordance with the terms and conditions in, the Purchase Agreement) is a valid exercise of their business judgment and should be approved if required under the Sale Transaction Documents.

3. Transactions with Netherlands Affiliates

On or prior to the closing of the transactions contemplated by the Purchase Agreement, the assets of the Netherlands Subsidiaries that would otherwise be Transferred Assets under the Purchase Agreement if such assets were owned by a Seller (as defined in the Purchase Agreement) shall be sold to KidKraft, or another Debtor designated by KidKraft, in exchange for the portion of the Purchase Price attributable to such assets (the "*Netherlands Asset Sale*"). The transactions contemplated by the Netherlands Asset Sale are undertaken by the Netherlands Subsidiaries and the Debtors without collusion and in good faith. The Netherlands Subsidiaries' assets that do not become Transferred Assets shall be liquidated with the consent of the Prepetition Secured Parties and the Netherlands Subsidiaries (the "*Netherlands Liquidation*"). The Netherlands Subsidiaries will create a right of pledge in favor of the Prepetition Secured Parties over the proceeds of the Netherlands Asset Sale and the proceeds of the Netherlands Liquidation.

The proceeds of the Netherlands Asset Sale (i.e. the Foreign Sale Reserve) and proceeds of the Netherlands Liquidation, in each case with the consent of the Prepetition Secured Parties, shall be used to implement the orderly out-of-court wind down of the Netherlands Subsidiaries (the "*Netherlands Wind Down*," collectively, with the Netherlands Asset Sale and Netherlands Liquidation, the "*Netherlands Transactions*").



To the extent proceeds of the Netherlands Asset Sale (i.e. the Foreign Sale Reserve) or Netherlands Liquidation remain, after the Netherlands Wind Down is complete, such proceeds shall be distributed to the Prepetition Secured Parties in a manner to be determined by the Prepetition Secured Parties, the Debtors, and the Wind Down Administrator, as applicable, and the Netherlands Subsidiaries. Following the distribution of such proceeds, the Prepetition Secured Parties and the Netherlands Subsidiaries shall execute a mutual release of all Claims and Causes of Action.

Upon the Bankruptcy Court entering the Sale Approval Order, the Netherlands Asset Sale will be deemed authorized and approved without any requirement or further act or action by the Debtors or the Debtors' governing bodies.

4. Vesting of Wind Down Estate Assets in the Wind Down Estate

Except as otherwise provided in the Plan, the Plan Supplement, or the Confirmation Order, on the Effective Date, all Wind Down Estate Assets (including all interests, rights, and privileges related thereto) and all GUC Trust Assets (solely until the GUC Trust Assets Transfer occurs) in each Estate and all Causes of Action that are retained under the Plan shall vest in the Wind Down Estate, to be administered by the Wind Down Administrator in accordance with the Plan, free and clear of all Claims, Liens, and encumbrances (except for the Wind Down Claims) to the fullest extent provided by section 363 or 1123 of the Bankruptcy Code; *provided that*, for the avoidance of doubt, no Assets that are, or shall be, transferred to Purchaser as Transferred Assets before or after the Effective Date in accordance with the Purchase Agreement and the Sale Approval Order shall vest in the Wind Down Estate.

The vesting of the Wind Down Estate Assets, as authorized by the Plan, shall not be construed to destroy or limit any such Assets or rights or be construed as a waiver of any right, and such rights may be asserted by the Wind Down Estate as if such Asset or right was still held by the Debtors.

On the next Business Day following the GUC Settlement Opt-In Election Deadline, the Wind Down Estate shall complete the GUC Trust Assets Transfer.

5. Wind Down Administrator

The Wind Down Administrator shall be selected by the Debtors, with the consent of the Prepetition Secured Parties and the DIP Secured Parties. The Wind Down Administrator shall be the successor to and representative of the Estate of each of the Debtors appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The powers, rights, and responsibilities of the Wind Down Administrator shall include the authority and responsibility to fulfill the obligations of the Plan consistent with the Confirmation Order.

On the Effective Date, the authority, power, and incumbency of the Persons acting as managers, directors, and officers of the Debtor entities comprising the Wind Down Estate shall vest in the Wind Down Administrator. The Wind Down Administrator shall be appointed the sole manager, sole director, and sole officer of the Debtor entities comprising the Wind Down Estate, as applicable, and shall succeed to the powers of the Debtors' managers, directors, and officers. From and after the Effective Date, the Wind Down Administrator shall be the sole Representative

of the Wind Down Estate and shall have the authority to sell, liquidate, or otherwise dispose of any and all of the Wind Down Estate Assets without any additional notice to or approval from the Bankruptcy Court.

In the event the Wind Down Administrator becomes incapacitated or unable to continue serving in such role for any reason, the Prepetition Secured Parties shall select a suitable replacement Wind Down Administrator as promptly as possible without the need for any further action or order of the Bankruptcy Court.

6. Wind Down Transactions

The Wind Down Administrator shall retain the authority to take all necessary actions to wind down the operations of the Wind Down Estate and dissolve the entities comprising the Wind Down Estate, to the extent required by applicable law. Subject in all respects to the terms of this Plan, the Wind Down Administrator shall have the power and authority to take any action necessary to dissolve the entities comprising the Wind Down Estate, and may: (i) file a certificate of dissolution for the Wind Down Estate, together with all other necessary corporate and company documents, to effect the dissolution of the Wind Down Estate under applicable laws; (ii) complete and file all final or otherwise required federal, state, and local tax returns and pay all required taxes, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of any of the Debtors, their respective Estates, or the entities comprising the Wind Down Estate for any tax incurred during the administration of these Chapter 11 Cases, as determined under applicable tax laws; and (iii) represent the interests of the Debtors, their respective Estates, and entities comprising the Wind Down Estate before any taxing authority in all tax matters, including any action, suit, proceeding, or audit.

Any applicable filing by the Wind Down Administrator of any certificates of dissolution (or similar documentation) of the entities comprising the Wind Down Estate shall be authorized and approved in all respects without further action under applicable law, regulation, order, or rule, including any action by the stockholder, members, officers, board of directors, or board of managers of the Debtors or any of their respective Affiliates. As the entities comprising the Wind Down Estate will be dissolved upon completion of the administration of this Plan, no new corporate organizational documents will be executed by the Wind Down Administrator.

For the avoidance of doubt, the Wind Down Administrator shall not be empowered to perform any actions designated to the GUC Trust or the GUC Trustee under the Plan or the GUC Trust Agreement.

7. Fees and Expenses of the Wind Down Administrator

The Wind Down Estate Expenses shall be paid after the Effective Date solely using the Post-Sale Reserve. The Wind Down Administrator, on behalf of the Wind Down Estate, may employ, without further order of the Bankruptcy Court, professionals (including professionals previously employed by the Debtors) to assist in carrying out duties for the Wind Down Estate and may compensate and reimburse the expenses of such professionals in the ordinary course, without further order of the Bankruptcy Court, subject to the Post-Sale Reserve.



8. Settlement of Claims

Except as otherwise provided in the Plan, on and after the Effective Date, the Wind Down Administrator may compromise or settle any Claims related to the Wind Down Estate Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules and may pay the charges that it incurs on or after the Effective Date for Wind Down Estate Expenses, professionals' fees, disbursements, expenses, or related support services (including fees relating to the preparation of Professional fee applications) without application to the Bankruptcy Court.

9. Sales of Assets by the Wind Down Estate

The Wind Down Administrator may conduct any sales or liquidations of De Minimis Assets on any terms it deems reasonable, subject to the consent of the Prepetition Secured Parties (with such consent not to be unreasonably withheld), without further order of the Bankruptcy Court. In lieu of conducting sales or liquidating its assets, with the consent of the Prepetition Secured Parties, the Wind Down Administrator may transfer any Wind Down Estate Assets to the Prepetition Secured Parties free and clear of all liens, claims, and encumbrances after the Effective Date.

10. Abandonment of Assets by the Wind Down Estate

The Wind Down Administrator may, with the consent of the Prepetition Secured Parties, on no less than 14 days' written notice to the U.S. Trustee, abandon any Wind Down Estate Assets which the Wind Down Administrator determines are burdensome to the Wind Down Estate, including any pending adversary proceeding or other legal action commenced or commenceable by any Debtor prior to the Effective Date; *provided that* if the U.S. Trustee provides a written objection to the Wind Down Administrator prior to the expiration of such 14 day period with respect to the proposed abandonment of any Wind Down Estate Asset, then such property may be abandoned only pursuant to an order by the Bankruptcy Court.

11. Plan Distributions

a. Sources of Consideration for Plan Distributions

On the Effective Date, the Debtors will fund the Debtors' distributions under the Plan with (i) the proceeds of the Sale Transaction, subject in all respects to amounts held-back in accordance with the Purchase Agreement, (ii) the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount, (iii) the Debtors' available Cash on hand, and (iv) with the consent of the DIP Secured Parties, the proceeds of the DIP Facility. After the Effective Date, other than with respect to funds held in the Professional Fee Escrow Account, the Post-Sale Reserve shall be held in a separate account from any other funds held by the Wind Down Estate.

b. Professional Fee Escrow Account

The Professional Fee Reserve Amount shall be held in trust in a segregated Professional Fee Escrow Account by the Wind Down Administrator for distributions or payment in accordance with the terms of Article II of the Plan.

12. Corporate Existence

On or after the Effective Date, each of the Debtors will be subject to a Dissolution Transaction. The equity or membership interests of each Debtor entity that is not subject to a Dissolution Transaction on the Effective Date will vest in the Wind Down Estate pursuant to this Plan. For the avoidance of doubt, the Debtor entities that are not subject to a Dissolution Transaction on the Effective Date will continue to exist after the Effective Date for the limited purpose of completing the GUC Trust Assets Transfer and the Wind Down Transactions. Promptly after completing the Wind Down Transactions, such entities shall be dissolved by the Wind Down Administrator.

13. Dissolution Transactions

On or after the Effective Date, the Debtors or the Wind Down Administrator will enter into such Dissolution Transactions and will take such actions as may be necessary or appropriate to merge, dissolve, or otherwise terminate the corporate existence of the Debtors. The actions to effect the Dissolution Transactions may include: (i) the execution and delivery of appropriate agreements or other documents of transfer, merger, consolidation, disposition, liquidation, or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law, as well as other terms to which these entities may agree; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, duty or obligation on terms consistent with the terms of the Plan and having such other terms as these entities may agree; (iii) the filing of appropriate certificates or articles of merger, consolidation, continuance, or dissolution or similar instruments with the applicable governmental authorities; and (iv) the taking of all other actions that the Wind Down Administrator determines to be necessary or appropriate, including making other filings or recordings that may be required by applicable law in connection with the Dissolution Transactions.

14. Recourse Solely to Wind Down Estate Assets

All Claims against the Debtors and against the GUC Trust are deemed satisfied, waived, and released as to the Debtors and the GUC Trust, as applicable, in exchange for the treatment of such Claims under the Plan or the distributions made from the GUC Trust, and Holders of Allowed Claims against any Debtor will have recourse solely to the Wind Down Estate Assets (and, in the case of the Prepetition Secured Parties, to the unused amounts, if any, of the Post-Sale Reserve and Professional Fee Escrow Account) for the payment of their Allowed Claims in accordance with the terms of the Plan. There will be no recourse for claims other than as to non-Debtors.

15. Cancellation of Existing Securities and Agreements

On the Effective Date, except to the extent otherwise expressly provided in the Plan (including with respect to the Prepetition Credit Agreement Documents), (i) all notes, bonds, debentures, instruments, certificates, credit agreements, indentures, collateral documents, guarantees, filings, recordings, registrations, and other documents and instruments evidencing, securing, or governing Claims or Interests, and any Interests that are not represented by certificates or other instruments, shall be canceled, terminated, released, and surrendered automatically

without any action on the part of any party, (ii) all Liens of any nature or any assets of any Debtor securing, or purporting to secure, such Claims shall be fully, finally, and irrevocably released and extinguished automatically without any action on the part of any party (and (x) the Debtors are hereby irrevocably authorized to make such filings, recordings, registrations, and notifications, and take such other actions, as the Debtors shall deem necessary or advisable to carry out such release and extinguishment and (y) the holders of such Claims shall take such actions and execute such instruments as the Debtors may reasonably request to carry out such release and extinguishment) and (iii) the obligations of the Debtors in respect of such Claims or in any way related thereto or arising therefrom (except with respect to any Indemnification Obligations, which obligations shall be assumed and assigned as set forth in Article V.G of the Plan) shall be deemed satisfied in full, terminated, canceled, released, and of no force or effect against the Debtors or the Wind Down Estate, without any further action on the part of the Debtors, the Wind Down Estate, or any other Person. Holders of or parties to such canceled instruments, Securities, and other documentation will have no rights arising from or relating to such instruments, Securities, and other documentation, or the cancellation thereof, except the rights provided for pursuant to the Plan. To the extent applicable, the Debtors' corporate charters shall be deemed amended by the Confirmation Order to provide that no nonvoting equity securities will be issued and to otherwise comply with the requirements of section 1123(a)(6) of the Bankruptcy Code.

Notwithstanding anything to the contrary herein, but subject to any applicable provisions of Articles IV and VI of the Plan, the Prepetition Credit Agreement Documents shall continue in effect as between all Debtors and the non-Debtors party thereto until the wind down of the Debtors and the Netherlands Wind Down is complete. Following completion of the wind down of the Debtors and the Netherlands Wind Down and distribution of the proceeds after the Netherlands Wind Down is complete, if any, to the Prepetition Secured Parties, as provided in Article IV of the Plan, the Prepetition Credit Agreement Documents shall be canceled and surrendered and the obligations of the Debtors thereunder or in any way related thereto shall be deemed satisfied in full, canceled, and of no force or effect against the Debtors or the Wind Down Estate, without any further action on the part of the Debtors, the Wind Down Estate, or any other Person. Except as provided in the Plan (including Article VI of the Plan), on the Effective Date, the Prepetition Credit Agreement Agent, its respective agents, successors, and assigns shall be automatically and fully discharged of all of their duties and obligations associated with the Prepetition Credit Agreement Documents (as applicable). The commitments and obligations (if any) of the Prepetition Credit Agreement Lenders to extend any further or future credit or financial accommodations to any of the Debtors, any of their respective subsidiaries, including, any non-Debtors, or any of their respective successors or assigns under the Prepetition Credit Agreement Documents shall fully terminate and be of no further force or effect on the Effective Date.

#### 16. Release of Liens

Except for the Wind Down Claims (which include the Prepetition Secured Party Liens securing such Claims), and as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date concurrently and consistent with the treatment provided for Claims and Interests in Article III, all mortgages, deeds of trust, Liens against, security interests in, or other encumbrances or interests in property of any Estate shall be deemed fully released and discharged. After the wind down of the Debtors and the Netherlands Wind Down is complete and after the proceeds of the

Netherlands Asset Sale and Netherlands Liquidation, if any, are indefeasibly distributed in Cash to the Prepetition Secured Parties as provided in Article IV of the Plan, all mortgages, deeds of trust, Liens against, security interests in, or other encumbrances or interests in property of any Estate on account of the Wind Down Claims shall be deemed fully released and discharged. Notwithstanding anything contained herein to the contrary, until completion of the wind down of the Debtors and the Netherlands Wind Down and distribution of the proceeds after the Netherlands Wind Down is complete, if any, to the Prepetition Secured Parties, as provided in Article IV of the Plan, the Plan shall not operate as a waiver of any right, power or remedy of the Prepetition Agent or Prepetition Lenders, or constitute a waiver of any provision of the Prepetition Credit Agreement Documents in respect of any non-Debtor affiliate of the Debtors party thereto and the obligations of the non-Debtor affiliates thereunder shall remain in full force and effect.

17. Corporate Governance, Directors and Officers.

a. Certificates of Incorporation and Bylaws

Consistent with the Plan, all existing certificates of incorporation and by-laws will be canceled; accordingly, no new certificates of incorporation and by-laws will be necessary for any Debtors. Certain of the Debtor entities comprising the Wind Down Estate will continue to exist after the Effective Date for the purpose of completing the GUC Trust Assets Transfer and the Wind Down Transactions.

b. Directors and Officers

As of the Effective Date, the term of the current members of the boards of directors or boards of managers, as applicable, of KidKraft and its Debtor Affiliates shall expire automatically and each person serving as a director of KidKraft and each of its Debtor Affiliates shall be removed and shall be deemed to have resigned and cease to serve automatically. Consistent with the Plan, each of the Estates will vest in the Wind Down Estate effective as of the Effective Date and, thus, no individuals will serve as directors, officers, or voting trustees after the Effective Date for any Debtors. The Wind Down Administrator will be the sole member, manager, director, officer, or other governing body or controlling authority of each Debtor entity that is not subject to a Dissolution Transaction on the Effective Date.

18. Insurance Policies

To the extent that any of the Debtors' insurance policies constitute Executory Contracts, such insurance policies and any agreements, documents, or instruments relating thereto, are treated as and deemed to be Executory Contracts under the Plan and shall be assumed by the Debtors and assigned to the Wind Down Estate on the Effective Date. All other insurance policies shall vest in the Wind Down Estate.

19. D&O Liability Insurance Policies

Notwithstanding anything in the Plan to the contrary, as of the Effective Date, the Debtors shall be deemed to assume and vest in the Wind Down Estate all D&O Liability Insurance Policies (including tail coverage liability insurance) pursuant to section 365(a) of the Bankruptcy Code, to the extent they are Executory Contracts. Entry of the Confirmation Order will constitute the

Bankruptcy Court's approval of the Debtors' assumption of each of the D&O Liability Insurance Policies, to the extent they are Executory Contracts. Notwithstanding anything to the contrary contained in the Plan, Confirmation of the Plan shall not discharge, impair, or otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O Liability Insurance Policies, and each such indemnity obligation will be deemed and treated as an Executory Contract that has been assumed by the Debtors under the Plan as to which no Proof of Claim need be Filed, and shall survive the Effective Date. On the Effective Date, all D&O Liability Insurance Policies shall vest in the Wind Down Estate consistent with the Confirmation Order without further order of the Bankruptcy Court.

20. Preservation of Causes of Action

Except as provided in the Plan, or in any contract, instrument, release, or other agreement entered into or delivered in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, the Wind Down Estate will retain and may enforce any claims, demands, rights, and causes of action that any Estate may hold against any Person to the extent not satisfied, settled, and released under the Plan or otherwise, including the Retained Causes of Action; *provided that*, the Wind Down Estate will not retain any Causes of Action (including Avoidance Actions) that are assigned to Purchaser as Transferred Assets in connection with the Sale Transaction that may be included in the GUC Trust Assets and transferred to the GUC Trust or are transferred to the GUC Trust in accordance with the Plan. The Wind Down Administrator may pursue any such retained claims, demands, rights, or causes of action, as appropriate, in accordance with the best interests of the Wind Down Estate. Except to the extent any such claim is specifically satisfied, settled, and released herein, in accordance with and subject to any applicable law, the Debtor's inclusion or failure to include any Cause of Action on the List of Retained Causes of Action shall not be deemed an admission, denial, or waiver of any claims, demands, rights, or causes of action that the Debtor or Estate may hold against any Person. Except to the extent any such claim is specifically satisfied, settled, and released herein, the Debtor intends to preserve those claims, demands, rights, or causes of action designated as Retained Causes of Action. For the avoidance of doubt, in no instance will any Cause of Action preserved pursuant to this Article IV.A.20 include any claim or Cause of Action with respect to, or against, a Released Party.

21. Substitution in Pending Legal Actions

On the Effective Date, the Wind Down Estate or the Wind Down Administrator, as applicable, shall be deemed to be substituted as the party to any litigation in which the Debtors are a party, including (but not limited to) (i) pending contested matters or adversary proceedings in the Bankruptcy Court or the CCAA Court, (ii) any appeals of orders of the Bankruptcy Court, and (iii) any state court or federal or state administrative proceedings or equivalent in Canada or any other applicable jurisdiction pending as of the Petition Date. The Wind Down Administrator and its professionals are not required to, but may, take such steps as are appropriate to provide notice of such substitution.

22. Effectuating Documents; Further Transactions

The Debtors (prior to the Effective Date) and the Wind Down Administrator (on or after the Effective Date) are authorized to and may issue, execute, deliver, file, or record such contracts,



securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and evidence the terms and conditions of the Plan, the Purchase Agreement, and the Dissolution Transactions, in each case, in the name of and on behalf of any Debtor or the Wind Down Estate, as applicable, without the need for any approvals, authorizations, or consents except those expressly required pursuant to the Plan.

Pursuant to section 1146(a) of the Bankruptcy Code, the following will not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales or use tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee or other similar tax or governmental assessment: (a) any transfer made by the Debtors to the Wind Down Estate; (b) any transfer made by the Debtors and, if applicable, the Wind Down Estate to the Purchaser pursuant to the Plan, the Purchase Agreement, and/or the Sale Order; (c) any sales made by the Wind Down Estate to liquidate such assets in the trust and convert such assets into Cash; (d) the making or assignment of any lease or sublease; (e) any Dissolution Transaction; and (f) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including any merger agreements, agreements of consolidation, restructuring, disposition, liquidation or dissolution, deeds, bills of sale, or assignments executed in connection with any of the foregoing or pursuant to the Plan.

*B. Restructuring Support Agreement*

Upon the later of (i) the Effective Date or (ii) the consummation of the Sale Transaction, any surviving obligations under the Restructuring Support Agreement shall terminate on a final basis.

*C. Global Settlement*

*1. GUC Trust*

On the Effective Date, the GUC Trust will be established with the primary purpose of liquidating the GUC Trust Assets and making distributions to GUC Trust Beneficiaries on account of their Allowed General Unsecured Claims.

Subject to and to the extent set forth in the Plan, the Confirmation Order, the GUC Trust Agreement, or any other order of the Bankruptcy Court entered in connection therewith, the GUC Trust shall be empowered to: (a) perform all actions and execute all agreements, instruments, and other documents necessary to implement the terms of the Plan to the extent applicable to the GUC Trust; (b) establish, maintain, and administer the GUC Trust Accounts; (c) accept, preserve, receive, collect, manage, invest, sell, liquidate, transfer, supervise, and protect, as applicable, the GUC Trust Assets (directly or through its professionals or a Disbursing Agent), in accordance with the Plan; (d) subject to the GUC Trust Agreement, the Plan, and the Confirmation Order, as applicable, review, reconcile, settle, or object to all General Unsecured Claims that are not Allowed Claims as of the Effective Date pursuant to the procedures for allowing or disputing Claims prescribed in the Plan; (e) calculate and make distributions of the proceeds of the GUC Trust Assets to Holders of Allowed General Unsecured Claims that are GUC Trust Beneficiaries in accordance with the terms of the Plan and the GUC Trust Agreement and otherwise implement the terms of

the Plan to the extent applicable to the GUC Trust; (f) retain, compensate, and employ professionals to represent or advise the GUC Trust; (g) file, in accordance with the GUC Trust Agreement, appropriate tax returns on behalf of the GUC Trust and pay any and all taxes or other obligations arising in connection therewith; (h) exercise such other powers as may be vested in the GUC Trust under the GUC Trust Agreement and the Plan, or as are deemed by the GUC Trustee to be necessary and proper to implement the provisions of the Plan and the GUC Trust Agreement; and (i) terminate the GUC Trust in accordance with the terms of the GUC Trust Agreement. For the avoidance of doubt, the GUC Trust shall not be empowered with performing any actions designated to the Wind Down Estate created pursuant to Article IV.A of the Plan and shall have no authority to pursue any Claims or Causes of Action against Released Parties or Exculpated Parties.

Notwithstanding anything to the contrary in this Article IV.C, the GUC Trust shall have no objective to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, the GUC Trust's purpose as described herein and in the GUC Trust Agreement and as may be reasonably necessary to conserve and protect the GUC Trust Assets and provide for the orderly liquidation and distribution thereof. Accordingly, the GUC Trustee shall, in an orderly manner, liquidate the GUC Trust Assets and make timely distributions pursuant to the Plan and not unduly prolong the duration of the GUC Trust.

The GUC Trust Beneficiaries, who will be treated as grantors and deemed owners for federal income tax purposes, will be holders of GUC Trust Interests. The GUC Trust shall file federal income tax returns for the GUC Trust as a grantor trust pursuant to Section 671 of the Tax Code and the Treasury Regulations promulgated thereunder. The parties shall not take any position on their respective tax returns with respect to any other matter related to taxes that is inconsistent with treating the GUC Trust as a "liquidating trust" within the meaning of Treasury Regulation Section 301.7701-4(d), unless any party receives definitive guidance from the Internal Revenue Service.

The GUC Trust shall be responsible for paying any (i) U.S. Trustee fees accruing in relation to disbursements by the GUC Trust and (ii) taxes related to the GUC Trust Assets or the liquidation thereof. Any professionals hired by the GUC Trustee will be compensated for services in such capacity solely from the GUC Trust Assets or proceeds thereof.

## 2. Funding of and Transfer of Assets into the GUC Trust

Except as otherwise provided in the Plan or the Confirmation Order, on the next Business Day following the GUC Settlement Opt-In Election Deadline, the Wind Down Estate shall complete the GUC Trust Assets Transfer, and all such assets shall vest in the GUC Trust on such date, to be administered by the GUC Trustee in accordance with the Plan and the GUC Trust Agreement. Except as set forth in the Plan, the GUC Trust Assets shall be transferred to the GUC Trust free and clear of all Claims, Liens, and encumbrances to the fullest extent provided by section 363 or 1123 of the Bankruptcy Code. All Cash amounts funded into the GUC Trust from the Debtors shall be funded by the U.S. Debtors.

For all federal and applicable state and local income tax purposes, all Persons (including without limitation the Debtors, the GUC Trustee and the GUC Trust Beneficiaries) will treat the

transfers and assignment of the GUC Trust Assets to the GUC Trust for the benefit of the GUC Trust Beneficiaries as (a) a transfer of the GUC Trust Assets directly to the GUC Trust Beneficiaries followed by (b) the transfer of the GUC Trust Assets by the GUC Trust Beneficiaries to the GUC Trust. The GUC Trust will be treated as a grantor trust for federal tax purposes and, to the extent permitted under applicable law, for state and local income tax purposes. The GUC Trust Beneficiaries will be treated as the grantors and deemed owners of their allocable portion of the GUC Trust Assets for federal income tax purposes.

The fair market value of the portion of the GUC Trust Assets that is treated for U.S. federal income tax purposes as having been transferred to each GUC Trust Beneficiary will be determined by the GUC Trustee, and all parties (including, without limitation, the GUC Trustee and the GUC Trustee Beneficiaries) must utilize such fair market values determined by the GUC Trustee for federal and applicable state and local income tax purposes.

The GUC Trust's taxable income, gain, loss, deduction or credit will be allocated to the GUC Trust Beneficiaries in accordance with their relative beneficial interests in the GUC Trust during the applicable taxable period. Such allocation will be binding on all parties for federal and applicable state and local income tax purposes, and the parties will be responsible for the payment of any federal, state and local income tax due on the income and gain so allocated to them.

The act of transferring the GUC Trust Assets, as authorized by the Plan, shall not be construed to destroy or limit any such assets or rights or be construed as a waiver of any right, and such rights may be asserted by the GUC Trust as if the asset or right was still held by the Debtors.

### 3. GUC Trustee

Solely with respect to the GUC Trust Assets and the administration of General Unsecured Claims, the GUC Trustee shall be the successor to and representative of the Estate of each of the Debtors appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The powers, rights, and responsibilities of the GUC Trustee shall be specified in the GUC Trust Agreement and shall include the authority and responsibility to fulfill the items identified in the Plan. Other rights and duties of the GUC Trustee and the GUC Trust Beneficiaries shall be as set forth in the GUC Trust Agreement.

The Committee shall select the GUC Trustee, subject to the consent, not to be unreasonably withheld, of the Debtors and the Prepetition Secured Parties.

### 4. GUC Trust Agreement

The GUC Trust Agreement will contain certain provisions to comply with Internal Revenue Service guidance for trusts treated as liquidating trusts. Among other things, the GUC Trust Agreement will require that the GUC Trust terminate no later than three years from the Effective Date; *provided, however*, that the Bankruptcy Court, upon motion by the GUC Trustee, may extend the term of the GUC Trust for a reasonable finite period if (a) such extension is necessary to the purpose of the GUC Trust, (b) the GUC Trustee receives an opinion of counsel or a ruling from the IRS stating that such an extension would not adversely affect the status of the GUC Trust as a liquidating trust for federal income tax purposes, and (c) such an extension is obtained within the six (6) month period prior to the GUC Trust's third (3rd) anniversary or the



end of the immediately preceding extension period, as applicable; *provided, however*, each finite extension may be no more than six months (and such extension shall not exceed a total of four extensions unless the GUC Trustee received a favorable ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the GUC Trust as a grantor trust for U.S. federal income tax purposes. The GUC Trust Agreement generally will also provide for, among other things: (i) the payment of reasonable and documented compensation to the GUC Trustee; (ii) the payment of other expenses of the GUC Trust; (iii) the retention of counsel, accountants, financial advisors, or other professionals and the payment of their compensation; (iv) the investment of Cash by the GUC Trustee within certain limitations; (v) the preparation and filing of appropriate tax returns and other reports on behalf of the GUC Trust and the Debtors and the payment of taxes or other obligations owed by the GUC Trust, if any; (vi) the distribution at least annually to the GUC Trust Beneficiaries the GUC Trust's net Cash income and all other Cash proceeds received by the GUC Trust in excess of an amount reasonably necessary to meet Claims and contingent liabilities and to maintain the value of the GUC Trust Assets; (vii) the orderly liquidation of the GUC Trust Assets; and (viii) any reconciliation, administration, objection, resolution, and distribution on account of General Unsecured Claims. For the avoidance of doubt, any payments to be made by the GUC Trust shall be paid solely from the GUC Trust Assets or the proceeds thereof.

Additional terms of the GUC Trust and Obligations of the GUC Trustee, if any, will be addressed in the Plan Supplement or GUC Trust Agreement, as applicable.

5. Settlement of Claims and Causes of Action

Except as otherwise provided in the Plan or the GUC Trust Agreement, on and after the Effective Date, the GUC Trustee may compromise or settle any General Unsecured Claims or any Causes of Action that are GUC Trust Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules and may pay the charges that it incurs on or after the Effective Date for GUC Trust Expenses, professionals' fees, disbursements, expenses, or related support services (including fees relating to the preparation of Professional fee applications) without application to the Bankruptcy Court.

6. Recourse Solely to GUC Trust Assets

All Claims against the Debtors are deemed satisfied, waived, and released as to the Debtors in exchange for the treatment of such Claims under the Plan, and Holders of Allowed General Unsecured Claims against any Debtor will have recourse solely to the GUC Trust Assets for the payment of their Allowed General Unsecured Claims, and only if such Holder made a GUC Settlement Opt-In Election, all in accordance with the terms of the Plan and the GUC Trust Agreement. A Holder of Allowed General Unsecured Claims that does not make a GUC Settlement Opt-In Election will receive no recovery or distribution on account of such claims, as set forth in Article III.B.4 of the Plan.

Potential Avoidance Actions against a Holder of General Unsecured Claims that is listed on Schedule 1 to the Global Settlement Term Sheet will (i) be purchased by the Purchaser as part of the Sale Transaction, subject to the occurrence of the GUC Settlement Election Opt-In Deadline, (ii) be held by the Wind Down Administrator pending the occurrence of the GUC Settlement

Election Opt-In Deadline, (iii) to the extent any such Holder does not make a GUC Settlement Opt-In Election, will be conveyed to the Purchaser on the next Business Day following the GUC Settlement Opt-In Election Deadline, and (iv) will not be pursued by the Purchaser. **For the avoidance of doubt, if a Holder of General Unsecured Claims that is listed on Schedule 1 makes a GUC Settlement Opt-In Election, any potential Avoidance Actions against such Holder will not be conveyed to the Purchaser and instead will become GUC Trust Assets, and such potential Avoidance Actions may be pursued against such Holder.**

7. Distribution of GUC Trust Assets

The GUC Trust Assets, including any proceeds received by the GUC Trust on account of the prosecution or settlement of any commercial tort claims or Avoidance Actions that are GUC Trust Assets, net of any GUC Trust expenses (including professional fees) not covered by the GUC Trust Expense Reserve, shall be distributed at least annually as follows:

- (i) Holders of Allowed General Unsecured Claims that are GUC Trust Beneficiaries other than the Prepetition Secured Parties and/or DIP Secured Parties shall receive their Pro Rata share of 100% of the GUC Trust Assets up to \$1,000,000; and
- (ii) thereafter, all Holders of Allowed General Unsecured Claims that are GUC Trust Beneficiaries (including the Prepetition Secured Parties' Deficiency Claims) shall receive their Pro Rata share of 100% of the GUC Trust Assets.

8. MidOcean Waiver of Claims and Cash Contribution

On the Effective Date, MidOcean will (i) contribute \$100,000 in Cash to the GUC Trust (the "***Sponsor Cash Contribution***") and (ii) waive any General Unsecured Claims it may have against the Debtors, including any claims under the subordinated note and services agreement (the "***Sponsor Claims Waiver***"); *provided, however*, that nothing in the foregoing shall result in any of the Debtors' directors that are MidOcean designees waiving or releasing any rights to assert indemnification claims against the Debtors or any of its insurance carriers or any rights as beneficiaries of any insurance policies.

MidOcean is a Released Party under the Plan and has provided valuable consideration to the Estates in the form of the Sponsor Cash Contribution and the Sponsor Claims Waiver. Accordingly, notwithstanding anything set forth in the Plan, neither the GUC Trust nor the Debtors (nor any entity on behalf of the Debtors' Estates, including the Wind Down Estate) shall bring or be entitled to bring any claims or Causes of Action against (i) the Debtors' current and former directors and officers appointed and/or designated by MidOcean or (ii) MidOcean or any of its current and former Affiliates or it or its current and former Affiliates' current and former directors, managers, officers, employees, managed accounts and funds, predecessors, successors, assigns, subsidiaries, equity holders, members, agents, attorneys, accountants, investment bankers, consultants, and other professionals, each solely in their capacity as such, and all such claims shall be deemed and hereby are waived and released, and each of the foregoing Persons shall be a "Released Party" for purposes of the Plan.

**ARTICLE V.  
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

*A. Assumption and Rejection of Executory Contracts and Unexpired Leases*

On the Effective Date, except as otherwise provided herein or in any contract, instrument, release, or other agreement or document entered into in connection with the Plan, the Plan shall serve as a motion under sections 365 and 1123(b)(2) of the Bankruptcy Code to assume, assume and assign, or reject Executory Contracts and Unexpired Leases, and all Executory Contracts or Unexpired Leases shall be rejected as of the Effective Date without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease: (i) is designated on a schedule of assumed contracts by the Purchaser; (ii) is designated as a Transferred Contract pursuant to the Purchase Agreement on the Schedule of Assumed Executory Contracts and Unexpired Leases in the Plan Supplement; (iii) was previously assumed or rejected by the Debtors, pursuant to a Final Order of the Bankruptcy Court; (iv) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (v) is the subject of a motion to reject filed by the Debtors on or before the Confirmation Date; or (vi) is subject to a motion to reject pursuant to which the requested effective date of such rejection is after the Effective Date.

Entry of the Confirmation Order and/or Sale Approval Order, as applicable, shall constitute the Bankruptcy Court's order approving the assumptions, assumptions and assignments, or rejections, as applicable, of Executory Contracts or Unexpired Leases as set forth in the Plan pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Each Executory Contract or Unexpired Lease comprising a Transferred Contract shall re-vest in and be fully enforceable by the Purchaser in accordance with its terms, except as such terms may have been modified by the provisions of the Plan or any order of the Bankruptcy Court. Notwithstanding anything to the contrary in the Plan, the Debtors reserve the right to, with the consent of the Purchaser, alter, amend, modify, or supplement the Schedule of Assumed Executory Contracts and Unexpired Leases at any time prior to the Effective Date on no less than two business days' notice to the applicable non-Debtor counterparties.

Unless otherwise indicated, assumptions, assumptions and assignments, or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Any motions to reject Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by the Bankruptcy Court on or after the Effective Date.

*B. Claims Based on Rejection of Executory Contracts or Unexpired Leases*

Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be Filed with the Bankruptcy Court in accordance with the Bar Date Order. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, the Wind Down Estate, the Estates, or their property (as applicable), without the need for any objection by the Wind Down Estate or Wind Down Administrator (as**

applicable), or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied and released, notwithstanding anything in the Proof of Claim to the contrary. All Allowed Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims and shall be treated in accordance with Article III.B of the Plan.

C. *Cure of Defaults for Assumed Executory Contracts and Unexpired Leases*

Any monetary defaults under an Executory Contract or Unexpired Lease, as reflected on the applicable Cure Notice, shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the proposed cure amount (if any) in Cash by the Debtors, the Wind Down Estate, or for the Transferred Contracts, by the Purchaser, as applicable, on the Effective Date or as soon as reasonably practicable thereafter, subject to the limitations described below or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree.

1. Cure of Defaults for Transferred Contracts Under the Purchase Agreement

Consistent with the Purchase Agreement and subject to the terms and conditions therein, within three business days after the Petition Date the Debtors shall deliver a Cure Notice, in form and substance reasonably acceptable to Buyer, of potential assumption and assignment and proposed cure of the Transferred Contracts to the applicable counterparty (each a "**Contract Counterparty**"), which shall specify: (a) that such contract is contemplated to be assumed and assigned to Purchaser as a Transferred Contract in connection with the Sale Transactions; (b) the proposed Cure Claim with respect to each Transferred Contract; (c) that each respective Contract Counterparty may file an objection (a "**Contract Objection**") to the proposed assumption and assignment of the applicable Transferred Contract or the proposed Cure Claim, if any. Such Contract Objection must (i) be in writing; (ii) comply with the Federal Rules of Bankruptcy Procedure and any applicable local rules of the U.S. Bankruptcy Court; (iii) be Filed with the Bankruptcy Court, together with proof of service, on or before 5:00 p.m. (Central Time) on the date that is 21 days after the date the Debtors delivered the Cure Notice (the "**Cure Notice Objection Deadline**"); (iv) be served, so such objection is actually received on or before the Cure Notice Objection Deadline on counsel to the Debtors, counsel to the DIP Secured Parties, counsel to the Purchaser, and the Office of the U.S. Trustee for the Northern District of Texas; and (v) state with specificity the grounds for such objection, including, without limitation, the asserted amount of the fully liquidated Cure Claim and the legal and factual bases for any unliquidated portion of the Cure Claim that the Contract Counterparty believes is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code for the applicable Transferred Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise to any such defaults. If a Contract Counterparty files a Contract Objection in a manner that is consistent with the requirements set forth above and the parties are unable to consensually resolve the dispute prior to the Sale Hearing, the amount to be paid or reserved with respect to such Contract Objection will be determined at the Confirmation Hearing or such other date determined by the U.S. Bankruptcy Court.

2. Cure of Defaults for Other Assumed Executory Contracts and Unexpired Leases

For all other Executory Contracts or Unexpired Leases not deemed “Transferred Contracts,” at least 14 days before the Confirmation Hearing, the Debtors shall distribute, or cause to be distributed, Cure Notices of proposed assumption and proposed cure amounts to the applicable third parties. Unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption or related cure amount paid or proposed to be paid by the Debtors or the Wind Down Estate to such counterparty must be filed with the Bankruptcy Court and served on and actually received by the Debtors at least 7 days before the Confirmation Hearing. **Any counterparty that fails to timely object to the proposed assumption or proposed cure amount shall be deemed to have assented to such assumption and cure amount, and any such objection shall be Disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against the Debtors or the Wind Down Estate, without the need for any objection by the Wind Down Estate or any other party in interest or any further notice to or action, order, or approval of the Bankruptcy Court.**

Any Cure Claim shall be deemed fully satisfied, released, and discharged upon payment by the Debtors or the Wind Down Estate of the amount set forth in the applicable Cure Notice or, if the Allowed Cure Claim with respect to any Executory Contract or Unexpired Lease is determined by a Final Order to be greater than the applicable amount set forth in the Cure Notice, the amount of such Allowed Cure Claim; *provided, however*, that following entry of a Final Order resolving any such dispute, the applicable Debtor shall, with the consent of the Purchaser, have the right to reject any Executory Contract or Unexpired Lease within thirty (30) days of such resolution; *provided further, however*, that nothing herein shall prevent the Wind Down Estate from paying any Cure Claim despite the failure of the relevant counterparty to file such request for payment of such Cure Claim. The Wind Down Estate also may settle any Cure Claim without any further notice to or action, order, or approval of the Bankruptcy Court.

If there is any dispute regarding any Cure Claim, the ability of the Wind Down Estate or any assignee to provide “adequate assurance of future performance” within the meaning of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption, then payment of the Cure Claim shall occur as soon as reasonably practicable after entry of a Final Order resolving such dispute, approving such assumption (and, if applicable, assignment), or as may be agreed upon by the Debtors or the Wind Down Estate, as applicable, and the counterparty to the Executory Contract or Unexpired Lease, in each case with the consent of the Purchaser. Notwithstanding the foregoing, to the extent the dispute relates solely to any Cure Claims, the applicable Debtor may, with the consent of the Purchaser, assume the Executory Contract or Unexpired Lease prior to the resolution of any such dispute; *provided, however*, that the Debtor reserves Cash in an amount sufficient to pay the full amount reasonably asserted as the required Cure Claim by the contract counterparty; *provided further, however*, that following entry of a Final Order resolving any such dispute, the applicable Debtor shall, with the consent of the Purchaser, have the right to reject any Executory Contract or Unexpired Lease within 30 days of such resolution.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or



ownership interest composition or other bankruptcy or insolvency-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the date that the Debtors assume such Executory Contract or Unexpired Lease. Any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed, including pursuant to the Confirmation Order, shall be deemed Disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court.

D. *Modifications, Amendments, Supplements, Restatements, or Other Agreements*

Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed or assumed and assigned shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and Executory Contracts and Unexpired Leases related thereto, if any, including easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

E. *Reservation of Rights*

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Schedule of Assumed Executory Contracts and Unexpired Leases, nor anything contained in the Plan or the Sale Transaction Documents, shall constitute an admission by the Debtors, the Wind Down Estate, the Purchaser, or the Wind Down Administrator (as applicable) that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Debtor, Wind Down Estate, the Purchaser, or the Wind Down Administrator (as applicable) has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors, or, after the Effective Date, the Wind Down Estate, the Purchaser, or the Wind Down Administrator (as applicable) shall have 30 days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

F. *Nonoccurrence of Effective Date*

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

G. *Indemnification Obligations*

All Indemnification Obligations shall not be discharged or impaired by Confirmation of the Plan or entry of the Confirmation Order and shall be assumed by the Wind Down Estate and remain intact, irrevocable, and shall survive the entry of the Confirmation Order and Effective Date of the Plan on terms no less favorable to such current and former directors, officers, managers,

equity holders, employees, attorneys, accountants, investment bankers, and other professionals of any of the Debtors and such current and former directors', officers', and managers' respective Affiliates than the Indemnification Obligations in place prior to the Petition Date, and to the extent any such Indemnification Obligations are obligations of a non-Debtor Affiliate of any of the Debtors, such Indemnification Obligations shall be assigned on the Effective Date to the Wind Down Estate.

## **ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS**

### *A. Timing and Calculation of Amounts to Be Distributed*

Unless otherwise provided in the Plan, on the Effective Date or as soon as reasonably practicable thereafter (or, if a Claim is not an Allowed Claim on the Effective Date, on the date that such Claim becomes Allowed or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim, including any portion of a Claim that is an Allowed Claim notwithstanding that other portions of such Claim are a Disputed Claim, shall receive the full amount of the distributions that the Plan provides for Allowed Claims in each applicable Class. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article VII of the Plan. Except as otherwise provided in the Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

### *B. Disbursing Agent.*

All distributions under the Plan shall be made by the Disbursing Agent. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. Additionally, in the event that the Disbursing Agent is so otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Wind Down Estate or the GUC Trust (as applicable).

#### *a. Powers of the Disbursing Agent*

The Disbursing Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions of the Plan.

#### *b. Expenses Incurred On or After the Effective Date*

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable and documented fees and expenses incurred by the Disbursing Agent on or after the Effective Date,

and any reasonable and documented compensation and expense reimbursement claims (including reasonable and documented attorney fees and expenses), made by the Disbursing Agent shall be paid in Cash by the Purchaser, the Wind Down Estate, or the Wind Down Administrator (as applicable).

c. No Liability

Except on account of gross negligence, fraud, or willful misconduct, the Disbursing Agent shall have no (a) liability to any party for actions taken in accordance with the Plan or in reliance upon information provided to it in accordance with the Plan or (b) obligation or liability to any party who does not hold a Claim against the Debtors as of the Distribution Record Date or any other date on which a distribution is made or who does not otherwise comply with the terms of the Plan.

C. *Delivery of Distributions and Undeliverable or Unclaimed Property*

1. Delivery of Distributions

a. Distribution Record Date

As of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims and Interests maintained by the Debtors, or their respective agents, shall be deemed closed, and there shall be no further changes in the record Holders of any of the Claims and Interests. The Disbursing Agent shall have no obligation to recognize any transfer of the Claims or Interests occurring on or after the Distribution Record Date.

b. Delivery of Distributions in General

Except as otherwise provided herein, the Disbursing Agent shall make distributions to Holders of Allowed Claims and Allowed Interests as of the Distribution Record Date at the address for each such Holder as indicated on the Debtors' records as of the date of any such distribution; *provided, however*, that the manner of such distributions shall be determined at the discretion of the Debtors, the Purchaser, the Wind Down Administrator, or the GUC Trustee (as applicable).

c. Delivery of Distributions on Secured Party Claims.

The Prepetition Credit Agreement Agent shall be deemed to be the Holder of all Secured Party Claims for purposes of distributions to be made hereunder, and all distributions on account of such Allowed Claims shall be made to the Prepetition Credit Agreement Agent. As soon as practicable following compliance with the requirements set forth in Article VI of the Plan, the Prepetition Credit Agreement Agent shall arrange to deliver or direct the delivery of such distributions to or on behalf of the Holders of Allowed Secured Party Claims in accordance with the terms of the Prepetition Credit Agreement Documents, subject to any modifications to such distributions in accordance with the terms of the Plan.



d. Delivery of Distributions on DIP Claims

The DIP Agent shall be deemed to be the Holder of all DIP Claims for purposes of distributions to be made hereunder, and all distributions on account of such DIP Claims shall be made to the DIP Agent. As soon as practicable following compliance with the requirements set forth in Article VI of the Plan, the DIP Agent shall arrange to deliver or direct the delivery of such distributions to or on behalf of the Holders of DIP Claims in accordance with the terms of the DIP Facility Documents, subject to any modifications to such distributions in accordance with the terms of the Plan.

e. Minimum Distributions

No Distribution shall be made by the Disbursing Agent on account of an Allowed Claim if the amount to be distributed to the Holder of such Claim on the applicable Distribution Date has an economic value of less than \$250.

2. Undeliverable Distributions and Unclaimed Property

In the event that any distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Debtors or the Wind Down Estate, as applicable, shall have determined the then-current address of such Holder, at which time such distribution shall be made to such Holder without interest; *provided that* such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one year from the Effective Date. After such date, all unclaimed property or interests in property shall be redistributed Pro Rata (it being understood that, for purposes of this Article VI.C, "Pro Rata" shall be determined as if the Claim underlying such unclaimed distribution had been Disallowed) without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal, provincial, or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any Holder to such property or interest in property shall be discharged and forever barred.

D. *Compliance with Tax Requirements*

In connection with the Plan, to the extent applicable, the Debtors, Wind Down Administrator, GUC Trustee, Disbursing Agent, and any applicable withholding agent shall comply with all applicable tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, such parties shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions until receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. For these purposes, all distributions made on behalf of the Debtors pursuant to the Plan shall if applicable be first in satisfaction of the portion of Claims that are not subject to any withholding tax obligation. All Persons holding Claims against any Debtor shall be required to provide any additional information reasonably necessary for the Debtors, Wind Down Administrator, GUC Trustee, Disbursing Agent, and any applicable withholding agent to comply with all tax

withholding and reporting requirements imposed on them by any Governmental Unit, including an IRS Form W-8 or W-9, as applicable, and any other applicable tax forms. The Debtors, Wind Down Estate, Wind Down Administrator, GUC Trustee, and Disbursing Agent (as applicable) reserve the right to allocate all distributions made under the Plan in a manner that complies with all other legal requirements, such as applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances. Any amounts withheld pursuant to the Plan shall be deemed to have been distributed to and received by the applicable recipient for all purposes of the Plan. Notwithstanding any other provision of the Plan to the contrary, each Holder of an Allowed Claim or Allowed Interest shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any Governmental Unit, including income, withholding and other tax obligations, on account of such distribution.

E. *Foreign Currency Exchange Rate*

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in The Wall Street Journal, National Edition, on the Effective Date.

F. *Surrender of Cancelled Instruments or Securities*

As a condition precedent to receiving any distribution on account of its Allowed Claim, each Holder of a Claim shall be deemed to have surrendered the certificates or other documentation underlying each such Claim, and all such surrendered certificates and other documentation shall be deemed to be cancelled pursuant to Article IV of the Plan, except to the extent otherwise provided in the Plan.

G. *Allocations*

The aggregate consideration to be distributed to each Holder of an Allowed Claim will be allocated first to the principal amount of such Allowed Claim, with any excess allocated to unpaid interest that accrued on such Allowed Claims, if any.

H. *No Postpetition Interest on Claims*

Unless otherwise specifically provided for in an order of the Bankruptcy Court, the Plan, or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims or Interests and no Holder of a Claim or Interest shall be entitled to interest accruing on or after the Petition Date on any such Claim.

I. *Setoffs and Recoupment*

The Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), may, but shall not be required to, set off against, or recoup from, any Allowed Claim (other than an Allowed General Unsecured Claim) against a Debtor of any nature whatsoever that the applicable Debtor, Wind Down Estate, Wind Down Administrator, GUC Trust, or GUC Trustee (as applicable) may have against the Holder of such Claim, but neither the failure to do so nor the allowance of any Claim against a Debtor hereunder shall constitute a

waiver or release by the applicable Debtor, Wind Down Estate, Wind Down Administrator, GUC Trust, or GUC Trustee (as applicable) of any such Claim it may have against the Holder of such Allowed Claim.

J. *Claims Paid or Payable by Third Parties*

1. Claims Paid by Third Parties

The Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), shall reduce in full an Allowed Claim (including any applicable Cure Claim of a Transferred Contract paid by the Purchaser), and such Claim shall be Disallowed without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor, Wind Down Estate, the Wind Down Administrator, GUC Trust, or the GUC Trustee (as applicable); *provided that* the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) shall provide 21 days' notice to the Holder prior to any disallowance of such Claim during which period the Holder may object to such disallowance, and if the parties cannot reach an agreed resolution, the matter shall be decided by the Bankruptcy Court. Subject to the last sentence of this paragraph, to the extent a Holder of a Claim receives a distribution on account of such Claim and thereafter receives payment from a party that is not a Debtor, Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) on account of such Claim, such Holder shall, within 14 days of receipt thereof, repay or return the distribution to the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the Petition Date. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the 14-day grace period specified above until the amount is repaid.

2. Claims Payable by Insurers

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim, then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without an objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court; *provided that* the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), shall provide 21 days' notice to the Holder of such Claim prior to any disallowance of such Claim during which period the Holder may object to such disallowance, and if the parties cannot reach an agreed resolution, the matter shall be decided by the Bankruptcy Court.

3. Applicability of Insurance Policies

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity may hold against any insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

**ARTICLE VII.  
PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED, AND DISPUTED CLAIMS**

A. *Allowance of Claims*

On or after the Effective Date, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) shall have and retain any and all rights and defenses that the Debtors had with respect to any Claim immediately prior to the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim. All settlements of Claims approved prior to the Effective Date pursuant to a Final Order of the Bankruptcy Court, pursuant to Bankruptcy Rule 9019, or otherwise shall be binding on all parties.

B. *Claims and Interests Administration Responsibilities*

Except as otherwise specifically provided in the Plan and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, after the Effective Date, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), by order of the Bankruptcy Court, shall together have the sole authority to: (1) File, withdraw, or litigate to judgment objections to Claims or Interests; (2) settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court. In any action or proceeding to determine the existence, validity, or amount of any General Unsecured Claim, any and all claims or defenses that could have been asserted by the applicable Debtor(s) or the Entity holding such General Unsecured Claim are preserved as if the Chapter 11 Cases had not been commenced.

C. *Adjustment to Claims or Interests Without Objection*

Any duplicate Claim or Interest or any Claim or Interest that has been paid or satisfied, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register without the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) having to File an application, motion, complaint, objection, or any

other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

D. *Time to File Objections to Claims*

Any objections to Claims, which, prior to the Effective Date, may be Filed by any party, shall be Filed on or before the Claims Objection Deadline.

E. *Disallowance of Claims*

Any Claims held by Entities from which property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims until such time as such Causes of Action (other than Causes of Action that constitute a Transferred Asset under the Purchase Agreement) against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid to the Debtors, the Wind Down Estate or the Wind Down Administrator (as applicable).

**ANY CLAIM THAT HAS BEEN LISTED IN THE SCHEDULES AS DISPUTED, CONTINGENT, OR UNLIQUIDATED, AND FOR WHICH NO PROOF OF CLAIM HAS BEEN TIMELY FILED, SHALL BE DEEMED DISALLOWED AND SHALL BE EXPUNGED WITHOUT FURTHER ACTION AND WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT.**

**EXCEPT AS PROVIDED HEREIN, IN AN ORDER OF THE BANKRUPTCY COURT, OR OTHERWISE AGREED, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE APPLICABLE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS AT OR PRIOR TO THE CONFIRMATION HEARING SUCH LATE CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

F. *Amendments to Claims*

On or after the Effective Date, except as provided in the Plan or the Confirmation Order, a Claim may not be Filed or amended without the prior authorization of the Bankruptcy Court and any such new or amended Claim Filed shall be deemed Disallowed in full and expunged without any further action, order, or approval of the Bankruptcy Court.

G. *No Distributions Pending Allowance*

Notwithstanding any other provision of this Plan to the contrary, no payment or distribution of any kind or nature provided under the Plan shall be made to the extent that all or any portion of any Claim is a Disputed Claim, including if an objection to a Claim or portion thereof is Filed as

set forth in Article VII, unless and until such Disputed Claim becomes an Allowed Claim; *provided that* any portion of a Claim that is an Allowed Claim shall receive the payment or distribution provided under the Plan thereon notwithstanding that any other portion of such Claim is a Disputed Claim.

H. *Single Satisfaction of Claims*

Holders of Allowed Claims may assert such Claims against each Debtor obligated with respect to such Claim, and such Claims shall be entitled to share in the recovery provided for the applicable Class of Claims against each obligated Debtor based upon the full Allowed amount of the Claim. Notwithstanding the foregoing, in no case shall the aggregate value of all property received or retained under the Plan on account of any Allowed Claim exceed 100% of such Allowed Claim.

**ARTICLE VIII.  
SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS**

A. *Compromise and Settlement of Claims, Interests, and Controversies*

Pursuant to sections 363 and 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions, releases, and other benefits provided pursuant to the Plan, which distributions, releases, and other benefits shall be irrevocable and not subject to challenge upon the Effective Date, the provisions of the Plan, and the distributions, releases, and other benefits provided hereunder, shall constitute a good-faith compromise and settlement of all Claims and Interests and controversies resolved pursuant to the Plan.

The Plan shall be deemed a motion to approve the good-faith compromise and settlement of all such Claims, Interests, and controversies pursuant to Bankruptcy Rule 9019, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise and settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that all such compromises and settlements are in the best interests of the Debtors, their Estates, and Holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) may compromise and settle Claims against, and Interests in, the Debtors and their Estates and Causes of Action against other Entities.

In accordance with Bankruptcy Rule 9019, the Plan constitutes the good-faith compromise and settlement among the Global Settlement Parties regarding the matters set forth in the Global Settlement Term Sheet, and reflects and implements such compromise and settlement, including by the establishment and funding of the GUC Trust. Such compromise and settlement is made in exchange for consideration and is in the best interests of the Global Settlement Parties and the Holders of General Unsecured Claims, is within the reasonable range of possible litigation outcomes, is fair, equitable, and reasonable, and is an essential element of the resolution of these Chapter 11 Cases.



B. *Discharge of Claims and Termination of Interests*

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Sale Order, the Plan and/or the Plan Supplement, the distributions, rights, and treatment that are provided in the Sale Order or the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Wind Down Estate or the Wind Down Administrator, as applicable), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and interests in, the Debtors or any of their assets or properties, regardless of whether any property, including, without limitation, the Transferred Assets, shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (a) a Proof of Claim based upon such debt or right is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (b) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (c) the Holder of such a Claim or Interest has accepted the Plan. Any default or “event of default” by the Debtors or Affiliates with respect to any Claim or Interest that existed immediately before or on account of the Filing of the Chapter 11 Cases shall be deemed cured (and no longer continuing) as of the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring.

C. *Term of Injunctions or Stays*

Unless otherwise provided herein, the Confirmation Order, the Confirmation Recognition Order or in a Final Order, all injunctions or stays arising under or entered during the Chapter 11 Cases under section 362 of the Bankruptcy Code or otherwise, or ordered by the CCAA Court in the CCAA Recognition Proceeding, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date set forth in the order providing for such injunction or stay.

D. *Release of Liens*

**Except as otherwise specifically provided in the Sale Order (solely with respect to any Permitted Encumbrances and Assumed Liabilities), the Plan, and/or the Plan Supplement, on the Effective Date and concurrently with the applicable distributions or other treatment made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates, including, without limitation, the Transferred Assets, shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Wind Down Estate or the GUC Trust and its successors and assigns, in each case, without any further approval or order of the Bankruptcy Court or the CCAA Court and without any action or Filing being required to be made by the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable).**

E. *Releases by the Debtors*

Pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, on and after the Effective Date, each Released Party is hereby released and discharged by the Debtors, their Estates, and the Wind Down Estate (as applicable) from any and all Claims, Causes of Action, Avoidance Actions, obligations, suits, judgments, damages, demands, losses, liabilities, and remedies whatsoever (including any derivative claims, asserted or assertable on behalf of the Debtors, their Estates, or the Wind Down Estate), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, accrued or unaccrued, existing or hereinafter arising, in law, equity, contract, tort, or otherwise, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), their Estates, the Wind Down Estate, the Debtors' in- or out-of-court restructuring efforts, the Debtors' intercompany transactions, the Prepetition Credit Agreement Documents, the Note Purchase Agreement Documents, the Professional Services Agreement Documents, the DIP Facility Documents (and any payments or transfers in connection therewith), the Sale Transaction, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the formulation, preparation, dissemination, negotiation, or Filing of the Restructuring Support Agreement, the restructuring of any Claim or Interest before or during the Chapter 11 Cases, or any Restructuring, contract, instrument, document, release, or other agreement or document (including any legal opinion regarding any such transaction, contract, instrument, document, release, or other agreement or the reliance by any Released Party on the Sale Order, the Plan, the Confirmation Order, or Confirmation Recognition Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, the Plan, the Plan Supplement, the DIP Facility, the DIP Facility Documents, the Sale Transaction, and other documents (including the Definitive Documentation), the Chapter 11 Cases, the CCAA Recognition Proceedings, the filing of the Chapter 11 Cases, the filing of the CCAA Recognition Proceedings, the Sales Process, the Global Settlement, the pursuit of Confirmation, the pursuit of Consummation, the solicitation of votes with respect to the Plan, the administration and implementation of the Plan and the Sales Process, including the issuance or distribution of any property pursuant to the Plan and the Sales Process, the Definitive Documentation, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to the foregoing. Notwithstanding anything to the contrary in the foregoing, (i) the releases set forth in this Article VIII.E do not release any post-Effective Date obligations of any party or Entity under the Plan, including any such obligations created in connection with the Restructuring or the assumption of the Indemnification Obligations as set forth in the Plan; (ii) nothing in this Article VIII.E shall, nor shall it be deemed to, release any Released Party from any Claims or Causes of Action arising from any obligations of any party under the Purchase Agreement; (iii) nothing in this Article VIII.E shall, nor shall it be deemed to, release any Released Party from any Claims or Causes of Action that are found, pursuant to a Final Order, to be the result of such Released Party's gross negligence, fraud or willful misconduct; (iv) nothing in this



Article VIII.E shall, nor shall it be deemed to, release any Causes of Action specifically enumerated in the List of Retained Causes of Action.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases by the Debtors set forth in this Article VIII.E, which includes by reference each of the related provisions and definitions contained herein, and, further, shall constitute the Bankruptcy Court's finding that such releases are: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the Claims and Causes of Action released by such releases; (3) in the best interests of the Debtors and their Estates; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors or their Estates asserting any Claim or Cause of Action released pursuant to such releases.

F. *Releases by Releasing Parties*

As of the Effective Date, each Releasing Party hereby releases and discharges each Debtor, Estate, Wind Down Estate, and Released Party from any and all Claims, Causes of Action, Avoidance Actions, obligations, suits, judgments, damages, demands, losses, liabilities, and remedies whatsoever (including any derivative claims, asserted or assertable on behalf of the Debtors, the Wind Down Estate, or their Estates), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, accrued or unaccrued, existing or hereinafter arising, in law, equity, contract, tort, or otherwise, that such Releasing Party or its estate, heirs, executors, administrators, successors, or assigns would have been legally entitled to assert in his, her, or its own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), their Estates, the Wind Down Estate, the Debtors' in- or out-of-court restructuring efforts, the Debtors' intercompany transactions, the Prepetition Credit Agreement Documents, the Note Purchase Agreement Documents, the Professional Services Agreement Documents, the DIP Facility Documents (and any payments or transfers in connection therewith), the Sale Transaction, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Releasing Party, the formulation, preparation, dissemination, negotiation, or Filing of the Restructuring Support Agreement, the restructuring of any Claim or Interest before or during the Chapter 11 Cases, or any Restructuring, contract, instrument, document, release, or other agreement or document (including any legal opinion regarding any such transaction, contract, instrument, document, release, or other agreement or the reliance by any Releasing Party on the Sale Order, the Plan, the Confirmation Order, or the Confirmation Recognition Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, the Plan, the Plan Supplement, the DIP Facility, the DIP Facility Documents, the related agreements, instruments, and other documents (including the Definitive Documentation), the Chapter 11 Cases, the CCAA Recognition Proceedings, the filing of the Chapter 11 Cases, the filing of the CCAA Recognition Proceedings, the Sales Process, the Global Settlement, the pursuit of

Confirmation, the pursuit of Consummation, the solicitation of votes with respect to the Plan, the administration and implementation of the Plan and the Sales Process, including the issuance or distribution of any property pursuant to the Plan and the Sales Process, the Definitive Documentation, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to the foregoing; *provided, however*, that except as expressly provided under the Plan, the foregoing releases shall not release obligations of the Debtors on account of any Allowed Claims that are treated under the Plan. Notwithstanding anything to the contrary in the foregoing, (i) the releases set forth in this Article VIII.F do not release any post-Effective Date obligations of any party or Entity under the Plan, including any such obligations created in connection with the Restructuring or the Global Settlement or the assumption of the Indemnification Obligations as set forth in the Plan; (ii) nothing in this Article VIII.F shall, nor shall it be deemed to, release any Released Party from any Claims or Causes of Action arising from any obligations of any party under the Purchase Agreement; (iii) nothing in this Article VIII.F shall, nor shall it be deemed to, release any Released Party from any Claims or Causes of Action that are found, pursuant to a Final Order, to be the result of such Released Party's gross negligence, fraud, or willful misconduct; ~~and~~ (iv) nothing in this Article VIII.F shall, nor shall it be deemed to, release any of the Lender Retained Causes of Action; and (v) nothing herein shall, nor shall it be deemed to, release any of the non-Debtor Affiliates of the Released Parties party to the Prepetition Credit Agreement Documents from the Wind Down Claims. For the avoidance of doubt, nothing in this Article VIII.F shall, nor shall it be deemed to, release any Causes of Action specifically enumerated in the List of Retained Causes of Action.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases by Holders of Claims and Interests set forth in this Article VIII.F, which includes by reference each of the related provisions and definitions contained herein, and, further, shall constitute the Bankruptcy Court's finding that such releases are: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the Claims and Causes of Action released by such releases; (3) in the best interests of the Debtors and their Estates; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; (6) an essential component of the Plan and the Restructuring; and (7) a bar to any of the Releasing Parties asserting any Claim or Cause of Action released pursuant to such releases.

G. *Exculpation*

Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur liability for, and each Exculpated Party is hereby exculpated from, any Claim, Cause of Action, obligation, suit, judgment, damage, demand, loss, or liability for any claim related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, Filing, or termination of the Restructuring Support Agreement and related prepetition transactions, the Disclosure Statement, the Plan, the Sale Process, the Sale Transaction, the related agreements, instruments, and other documents (including the Definitive Documentation), the solicitation of votes with respect to the Plan, or the Restructuring, or any related contract, instrument,

release or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Person on the Plan or the Confirmation Order or Confirmation Recognition Order in lieu of such legal opinion) created or entered into in connection with the Debtors' in or out-of-court restructuring efforts, the Sale Process, the Disclosure Statement, the Plan, the Restructuring Support Agreement, the related agreements, instruments, and other documents (including the Definitive Documentation), the Chapter 11 Cases, the CCAA Recognition Proceedings, the filing of the Chapter 11 Cases, the filing of the CCAA Recognition Proceedings, the Sales Process, the Global Settlement, solicitation of votes with respect to the Plan, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan and the Sales Process, including the issuance of or distribution of any property pursuant to the Plan and the Sales Process, the related agreements, instruments, and other documents (including the Definitive Documentation), or any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related to the foregoing, except for claims related to any act or omission that is determined in a Final Order to have constituted fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Confirmation Order shall provide that the Exculpated Parties (to the extent applicable) have, and upon completion of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of, and distribution of, consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan. For the avoidance of doubt, nothing in this Article VIII.G shall, nor shall it be deemed to, exculpate the Debtors from any Lender Retained Causes of Action or any Exculpated Party from any Causes of Action (i) arising from any obligations of any party under the Purchase Agreement; or (ii) specifically enumerated in the List of Retained Causes of Action.

#### H. *Injunction*

Except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or Confirmation Order, all Entities who have held, hold, or may hold Claims, Interests, or Causes of Action that have been released pursuant to Article VIII.E or Article VIII.F, discharged pursuant to Article VIII.B, or are subject to exculpation pursuant to Article VIII.G, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Wind Down Estate, the Released Parties, or the Exculpated Parties: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (c) creating, perfecting, or enforcing any Lien or encumbrance of any kind against such Entities or the property, including, without limitation, the Transferred Assets, or the estates of such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of

**Action; or (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action. Notwithstanding anything to the contrary in the foregoing, this injunction does not enjoin any party under the Plan or under any document, instrument, or agreement (including the Disclosure Statement or set forth in the Plan Supplement, to the extent finalized) executed to implement the Plan from bringing an action in the Bankruptcy Court to enforce the terms of the Plan or such document, instrument, or agreement (including those attached to the Disclosure Statement or set forth in the Plan Supplement, to the extent finalized) executed to implement the Plan. Subject in all respects to Article XI, no entity or person may commence or pursue a Claim or Cause of Action of any kind against any Released Party or Exculpated Party that arose or arises from, in whole or in part, the Chapter 11 Cases, the CCAA Recognition Proceedings, the Debtors, the Wind Down Estate, the Plan, the Plan Supplement, the Disclosure Statement, the Restructuring Support Agreement, the Sale Process, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Plan, the Disclosure Statement, the Chapter 11 Cases, the CCAA Recognition Proceedings, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the distribution of property under the Plan, or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such Claim or Cause of Action represents a colorable Claim or Cause of Action of any kind, including negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Released Party or Exculpated Party and (ii) specifically authorizing such entity or person to bring such Claim or Cause of Action against any such Released Party or Exculpated Party. The Bankruptcy Court shall have sole and exclusive jurisdiction to determine whether a Claim or Cause of Action is colorable and, only to the extent legally permissible and as provided for in Article XI, shall have jurisdiction to adjudicate the underlying colorable Claim or Cause of Action.**

*I. Protection Against Discriminatory Treatment*

Consistent with section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against the Wind Down Estate or the Wind Down Administrator (as applicable) or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Wind Down Estate or the Wind Down Administrator (as applicable), or another Entity with whom the Wind Down Estate or the Wind Down Administrator (as applicable) have been associated, solely because each Debtor has been a debtor under chapter 11 of the Bankruptcy Code, has been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtors are granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

*J. Recoupment*

In no event shall any Holder of Claims or Interests be entitled to recoup any Claim or Interest against any Claim, right, or Cause of Action of the Debtors, the Wind Down Estate, the

Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), unless such Holder actually has performed such recoupment and provided notice thereof in writing to the Debtors on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

K. *Subordination Rights*

Any distributions under the Plan shall be received and retained free from any obligations to hold or transfer the same to any other Holder and shall not be subject to levy, garnishment, attachment, or other legal process by any Holder by reason of claimed contractual subordination rights. Any such subordination rights shall be waived, and the Confirmation Order shall constitute an injunction enjoining any Entity from enforcing or attempting to enforce any contractual, legal, or equitable subordination rights to property distributed under the Plan, in each case other than as provided in the Plan.

L. *Reimbursement or Contribution*

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Confirmation Date: (1) such Claim has been adjudicated as non-contingent; or (2) the relevant Holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered prior to the Confirmation Date determining such Claim as no longer contingent.

M. *Document Retention.*

On and after the Effective Date, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) may maintain documents in accordance with their standard document retention policy, as may be altered, amended, modified, or supplemented by the Wind Down Estate or the Wind Down Administrator (as applicable).

**ARTICLE IX.  
CONDITIONS PRECEDENT TO CONFIRMATION  
AND CONSUMMATION OF THE PLAN**

A. *Conditions Precedent to Confirmation*

It shall be a condition to Confirmation of the Plan that the following conditions, as determined by the Debtors with the consent of the DIP Agent, the Prepetition Secured Parties, and the Purchaser shall have been satisfied (or waived pursuant to the provisions of Article IX.C of the Plan):

1. the Restructuring Support Agreement shall not have been breached or terminated and shall be in full force and effect;



2. the Bankruptcy Court shall have entered a Final Order approving the Disclosure Statement with respect to the Plan as containing adequate information within the meaning of section 1125 of the Bankruptcy Code;

3. a Final DIP Approval Order shall have been entered by the Bankruptcy Court and the Final DIP Recognition Order shall have been entered by the CCAA Court, and each shall not have been breached or terminated, shall be in full force and effect, and no stay thereof shall be in effect;

4. the Purchase Agreement shall have been executed by the parties thereto, shall not have been breached or terminated and shall be in full force and effect;

5. all provisions, terms, and conditions hereof shall have been approved in the Confirmation Order;

6. the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount shall have been funded by cash on hand of the Debtors and the proceeds of the DIP Facility into a reserve account and shall be added to the outstanding obligations under the DIP Facility (less cash on hand);

7. the Special Committee's investigation shall have concluded; and

8. a motion (including any exhibits, schedules, amendments, modifications or supplements thereto) shall have been filed in the CCAA Recognition Proceedings seeking the issuance of the Sale Recognition Order pursuant the Purchase Agreement and consistent with the terms of the Restructuring Support Agreement and the Restructuring Support Agreement Documentation.

*B. Conditions Precedent to the Effective Date*

It shall be a condition to the occurrence of the Effective Date that the following conditions, as determined by the Debtors with the consent of the DIP Agent, the Prepetition Secured Parties, and the Purchaser shall have been satisfied (or waived pursuant to the provisions of Article IX.C of the Plan):

1. the Restructuring Support Agreement shall not have been breached or terminated and shall be in full force and effect;

2. the Confirmation Order and Confirmation Recognition Order shall have been entered and neither the Confirmation Order nor the Confirmation Recognition Order shall have been stayed, modified, or vacated on appeal;

3. the Sale Order shall have been entered (whether or not included as a part of the Confirmation Order and Confirmation Recognition Order, as applicable), and shall not have been stayed, modified, or vacated on appeal;

4. the Sale Transaction (including with respect to the sale of the Canadian Transferred Assets to Purchaser pursuant to the CCAA Recognition Proceedings) shall have been consummated in accordance with the terms of the Purchase Agreement;

5. a Final DIP Approval Order shall have been entered by the Bankruptcy Court and Final DIP Recognition Order shall have been entered by the CCAA Court, and each shall not have been breached or terminated, shall be in full force and effect, and no stay thereof shall be in effect;

6. the Professional Fee Escrow Account shall be funded using cash on hand of the Debtors, proceeds of the DIP Facility, or proceeds of the Sale Transaction, as applicable, in an amount equal to the Professional Fee Reserve Amount;

7. all required governmental and third-party approvals and consents, including Bankruptcy Court approval, necessary in connection with the transactions provided for in the Plan shall have been obtained, shall not be subject to unfulfilled conditions, and shall be in full force and effect, and all applicable waiting periods shall have expired without any action having been taken by any competent authority that would restrain or prevent such transactions;

8. all documents and agreements necessary to implement the Plan and the Restructuring shall have been (a) tendered for delivery and (b) effected or executed by all Entities party thereto, and all conditions precedent to the effectiveness of such documents and agreements (other than any conditions related to the occurrence of the Effective Date) shall have been satisfied or waived pursuant to the terms of such documents or agreements;

9. the Bankruptcy Court shall have approved the Plan's releases and such approval shall have been recognized and given effect in Canada by the CCAA Court;

10. all Restructuring Expenses shall have been paid in Cash in full;

11. the GUC Trust shall have been created and funded in accordance with the Plan;

12. the Post-Sale Reserve shall have been funded using cash on hand of the Debtors, proceeds of the DIP Facility, or the Sale Transaction proceeds, as applicable; and

13. the Foreign Sale Reserve shall have been funded using Sale Transaction proceeds and distributed to the Netherlands Subsidiaries.

C. *Waiver of Conditions*

The conditions precedent to Confirmation of the Plan and to the Effective Date of the Plan set forth in Article IX.A and Article IX.B may be amended, modified, supplemented, or waived in writing by mutual agreement of the Debtors, the DIP Secured Parties, the Prepetition Secured Parties, and the Purchaser without notice, leave, or order of the Bankruptcy Court or any formal action other than proceedings to confirm or consummate the Plan.

**ARTICLE X.  
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

A. *Modification and Amendments*

Subject to the limitations contained herein, in the Global Settlement, and in the Restructuring Support Agreement, the Debtors reserve the right to alter, amend, or modify the Plan, subject to the consent of the Prepetition Secured Parties, and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code, Bankruptcy Rule 3019, and the restrictions on modifications set forth in the Plan and the Restructuring Support Agreement, the Debtors expressly reserve their rights to alter, amend, or modify the Plan, one or more times, after Confirmation, and, to the extent necessary, initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan.

B. *Effect of Confirmation on Modifications*

Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and shall constitute a finding that such modifications or amendments to the Plan do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

C. *Revocation or Withdrawal of the Plan*

Subject to the conditions and limitations set forth in the Restructuring Support Agreement, the Debtors reserve the right to revoke or withdraw the Plan with respect to any or all Debtors prior to the Confirmation Date and to File subsequent plans of reorganization. If the Debtors revoke or withdraw the Plan, or if Confirmation and Consummation do not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (3) nothing contained in the Plan shall: (i) constitute a waiver or release of any Claims or Interests; (ii) prejudice in any manner the rights of the Debtors or any other Entity, including the Holders of Claims; (iii) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors or any other Entity; or (iv) be used by the Debtors or any other Entity as evidence (or in any other way) in any litigation, including with regard to the strengths or weaknesses of any of the parties' positions, arguments, or claims; *provided that*, the foregoing reservation of rights shall not in any way amend, nullify, or void any action, act, or right ratified upon the Bankruptcy Court's entry of the Sale Approval Order.



**ARTICLE XI.  
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases and all matters, arising out of, or related to, the Chapter 11 Cases and the Plan, including jurisdiction to:

1. Allow, Disallow, determine, liquidate, classify, estimate, or establish the priority, Secured, Unsecured, or subordinated status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections relating to any of the foregoing;

2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals;

3. resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Cures pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; and (c) any dispute regarding whether a contract or lease is or was executory or expired;

4. ensure that distributions to Holders of Allowed Claims or Interests are accomplished pursuant to the provisions of the Plan;

5. consider any modifications of the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code, the Confirmation Order, the Sale Approval Order or any contract, instrument, release, or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement, the Confirmation Order, or the Sale Approval Order in each case, to remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order, the Sale Approval Order, or any contract, instrument, release, or other agreement or document entered into, delivered, or created in connection with the Plan, the Disclosure Statement, the Confirmation Order, or the Sale Approval Order in such manner as may be necessary or appropriate to consummate the Plan;

6. adjudicate, decide, or resolve any motions, adversary proceedings, contested, or litigated matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

7. adjudicate, decide, or resolve any and all matters related to Causes of Action by or against a Debtor, the GUC Trust, or GUC Trustee;

8. adjudicate, decide, or resolve any and all matters related to sections 1141, 1145, and 1146 of the Bankruptcy Code;

9. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan, and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan;
10. enter and enforce any order for the sale of property pursuant to sections 363 or 1123 of the Bankruptcy Code, including for the avoidance of doubt the Sale Approval Order;
11. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;
12. adjudicate, decide, or resolve any dispute and all matters related to the Sale Transaction and Sale Transaction Documents;
13. adjudicate, decide, or resolve any dispute and all matters arising under the GUC Trust Agreement;
14. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;
15. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, discharges, releases, injunctions, exculpations, and other provisions contained in Article VIII of the Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;
16. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid pursuant to Article VII of the Plan;
17. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;
18. determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, the Plan Supplement, or the Sale Approval Order;
19. adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein, including any Restructuring Transactions;
20. determine requests for the payment of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code;
21. hear and determine matters concerning state, local, and U.S. federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;
22. hear and determine matters concerning section 1145 of the Bankruptcy Code;

23. hear and determine all disputes involving the existence, nature, or scope of the release provisions set forth in the Plan, including any dispute or matter relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

24. enforce all orders previously entered by the Bankruptcy Court;

25. enter a final decree concluding or closing the Chapter 11 Cases;

26. enforce the injunction, release, and exculpation provisions set forth in Article VIII of the Plan;

27. hear any other matter not inconsistent with the Bankruptcy Code; and

28. the CCAA Court shall retain jurisdiction over the CCAA Recognition Proceedings and all matters, arising out of, or related to, the CCAA Recognition Proceedings including the orders of the CCAA Court.

## **ARTICLE XII. MISCELLANEOUS PROVISIONS**

### **A. *Immediate Binding Effect***

Subject to Article IX.B of the Plan and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the final versions of the documents contained in the Plan Supplement, the Confirmation Order, and the Sale Approval Order shall be immediately effective and enforceable and deemed binding upon the Debtors or the Wind Down Estate, as applicable, and any and all Holders of Claims or Interests (regardless of whether the Holders of such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions provided for in the Plan, each Entity acquiring property under the Plan or the Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases. All Claims and debts shall be fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

### **B. *Additional Documents***

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee, as applicable, and all Holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

C. *Reservation of Rights*

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court enters the Confirmation Order, and the Confirmation Order shall have no force or effect unless the Effective Date occurs. Prior to the Effective Date, neither the Plan, any statement or provision contained in the Plan, nor any action taken or not taken by any Debtor with respect to the Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Interests.

D. *Successors and Assigns*

The rights, benefits, and obligations of any Entity named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, manager, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

E. *Service of Documents*

Any pleading, notice, or other document required by the Plan to be served on or delivered to the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee as applicable, shall be served on:

**Debtors or the  
Wind Down Estate**

**KidKraft Inc.**  
4630 Olin Road  
Dallas, TX 75244  
Attn: Geoffrey Walker

**Attorneys to the Debtors**

**Vinson & Elkins LLP**  
2001 Ross Avenue, Suite 3900  
Dallas, TX 75201  
Attn: William L. Wallander  
Matthew D. Struble  
Kiran Vakamudi

and

**Vinson & Elkins LLP**  
1114 Avenue of the Americas, 32nd Floor  
New York, NY 10036  
Attn: David S. Meyer  
Lauren R. Kanzer

**Wind Down Administrator**

**SierraConstellation Partners, LLC**  
3090 Olive St., 3rd Floor  
Dallas, TX 75219  
Attn: Carl Moore

**GUC Trustee**

**Jiangang Ou, Esq.**  
1222 Howard Lane  
Bellaire, Texas 77401

**United States Trustee**

**Office of the United States Trustee  
for the Northern District of Texas**  
Earle Cabell Federal Building  
1100 Commerce Street, Room 976  
Attn: Meredyth Kippes

**Prepetition Credit Agreement  
Agent and DIP Agent**

**GB Funding, LLC**  
101 Huntington Avenue, Suite 1100  
Boston, Massachusetts 02199  
Attn: David Braun  
Kyle Shonak

**Counsel to the Prepetition Credit  
Agreement Agent and DIP Agent**

**Katten Muchin Rosenman LLP**  
50 Rockefeller Plaza  
New York, NY 10020  
Attn: Cindi M. Giglio  
Lucy F. Kweskin

**Purchaser**

**Backyard Products LLC**  
317 S. Main Street  
Ann Arbor, MI 48104  
Attn: Thomas van der Meulen

**Counsel to Purchaser**

**King & Spalding LLP**  
1185 6th Avenue  
New York, NY 10036  
Attn: Spencer Stockdale  
Michael Fishel  
Jeff Dutson

**MidOcean**

**MidOcean Partners**  
245 Park Avenue  
38th Floor  
New York, NY 10167  
Attn: Daniel Penn

**Counsel to MidOcean**

**Gibson Dunn & Crutcher LLP**

200 Park Avenue  
New York, NY 10166  
Attn: Andrew Herman

F. *Term of Injunctions or Stays*

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court or the CCAA Court, and existing on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan, the Confirmation Order, the Confirmation Recognition Order or the Sale Order shall remain in full force and effect in accordance with their terms.

G. *Entire Agreement*

Except as otherwise indicated, and without limiting the effectiveness of the Global Settlement and the Restructuring Support Agreement and any related agreements thereto, on the Effective Date, the Plan, the Plan Supplement, and the Confirmation Order shall supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

H. *Exhibits*

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the Debtors' restructuring website at <https://www.stretto.com/kidkraft> or the Bankruptcy Court's website at <https://www.txnb.uscourts.gov/>. To the extent any exhibit or document is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall control.

I. *Nonseverability of Plan Provisions*

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such terms or provision shall then be applicable as altered or interpreted, *provided that* any such alteration or interpretation shall be acceptable to the Debtors, the DIP Agent, the Prepetition Secured Parties, and the Purchaser. Notwithstanding any such alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such alteration or

interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtors', the Prepetition Secured Parties', and the Purchaser's consent; and (3) nonseverable and mutually dependent.

J. *Votes Solicited in Good Faith*

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities (if any) offered and sold under the Plan and any previous plan, and, therefore, neither any of such parties or individuals nor the Wind Down Estate or Wind Down Administrator (as applicable) will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities (if any) offered and sold under the Plan and any previous plan.

K. *Request for Expedited Determination of Taxes*

The Debtors, the Wind Down Estate, the Wind Down Administrator, or the GUC Trustee, as the case may be, shall have the right to request an expedited determination under section 505(b) of the Bankruptcy Code with respect to tax returns filed, or to be filed, for any and all taxable periods ending after the Petition Date through the Effective Date.

L. *Closing of Chapter 11 Cases*

The Wind Down Estate or the Wind Down Administrator (as applicable) shall, promptly after the full administration of the Chapter 11 Cases, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to issue a final decree closing the Chapter 11 Cases and file materials with the CCAA Court to terminate the CCAA Recognition Proceedings.

M. *No Stay of Confirmation Order*

The Confirmation Order and Confirmation Recognition Order shall contain a waiver of any stay of enforcement otherwise applicable, including pursuant to Bankruptcy Rules 3020(e) and 7062.

N. *Waiver or Estoppel*

Each Holder of a Claim or Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement or the Debtors,' Wind Down Estate's, or the Wind Down Administrator's (as applicable) right to enter into settlements was not

disclosed in the Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court or the Noticing and Claims Agent prior to the Confirmation Date.

O. *Dissolution of Statutory Committees*

On the Effective Date, any statutory committee formed in connection with the Chapter 11 Cases shall dissolve automatically and all members thereof (solely in their capacities as such) shall be released and discharged from all rights, duties, and responsibilities arising from, or related to, the Chapter 11 Cases.

\* \* \* \*



Respectfully submitted, as of the date first set forth below,

Dated: ~~June 20~~July 6, 2024  
Dallas, Texas

KIDKRAFT, INC.  
on behalf of itself and all other Debtors

/s/ Geoffrey Walker  
Geoffrey Walker  
President & Chief Executive Officer

THIS IS **EXHIBIT “G”** REFERRED TO IN THE AFFIDAVIT OF  
GEOFFREY WALKER SWORN BEFORE ME over video  
teleconference this 11<sup>th</sup> day of July, 2024 pursuant to O. Reg 431/20,  
Administering Oath or Declaration Remotely. The affiant was located in  
the City of Dallas, in the State of Texas, while the Commissioner was  
located in the City of Toronto, in the Province of Ontario.



---

Commissioner for Taking Affidavits  
EMILIE DILLON (LSO # 85199L)

William L. Wallander (Texas Bar No. 20780750)  
Matthew D. Struble (Texas Bar No. 24102544)  
Kiran Vakamudi (Texas Bar No. 24106540)  
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David S. Meyer (admitted *pro hac vice*)  
Lauren R. Kanzer (admitted *pro hac vice*)  
**VINSON & ELKINS LLP**  
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New York, NY 10036  
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Fax: 212.237.0100  
dmeyer@velaw.com;  
lkanzer@velaw.com

**ATTORNEYS FOR THE DEBTORS  
AND DEBTORS IN POSSESSION**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:** § Case No. 24-80045-mvl11  
§  
**KIDKRAFT, INC., et al.,** § (Chapter 11)  
§  
**Debtors.<sup>1</sup>** § (Jointly Administered)  
§

**NOTICE OF FILING OF (I) THIRD AMENDED  
JOINT PREPACKAGED CHAPTER 11 PLAN AND  
(II) REVISED PROPOSED PLAN MODIFICATION ORDER**

**PLEASE TAKE NOTICE** that, on May 10, 2024 (the “*Petition Date*”), the above-captioned debtors and debtors in possession (collectively, the “*Debtors*”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code and commenced these chapter 11 cases in the United States Bankruptcy Court for the Northern District of Texas (the “*Court*”) and filed the *Debtors’ Joint Prepackaged Chapter 11 Plan* [Docket No. 28].

**PLEASE TAKE FURTHER NOTICE** that, on June 20, 2024, the Debtors filed the *Debtors’ Amended Joint Prepackaged Chapter 11 Plan* [Docket No. 220] (the “*First Amended Plan*”).

**PLEASE TAKE FURTHER NOTICE** that, on June 24, 2024, the Court entered the *Findings of Fact, Conclusions of Law, and Order (I) Approving the Disclosure Statement; and (II)*

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<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft Partners, LLC (3268), KidKraft International IP Holdings, LLC (1841), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc. (4302). The location of the Debtors’ U.S. corporate headquarters and the Debtors’ service address is: 4630 Olin Road, Dallas, TX 75244.

*Confirming the Debtors' Amended Joint Prepackaged Chapter 11 Plan* [Docket No. 241] which, among other things, confirmed the First Amended Plan.

**PLEASE TAKE FURTHER NOTICE** that, on July 6, 2024, the Debtors filed the *Debtors' Second Amended Joint Prepackaged Chapter 11 Plan* [Docket No. 265] (the "**Second Amended Plan**").

**PLEASE TAKE FURTHER NOTICE** that, on July 6, 2024 the Debtors filed the *Emergency Joint Motion of the Debtors and Prepetition and DIP Secured Parties for an Order (I) Approving Limited Modifications to the Confirmed Plan Pursuant to 11 U.S.C. § 1127(B); and (II) Granting Related Relief* [Docket No. 266] (the "**Plan Modification Motion**"), seeking entry of an order approving certain post-confirmation modifications reflected in the Second Amended Plan (the "**Proposed Plan Modification Order**").

**PLEASE TAKE FURTHER NOTICE** that, on July 9, 2024, at 2:30 p.m. (Central Time) the Court conducted a hearing regarding the Second Amended Plan and the relief requested in the Plan Modification Motion (the "**Plan Modification Hearing**").

**PLEASE TAKE FURTHER NOTICE** that, at the Plan Modification Hearing, counsel for the Debtors, the Prepetition and DIP Secured Parties, the Purchaser, and the Committee (collectively, the "**Parties**") advised the Court that the Parties had agreed to further amend the Second Amended Plan to resolve certain issues among the Parties.

**PLEASE TAKE FURTHER NOTICE** that, in accordance with the record at the Plan Modification Hearing, the Debtors hereby submit the *Debtors' Third Amended Joint Chapter 11 Plan* substantially in the form attached as **Exhibit A** (the "**Third Amended Plan**") and a revised form of the Proposed Plan Modification Order attached as **Exhibit B** (the "**Revised Proposed Plan Modification Order**").<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that, for the convenience of the Court and all parties in interest, a redline comparison of the Third Amended Plan against the Second Amended Plan is attached as **Exhibit A-1**, and a redline comparison of the Revised Proposed Plan Modification Order against the Proposed Plan Modification Order is attached as **Exhibit B-1**.

*[Remainder of page intentionally left blank]*

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Third Amended Plan.

Dated: July 10, 2024  
Dallas, Texas

/s/ Lauren R. Kanzer

**VINSON & ELKINS LLP**

William L. Wallander (Texas Bar No. 20780750)

Matthew D. Struble (Texas Bar No. 24102544)

Kiran Vakamudi (Texas Bar No. 24106540)

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[kvakamudi@velaw.com](mailto:kvakamudi@velaw.com)

- and -

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**ATTORNEYS FOR THE DEBTORS  
AND DEBTORS IN POSSESSION**

**CERTIFICATE OF SERVICE**

I certify that on July 10, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ Matthew D. Struble  
One of Counsel

**Exhibit A**

**Third Amended Plan**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:** § **Case No. 24-80045-mvl11**  
§  
**KIDKRAFT, INC., et al.,** § **(Chapter 11)**  
§  
**Debtors.<sup>1</sup>** § **(Jointly Administered)**  
§

**DEBTORS' THIRD AMENDED JOINT PREPACKAGED CHAPTER 11 PLAN**

---

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New York, NY 10036

**ATTORNEYS FOR THE DEBTORS AND  
DEBTORS IN POSSESSION**

**Dated: July 10, 2024**

---

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft Partners, LLC (3268), KidKraft International IP Holdings, LLC (1841), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc (4302). The location of the Debtors' U.S. corporate headquarters and the Debtors' service address is: 4630 Olin Road, Dallas, TX 75244.



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## INTRODUCTION

KidKraft and its affiliated debtors, as Debtors and debtors in possession in the above-captioned chapter 11 cases, jointly propose this prepackaged chapter 11 plan for the resolution of outstanding Claims against, and Interests in, the Debtors. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims against, and Interests in, such Debtor. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in Article I.A of the Plan or the Bankruptcy Code or Bankruptcy Rules. Holders of Claims and Interests should refer to the Disclosure Statement for a discussion of the Debtors' history, businesses, Assets, results of operations, and historical financial information, as well as a summary and description of the Plan. The Debtors are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

**ALL HOLDERS OF CLAIMS WHO ARE ELIGIBLE TO VOTE ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.**

## ARTICLE I. DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW

### A. *Defined Terms*

As used in the Plan, capitalized terms have the meanings set forth below.

1. “**363 Sale**” means the sale of the Transferred Assets pursuant to section 363 of the Bankruptcy Code in accordance with the terms of the Purchase Agreement and Sale Approval Order.

2. “**503(b)(9) Claim**” means a Claim pursuant to section 503(b)(9) of the Bankruptcy Code for the value of goods received by the Debtors in the 20 days immediately prior to the Petition Date and sold to the Debtors in the ordinary course of the Debtors' business.

3. “**549 Causes of Action**” means any Claim or Cause of Action pursuant to section 549 of the Bankruptcy Code.

4. “**Adequate Protection Claim**” means any Claim for adequate protection within the meaning of section 361 of the Bankruptcy Code arising under applicable law or pursuant to Final Order of the Bankruptcy Court.

5. “**Administrative Expense Claim**” means any Claim (other than any Adequate Protection Claims or DIP Claims) for costs and expenses of administration of the Debtors' Estates pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (i) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Debtors' Estates and operating the Debtors' businesses, (ii) any Allowed requests for compensation or expense reimbursement for making a substantial

contribution in the Chapter 11 Cases pursuant to sections 503(b)(3), (4), and (5) of the Bankruptcy Code, and (iii) any Unpaid Employee Severance Obligations.

6. “**Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount**” means the amount set forth in the Approved Budget (or as otherwise agreed upon by the Debtors, the DIP Secured Parties, and the Purchaser), and funded by cash on hand of the Debtors and the proceeds of the DIP Facility prior to the Confirmation Date, sufficient to satisfy the agreed upon estimated amount of the Allowed Administrative Expense Claims, Allowed Priority Tax Claims, and Allowed Other Priority Claims; *provided that* in no event will the DIP Secured Parties’ obligations to provide such funding exceed the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount.

7. “**Administrative Expense Claims Bar Date**” means the deadline for Filing requests for payment of Administrative Expense Claims (other than 503(b)(9) Claims), which: (a) with respect to Administrative Expense Claims other than Professional Fee Claims, shall be 30 days after the Effective Date; and (b) with respect to Professional Fee Claims of Professionals, shall be 45 days after the Effective Date.

8. “**Affiliate**” shall have the meaning set forth in section 101(2) of the Bankruptcy Code when used in reference to a Debtor, and when used in reference to an Entity other than a Debtor, means any other Entity that controls, is controlled by, or is under common control with such Entity, other than a Debtor.

9. “**Allowed**” means with reference to any Claim or Interest, (i) any Claim or Interest arising on or before the Effective Date (a) as to which no objection to allowance has been interposed within the time period set forth in the Plan and such Claim or Interest is not Disputed or (b) as to which any objection has been determined by a Final Order of the Bankruptcy Court to the extent such objection is determined in favor of the respective Holder, (ii) any Claim or Interest as to which the liability of the Debtors and the amount thereof are determined by a Final Order of a court of competent jurisdiction other than the Bankruptcy Court, or (iii) any Claim or Interest expressly allowed under the Plan; *provided, however*, that notwithstanding the foregoing, the Wind Down Estate (to the extent applicable) will retain all claims and defenses with respect to Allowed Claims that are Reinstated or otherwise Unimpaired pursuant to the Plan.

10. “**Approved Budget**” means the weekly budget, as defined in paragraph G(iv) of the DIP Approval Order.

11. “**Assets**” means all of the Debtors’ property, rights, and interests that are property of the Estates pursuant to section 541 of the Bankruptcy Code.

12. “**Assigned Avoidance Actions**” means all Avoidance Actions other than those against (i) any parties identified on Schedule 1 to the Global Settlement Term Sheet, unless any such party makes a GUC Settlement Opt-In Election, (ii) any other “Designated Parties” (as that term is defined in the Purchase Agreement) under Section 2.1(k)(ii) through (iv) of the Purchase Agreement, and (iii) any Released Parties.

13. “**Assumed Liabilities**” shall have the meaning set forth in Section 2.3 of the Purchase Agreement.

14. “**Avoidance Actions**” means any and all actual or potential Claims and Causes of Action to avoid a transfer of property or an obligation incurred by the Debtors arising under chapter 5 of the Bankruptcy Code, including sections 502, 510, 544, 545, 547 through 553, and 724(a) of the Bankruptcy Code or under similar or related state or federal statutes and common law, including fraudulent transfer and preference laws.

15. “**Ballots**” means the ballots distributed to certain Holders of Impaired Claims entitled to vote on the Plan upon which such Holders shall, among other things, indicate their acceptance or rejection of the Plan in accordance with the Plan and the procedures governing the solicitation process.

16. “**Bankruptcy Code**” means title 11 of the United States Code, as amended and in effect during the pendency of the Chapter 11 Cases.

17. “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure promulgated under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court, in each case, as amended from time to time.

18. “**Bankruptcy Court**” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division.

19. “**Bar Date Order**” means the order entered by the Bankruptcy Court setting the Claims Bar Date and the Governmental Bar Date.

20. “**Bidder Protections**” means, collectively, the Break-Up Fee and Expense Reimbursement.

21. “**Break-Up Fee**” shall have the meaning set forth in Section 9.3(a) of the Purchase Agreement, as may be modified by a subsequent order of the Bankruptcy Court.

22. “**Business Day**” means any day other than a Saturday, Sunday, or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

23. “**Canadian Debtors**” means, collectively, the following Debtors: Solowave Design Holdings Limited, Solowave Design LP, Solowave Design Inc., and Solowave International Inc. Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Canadian Debtors shall mean the Wind Down Estate to the extent context requires.

24. “**Canadian Property**” means the assets, undertakings and property of the Canadian Debtors and any other assets, undertakings and property of the Debtors that may be located in Canada.

25. “**Canadian Transferred Assets**” means the Transferred Assets of the Canadian Debtors and any other Transferred Assets of the Debtors that may be located in Canada.

26. “**Cash**” means cash in legal tender of the United States of America and cash equivalents, including bank deposits, checks, and other similar items.

27. “**Cause of Action**” means any action, claim, cause of action, controversy, third-party claim, dispute, demand, right, action, Lien, indemnity, contribution, guaranty, suit, obligation, liability, loss, debt, fee or expense, damage, interest, judgment, account, defense, remedy, power, privilege, license, and franchise of any kind or character whatsoever, whether known, unknown, foreseen or unforeseen, existing or hereafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, Disputed or undisputed, Secured or Unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract, in tort, in law, or in equity or pursuant to any other theory of law. For the avoidance of doubt, a “Cause of Action” includes: (a) any right of setoff, counterclaim, or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Interests; (c) any Claim pursuant to section 362 or chapter 5 of the Bankruptcy Code (including Avoidance Actions); (d) any claim or defense including fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any state or foreign law fraudulent transfer or similar claim.

28. “**CCAA Court**” means the Ontario Superior Court of Justice (Commercial List).

29. “**CCAA Recognition Proceedings**” means the recognition proceedings commenced pursuant to Part IV of the *Companies’ Creditors Arrangement Act* (Canada) in respect of the Chapter 11 Cases of KidKraft and the Canadian Debtors.

30. “**Chapter 11 Cases**” means each individual case or the jointly administered cases pending under chapter 11 of the Bankruptcy Code for each individual Debtor or the Debtors, as applicable, in the Bankruptcy Court.

31. “**Claim**” shall have the meaning set forth in section 101(5) of the Bankruptcy Code, against any Debtor.

32. “**Claims Bar Date**” means such time and date established pursuant to the Bar Date Order by which Proofs of Claim (other than for Administrative Expense Claims and Claims held by Governmental Units), including 503(b)(9) Claims, must be Filed.

33. “**Claims Objection Deadline**” means the deadline for objecting to a Claim against a Debtor, which shall be on the date that is the later of (a) 120 days after the Effective Date, subject to extension by order of the Bankruptcy Court, (b) 90 days after the Filing of a Proof of Claim, or (c) such other period of limitation as may be fixed by the Plan, the Confirmation Order, the Bankruptcy Rules, or a Final Order for objecting to a Claim.

34. “**Claims Register**” means the official register of Claims against and Interests in the Debtors maintained by the Noticing and Claims Agent.

35. “**Class**” means a category of Claims against or Interests in the Debtors as set forth in Article III of the Plan pursuant to section 1122(a) of the Bankruptcy Code.

36. “**Committee**” means the official committee of unsecured creditors of the Debtors appointed by the U.S. Trustee in the Chapter 11 Cases on May 23, 2024, pursuant to section 1102 of the Bankruptcy Code.

37. “**Confirmation**” means the entry of the Confirmation Order on the docket of the Chapter 11 Cases.

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

39. “**Confirmation Hearing**” means the hearing held by the Bankruptcy Court to consider Confirmation of the Plan pursuant to section 1128(a) of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

40. “**Confirmation Order**” means the Order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code, which Order may include the Sale Approval Order.

41. “**Confirmation Recognition Order**” means an Order of the CCAA Court in the CCAA Recognition Proceedings recognizing and giving effect in Canada to the Confirmation Order.

42. “**Consummation**” means the occurrence of the Effective Date.

43. “**Cure Claim**” means a monetary Claim based upon a Debtor’s defaults under an Executory Contract or Unexpired Lease at the time such contract or lease is assumed, or assumed and assigned by such Debtor pursuant to section 365 of the Bankruptcy Code.

44. “**Cure Notice**” means a notice of a proposed amount to be paid on account of a Cure Claim in connection with an Executory Contract or Unexpired Lease to be assumed under the Plan pursuant to section 365 of the Bankruptcy Code, which notice shall include (a) procedures for objecting to proposed assumptions of Executory Contracts and Unexpired Leases, (b) Cure Claims to be paid in connection therewith and (c) procedures for resolution by the Bankruptcy Court of any related disputes.

45. “**D&O Liability Insurance Policies**” means all unexpired directors’, managers’, and officers’ liability insurance policies (including any “tail policy”) maintained by any of the Debtors with respect to directors, managers, officers, and employees of the Debtors.

46. “**Debtor Retained Causes of Action**” means any and all potential Claims and Causes of Action held by the Debtors against (i) the Debtors’ Officers; or (ii) SCP, in each case related solely to: (a) the Debtors’ reporting obligations under the DIP Approval Order or DIP Facility Documents; or (b) any payment in violation of the Prepetition Credit Agreement Documents, the Restructuring Support Agreement, and/or the DIP Documents; *provided*, that any potential recovery against the Debtors’ Officers shall be limited to insurance proceeds (if any) available from the Debtors’ insurance policies, including the D&O Liability Insurance Policies; *provided, further*, that such insurance limitation shall not apply to Claims and Causes of Action arising as a result of gross negligence, fraud, or willful misconduct. Notwithstanding any other releases provided herein by the Debtors, the Debtor Retained Causes of Action shall not be released; *provided, further*, that any and all potential Claims and Causes of Action held by the



Debtors against any Released Party other than those parties specifically identified in clauses (i) and (ii) above shall not constitute Debtor Retained Causes of Action.

47. “**Debtors**” means, collectively, the following: KidKraft, Inc.; KidKraft Europe, LLC; KidKraft Intermediate Holdings, LLC; KidKraft International Holdings, Inc.; KidKraft International IP Holdings, LLC; KidKraft Partners, LLC; Solowave Design Corp.; Solowave Design Holdings Limited; Solowave Design Inc.; Solowave Design LP; and Solowave International Inc. Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors shall mean the Wind Down Estate to the extent context requires.

48. “**Debtors’ Officers**” means the Debtors’ officers as of the Petition Date; *provided*, that any such officer shall be deemed not to be a Debtors’ Officer for so long as such officer is employed by the Purchaser.

49. “**Definitive Documentation**” means, without limitation, the following definitive documents and agreements: (a) this Plan and all exhibits hereto, including the Plan Supplement documents; (b) the Confirmation Order and Confirmation Recognition Order; (c) the Disclosure Statement; (d) the solicitation materials with respect to the Plan; (e) the Purchase Agreement, including the exhibits and schedules thereto; (f) the Sale Order, if not incorporated as part of the Confirmation Order and Confirmation Recognition Order, as applicable; (g) any documentation or budget related to the Post-Sale Reserve and Foreign Sale Reserve; (h) the DIP Order; (i) all “first day” motions, applications, and other documents that any Debtor intends to file with the Bankruptcy Court and seeks to have heard on an expedited basis at the “first-day hearing” in the Chapter 11 Cases and any proposed orders related thereto; (j) all motions, applications, and other documents that any Debtor (including a foreign representative appointed by the Bankruptcy Court for any Debtor) or any Canadian Affiliates of Debtors intend to file with the CCAA Court in the CCAA Recognition Proceedings, and any proposed orders related thereto; (k) any provision in any documentation regarding (i) releases of Claims, causes of action, and avoidance actions or (ii) Assumed Liabilities or Transferred Contracts under the Purchase Agreement; (l) such other agreements, instruments, and documentation as may be necessary or reasonably desirable to consummate and document the Restructuring and Sale Transaction (including, without limitation, in connection with the CCAA Recognition Proceedings); and (m) to the extent not included, any motions and related proposed orders seeking approval of each of the above. For the avoidance of doubt, the Definitive Documentation shall be in form and substance acceptable to the Debtors, the Prepetition Secured Parties, the Purchaser, and with respect to MidOcean, solely with respect to any provision therein having a material effect on MidOcean or releasing Claims or causes of action by or against MidOcean or its affiliates thereunder.

50. “**De Minimis Assets**” means assets with a total transaction value, as calculated within the Debtors’ or Wind Down Administrator’s reasonable discretion, in consultation with the Prepetition Secured Parties, less than or equal to \$50,000.

51. “**DIP Agent**” means GB Funding, LLC, in its capacity as administrative agent and collateral agent under the DIP Facility.

52. “**DIP Approval Order**” means the interim order entered by the Bankruptcy Court approving the DIP Facility and the Final DIP Approval Order.

53. “**DIP Claim**” means any Claim of the DIP Agent or any DIP Lender on account of or arising from, under or in connection with the DIP Facility.

54. “**DIP Facility**” means the senior secured superpriority debtor-in-possession financing facility to be provided by the DIP Lenders, all as set forth in, and consistent with and subject to, the terms and conditions of the DIP Facility Documents.

55. “**DIP Facility Documents**” means the DIP Facility Term Sheet, the DIP Credit Agreement (as applicable) and all other agreements, documents, instruments, and amendments related thereto, including any DIP Order, and any guaranty agreements, pledge and collateral agreements, UCC financing statements, or other perfection documents, subordination agreements, fee letters, and any other security agreements.

56. “**DIP Facility Term Sheet**” means that certain term sheet regarding the terms of debtor-in-possession financing between KidKraft, Inc., as borrower, certain of KidKraft’s subsidiaries and affiliates, as guarantors, the DIP Agent, and the DIP Lender, attached as Exhibit A to the DIP Approval Order.

57. “**DIP Lender**” means 1903 Partners, LLC, in its capacity as lender under the DIP Facility.

58. “**DIP Liens**” mean the Liens granted to the DIP Agent under the DIP Order to secure the DIP Claims.

59. “**DIP Order**” means the DIP Approval Order and the DIP Recognition Order, as applicable.

60. “**DIP Recognition Order**” means one or more orders of the CCAA Court in the CCAA Recognition Proceedings recognizing and giving effect in Canada to the DIP Approval Order, including the Final DIP Recognition Order.

61. “**DIP Secured Parties**” means collectively, the DIP Lender and the DIP Agent, in their respective capacities under the DIP Facility.

62. “**DIP Secured Parties Advisors**” means Katten Muchin Rosenman LLP, as counsel to the DIP Secured Parties and Fasken Martineau DuMoulin LLP as Canadian Counsel to the DIP Secured Parties.

63. “**Disallowed**” means, with respect to any Claim, or any portion thereof, that such Claim, or such portion thereof, is not Allowed; *provided, however*, that a Disputed Claim shall not be considered Disallowed until so determined by entry of a Final Order.

64. “**Disbursing Agent**” means the Debtors, the Wind Down Estate, the GUC Trust, or the Entity or Entities selected by the Debtors, the Wind Down Estate, or the GUC Trust as applicable, to make or facilitate distributions pursuant to the Plan.

65. “**Disclosure Statement**” means the *Disclosure Statement for the Debtors’ Joint Prepackaged Chapter 11 Plan*, dated as of May 8, 2024, as may be amended, supplemented, or

modified from time to time, including all exhibits and schedules thereto and references therein that relate to the Plan, that is prepared and distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law.

66. “**Disputed**” means, with respect to any Claim or Interest, that such Claim or Interest (a) is not yet Allowed, (b) is not Disallowed by the Plan, the Bankruptcy Code, or a Final Order, as applicable, (c) as to which a dispute is being adjudicated by a court of competent jurisdiction in accordance with non-bankruptcy law, or (d) is or is hereafter listed in the Schedules as contingent, unliquidated, or disputed and for which a Proof of Claim is or has been timely Filed in accordance with the Bar Date Order.

67. “**Dissolution Transactions**” means the transactions that the Debtors or Wind Down Administrator, with the consent of the Prepetition Secured Parties, determine to be necessary or appropriate to implement the terms of the Plan, and ultimately result in the dissolution or other termination of the corporate entities that comprise the Debtors.

68. “**Distributable Value**” means (a) the Purchase Price *plus* (b) any of the Debtors’ cash on hand as of the Effective Date *plus* (c) proceeds of the monetization of any Excluded Assets of the Debtors, whenever received by the Debtors or the Wind Down Estates *plus* (d) surrender of collateral or proceeds of any other collateral securing the DIP Claims or Prepetition Secured Party Claims, whenever received by the Debtors or the Wind Down Estates; *minus* (e) amounts held-back to secure any purchase price adjustments pursuant to the Purchase Agreement (unless and until distributed to the Debtors in accordance therewith); *minus* (f) amounts necessary to fund the Professional Fee Escrow Account in the Professional Fee Reserve Amount; *minus* (g) amounts necessary to satisfy Restructuring Expenses; *minus* (h) amounts necessary to fund the Post-Sale Reserve; *minus* (g) amounts necessary to fund the Foreign Sale Reserve; *provided that* any unused amounts remaining from the Professional Fee Escrow Account, the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount, and the Post-Sale Reserve shall be considered Distributable Value; *provided that*, for the avoidance of doubt, no GUC Trust Assets shall be included as Distributable Value.

69. “**Distribution Record Date**” means the record date for purposes of making distributions under the Plan on account of Allowed Claims, which date shall be the Confirmation Date or such other date as designated in an order of the Bankruptcy Court.

70. “**Effective Date**” means the date selected by the Debtors on which: (a) no stay of the Confirmation Order, Confirmation Recognition Order or Sale Order (if separately entered) is in effect; (b) all conditions precedent specified in Article IX have been satisfied or waived (in accordance with Article IX.C); and (c) the Plan becomes effective; *provided, however*, that if such date does not occur on a Business Day, the Effective Date shall be deemed to occur on the first Business Day after such date.

71. “**Entity**” shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

72. “**Estate**” means, as to each Debtor, the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

73. “**Excluded Assets**” shall have the meaning set forth in Section 2.2 of the Purchase Agreement.

74. “**Exculpated Party**” means each of the following solely in its capacity as such and to the maximum extent permitted by law: (a) the Debtors; (b) the Committee; and (c) the members of the Committee, solely in their capacities as such.

75. “**Executory Contract**” means a contract to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

76. “**Expense Reimbursement**” shall have the meaning set forth in Section 9.3(a) of the Purchase Agreement, as may be modified by a subsequent order of the Bankruptcy Court.

77. “**Federal Judgment Rate**” means the federal judgment rate in effect as of the Petition Date, compounded annually.

78. “**File,**” “**Filed,**” or “**Filing**” means file, filed, or filing in the Chapter 11 Cases with the Bankruptcy Court or, with respect to the filing of a Proof of Claim, the Noticing and Claims Agent or the Bankruptcy Court through the PACER or CM/ECF website.

79. “**Final Decree**” means the decree contemplated under Bankruptcy Rule 3022.

80. “**Final DIP Approval Order**” means the Final Order entered by the Bankruptcy Court approving the DIP Facility.

81. “**Final DIP Recognition Order**” means the Final Order of the CCAA Court recognizing and giving effect in Canada to the Final DIP Approval Order.

82. “**Final Order**” means an order or judgment of a court of competent jurisdiction that has been entered on the docket maintained by the clerk of such court, which has not been reversed, vacated, or stayed and as to which (i) the time to appeal, petition for certiorari, or move for a new trial, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for a new trial, reargument, or rehearing shall then be pending, or (ii) if an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought, such order or judgment shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari, or move for a new trial, reargument, or rehearing shall have expired; provided, however, that no order or judgment shall fail to be a “Final Order” solely because of the possibility that a motion under Rules 59 or 60 of the Federal Rules of Civil Procedure or any analogous Bankruptcy Rule (or any analogous rules applicable in another court of competent jurisdiction) or sections 502(j) or 1144 of the Bankruptcy Code has been or may be filed with respect to such order or judgment.

83. “**Foreign Sale Reserve**” means the amount of the Purchase Price allocated to the inventory transferred from the Netherlands Subsidiaries to facilitate the Sale Transaction, which amount will be distributed from Debtors to the Netherlands Subsidiaries pursuant to the Plan.

84. “**General Unsecured Claim**” means any Claim that is not secured, subordinated, or entitled to priority under the Bankruptcy Code or any Final Order of the Bankruptcy Court (other than an Intercompany Claim or a Subordinated Claim).

85. “**Global Settlement**” means the global settlement between the Global Settlement Parties pursuant to the term sheet (the “**Global Settlement Term Sheet**”) attached to the *Notice of Filing Global Settlement Term Sheet* [Docket No. 195].

86. “**Global Settlement Parties**” means the Debtors, the Committee, the DIP Secured Parties, the Prepetition Secured Parties, the Purchaser, and MidOcean.

87. “**Governmental Bar Date**” means such time and date established pursuant to the Bar Date Order by which Proofs of Claim of Governmental Units must be Filed.

88. “**Governmental Unit**” shall have the meaning set forth in section 101(27) of the Bankruptcy Code.

89. “**GUC Critical Vendor Cash**” means any amounts permitted to be paid under the *Final Order (I) Authorizing the Debtors to Pay (A) Critical Vendors, (B) Lien Claimants, and (C) 503(b)(9) Claimants; (II) Confirming Administrative Expense Priority of Outstanding Orders; and (III) Granting Related Relief* [Docket No. 200] that are unused as of the Effective Date (with the Debtors having sole discretion to pay amounts authorized under such order, except that any Allowed Claims entitled to priority status under section 503(b)(9) of the Bankruptcy Code shall be paid in full to the Holders thereof).

90. “**GUC L/C Cash**” means 40% of any cash collateral recovered from the former prepetition agent pursuant to the Assignment and Assumption dated as of January 31, 2024 by and between (i) Antares AssetCo LP, Antares Capital LP, Antares Holdings LP, Antares CLO 2017-2, LTD., Antares CLO 2018-1, LTD., Fifth Third Bank, N.A., and PNC Bank, N.A., as assignors, and (ii) 1903 Partners, LLC, as assignee.

91. “**GUC Purchase Price Cash**” means (i) \$350,000 if, on the Effective Date, the calculation of the Purchase Price Calculation is within a 0-5% variance of \$39,322,916; (ii) \$250,000 if, on the Effective Date, the Purchase Price Calculation is within a 6-10% variance of \$39,322,916; (iii) \$200,000 if, on the Effective Date, the Purchase Price Calculation is within a 11-20% variance of \$39,322,916; or (iv) \$150,000 if, on the Effective Date, the Purchase Price Calculation is a more than 20% variance of \$39,322,916.

92. “**GUC Retained Causes of Action**” means, collectively, (i) the Debtor Retained Causes of Action; (ii) 549 Causes of Action; and (iii) the Professional Fee Reduction Amount.

93. “**GUC Retained Causes of Action Potential Recovery**” means any recovery from the GUC Retained Causes of Action. For the avoidance of doubt, the GUC Retained Causes of Action Potential Recovery shall be shared Pro Rata among the GUC Trust Beneficiaries.

94. “**GUC Retained Causes of Action Transfer**” means the assignment, conveyance, or other transfer of the GUC Retained Causes of Action to the GUC Trust, which shall occur on the next Business Day following the GUC Settlement Opt-In Election Deadline.

95. “**GUC Settlement Opt-In Election**” means the affirmative election by a Holder of a General Unsecured Claim to opt-in to the settlement under the Global Settlement Term Sheet and receive its Pro Rata share of 100% of the GUC Trust Interests.

96. “**GUC Settlement Opt-In Election Deadline**” means the date that is thirty (30) days after the Effective Date.

97. “**GUC Settlement Opt-In Form**” means the form by which a potential holder of a General Unsecured Claim may make a GUC Settlement Opt-In Election, which form shall be included in the Plan Supplement.

98. “**GUC Settlement Opt-In Procedures**” means the procedures set forth in the GUC Settlement Opt-In Form for a potential holder of an Allowed General Unsecured Claim to make a GUC Settlement Opt-In Election.

99. “**GUC Trust**” means the trust established pursuant to Article IV.C of the Plan to, among other things, hold and liquidate the GUC Trust Assets and GUC Retained Causes of Action and make distributions to GUC Trust Beneficiaries.

100. “**GUC Trust Accounts**” means the bank accounts to be held in the name of the GUC Trustee that are created pursuant to Article IV.C of the Plan.

101. “**GUC Trust Agreement**” means the agreement establishing and governing the GUC Trust, which agreement shall be included in the Plan Supplement and executed as of the Effective Date, and which agreement shall be acceptable in form and substance to the Debtors, the Committee, and the Prepetition Secured Parties.

102. “**GUC Trust Assets**” means, in the aggregate, (i) the GUC Trust Expense Reserve; (ii) \$125,000 in Cash; (iii) the Sponsor Cash Contribution; (iv) the GUC L/C Cash; (v) the GUC Purchase Price Cash; (vi) any unused amounts in the Approved Budget that are designated for fees and expenses of the Committee’s professionals; (vii) the GUC Critical Vendor Cash, if any; (viii) all commercial tort claims (as that term is defined in Article 9 of the Uniform Commercial Code) of the Debtors other than any such claims against any Released Party under the Plan; and (ix) the Assigned Avoidance Actions.

103. “**GUC Trust Assets Transfer**” means the assignment, conveyance, or other transfer of the GUC Trust Assets to the GUC Trust, which shall occur on the next Business Day following the GUC Settlement Opt-In Election Deadline.

104. “**GUC Trust Beneficiaries**” means any Holder of an Allowed General Unsecured Claim that has made a GUC Settlement Opt-In Election and thereby obtained one or more GUC Trust Interests and the Prepetition Secured Parties. For the avoidance of doubt, the Prepetition Secured Parties shall be deemed to have made a GUC Settlement Opt-In Election and shall be GUC Trust Beneficiaries without the need to submit any opt-in election or otherwise comply with the GUC Settlement Opt-In Procedures.

105. “**GUC Trust Expense Reserve**” means a reserve in the amount of \$75,000 funded from Cash on hand of the U.S. Debtors to the GUC Trust on the Effective Date to allow the GUC Trustee to maintain and administer the GUC Trust Assets.

106. “**GUC Trust Interests**” means the beneficial interests in the GUC Trust.

107. “**GUC Trustee**” means the trustee appointed pursuant to Article IV.C of the Plan (or any successor trustee), in its capacity as the trustee of the GUC Trust, who shall be solely responsible for overseeing the reconciliation, objection, settlement, or other disposition of General Unsecured Claims asserted in these Chapter 11 Cases.

108. “**Holder**” means a Person or Entity holding a Claim against or Interest in a Debtor, as applicable.

109. “**Impaired**” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is not Unimpaired.

110. “**Indemnification Obligations**” means each of the Debtors’ indemnification obligations, whether in the bylaws, certificates of incorporation or formation, limited liability company agreements, other organizational or formation documents, board resolutions, management or indemnification agreements, or employment contracts, for the current and former directors and the officers of the Debtors.

111. “**Intercompany Claim**” means any Claim against a Debtor held by another Debtor.

112. “**Intercompany Interest**” means any Interest in a Debtor held by another Debtor.

113. “**Interest**” means any equity interest (as defined in section 101(16) of the Bankruptcy Code) in any Debtor, including all ordinary shares, units, common stock, preferred stock, membership interest, partnership interest, or other instrument, evidencing any fixed or contingent ownership interest in the Debtors, whether or not transferable, including any option, warrant, or other right, contractual or otherwise, to acquire any such interest, that existed immediately before the Effective Date.

114. “**Internal Revenue Code**” means the Internal Revenue Code of 1986, as amended.

115. “**IRS**” means the Internal Revenue Service.

116. “**Judicial Code**” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001.

117. “**KidKraft**” means KidKraft, Inc.

118. “**Lender Retained Causes of Action**” means any and all potential Claims and Causes of Action held by the DIP Secured Parties or the Prepetition Secured Parties against (i) the Debtors; (ii) the Debtors’ Officers; or (iii) SCP, in each case related solely to: (a) the Debtors’ reporting obligations under the DIP Approval Order or DIP Facility Documents; or (b) any payment in violation of the Prepetition Credit Agreement Documents, the Restructuring Support Agreement, and/or the DIP Documents; *provided*, that any potential recovery against the Debtors

and the Debtors' Officers shall be limited to insurance proceeds (if any) available from the Debtors' insurance policies, including the D&O Liability Insurance Policies; *provided, further*, that such insurance limitation shall not apply to Claims and Causes of Action arising as a result of gross negligence, fraud, or willful misconduct. Notwithstanding any other releases provided herein by the DIP Secured Parties or the Prepetition Secured Parties, the Lender Retained Causes of Action shall not be released; *provided, further*, that any and all potential Claims and Causes of Action held by the DIP Secured Parties or the Prepetition Secured Parties against any Released Party other than those parties specifically identified in clauses (i), (ii), and (iii) above shall not constitute Lender Retained Causes of Action.

119. "**Lien**" shall have the meaning set forth in section 101(37) of the Bankruptcy Code.

120. "**List of Retained Causes of Action**" means the schedule of certain Causes of Action of the Debtors which shall be included in the Plan Supplement.

121. "**Local Rules**" means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas.

122. "**MidOcean**" means MidOcean Partners IV, L.P. in its capacity as the holder of Preferred A Units and Preferred C Units in KidKraft Group Holdings, LLC and party to that certain *Note Purchase Agreement* dated as of January 13, 2023, pursuant to which, KidKraft agreed to issue and sell to and MidOcean agreed to purchase, notes in the aggregate principal amount of up to \$5,000,000 and MidOcean US Advisor, L.P. as party to that certain *Professional Services Agreement* dated as of July 15, 2015 by and among KidKraft Group Holdings, LLC, KidKraft, and MidOcean US Advisor, L.P., as amended by that First Amendment to the Professional Services Agreement dated as of September 30, 2016.

123. "**Netherlands Asset Sale**" has the meaning set forth in Article IV.A.3. of the Plan.

124. "**Netherlands Liquidation**" has the meaning set forth in Article IV.A.3. of the Plan.

125. "**Netherlands Subsidiaries**" means non-debtors KidKraft Netherlands C.V., KidKraft Holdings B.V., and KidKraft Netherlands B.V.

126. "**Note Purchase Agreement Documents**" means that certain *Note Purchase Agreement* dated as of January 13, 2023 by and among certain of the Debtors and MidOcean and all other agreements, documents, instruments, and amendments related thereto.

127. "**Noticing and Claims Agent**" means Stretto Inc., the noticing, claims, and solicitation agent proposed to be retained by the Debtors in the Chapter 11 Cases.

128. "**Other Priority Claim**" means any Claim that is entitled to priority of payment under section 507(a) of the Bankruptcy Code other than an Administrative Expense Claim or a Priority Tax Claim.

129. "**Other Secured Claims**" means Secured Claims other than Priority Tax Claims, DIP Claims, or Prepetition Secured Party Claims.



130. “**Person**” shall have the meaning set forth in section 101(41) of the Bankruptcy Code.

131. “**Petition Date**” means the date on which each Debtor Filed its voluntary petition for relief commencing the Chapter 11 Cases.

132. “**Plan**” means this chapter 11 plan, as it may be altered, amended, modified, or supplemented from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the terms of the Plan, including the Plan Supplement and all exhibits, supplements, appendices, and schedules to the Plan, which shall be consistent with, and subject to the approvals and consents as to form and substance set forth in, the Restructuring Support Agreement.

133. “**Plan Supplement**” means, to the extent applicable, the compilation of documents and forms of documents, and all exhibits, attachments, schedules, agreements, documents and instruments referred to therein, ancillary or otherwise, including, without limitation, the Purchase Agreement, the Schedule of Assumed Executory Contracts and Unexpired Leases, the GUC Trust Agreement, the Global Settlement Term Sheet, the GUC Settlement Opt-In Form, the identity of the Wind Down Administrator, and the List of Retained Causes of Action all of which shall be incorporated by reference into, and are an integral part of, the Plan, as may be amended, modified, replaced and/or supplemented from time to time, subject to the consent of the Prepetition Secured Parties.

134. “**Post-Sale Reserve**” means a cash reserve in the amount of \$650,000 to fund the reasonably anticipated costs necessary for the wind down of the Wind Down Estate, including an estimated amount of reasonable fees and expenses that may be incurred by professionals for services rendered after the Effective Date and statutory fees, which cash reserve shall be funded into a segregated account on the Effective Date.

135. “**Prepetition Credit Agreement**” means that certain *Amended and Restated First Lien Credit Agreement*, dated as of April 3, 2020 (as amended from time to time), by and among KidKraft, Inc. and KidKraft Netherlands B.V., jointly and severally, as borrowers, the guarantors thereto, GB Funding, LLC, as Prepetition Credit Agreement Agent, and 1903 Partners, LLC, as Lender.

136. “**Prepetition Credit Agreement Agent**” means GB Funding, LLC, in its capacity as Administrative Agent and Collateral Agent (as such terms are defined in the Prepetition Credit Agreement) under the Prepetition Credit Agreement.

137. “**Prepetition Credit Agreement Documents**” means the Prepetition Credit Agreement and all other agreements, documents, instruments, and amendments related thereto, including any guaranty agreements, pledge and collateral agreements, UCC financing statements, or other perfection documents, subordination agreements, fee letters, and any other security agreements.

138. “**Prepetition Secured Parties**” means GB Funding, LLC, as Administrative Agent and Collateral Agent, and 1903 Partners, LLC, as Lender, in their respective capacities under the Prepetition Credit Agreement.

139. “*Prepetition Secured Party Advisors*” means Katten Muchin Rosenman LLP, as counsel to the Prepetition Secured Parties and Fasken Martineau DuMoulin LLP as Canadian counsel to the Prepetition Secured Parties.

140. “*Prepetition Secured Party Claims*” means all Claims, including “Parallel Debts” (as defined in the Prepetition Credit Agreement Documents) held by the Prepetition Secured Parties on account of, arising under, or relating to their respective capacities as lender or agent under the Prepetition Credit Agreement Documents.

141. “*Prepetition Secured Parties’ Deficiency Claims*” means the deficiency Claims held by the Prepetition Secured Parties. Solely for purposes of any distributions to be made from the GUC Trust Assets to GUC Trust Beneficiaries, the Prepetition Secured Parties’ Deficiency Claims shall be capped at \$55 million.

142. “*Prepetition Secured Party Liens*” means all Liens granted to the Prepetition Credit Agreement Agent to secure the Prepetition Secured Party Claims.

143. “*Priority Tax Claim*” means a Claim held by a Governmental Unit of the kind entitled to priority of payment as specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

144. “*Pro Rata*” means the proportion that an Allowed Claim or an Allowed Interest bears to the aggregate amount of Allowed Claims, Allowed Interests, or other matter so referenced, as the context requires.

145. “*Professional*” means an Entity employed pursuant to a Bankruptcy Court order in accordance with sections 327 or 1103 of the Bankruptcy Code and to be compensated for services rendered before or on the Effective Date, pursuant to sections 327, 328, 329, 330, or 331 of the Bankruptcy Code.

146. “*Professional Fee Claims*” means a Claim for the compensation of the Professionals and other professionals (including, for certainty, professionals to be compensated pursuant to the orders of the CCAA Court in the CCAA Recognition Proceedings) and the reimbursement of expenses incurred by such professionals through and including the Effective Date to the extent such fees and expenses have not been previously paid, including, for the avoidance of doubt, any costs, fees, expenses, or commissions (including with respect to any investment banking transaction fees or commissions) incurred in connection with the Restructuring; *provided that* to the extent a Debtor Professional (as defined in the DIP Approval Order) agrees with the DIP Lender to a modification to the Debtor Professional fees in accordance with Section 1.8 of the DIP Approval Order, the Claim as modified shall be included in the applicable Professional Fee Claim. Professional Fee Claims of the Committee’s Professionals shall not exceed the aggregate amounts set forth in the Approved Budget, consistent with the Global Settlement Term Sheet.

147. “*Professional Fee Escrow Account*” means an interest-bearing account funded by the Debtors on the Effective Date in an amount equal to the Professional Fee Reserve Amount, pursuant to Article II.B.

148. “**Professional Fee Reduction Amount**” means the amount, if any, by which the professional fee budget for SCP in the DIP Facility Documents exceeds the amount of Allowed Professional Fee Claims of SCP, where the budget savings is obtained consensually or is the result of an objection to SCP’s fee application.

149. “**Professional Fee Reserve Amount**” means the total amount of Professional Fee Claims estimated in accordance with Article II.B.

150. “**Professional Services Agreement Documents**” means that certain *Professional Services Agreement* dated as of July 15, 2015 by and among certain of the Debtors and MidOcean and all other agreements, documents, instruments, and amendments related thereto.

151. “**Proof of Claim**” means a proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

152. “**Purchase Agreement**” means that certain Amended and Restated Asset Purchase Agreement dated as of July 5, 2024, as amended, modified, or supplemented from time to time, among Purchaser and certain of the Debtors, including all schedules and exhibits thereto, which shall be Filed with the Plan Supplement.

153. “**Purchase Price**” shall have the meaning set forth in the Purchase Agreement.

154. “**Purchase Price Calculation**” means the calculation of the “Purchase Price at close” in accordance with Exhibit B of the Purchase Agreement.

155. “**Purchaser**” means Backyard Products, LLC, and permitted successors, assigns, and designees, as applicable.

156. “**Qualifying Alternative Transaction**” shall have the meaning set forth in the Purchase Agreement.

157. “**Reinstated**” or “**Reinstatement**” means, with respect to Claims and Interests, the treatment provided for in section 1124 of the Bankruptcy Code, which, in all instances, shall be acceptable to the Prepetition Secured Parties and the Purchaser in their sole and absolute discretion.

158. “**Released Party**” means each of the following solely in its capacity as such: (a) the Debtors; (b) the DIP Agent; (c) the DIP Lender; (d) MidOcean; (e) the Prepetition Secured Parties; (f) the Purchaser; (g) the Committee; and (h) with respect to each of the foregoing under (a) through (g) such Entity and its current and former Affiliates, and such Entity’s and its current and former Affiliates’ current and former directors, managers, officers, employees, managed accounts and funds, predecessors, successors, assigns, subsidiaries, equity Holders, members, agents, attorneys, accountants, investment bankers, consultants, and other professionals, each solely in their capacity as such.

159. “**Releasing Party**” means each of the following solely in its capacity as such: (a) all Released Parties; (b) all Holders of Claims who affirmatively cast a timely ballot to accept the Plan and did not affirmatively opt out of the releases set forth in Article VIII.F herein; (c) all Holders of Claims and Interests that were given notice of the opportunity to opt out of granting the

releases set forth in Article VIII.F herein but did not otherwise affirmatively opt out of such releases; and (d) all GUC Trust Beneficiaries.

160. “**Restructuring**” means all actions that may be necessary or appropriate to effectuate the transactions described in, approved by, contemplated by, or necessary to effectuate, the Plan.

161. “**Restructuring Expenses**” means the reasonable and documented professional fees and expenses incurred by the DIP Secured Party Advisors, the DIP Secured Parties, the Prepetition Secured Party Advisors and the Prepetition Secured Parties, in each case, in connection with or arising as a result of the Restructuring, the Restructuring Support Agreement, Sale Transaction, the Plan, or the Chapter 11 Cases.

162. “**Restructuring Support Agreement**” means that certain *Restructuring Support Agreement*, dated April 25, 2024, by and among the Debtors, the Prepetition Secured Parties, the DIP Secured Parties, the Purchaser, and MidOcean, as may be further amended, restated, modified, supplemented, or replaced from time to time in accordance with the terms thereof.

163. “**Retained Causes of Action**” means those Causes of Action identified on the List of Retained Causes of Action that are not released, waived, or transferred pursuant to the Plan or any Sale Transaction.

164. “**RSA Parties**” mean, collectively, the Debtors, the Prepetition Secured Parties, the DIP Secured Parties, the Purchaser, and MidOcean.

165. “**Sale Approval Order**” means the order of the Bankruptcy Court approving the Purchase Agreement and the Sale Transaction, which order may be, but is not required to be, part of the Confirmation Order.

166. “**Sale Hearing**” means the hearing held by the Bankruptcy Court to consider Confirmation of the Sale Order, as such hearing may be adjourned or continued from time to time.

167. “**Sale Order**” means the Sale Approval Order and the Sale Recognition Order, as applicable.

168. “**Sale Recognition Order**” means an order of the CCAA Court in the CCAA Recognition Proceedings recognizing and giving effect in Canada to the Sale Approval Order, which order may be, but is not required to be, part of the Confirmation Recognition Order.

169. “**Sales Process**” means the marketing and sales process for the Debtors’ Assets.

170. “**Sale Transaction**” means the sale by the Debtors that are party to the Purchase Agreement of all of their respective right, title, and interest in, to and under the Transferred Assets to the Purchaser in accordance with the terms of the Purchase Agreement and the Sale Order.

171. “**Sale Transaction Documents**” means the Sale Order, the Purchase Agreement, and all other documents required to consummate the Sale Transaction (with respect to such other

documents required to consummate the Sale Transaction, in form and substance acceptable to each party thereto).

172. “*Schedule of Assumed Executory Contracts and Unexpired Leases*” means the schedule of Executory Contracts and Unexpired Leases to be assumed and assigned to Purchaser pursuant to the Plan, as set forth in the Plan Supplement, as may be amended from time to time prior to the Effective Date.

173. “*Schedules*” means, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs Filed by the Debtors pursuant to section 521 of the Bankruptcy Code and in substantial conformance with the official bankruptcy forms, as the same may have been amended, modified, or supplemented from time to time.

174. “*SCP*” means SierraConstellation Partners, LLC.

175. “*SEC*” means the United States Securities and Exchange Commission.

176. “*Secured Claim*” means a Claim (i) secured by a lien on collateral to the extent of the value of such collateral as (a) set forth in the Plan, (b) agreed to by the Holder of such Claim and the Debtors, or (c) determined by a Final Order in accordance with section 506(a) of the Bankruptcy Code, or (ii) secured by the amount of any right of setoff of the Holder thereof in accordance with section 553 of the Bankruptcy Code.

177. “*Security*” shall have the meaning set forth in section 101(49) of the Bankruptcy Code.

178. “*Special Committee*” means the Special Committee of the Board of Directors of KidKraft, Inc.

179. “*Sponsor Cash Contribution*” has the meaning set forth in Article IV.C.8 of the Plan.

180. “*Sponsor Claims Waiver*” has the meaning set forth in Article IV.C.8 of the Plan.

181. “*Subordinated Claim*” means any Claim against a Debtor arising from (a) rescission of a purchase or sale of a Security in any Debtor or an Affiliate of any Debtor, (b) purchase or sale of such a Security, or (c) reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim.

182. “*Transferred Assets*” shall have the meaning set forth in Section 2.1 of the Purchase Agreement, *provided, however*, the Assigned Avoidance Actions shall not be Transferred Assets.

183. “*Transferred Contracts*” shall have the meaning set forth in Section 2.1(e) of the Purchase Agreement.

184. “**Unclaimed Property**” means any distribution under the Plan on account of an Allowed Claim whose Holder has not: (a) accepted such distribution or, in the case of distributions made by check, negotiated such check; (b) given notice to the Wind Down Estate of an intent to accept such distribution; (c) responded to the Debtors’, Wind Down Administrator’s, or GUC Trustee’s (as applicable) requests for information necessary to facilitate such distribution; or (d) taken any other action necessary to facilitate such distribution.

185. “**Unexpired Lease**” means a lease of nonresidential real property to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

186. “**Unimpaired**” means, with respect to a Class of Claims or Interests, a Class consisting of Claims or Interests that are not “impaired” within the meaning of section 1124 of the Bankruptcy Code, including through payment in full in Cash or Reinstatement.

187. “**Unpaid Employee Severance Obligations**” means those obligations owed to certain eligible employees who were terminated prior to the Petition Date and who executed a separation agreement after the Petition Date and prior to the Effective Date, which obligations shall be deemed to have been incurred after the Petition Date and treated as Administrative Expense Claims for purposes of this Plan.

188. “**Unsecured**” means, with respect to a Claim, not Secured.

189. “**U.S. Trustee**” means the Office of the United States Trustee for the Northern District of Texas.

190. “**U.S. Trustee Fees**” means fees arising under 28 U.S.C. § 1930(a)(6) and, to the extent applicable, accrued interest thereon arising under 31 U.S.C. § 3717.

191. “**Wind Down Administrator**” means the Person or Persons identified in the Plan Supplement (as determined by the Debtors), if known, and appointed on the Effective Date, who will serve as the trustee and administrator overseeing the Wind Down Estate and dissolution of the Debtors and their Estates in accordance with the Plan.

192. “**Wind Down Claims**” means the Prepetition Secured Party Claims that remain outstanding on the Effective Date, in an amount not to exceed \$10,000,000, and the Prepetition Secured Party Liens securing such Prepetition Secured Party Claims, which Prepetition Secured Party Claims and Liens shall be automatically released and discharged following the orderly wind down of the Debtors and the other borrower and guarantors under the Prepetition Credit Agreement and after the proceeds of the Netherlands Asset Sale and Netherlands Liquidation, if any, are indefeasibly distributed in Cash to the Prepetition Secured Parties as provided in Article IV of the Plan.

193. “**Wind Down Estate**” means, collectively, (i) the Estates of the Debtors and (ii) the Debtors’ non-Debtor affiliates, as applicable, following the Effective Date.

194. “**Wind Down Estate Assets**” means (i) any Assets of the Debtors’ Estates that are not GUC Trust Assets and not sold pursuant to the Sale Transaction, including, but not limited to,

the Excluded Assets, Interests in the Debtors' non-Debtor affiliates, and any Cause of Action specifically enumerated in the List of Retained Causes of Action and (ii) Cash in the amount set forth in the Post-Sale Reserve; *provided that* proceeds of any Wind Down Estate Assets, including without limitation, Excluded Assets and such Retained Causes of Action shall become Distributable Value. For the avoidance of doubt, no GUC Trust Assets shall be Wind Down Estate Assets.

195. “***Wind Down Estate Expenses***” means any and all reasonable and documented fees, costs, and expenses incurred by the Wind Down Estate or the Wind Down Administrator (or any Person, entity, or professional engaged to assist the Wind Down Administrator) in connection with the Wind Down Transactions, including, without limitation, any reasonable and documented administrative fees, attorneys’ or other professionals’ fees and expenses, insurance fees, taxes, escrow expenses and fees payable under 28 U.S.C. § 1930, costs associated with any maintenance of any going concern as part of the wind down of such going concern’s business operations, or costs to maintain certain assets while they are held, in each case, in accordance with and subject to the Post-Sale Reserve.

196. “***Wind Down Transactions***” means the transactions that the Debtors or Wind Down Administrator, as applicable, with the consent of the Prepetition Secured Parties, determines to be necessary or appropriate to implement the terms of the Plan, and that ultimately result in the dissolution or other termination of KidKraft and its Affiliates.

B. *Rules of Interpretation*

For purposes herein: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) except as otherwise provided, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified, or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (3) except as otherwise provided, any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, restated, supplemented, or otherwise modified in accordance with the terms of the Plan; (4) unless otherwise specified, all references herein to “Articles” are references to Articles of the Plan; (5) unless otherwise stated, the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (6) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (7) the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, and shall be deemed to be followed by the words “without limitation;” (8) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (9) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (10) any docket number references in the Plan shall refer to the docket number of any document Filed with the Bankruptcy Court in the Chapter 11 Cases.

C. *Computation of Time*

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction, action, or event shall or may occur pursuant to the Plan is a day that is not a Business Day, then such transaction, action, or event shall instead occur on the next succeeding Business Day.

D. *Governing Law*

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated herein, the laws of the State of New York without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); *provided that* the corporate or limited liability company governance matters relating to the Debtors shall be governed by the laws of the state of incorporation or formation (as applicable) of the applicable Debtor.

E. *Reference to Monetary Figures*

All references in the Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided herein.

F. *Reference to the Debtors or the Wind Down Estate*

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or the Wind Down Estate shall mean the Debtors and the Wind Down Estate, as applicable, to the extent the context requires.

G. *Controlling Document*

In the event of an inconsistency between the Plan, the Disclosure Statement, or any other Final Order (other than the Confirmation Order or Sale Approval Order, as applicable) referenced in the Plan (or any exhibits, schedules, appendices, supplements or amendments to any of the foregoing, other than the Plan Supplement), the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and the Plan Supplement, the terms of the relevant document in the Plan Supplement shall control (unless stated otherwise in such Plan Supplement document or in the Confirmation Order). In the event of an inconsistency between the Confirmation Order or Sale Approval Order and the Plan, the Confirmation Order or Sale Approval Order, as applicable, shall control.

**ARTICLE II.  
ADMINISTRATIVE EXPENSE CLAIMS AND PRIORITY CLAIMS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, Professional Fee Claims, DIP Claims, Adequate Protection Claims, and Priority Tax



Claims have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in Article III of the Plan.

A. *Administrative Expense Claims*

Except (i) with respect to Administrative Expense Claims that are Professional Fee Claims and Bidder Protections, or (ii) to the extent that (x) an Administrative Expense Claim has already been paid during the Chapter 11 Cases or a Holder of an Allowed Administrative Expense Claim and the applicable Debtor(s) or (y) Wind Down Administrator (as applicable) agrees to less favorable treatment, each Holder of an Allowed Administrative Expense Claim shall be paid in full in Cash; on the latest of: (a) on or as soon as reasonably practicable after the Effective Date if such Administrative Expense Claim is Allowed as of the Effective Date; (b) on or as soon as reasonably practicable after the date such Administrative Expense Claim is Allowed; and (c) the date such Allowed Administrative Expense Claim becomes due and payable, or as soon thereafter as is reasonably practicable; *provided that* in no event shall the amount paid in the aggregate to Administrative Expense Claims (excluding Professional Fee Claims) in accordance with this Article II.A, Priority Tax Claims under Article II.E hereof, and Other Priority Claims under Article III.B hereof exceed the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount. For the avoidance of doubt, the Bidder Protections shall be an Administrative Expense Claim in accordance with any applicable orders of the Bankruptcy Court.

Except as otherwise provided in this Article II.A of the Plan and except with respect to Administrative Expense Claims that are Professional Fee Claims, Unpaid Employee Severance Obligations, or Bidder Protection Claims, requests for allowance and payment of Administrative Expense Claims must be Filed and served on the Debtors, the Wind Down Estate, or the Wind Down Administrator (as applicable), pursuant to the procedures specified in the Bar Date Order, the Confirmation Order, and the notice of entry of the Confirmation Order no later than the Administrative Expense Claims Bar Date. Holders of Administrative Expense Claims that are required to, but do not, File and serve on the Debtors, the Wind Down Estate, or the Wind Down Administrator (as applicable) a request for allowance and payment of such Administrative Expense Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Expense Claims against the Debtors, the Wind Down Estate, or their respective assets or property and such Administrative Expense Claims shall be deemed discharged as of the Effective Date. Objections to such requests, if any, must be Filed and served on the Debtors, the Wind Down Estate, or the Wind Down Administrator (as applicable) and the requesting party no later than 90 days after the Effective Date or such other date fixed by the Bankruptcy Court. Notwithstanding the foregoing, no request for payment of an Administrative Expense Claim need be Filed with respect to an Administrative Expense Claim previously Allowed.

B. *Professional Compensation*

1. Final Fee Applications

All final requests for payment of Professional Fee Claims of Professionals, including such Professional Fee Claims incurred during the period from the Petition Date through and including the Effective Date, shall be Filed and served on the Debtors, the Wind Down Estate, or the Wind Down Administrator, as applicable, no later than 45 days after the Effective Date. Each such final

request will be subject to approval by the Bankruptcy Court after notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Bankruptcy Court in the Chapter 11 Cases, and once approved by the Bankruptcy Court, such Allowed Professional Fee Claims shall be promptly paid in Cash from the Professional Fee Escrow Account up to its full Allowed amount.

Objections to any Professional Fee Claim of Professionals must be Filed and served on the Debtors, the Wind Down Estate, or the Wind Down Administrator, as applicable, and the applicable Professional no later than 24 days after such Professional Fee Claim is Filed with the Bankruptcy Court.

2. Professional Fee Escrow Account

On the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the “Professional Fee Reserve Amount” described in Article II.B.3 herein. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and the other professionals with Professional Fee Claims. The Debtors shall utilize the Funded Reserve Account (as defined in the DIP Approval Order) to fund the Professional Fee Escrow Account, *provided that* the Funded Reserve Account is not a limitation on the amount funded to the Professional Fee Escrow Account. The Professional Fee Escrow Account and funds therein shall not be considered property of the Estates of the Debtors or the Wind Down Estate. The amount of Allowed Professional Fee Claims shall be paid in Cash to the Professionals by the Disbursing Agent or the Wind Down Administrator from the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed, and the amount of all other Professional Fee Claims shall be paid in Cash to the applicable professionals by the Disbursing Agent or the Wind Down Administrator from the Professional Fee Escrow Account on the Effective Date. After all such Professional Fee Claims have been paid in full, any remaining amount in the Professional Fee Escrow Account shall promptly be distributed to the Wind Down Estate and deemed Distributable Value and distributed to the holders of Prepetition Secured Party Claims without any further action or order of the Bankruptcy Court.

3. Professional Fee Reserve Amount

No later than five Business Days prior to the Effective Date, the Debtors shall solicit Professionals and the other professionals with Professional Fee Claims for estimates of their unpaid Professional Fee Claims before and as of the Effective Date, and such Professionals and other professionals shall deliver such estimate to the Debtors in writing via email two Business Days prior to the Effective Date; *provided, however*, that such estimate shall not be deemed to limit the amount of the fees and expenses that are the subject of any such professional’s final request for payment of Professional Fee Claims. If any professional does not timely provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such professional.

4. Post-Effective Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Effective Date, the Disbursing Agent, the Wind Down Estate, or the Wind Down Administrator (as applicable) shall, in the ordinary course of business and without any further notice or application to or action,

order, or approval of the Bankruptcy Court, pay in Cash the reasonable, actual, and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred on or after the Effective Date by the Professionals and other professionals (including any fees related to the preparation of Professional fee applications). Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors, the Wind Down Estate, or the Wind Down Administrator (as applicable) may employ and pay any Professional or other professional for fees and expenses incurred after the Effective Date in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court. Notwithstanding the foregoing, in no circumstances shall the payment of any post-Effective Date fees and/or expenses and other Wind Down Estate Expenses exceed the amount of the Post-Sale Reserve.

C. *DIP Claims*

Notwithstanding anything to the contrary herein, in full and final satisfaction, settlement, release, and discharge of and in exchange for release of all DIP Claims, on the Effective Date, the DIP Claims shall: (i) be indefeasibly paid in Cash in full, or (ii) receive such other treatment as agreed by the Debtors and the applicable Holder of a DIP Claim. Notwithstanding anything herein, the Prepetition Secured Parties and DIP Secured Parties may, in their sole discretion, apply any recovery received on the DIP Claims against the Prepetition Secured Party Claims and vice versa; provided that any such application shall not affect the Prepetition Secured Parties' Deficiency Claims or the agreements set forth in the Global Settlement Term Sheet.

D. *Adequate Protection Claims*

On the Effective Date, the Adequate Protection Claims shall (i) be paid in Cash in full or (ii) receive such other treatment as agreed by (a) to the extent such Adequate Protection Claims are held by the Prepetition Secured Parties, the Debtors and the Prepetition Secured Parties or (b) to the extent such Adequate Protection Claims are not held by a Prepetition Secured Party, the Debtors and the applicable Holder of such Adequate Protection Claims.

E. *Priority Tax Claims*

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall receive Cash in an amount equal to such Allowed Priority Tax Claim on the Effective Date or as soon as practicable thereafter or such other treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.

F. *Statutory Fees*

All Statutory Fees due and payable prior to, and that remain unpaid as of, the Effective Date shall be paid by the applicable Debtors on the Effective Date. No statutory fees shall be paid on the initial funding of the Post-Sale Reserve or the GUC Trust. Statutory fees shall only be paid on subsequent disbursement of Cash by the Wind Down Estate or the GUC Trust, as applicable. Any Statutory Fees that may be owed by the Debtors, the Wind Down Estate, or the GUC Trust,

as applicable, after the Confirmation Date related to the reduction to Cash of non-Cash assets shall be paid by the Debtors, the Wind Down Estate, or the GUC Trust, as applicable, until the case is closed, dismissed, or converted. If no disbursements are made by the Debtors, the Wind Down Estate, or the GUC Trust for any quarter post-confirmation, only the minimum statutory fee will be owed in accordance with 28 U.S.C. § 1930(a)(6). The Wind Down Estate and the GUC Trust shall file post-confirmation operating reports with respect to their respective operations and disbursements until these Chapter 11 Cases are closed, dismissed, or converted to cases under chapter 7 of the Bankruptcy Code.

G. *Restructuring Expenses*

The Debtors will promptly pay in full in Cash any Restructuring Expenses in accordance with the terms of the Restructuring Support Agreement and the DIP Approval Order. To the extent any Restructuring Expenses remain unpaid on the Effective Date, such Restructuring Expenses shall constitute Allowed Administrative Expense Claims and shall be paid in full in Cash, subject to the Restructuring Support Agreement and the DIP Approval Order without the need to file a proof of such Claim and without further order of the Court. On the Effective Date, the Disbursing Agent or the Wind Down Estate, as applicable, shall pay the Restructuring Expenses that have accrued and are unpaid as of the Effective Date.

**ARTICLE III.  
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

A. *Classification of Claims*

The Plan constitutes a separate Plan proposed by each Debtor. Except for the Claims addressed in Article II of the Plan, all Claims and Interests are classified in the Classes set forth below in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest fits within the description of that Class and is classified in other Class(es) to the extent that any portion of the Claim or Interest fits within the description of such other Class(es). A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

The classification of Claims and Interests against the Debtors pursuant to the Plan is as follows:

| <b>Class</b> | <b>Claim or Interest</b>         | <b>Status</b> | <b>Voting Rights</b> |
|--------------|----------------------------------|---------------|----------------------|
| 1            | Other Priority Claims            | Unimpaired    | Presumed to Accept   |
| 2            | Other Secured Claims             | Unimpaired    | Presumed to Accept   |
| 3            | Prepetition Secured Party Claims | Impaired      | Entitled to Vote     |
| 4            | General Unsecured Claims         | Impaired      | Deemed to Reject     |

|   |   |                     |                                     |
|---|---|---------------------|-------------------------------------|
| 5 | Intercompany Claims                           | Unimpaired/Impaired | Presumed to Accept/Deemed to Reject |
| 6 | Intercompany Interests                        | Unimpaired/Impaired | Presumed to Accept/Deemed to Reject |
| 7 | KidKraft Intermediate Holdings, LLC Interests | Impaired            | Deemed to Reject                    |

B. *Treatment of Claims and Interests*

1. Class 1 — Other Priority Claims

- a. *Classification:* Class 1 consists of all Other Priority Claims.
- b. *Treatment:* Except to the extent that a Holder of an Allowed Other Priority Claim agrees to less favorable treatment, in full and final satisfaction of such Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim will, (i) be paid in full in Cash or (ii) otherwise receive treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code, payable on the later of the Effective Date and the date that is 10 business days after the date on which such Other Priority Claim becomes an Allowed Other Priority Claim, in each case, or as soon as reasonably practicable thereafter; *provided that* in no event shall the amount paid in the aggregate for Administrative Expense Claims (excluding Professional Fee Claims) in accordance with Article II.A hereof, Priority Tax Claims under Article II.E hereof, and Other Priority Claims under this Article III.B exceed the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount.
- c. *Voting:* Class 1 is Unimpaired under the Plan. Holders of Class 1 Other Priority Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject the Plan.

2. Class 2 — Other Secured Claims

- a. *Classification:* Class 2 consists of all Other Secured Claims.
- b. *Treatment:* Except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment, in full and final satisfaction of such Allowed Other Secured Claim, at the option of Debtors or the Wind Down Estate, as applicable, each Holder shall receive either (i) cash equal to the full allowed amount of its claim, (ii) reinstatement of such holder’s claim, (iii) the return to or abandonment of the collateral securing such holder’s claim, or (iv) such other treatment as may otherwise be agreed to by such Holder and the Debtors.

- c. *Voting:* Class 2 is Unimpaired under the Plan. Holders of Class 2 Other Secured Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject the Plan.

3. Class 3 — Prepetition Secured Party Claims

- a. *Classification:* Class 3 consists of all Prepetition Secured Party Claims.
- b. *Treatment:* Except to the extent that the Holder of Prepetition Secured Party Claims agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and discharge of each Allowed Prepetition Secured Party Claim (which satisfaction, settlement, release, and discharge shall occur (i) on the Effective Date for all Prepetition Secured Party Claims other than the Wind Down Claims, and (ii) after the orderly wind down of the Debtors and other borrower and guarantors under the Prepetition Credit Agreement for all Wind Down Claims), each Holder of an Allowed Prepetition Secured Party Claim shall receive the remaining Distributable Value following payment of Administrative Expense Claims and Priority Tax Claims, DIP Claims, Other Priority Claims, Other Secured Claims, (which amount may be paid directly by the Purchaser on the Effective Date), and GUC Trust Interests (subject to the terms of the Global Settlement) on the Effective Date and any Distributable Value that is available for distribution after the Effective Date shall be promptly distributed by the Debtors or Wind Down Estate to holders of Prepetition Secured Party Claims.
- c. *Voting:* Class 3 is Impaired under the Plan. Holders of Class 3 Secured Party Claims will be entitled to vote to accept or reject the Plan.

4. Class 4 — General Unsecured Claims

- a. *Classification:* Class 4 consists of all General Unsecured Claims.
- b. *Treatment:* On the Effective Date, all General Unsecured Claims will be canceled, released, extinguished and discharged, and Holders of General Unsecured Claims will receive no recovery or distribution on account of such claims; *provided, however,* that any Holder of Allowed General Unsecured Claims who timely makes a GUC Settlement Opt-In Election in compliance with the GUC Settlement Opt-In Procedures shall receive its Pro Rata share of 100% of the GUC Trust Interests.
- c. *Voting:* Class 4 is Impaired under the Plan. Holders of Class 4 General Unsecured Claims will be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such Holders will not be entitled to vote to accept or reject the Plan.

5. Class 5 — Intercompany Claims

- a. *Classification:* Class 5 consists of all Intercompany Claims.
- b. *Treatment:* All Intercompany Claims will be unaltered and otherwise unaffected by the Plan, or canceled on the Effective Date, in the Debtors' discretion, with the consent of Purchaser.
- c. *Voting:* Class 5 is Unimpaired/Impaired under the Plan. Holders of Class 5 Intercompany Claims are proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code. Therefore, the vote of such Holders to accept or reject the Plan will not be solicited.

6. Class 6 — Intercompany Interests

- a. *Classification:* Class 6 consists of all Intercompany Interests.
- b. *Treatment:* All Intercompany Interests shall be maintained under the Plan, solely for purposes of administrative convenience or canceled on the Effective Date, in the Debtors' discretion, subject to the consent of the Prepetition Secured Parties and the Purchaser.
- c. *Voting:* Class 6 is Unimpaired/Impaired under the Plan. Holders of a Class 6 Intercompany Interests are proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code. Therefore, the vote of such Holders to accept or reject the Plan will not be solicited.

7. Class 7 — KidKraft Intermediate Holdings, LLC Interests

- a. *Classification:* Class 7 consists of all KidKraft Intermediate Holdings, LLC Interests.
- b. *Treatment:* All prepetition Interests in KidKraft Intermediate Holdings, LLC will be canceled on the Effective Date and Holders shall receive no recovery or distribution on account of their Interests.
- c. *Voting:* Class 7 is Impaired under the Plan. For purposes of solicitation, it is presumed that Holders of Class 7 KidKraft Intermediate Holdings, LLC Interests shall not receive any distribution on account of such KidKraft Intermediate Holdings, LLC Interests and will be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such Holders will not be entitled to vote to accept or reject the Plan.

C. *Special Provision Governing Unimpaired or Reinstated Claims*

Nothing under the Plan shall affect the Debtors', the Wind Down Estate's, or the Wind Down Administrator's (as applicable) claims, Causes of Action, rights, or defenses in respect of any Unimpaired Claims or Reinstated Claims, including all rights in respect of legal and equitable defenses to or setoffs or recoupment against any such Unimpaired Claims or Reinstated Claims.

D. *Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code*

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by one or more of the Classes entitled to vote pursuant to Article III.B of the Plan. The Debtors reserve the right to modify the Plan in accordance with Article X of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

E. *Elimination of Vacant Classes*

Any Class of Claims that does not contain an Allowed Claim or a Claim temporarily Allowed by the Bankruptcy Court for voting purposes as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

F. *Voting Classes; Presumed Acceptance by Non-Voting Classes*

If a Class contains Claims eligible to vote and no Holder of Claims eligible to vote in such Class votes to accept or reject the Plan, the Plan shall be presumed accepted by such Class.

G. *Controversy Concerning Impairment*

If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date

H. *Subordinated Claims*

The allowance, classification, and treatment of all Claims and Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors, Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) reserve(s) the right to reclassify any Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.



**ARTICLE IV.  
MEANS FOR IMPLEMENTATION OF THE PLAN**

A. *Means for Implementation*

1. Sale Transaction

On July 5, 2024, the applicable Debtors consummated the Sale Transaction and the Transferred Assets vested in the Purchaser free and clear of all Liens, Claims, charges, or encumbrances pursuant to section 1123 of the Bankruptcy Code and the CCAA and the Sale Transaction Documents. Upon entry of the Sale Approval Order by the Bankruptcy Court and the Sale Recognition Order by the CCAA Court, all matters provided for under the Purchase Agreement and the other Sale Transaction Documents were deemed authorized and approved without any requirement of further act or action by the Debtors or the Debtors' governing bodies. The applicable Debtors are authorized to execute and deliver, and to consummate the transactions contemplated by the Sale Transaction Documents, as well as to execute, deliver, file, record and issue any documents, or agreements in connection therewith, without further notice to or order of the Bankruptcy Court or the CCAA Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity.

In the alternative, the Plan shall serve as a motion under section 363 of the Bankruptcy Code to authorize the sale of the Transferred Assets pursuant to the terms of the Sale Transaction Documents. Section 363(f) of the Bankruptcy Code provides that the Debtors' assets may be sold free and clear of any and all liens, claims, interests, and encumbrances with any such liens, claims, interests, and encumbrances attaching to the proceeds of the Sale Transaction. The Debtors submit that the Sale Transaction satisfies the requirements of section 363(f) of the Bankruptcy Code. To the extent a party objects to Sale Transaction on the basis that it holds a lien or encumbrance on the Transferred Assets, the Debtors believe that any such party could be compelled to accept a monetary satisfaction of such claims under section 365(f)(5) of the Bankruptcy Code and the CCAA. In addition, to the extent the Debtors discover any party may hold a lien on all, or a portion of, the Assets, the Debtors have provided such party with notice of, and an opportunity to object to, the Sale Transaction. Absent objection, each such party will be deemed to have consented to the sale of the Transferred Assets.

Except as otherwise expressly provided in the Sale Transaction Documents, (a) the Purchaser and all of its Affiliates shall not be liable for any Claims against the Debtors or any of their predecessors or direct or indirect subsidiaries, and (b) neither the Purchaser nor any of its affiliates shall have successor or vicarious liabilities of any kind or character, including under any theory of successor or transferee liability, labor, employment, tort, products liability, or benefits law, whether known or unknown as of the closing, then existing or hereafter arising, whether fixed or contingent, asserted or unasserted, liquidated or unliquidated, in each case, with respect to the Debtors or any obligations of the Debtors arising prior to the closing, including liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Debtors prior to the closing (except as otherwise expressly provided in the Sale Transaction Documents). For the avoidance of doubt, any Avoidance Actions purchased by the Purchaser will not be pursued by the Purchaser.

The transactions contemplated by the Sale Transaction Documents are undertaken by the applicable Debtors and the Purchaser without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided therein to consummate the Sale Transaction shall not affect the validity of such sale, unless such authorization and consummation of such sale are duly stayed pending such appeal. 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.

On or before the Effective Date, the Purchaser shall transfer back to the Debtors any 549 Causes of Action that were included within the Transferred Assets, and such 549 Causes of Action shall be transferred to the GUC Trust in accordance and consistent with Article IV.C.2.

2. Break-Up Fee and Expense Reimbursement

Consistent with the Sale Transaction Documents, the payment of the Break-Up Fee and Expense Reimbursement for the Purchaser are hereby authorized in the event: (i) the Debtors that are party to the Purchase Agreement consummate or enter into a Qualifying Alternative Transaction and the Purchase Agreement is terminated in connection therewith; (ii) the Debtors that are party to the Purchase Agreement publicly announce or support any plan of reorganization or plan of liquidation other than the Plan and other than a plan that includes a conversion of any of the Chapter 11 Cases to chapter 7 of the Bankruptcy Code or that would not prevent or materially delay consummation of the Closing (as defined in the Purchase Agreement) in accordance with the terms of the Purchase Agreement; or (iii) the board of directors or board of managers, as applicable, of any Debtor that is party to the Purchase Agreement determines, in good faith based upon advice of outside legal counsel, that proceeding with the Purchase Agreement or the transactions contemplated thereunder (including the Plan or solicitation of the Plan) or taking any action (or refraining from taking any action) in relation thereto, would be inconsistent with the exercise of its fiduciary duties under applicable law, and the Purchase Agreement is terminated in connection therewith (in each of the foregoing cases as further set forth in and subject to the terms of the Purchase Agreement). The potential remedy of the Break-Up Fee and Expense Reimbursement was a condition of the Purchaser entering into the Purchase Agreement, which is the best option for the Debtors to maximize the value of their estates. The Break-Up Fee and Expense Reimbursement are the product of arm's-length, good faith negotiations among the Debtors and the Purchaser, and as a result, the Debtors believe that the agreement to pay such fees to the Purchaser (if and when the same become due to the Purchaser pursuant to, and in accordance with the terms and conditions in, the Purchase Agreement) is a valid exercise of their business judgment and should be approved if required under the Sale Transaction Documents.

3. Transactions with Netherlands Affiliates

On or prior to the closing of the transactions contemplated by the Purchase Agreement, the assets of the Netherlands Subsidiaries that would otherwise be Transferred Assets under the Purchase Agreement if such assets were owned by a Seller (as defined in the Purchase Agreement) shall be sold to KidKraft, or another Debtor designated by KidKraft, in exchange for the portion of the Purchase Price attributable to such assets (the "*Netherlands Asset Sale*"). The transactions contemplated by the Netherlands Asset Sale are undertaken by the Netherlands Subsidiaries and

the Debtors without collusion and in good faith. The Netherlands Subsidiaries' assets that do not become Transferred Assets shall be liquidated with the consent of the Prepetition Secured Parties and the Netherlands Subsidiaries (the "*Netherlands Liquidation*"). The Netherlands Subsidiaries will create a right of pledge in favor of the Prepetition Secured Parties over the proceeds of the Netherlands Asset Sale and the proceeds of the Netherlands Liquidation.

The proceeds of the Netherlands Asset Sale (i.e. the Foreign Sale Reserve) and proceeds of the Netherlands Liquidation, in each case with the consent of the Prepetition Secured Parties, shall be used to implement the orderly out-of-court wind down of the Netherlands Subsidiaries (the "*Netherlands Wind Down*," collectively, with the Netherlands Asset Sale and Netherlands Liquidation, the "*Netherlands Transactions*").

To the extent proceeds of the Netherlands Asset Sale (i.e. the Foreign Sale Reserve) or Netherlands Liquidation remain, after the Netherlands Wind Down is complete, such proceeds shall be distributed to the Prepetition Secured Parties in a manner to be determined by the Prepetition Secured Parties, the Debtors, and the Wind Down Administrator, as applicable, and the Netherlands Subsidiaries. Following the distribution of such proceeds, the Prepetition Secured Parties and the Netherlands Subsidiaries shall execute a mutual release of all Claims and Causes of Action.

Upon the Bankruptcy Court entering the Sale Approval Order, the Netherlands Asset Sale will be deemed authorized and approved without any requirement or further act or action by the Debtors or the Debtors' governing bodies.

4. Vesting of Wind Down Estate Assets in the Wind Down Estate

Except as otherwise provided in the Plan, the Plan Supplement, or the Confirmation Order, on the Effective Date, all Wind Down Estate Assets (including all interests, rights, and privileges related thereto) and all GUC Trust Assets (solely until the GUC Trust Assets Transfer occurs) in each Estate and all Causes of Action that are retained under the Plan shall vest in the Wind Down Estate, to be administered by the Wind Down Administrator in accordance with the Plan, free and clear of all Claims, Liens, and encumbrances (except for the Wind Down Claims) to the fullest extent provided by section 363 or 1123 of the Bankruptcy Code; *provided that*, for the avoidance of doubt, no Assets that are, or shall be, transferred to Purchaser as Transferred Assets before or after the Effective Date in accordance with the Purchase Agreement and the Sale Approval Order shall vest in the Wind Down Estate.

The vesting of the Wind Down Estate Assets, as authorized by the Plan, shall not be construed to destroy or limit any such Assets or rights or be construed as a waiver of any right, and such rights may be asserted by the Wind Down Estate as if such Asset or right was still held by the Debtors.

On the next Business Day following the GUC Settlement Opt-In Election Deadline, the Wind Down Estate shall complete the GUC Trust Assets Transfer.

5. Wind Down Administrator

The Wind Down Administrator shall be selected by the Debtors, with the consent of the Prepetition Secured Parties and the DIP Secured Parties. The Wind Down Administrator shall be the successor to and representative of the Estate of each of the Debtors appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The powers, rights, and responsibilities of the Wind Down Administrator shall include the authority and responsibility to fulfill the obligations of the Plan consistent with the Confirmation Order.

On the Effective Date, the authority, power, and incumbency of the Persons acting as managers, directors, and officers of the Debtor entities comprising the Wind Down Estate shall vest in the Wind Down Administrator. The Wind Down Administrator shall be appointed the sole manager, sole director, and sole officer of the Debtor entities comprising the Wind Down Estate, as applicable, and shall succeed to the powers of the Debtors' managers, directors, and officers. From and after the Effective Date, the Wind Down Administrator shall be the sole Representative of the Wind Down Estate and shall have the authority to sell, liquidate, or otherwise dispose of any and all of the Wind Down Estate Assets without any additional notice to or approval from the Bankruptcy Court.

In the event the Wind Down Administrator becomes incapacitated or unable to continue serving in such role for any reason, the Prepetition Secured Parties shall select a suitable replacement Wind Down Administrator as promptly as possible without the need for any further action or order of the Bankruptcy Court.

6. Wind Down Transactions

The Wind Down Administrator shall retain the authority to take all necessary actions to wind down the operations of the Wind Down Estate and dissolve the entities comprising the Wind Down Estate, to the extent required by applicable law. Subject in all respects to the terms of this Plan, the Wind Down Administrator shall have the power and authority to take any action necessary to dissolve the entities comprising the Wind Down Estate, and may: (i) file a certificate of dissolution for the Wind Down Estate, together with all other necessary corporate and company documents, to effect the dissolution of the Wind Down Estate under applicable laws; (ii) complete and file all final or otherwise required federal, state, and local tax returns and pay all required taxes, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of any of the Debtors, their respective Estates, or the entities comprising the Wind Down Estate for any tax incurred during the administration of these Chapter 11 Cases, as determined under applicable tax laws; and (iii) represent the interests of the Debtors, their respective Estates, and entities comprising the Wind Down Estate before any taxing authority in all tax matters, including any action, suit, proceeding, or audit.

Any applicable filing by the Wind Down Administrator of any certificates of dissolution (or similar documentation) of the entities comprising the Wind Down Estate shall be authorized and approved in all respects without further action under applicable law, regulation, order, or rule, including any action by the stockholder, members, officers, board of directors, or board of managers of the Debtors or any of their respective Affiliates. As the entities comprising the Wind

Down Estate will be dissolved upon completion of the administration of this Plan, no new corporate organizational documents will be executed by the Wind Down Administrator.

For the avoidance of doubt, the Wind Down Administrator shall not be empowered to perform any actions designated to the GUC Trust or the GUC Trustee under the Plan or the GUC Trust Agreement.

7. Fees and Expenses of the Wind Down Administrator

The Wind Down Estate Expenses shall be paid after the Effective Date solely using the Post-Sale Reserve. The Wind Down Administrator, on behalf of the Wind Down Estate, may employ, without further order of the Bankruptcy Court, professionals (including professionals previously employed by the Debtors) to assist in carrying out duties for the Wind Down Estate and may compensate and reimburse the expenses of such professionals in the ordinary course, without further order of the Bankruptcy Court, subject to the Post-Sale Reserve.

8. Settlement of Claims

Except as otherwise provided in the Plan, on and after the Effective Date, the Wind Down Administrator may compromise or settle any Claims related to the Wind Down Estate Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules and may pay the charges that it incurs on or after the Effective Date for Wind Down Estate Expenses, professionals' fees, disbursements, expenses, or related support services (including fees relating to the preparation of Professional fee applications) without application to the Bankruptcy Court.

9. Sales of Assets by the Wind Down Estate

The Wind Down Administrator may conduct any sales or liquidations of De Minimis Assets on any terms it deems reasonable, subject to the consent of the Prepetition Secured Parties (with such consent not to be unreasonably withheld), without further order of the Bankruptcy Court. In lieu of conducting sales or liquidating its assets, with the consent of the Prepetition Secured Parties, the Wind Down Administrator may transfer any Wind Down Estate Assets to the Prepetition Secured Parties free and clear of all liens, claims, and encumbrances after the Effective Date.

10. Abandonment of Assets by the Wind Down Estate

The Wind Down Administrator may, with the consent of the Prepetition Secured Parties, on no less than 14 days' written notice to the U.S. Trustee, abandon any Wind Down Estate Assets which the Wind Down Administrator determines are burdensome to the Wind Down Estate, including any pending adversary proceeding or other legal action commenced or commenceable by any Debtor prior to the Effective Date; *provided that* if the U.S. Trustee provides a written objection to the Wind Down Administrator prior to the expiration of such 14 day period with respect to the proposed abandonment of any Wind Down Estate Asset, then such property may be abandoned only pursuant to an order by the Bankruptcy Court.

11. Plan Distributions

a. Sources of Consideration for Plan Distributions

On the Effective Date, the Debtors will fund the Debtors' distributions under the Plan with (i) the proceeds of the Sale Transaction, subject in all respects to amounts held-back in accordance with the Purchase Agreement, (ii) the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount, (iii) the Debtors' available Cash on hand, and (iv) with the consent of the DIP Secured Parties, the proceeds of the DIP Facility. After the Effective Date, other than with respect to funds held in the Professional Fee Escrow Account, the Post-Sale Reserve shall be held in a separate account from any other funds held by the Wind Down Estate.

b. Professional Fee Escrow Account

The Professional Fee Reserve Amount shall be held in trust in a segregated Professional Fee Escrow Account by the Wind Down Estate for distributions or payment in accordance with the terms of Article II of the Plan.

12. Corporate Existence

On or after the Effective Date, each of the Debtors will be subject to a Dissolution Transaction. The equity or membership interests of each Debtor entity that is not subject to a Dissolution Transaction on the Effective Date will vest in the Wind Down Estate pursuant to this Plan. For the avoidance of doubt, the Debtor entities that are not subject to a Dissolution Transaction on the Effective Date will continue to exist after the Effective Date for the limited purpose of completing the GUC Trust Assets Transfer and the Wind Down Transactions. Promptly after completing the Wind Down Transactions, such entities shall be dissolved by the Wind Down Administrator.

13. Dissolution Transactions

On or after the Effective Date, the Debtors or the Wind Down Administrator will enter into such Dissolution Transactions and will take such actions as may be necessary or appropriate to merge, dissolve, or otherwise terminate the corporate existence of the Debtors. The actions to effect the Dissolution Transactions may include: (i) the execution and delivery of appropriate agreements or other documents of transfer, merger, consolidation, disposition, liquidation, or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law, as well as other terms to which these entities may agree; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, duty or obligation on terms consistent with the terms of the Plan and having such other terms as these entities may agree; (iii) the filing of appropriate certificates or articles of merger, consolidation, continuance, or dissolution or similar instruments with the applicable governmental authorities; and (iv) the taking of all other actions that the Wind Down Administrator determines to be necessary or appropriate, including making other filings or recordings that may be required by applicable law in connection with the Dissolution Transactions.

14. Recourse Solely to Wind Down Estate Assets

All Claims against the Debtors and against the GUC Trust are deemed satisfied, waived, and released as to the Debtors and the GUC Trust, as applicable, in exchange for the treatment of such Claims under the Plan or the distributions made from the GUC Trust, and Holders of Allowed Claims against any Debtor will have recourse solely to the Wind Down Estate Assets (and, in the case of the Prepetition Secured Parties, to the unused amounts, if any, of the Post-Sale Reserve and Professional Fee Escrow Account) for the payment of their Allowed Claims in accordance with the terms of the Plan. There will be no recourse for claims other than as to non-Debtors.

15. Cancellation of Existing Securities and Agreements

On the Effective Date, except to the extent otherwise expressly provided in the Plan (including with respect to the Prepetition Credit Agreement Documents), (i) all notes, bonds, debentures, instruments, certificates, credit agreements, indentures, collateral documents, guarantees, filings, recordings, registrations, and other documents and instruments evidencing, securing, or governing Claims or Interests, and any Interests that are not represented by certificates or other instruments, shall be canceled, terminated, released, and surrendered automatically without any action on the part of any party, (ii) all Liens of any nature or any assets of any Debtor securing, or purporting to secure, such Claims shall be fully, finally, and irrevocably released and extinguished automatically without any action on the part of any party (and (x) the Debtors are hereby irrevocably authorized to make such filings, recordings, registrations, and notifications, and take such other actions, as the Debtors shall deem necessary or advisable to carry out such release and extinguishment and (y) the holders of such Claims shall take such actions and execute such instruments as the Debtors may reasonably request to carry out such release and extinguishment) and (iii) the obligations of the Debtors in respect of such Claims or in any way related thereto or arising therefrom (except with respect to any Indemnification Obligations, which obligations shall be assumed and assigned as set forth in Article V.G of the Plan) shall be deemed satisfied in full, terminated, canceled, released, and of no force or effect against the Debtors or the Wind Down Estate, without any further action on the part of the Debtors, the Wind Down Estate, or any other Person. Holders of or parties to such canceled instruments, Securities, and other documentation will have no rights arising from or relating to such instruments, Securities, and other documentation, or the cancellation thereof, except the rights provided for pursuant to the Plan. To the extent applicable, the Debtors' corporate charters shall be deemed amended by the Confirmation Order to provide that no nonvoting equity securities will be issued and to otherwise comply with the requirements of section 1123(a)(6) of the Bankruptcy Code.

Notwithstanding anything to the contrary herein, but subject to any applicable provisions of Articles IV and VI of the Plan, the Prepetition Credit Agreement Documents shall continue in effect as between all Debtors and the non-Debtors party thereto until the wind down of the Debtors and the Netherlands Wind Down is complete. Following completion of the wind down of the Debtors and the Netherlands Wind Down and distribution of the proceeds after the Netherlands Wind Down is complete, if any, to the Prepetition Secured Parties, as provided in Article IV of the Plan, the Prepetition Credit Agreement Documents shall be canceled and surrendered and the obligations of the Debtors thereunder or in any way related thereto shall be deemed satisfied in full, canceled, and of no force or effect against the Debtors or the Wind Down Estate, without any further action on the part of the Debtors, the Wind Down Estate, or any other Person. Except as

provided in the Plan (including Article VI of the Plan), on the Effective Date, the Prepetition Credit Agreement Agent, its respective agents, successors, and assigns shall be automatically and fully discharged of all of their duties and obligations associated with the Prepetition Credit Agreement Documents (as applicable). The commitments and obligations (if any) of the Prepetition Credit Agreement Lenders to extend any further or future credit or financial accommodations to any of the Debtors, any of their respective subsidiaries, including, any non-Debtors, or any of their respective successors or assigns under the Prepetition Credit Agreement Documents shall fully terminate and be of no further force or effect on the Effective Date.

16. Release of Liens

Except for the Wind Down Claims (which include the Prepetition Secured Party Liens securing such Claims), and as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date concurrently and consistent with the treatment provided for Claims and Interests in Article III, all mortgages, deeds of trust, Liens against, security interests in, or other encumbrances or interests in property of any Estate shall be deemed fully released and discharged. After the wind down of the Debtors and the Netherlands Wind Down is complete and after the proceeds of the Netherlands Asset Sale and Netherlands Liquidation, if any, are indefeasibly distributed in Cash to the Prepetition Secured Parties as provided in Article IV of the Plan, all mortgages, deeds of trust, Liens against, security interests in, or other encumbrances or interests in property of any Estate on account of the Wind Down Claims shall be deemed fully released and discharged. Notwithstanding anything contained herein to the contrary, until completion of the wind down of the Debtors and the Netherlands Wind Down and distribution of the proceeds after the Netherlands Wind Down is complete, if any, to the Prepetition Secured Parties, as provided in Article IV of the Plan, the Plan shall not operate as a waiver of any right, power or remedy of the Prepetition Agent or Prepetition Lenders, or constitute a waiver of any provision of the Prepetition Credit Agreement Documents in respect of any non-Debtor affiliate of the Debtors party thereto and the obligations of the non-Debtor affiliates thereunder shall remain in full force and effect.

17. Corporate Governance, Directors and Officers.

a. Certificates of Incorporation and Bylaws

Consistent with the Plan, all existing certificates of incorporation and by-laws will be canceled; accordingly, no new certificates of incorporation and by-laws will be necessary for any Debtors. Certain of the Debtor entities comprising the Wind Down Estate will continue to exist after the Effective Date for the purpose of completing the GUC Trust Assets Transfer and the Wind Down Transactions.

b. Directors and Officers

As of the Effective Date, the term of the current members of the boards of directors or boards of managers, as applicable, of KidKraft and its Debtor Affiliates shall expire automatically and each person serving as a director of KidKraft and each of its Debtor Affiliates shall be removed and shall be deemed to have resigned and cease to serve automatically. Consistent with the Plan, each of the Estates will vest in the Wind Down Estate effective as of the Effective Date and, thus,



no individuals will serve as directors, officers, or voting trustees after the Effective Date for any Debtors. The Wind Down Administrator will be the sole member, manager, director, officer, or other governing body or controlling authority of each Debtor entity that is not subject to a Dissolution Transaction on the Effective Date.

18. Insurance Policies

To the extent that any of the Debtors' insurance policies constitute Executory Contracts, such insurance policies and any agreements, documents, or instruments relating thereto, are treated as and deemed to be Executory Contracts under the Plan and shall be assumed by the Debtors and assigned to the Wind Down Estate on the Effective Date. All other insurance policies shall vest in the Wind Down Estate.

19. D&O Liability Insurance Policies

Notwithstanding anything in the Plan to the contrary, as of the Effective Date, the Debtors shall be deemed to assume and vest in the Wind Down Estate all D&O Liability Insurance Policies (including tail coverage liability insurance) pursuant to section 365(a) of the Bankruptcy Code, to the extent they are Executory Contracts. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Debtors' assumption of each of the D&O Liability Insurance Policies, to the extent they are Executory Contracts. Notwithstanding anything to the contrary contained in the Plan, Confirmation of the Plan shall not discharge, impair, or otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O Liability Insurance Policies, and each such indemnity obligation will be deemed and treated as an Executory Contract that has been assumed by the Debtors under the Plan as to which no Proof of Claim need be Filed, and shall survive the Effective Date. Nothing shall alter, modify, or amend, affect, or impair the terms and conditions of (or the coverage provided by) any of the D&O Liability Insurance Policies, including the coverage for defense and indemnity under any of the D&O Liability Insurance Policies, which shall remain available to all individuals within the definition of "Insured" in any of the D&O Liability Insurance Policies in accordance with and subject to the terms and conditions thereof regardless of whether such individuals remain in their capacity as an Insured Person after the Effective Date. For the avoidance of doubt, the D&O Liability Insurance Policies will continue to apply with respect to actions, or failures to act, that occurred on or prior to the Effective Date, in accordance with and subject to the terms and conditions of the D&O Liability Insurance Policies. On the Effective Date, all D&O Liability Insurance Policies shall vest in the Wind Down Estate consistent with the Confirmation Order without further order of the Bankruptcy Court.

20. Preservation of Causes of Action

Except as provided in the Plan, or in any contract, instrument, release, or other agreement entered into or delivered in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, the Wind Down Estate will retain and may enforce any claims, demands, rights, and causes of action that any Estate may hold against any Person to the extent not satisfied, settled, and released under the Plan or otherwise, including the Retained Causes of Action; *provided that*, the Wind Down Estate will not retain any Causes of Action (including Avoidance Actions) that are assigned to Purchaser as Transferred Assets in connection with the Sale Transaction, or any Causes of Action that may be included in the GUC Trust Assets and transferred to the GUC Trust,

or Causes of Action that are transferred to the GUC Trust in accordance with the Plan (including the GUC Retained Causes of Action). The Wind Down Administrator may pursue any such retained claims, demands, rights, or causes of action, as appropriate, in accordance with the best interests of the Wind Down Estate. Except to the extent any such claim is specifically satisfied, settled, and released herein, in accordance with and subject to any applicable law, the Debtor's inclusion or failure to include any Cause of Action on the List of Retained Causes of Action shall not be deemed an admission, denial, or waiver of any claims, demands, rights, or causes of action that the Debtor or Estate may hold against any Person. Except to the extent any such claim is specifically satisfied, settled, and released herein, the Debtor intends to preserve those claims, demands, rights, or causes of action designated as Retained Causes of Action. For the avoidance of doubt, in no instance will any Cause of Action preserved pursuant to this Article IV.A.20 include any claim or Cause of Action with respect to, or against, a Released Party.

21. Substitution in Pending Legal Actions

On the Effective Date, the Wind Down Estate or the Wind Down Administrator, as applicable, shall be deemed to be substituted as the party to any litigation in which the Debtors are a party, including (but not limited to) (i) pending contested matters or adversary proceedings in the Bankruptcy Court or the CCAA Court, (ii) any appeals of orders of the Bankruptcy Court, and (iii) any state court or federal or state administrative proceedings or equivalent in Canada or any other applicable jurisdiction pending as of the Petition Date. The Wind Down Administrator and its professionals are not required to, but may, take such steps as are appropriate to provide notice of such substitution.

22. Effectuating Documents; Further Transactions

The Debtors (prior to the Effective Date) and the Wind Down Administrator (on or after the Effective Date) are authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and evidence the terms and conditions of the Plan, the Purchase Agreement, and the Dissolution Transactions, in each case, in the name of and on behalf of any Debtor or the Wind Down Estate, as applicable, without the need for any approvals, authorizations, or consents except those expressly required pursuant to the Plan.

Pursuant to section 1146(a) of the Bankruptcy Code, the following will not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales or use tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee or other similar tax or governmental assessment: (a) any transfer made by the Debtors to the Wind Down Estate; (b) any transfer made by the Debtors and, if applicable, the Wind Down Estate to the Purchaser pursuant to the Plan, the Purchase Agreement, and/or the Sale Order; (c) any sales made by the Wind Down Estate to liquidate such assets in the trust and convert such assets into Cash; (d) the making or assignment of any lease or sublease; (e) any Dissolution Transaction; and (f) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including any merger agreements, agreements of consolidation, restructuring, disposition, liquidation or dissolution, deeds, bills of sale, or assignments executed in connection with any of the foregoing or pursuant to the Plan.

B. *Restructuring Support Agreement*

Upon the later of (i) the Effective Date or (ii) the consummation of the Sale Transaction, any surviving obligations under the Restructuring Support Agreement shall terminate on a final basis.

C. *Global Settlement*

1. GUC Trust

On the Effective Date, the GUC Trust will be established with the primary purpose of liquidating the GUC Trust Assets and GUC Retained Causes of Action and making distributions to GUC Trust Beneficiaries on account of their Allowed General Unsecured Claims.

Subject to and to the extent set forth in the Plan, the Confirmation Order, the GUC Trust Agreement, or any other order of the Bankruptcy Court entered in connection therewith, the GUC Trust shall be empowered to: (a) perform all actions and execute all agreements, instruments, and other documents necessary to implement the terms of the Plan to the extent applicable to the GUC Trust; (b) establish, maintain, and administer the GUC Trust Accounts; (c) accept, preserve, receive, collect, manage, invest, sell, liquidate, transfer, supervise, and protect, as applicable, the GUC Trust Assets (directly or through its professionals or a Disbursing Agent), in accordance with the Plan; (d) subject to the GUC Trust Agreement, the Plan, and the Confirmation Order, as applicable, review, reconcile, settle, or object to all General Unsecured Claims that are not Allowed Claims as of the Effective Date pursuant to the procedures for allowing or disputing Claims prescribed in the Plan; (e) calculate and make distributions of the proceeds of the GUC Trust Assets to Holders of Allowed General Unsecured Claims that are GUC Trust Beneficiaries in accordance with the terms of the Plan and the GUC Trust Agreement and otherwise implement the terms of the Plan to the extent applicable to the GUC Trust; (f) retain, compensate, and employ professionals to represent or advise the GUC Trust; (g) file, in accordance with the GUC Trust Agreement, appropriate tax returns on behalf of the GUC Trust and pay any and all taxes or other obligations arising in connection therewith; (h) exercise such other powers as may be vested in the GUC Trust under the GUC Trust Agreement and the Plan, or as are deemed by the GUC Trustee to be necessary and proper to implement the provisions of the Plan and the GUC Trust Agreement; and (i) terminate the GUC Trust in accordance with the terms of the GUC Trust Agreement. For the avoidance of doubt, the GUC Trust shall not be empowered with performing any actions designated to the Wind Down Estate created pursuant to Article IV.A of the Plan and shall have no authority to pursue any Claims or Causes of Action against Released Parties or Exculpated Parties, other than the GUC Retained Causes of Action.

Notwithstanding anything to the contrary in this Article IV.C, the GUC Trust shall have no objective to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, the GUC Trust's purpose as described herein and in the GUC Trust Agreement and as may be reasonably necessary to conserve and protect the GUC Trust Assets and GUC Retained Causes of Action and provide for the orderly liquidation and distribution thereof. Accordingly, the GUC Trustee shall, in an orderly manner, liquidate the GUC Trust Assets and make timely distributions pursuant to the Plan and not unduly prolong the duration of the GUC Trust.

The GUC Trust Beneficiaries, who will be treated as grantors and deemed owners for federal income tax purposes, will be holders of GUC Trust Interests. The GUC Trust shall file federal income tax returns for the GUC Trust as a grantor trust pursuant to Section 671 of the Tax Code and the Treasury Regulations promulgated thereunder. The parties shall not take any position on their respective tax returns with respect to any other matter related to taxes that is inconsistent with treating the GUC Trust as a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d), unless any party receives definitive guidance from the Internal Revenue Service.

The GUC Trust shall be responsible for paying any (i) U.S. Trustee fees accruing in relation to disbursements by the GUC Trust and (ii) taxes related to the GUC Trust Assets or the liquidation thereof. Any professionals hired by the GUC Trustee will be compensated for services in such capacity solely from the GUC Trust Assets or proceeds thereof.

## 2. Funding of and Transfer of Assets into the GUC Trust

Except as otherwise provided in the Plan or the Confirmation Order, on the next Business Day following the GUC Settlement Opt-In Election Deadline, the Wind Down Estate shall complete the GUC Trust Assets Transfer and the GUC Retained Causes of Action Transfer, and all such assets shall vest in the GUC Trust on such date, to be administered by the GUC Trustee in accordance with the Plan and the GUC Trust Agreement. Except as set forth in the Plan, the GUC Trust Assets and GUC Retained Causes of Action shall be transferred to the GUC Trust free and clear of all Claims, Liens, and encumbrances to the fullest extent provided by section 363 or 1123 of the Bankruptcy Code. All Cash amounts and Causes of Action transferred into the GUC Trust from the Debtors shall be transferred by the U.S. Debtors.

For all federal and applicable state and local income tax purposes, all Persons (including without limitation the Debtors, the GUC Trustee and the GUC Trust Beneficiaries) will treat the transfers and assignment of the GUC Trust Assets and the GUC Retained Causes of Action to the GUC Trust for the benefit of the GUC Trust Beneficiaries as (a) a transfer of the GUC Trust Assets and the GUC Retained Causes of Action directly to the GUC Trust Beneficiaries followed by (b) the transfer of the GUC Trust Assets and the GUC Retained Causes of Action by the GUC Trust Beneficiaries to the GUC Trust. The GUC Trust will be treated as a grantor trust for federal tax purposes and, to the extent permitted under applicable law, for state and local income tax purposes. The GUC Trust Beneficiaries will be treated as the grantors and deemed owners of their allocable portion of the GUC Trust Assets and the GUC Retained Causes of Action for federal income tax purposes.

The fair market value of the portion of the GUC Trust Assets and the GUC Retained Causes of Action that is treated for U.S. federal income tax purposes as having been transferred to each GUC Trust Beneficiary will be determined by the GUC Trustee, and all parties (including, without limitation, the GUC Trustee and the GUC Trustee Beneficiaries) must utilize such fair market values determined by the GUC Trustee for federal and applicable state and local income tax purposes.

The GUC Trust’s taxable income, gain, loss, deduction or credit will be allocated to the GUC Trust Beneficiaries in accordance with their relative beneficial interests in the GUC Trust during the applicable taxable period. Such allocation will be binding on all parties for federal and

applicable state and local income tax purposes, and the parties will responsible for the payment of any federal, state and local income tax due on the income and gain so allocated to them.

The act of transferring the GUC Trust Assets and GUC Retained Causes of Action, as authorized by the Plan, shall not be construed to destroy or limit any such assets or rights or be construed as a waiver of any right, and such rights may be asserted by the GUC Trust as if the asset or right was still held by the Debtors.

3. GUC Trustee

Solely with respect to the GUC Trust Assets, the GUC Retained Causes of Action, and the administration of General Unsecured Claims, the GUC Trustee shall be the successor to and representative of the Estate of each of the Debtors appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The powers, rights, and responsibilities of the GUC Trustee shall be specified in the GUC Trust Agreement and shall include the authority and responsibility to fulfill the items identified in the Plan. Other rights and duties of the GUC Trustee and the GUC Trust Beneficiaries shall be as set forth in the GUC Trust Agreement.

The Committee shall select the GUC Trustee, subject to the consent, not to be unreasonably withheld, of the Debtors and the Prepetition Secured Parties.

4. GUC Trust Agreement

The GUC Trust Agreement will contain certain provisions to comply with Internal Revenue Service guidance for trusts treated as liquidating trusts. Among other things, the GUC Trust Agreement will require that the GUC Trust terminate no later than three years from the Effective Date; *provided, however*, that the Bankruptcy Court, upon motion by the GUC Trustee, may extend the term of the GUC Trust for a reasonable finite period if (a) such extension is necessary to the purpose of the GUC Trust, (b) the GUC Trustee receives an opinion of counsel or a ruling from the IRS stating that such an extension would not adversely affect the status of the GUC Trust as a liquidating trust for federal income tax purposes, and (c) such an extension is obtained within the six (6) month period prior to the GUC Trust's third (3rd) anniversary or the end of the immediately preceding extension period, as applicable; *provided, however*, each finite extension may be no more than six months (and such extension shall not exceed a total of four extensions unless the GUC Trustee received a favorable ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the GUC Trust as a grantor trust for U.S. federal income tax purposes. The GUC Trust Agreement generally will also provide for, among other things: (i) the payment of reasonable and documented compensation to the GUC Trustee; (ii) the payment of other expenses of the GUC Trust; (iii) the retention of counsel, accountants, financial advisors, or other professionals and the payment of their compensation; (iv) the investment of Cash by the GUC Trustee within certain limitations; (v) the preparation and filing of appropriate tax returns and other reports on behalf of the GUC Trust and the Debtors and the payment of taxes or other obligations owed by the GUC Trust, if any; (vi) the distribution at least annually to the GUC Trust Beneficiaries the GUC Trust's net Cash income and all other Cash proceeds received by the GUC Trust in excess of an amount reasonably necessary to meet Claims and contingent liabilities and to maintain the value of the GUC Trust Assets; (vii) the orderly liquidation of the GUC Trust Assets; and (viii) any reconciliation, administration, objection,

resolution, and distribution on account of General Unsecured Claims. For the avoidance of doubt, any payments to be made by the GUC Trust shall be paid solely from the GUC Trust Assets or the proceeds thereof.

The Prepetition Secured Parties and DIP Secured Parties shall work in good faith with the Committee to conform the GUC Trust Agreement to the terms of the Plan, including providing the Prepetition Secured Parties and DIP Secured Parties with certain reporting and consultation rights. Additional terms of the GUC Trust and Obligations of the GUC Trustee, if any, will be addressed in the Plan Supplement or GUC Trust Agreement, as applicable.

5. Settlement of Claims and Causes of Action

Except as otherwise provided in the Plan or the GUC Trust Agreement, on and after the Effective Date, the GUC Trustee may compromise or settle any General Unsecured Claims or any Causes of Action that are GUC Trust Assets or GUC Retained Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules and may pay the charges that it incurs on or after the Effective Date for GUC Trust Expenses, professionals' fees, disbursements, expenses, or related support services (including fees relating to the preparation of Professional fee applications) without application to the Bankruptcy Court.

6. Recourse Solely to GUC Trust Assets

All Claims against the Debtors are deemed satisfied, waived, and released as to the Debtors in exchange for the treatment of such Claims under the Plan, and Holders of Allowed General Unsecured Claims against any Debtor will have recourse solely to the GUC Trust Assets for the payment of their Allowed General Unsecured Claims, and only if such Holder made a GUC Settlement Opt-In Election, all in accordance with the terms of the Plan and the GUC Trust Agreement. A Holder of Allowed General Unsecured Claims that does not make a GUC Settlement Opt-In Election will receive no recovery or distribution on account of such claims, as set forth in Article III.B.4 of the Plan.

Potential Avoidance Actions against a Holder of General Unsecured Claims that is listed on Schedule 1 to the Global Settlement Term Sheet will (i) be purchased by the Purchaser as part of the Sale Transaction, subject to the occurrence of the GUC Settlement Election Opt-In Deadline, (ii) be held by the Wind Down Administrator pending the occurrence of the GUC Settlement Election Opt-In Deadline, (iii) to the extent any such Holder does not make a GUC Settlement Opt-In Election, will be conveyed to the Purchaser on the next Business Day following the GUC Settlement Opt-In Election Deadline, and (iv) will not be pursued by the Purchaser. **For the avoidance of doubt, if a Holder of General Unsecured Claims that is listed on Schedule 1 makes a GUC Settlement Opt-In Election, any potential Avoidance Actions against such Holder will not be conveyed to the Purchaser and instead will become GUC Trust Assets, and such potential Avoidance Actions may be pursued against such Holder.**

7. Distribution of GUC Trust Assets and GUC Retained Causes of Action Potential Recovery

All Holders of Allowed General Unsecured Claims that are GUC Trust Beneficiaries (including the Prepetition Secured Parties' Deficiency Claims) shall receive their Pro Rata share of the GUC Retained Causes of Action Potential Recovery, after the payment of any fees and expenses associated with the collection of the GUC Retained Causes of Action Potential Recovery.

The GUC Trust Assets, including any proceeds received by the GUC Trust on account of the prosecution or settlement of any commercial tort claims or Avoidance Actions that are GUC Trust Assets, net of any GUC Trust expenses (including professional fees) not covered by the GUC Trust Expense Reserve, shall be distributed at least annually as follows:

- (i) Holders of Allowed General Unsecured Claims that are GUC Trust Beneficiaries other than the Prepetition Secured Parties and/or DIP Secured Parties shall receive their Pro Rata share of 100% of the GUC Trust Assets up to \$1,000,000; and
- (ii) thereafter, all Holders of Allowed General Unsecured Claims that are GUC Trust Beneficiaries (including the Prepetition Secured Parties' Deficiency Claims) shall receive their Pro Rata share of 100% of the GUC Trust Assets.

8. MidOcean Waiver of Claims and Cash Contribution

On the Effective Date, MidOcean will (i) contribute \$100,000 in Cash to the GUC Trust (the "***Sponsor Cash Contribution***") and (ii) waive any General Unsecured Claims it may have against the Debtors, including any claims under the subordinated note and services agreement (the "***Sponsor Claims Waiver***"); *provided, however*, that nothing in the foregoing shall result in any of the Debtors' directors that are MidOcean designees waiving or releasing any rights to assert indemnification claims against the Debtors or any of its insurance carriers or any rights as beneficiaries of any insurance policies.

MidOcean is a Released Party under the Plan and has provided valuable consideration to the Estates in the form of the Sponsor Cash Contribution and the Sponsor Claims Waiver. Accordingly, notwithstanding anything set forth in the Plan, neither the GUC Trust nor the Debtors (nor any entity on behalf of the Debtors' Estates, including the Wind Down Estate) shall bring or be entitled to bring any claims or Causes of Action against (i) the Debtors' current and former directors and officers appointed and/or designated by MidOcean or (ii) MidOcean or any of its current and former Affiliates or it or its current and former Affiliates' current and former directors, managers, officers, employees, managed accounts and funds, predecessors, successors, assigns, subsidiaries, equity holders, members, agents, attorneys, accountants, investment bankers, consultants, and other professionals, each solely in their capacity as such, and all such claims shall be deemed and hereby are waived and released, and each of the foregoing Persons shall be a "Released Party" for purposes of the Plan.

**ARTICLE V.  
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

*A. Assumption and Rejection of Executory Contracts and Unexpired Leases*

On the Effective Date, except as otherwise provided herein or in any contract, instrument, release, or other agreement or document entered into in connection with the Plan, the Plan shall serve as a motion under sections 365 and 1123(b)(2) of the Bankruptcy Code to assume, assume and assign, or reject Executory Contracts and Unexpired Leases, and all Executory Contracts or Unexpired Leases shall be rejected as of the Effective Date without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease: (i) is designated on a schedule of assumed contracts by the Purchaser; (ii) is designated as a Transferred Contract pursuant to the Purchase Agreement on the Schedule of Assumed Executory Contracts and Unexpired Leases in the Plan Supplement; (iii) was previously assumed or rejected by the Debtors, pursuant to a Final Order of the Bankruptcy Court; (iv) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (v) is the subject of a motion to reject filed by the Debtors on or before the Confirmation Date; or (vi) is subject to a motion to reject pursuant to which the requested effective date of such rejection is after the Effective Date.

Entry of the Confirmation Order and/or Sale Approval Order, as applicable, shall constitute the Bankruptcy Court's order approving the assumptions, assumptions and assignments, or rejections, as applicable, of Executory Contracts or Unexpired Leases as set forth in the Plan pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Each Executory Contract or Unexpired Lease comprising a Transferred Contract shall re-vest in and be fully enforceable by the Purchaser in accordance with its terms, except as such terms may have been modified by the provisions of the Plan or any order of the Bankruptcy Court. Notwithstanding anything to the contrary in the Plan, the Debtors reserve the right to, with the consent of the Purchaser, alter, amend, modify, or supplement the Schedule of Assumed Executory Contracts and Unexpired Leases at any time prior to the Effective Date on no less than two business days' notice to the applicable non-Debtor counterparties.

Unless otherwise indicated, assumptions, assumptions and assignments, or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Any motions to reject Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by the Bankruptcy Court on or after the Effective Date.

*B. Claims Based on Rejection of Executory Contracts or Unexpired Leases*

Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be Filed with the Bankruptcy Court in accordance with the Bar Date Order. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, the Wind Down Estate, the Estates, or their property (as applicable), without the need for any objection by the Wind Down Estate or Wind Down Administrator (as**



applicable), or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied and released, notwithstanding anything in the Proof of Claim to the contrary. All Allowed Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims and shall be treated in accordance with Article III.B of the Plan.

C. *Cure of Defaults for Assumed Executory Contracts and Unexpired Leases*

Any monetary defaults under an Executory Contract or Unexpired Lease, as reflected on the applicable Cure Notice, shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the proposed cure amount (if any) in Cash by the Debtors, the Wind Down Estate, or for the Transferred Contracts, by the Purchaser, as applicable, on the Effective Date or as soon as reasonably practicable thereafter, subject to the limitations described below or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree.

1. Cure of Defaults for Transferred Contracts Under the Purchase Agreement

Consistent with the Purchase Agreement and subject to the terms and conditions therein, within three business days after the Petition Date the Debtors shall deliver a Cure Notice, in form and substance reasonably acceptable to Buyer, of potential assumption and assignment and proposed cure of the Transferred Contracts to the applicable counterparty (each a "**Contract Counterparty**"), which shall specify: (a) that such contract is contemplated to be assumed and assigned to Purchaser as a Transferred Contract in connection with the Sale Transactions; (b) the proposed Cure Claim with respect to each Transferred Contract; (c) that each respective Contract Counterparty may file an objection (a "**Contract Objection**") to the proposed assumption and assignment of the applicable Transferred Contract or the proposed Cure Claim, if any. Such Contract Objection must (i) be in writing; (ii) comply with the Federal Rules of Bankruptcy Procedure and any applicable local rules of the U.S. Bankruptcy Court; (iii) be Filed with the Bankruptcy Court, together with proof of service, on or before 5:00 p.m. (Central Time) on the date that is 21 days after the date the Debtors delivered the Cure Notice (the "**Cure Notice Objection Deadline**"); (iv) be served, so such objection is actually received on or before the Cure Notice Objection Deadline on counsel to the Debtors, counsel to the DIP Secured Parties, counsel to the Purchaser, and the Office of the U.S. Trustee for the Northern District of Texas; and (v) state with specificity the grounds for such objection, including, without limitation, the asserted amount of the fully liquidated Cure Claim and the legal and factual bases for any unliquidated portion of the Cure Claim that the Contract Counterparty believes is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code for the applicable Transferred Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise to any such defaults. If a Contract Counterparty files a Contract Objection in a manner that is consistent with the requirements set forth above and the parties are unable to consensually resolve the dispute prior to the Sale Hearing, the amount to be paid or reserved with respect to such Contract Objection will be determined at the Confirmation Hearing or such other date determined by the U.S. Bankruptcy Court.

2. Cure of Defaults for Other Assumed Executory Contracts and Unexpired Leases

For all other Executory Contracts or Unexpired Leases not deemed “Transferred Contracts,” at least 14 days before the Confirmation Hearing, the Debtors shall distribute, or cause to be distributed, Cure Notices of proposed assumption and proposed cure amounts to the applicable third parties. Unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption or related cure amount paid or proposed to be paid by the Debtors or the Wind Down Estate to such counterparty must be filed with the Bankruptcy Court and served on and actually received by the Debtors at least 7 days before the Confirmation Hearing. **Any counterparty that fails to timely object to the proposed assumption or proposed cure amount shall be deemed to have assented to such assumption and cure amount, and any such objection shall be Disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against the Debtors or the Wind Down Estate, without the need for any objection by the Wind Down Estate or any other party in interest or any further notice to or action, order, or approval of the Bankruptcy Court.**

Any Cure Claim shall be deemed fully satisfied, released, and discharged upon payment by the Debtors or the Wind Down Estate of the amount set forth in the applicable Cure Notice or, if the Allowed Cure Claim with respect to any Executory Contract or Unexpired Lease is determined by a Final Order to be greater than the applicable amount set forth in the Cure Notice, the amount of such Allowed Cure Claim; *provided, however*, that following entry of a Final Order resolving any such dispute, the applicable Debtor shall, with the consent of the Purchaser, have the right to reject any Executory Contract or Unexpired Lease within thirty (30) days of such resolution; *provided further, however*, that nothing herein shall prevent the Wind Down Estate from paying any Cure Claim despite the failure of the relevant counterparty to file such request for payment of such Cure Claim. The Wind Down Estate also may settle any Cure Claim without any further notice to or action, order, or approval of the Bankruptcy Court.

If there is any dispute regarding any Cure Claim, the ability of the Wind Down Estate or any assignee to provide “adequate assurance of future performance” within the meaning of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption, then payment of the Cure Claim shall occur as soon as reasonably practicable after entry of a Final Order resolving such dispute, approving such assumption (and, if applicable, assignment), or as may be agreed upon by the Debtors or the Wind Down Estate, as applicable, and the counterparty to the Executory Contract or Unexpired Lease, in each case with the consent of the Purchaser. Notwithstanding the foregoing, to the extent the dispute relates solely to any Cure Claims, the applicable Debtor may, with the consent of the Purchaser, assume the Executory Contract or Unexpired Lease prior to the resolution of any such dispute; *provided, however*, that the Debtor reserves Cash in an amount sufficient to pay the full amount reasonably asserted as the required Cure Claim by the contract counterparty; *provided further, however*, that following entry of a Final Order resolving any such dispute, the applicable Debtor shall, with the consent of the Purchaser, have the right to reject any Executory Contract or Unexpired Lease within 30 days of such resolution.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or

ownership interest composition or other bankruptcy or insolvency-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the date that the Debtors assume such Executory Contract or Unexpired Lease. Any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed, including pursuant to the Confirmation Order, shall be deemed Disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court.

D. *Modifications, Amendments, Supplements, Restatements, or Other Agreements*

Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed or assumed and assigned shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and Executory Contracts and Unexpired Leases related thereto, if any, including easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

E. *Reservation of Rights*

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Schedule of Assumed Executory Contracts and Unexpired Leases, nor anything contained in the Plan or the Sale Transaction Documents, shall constitute an admission by the Debtors, the Wind Down Estate, the Purchaser, or the Wind Down Administrator (as applicable) that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Debtor, Wind Down Estate, the Purchaser, or the Wind Down Administrator (as applicable) has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors, or, after the Effective Date, the Wind Down Estate, the Purchaser, or the Wind Down Administrator (as applicable) shall have 30 days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

F. *Nonoccurrence of Effective Date*

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

G. *Indemnification Obligations*

All Indemnification Obligations shall not be discharged or impaired by Confirmation of the Plan or entry of the Confirmation Order and shall be assumed by the Wind Down Estate and remain intact, irrevocable, and shall survive the entry of the Confirmation Order and Effective Date of the Plan on terms no less favorable to such current and former directors, officers, managers,

equity holders, employees, attorneys, accountants, investment bankers, and other professionals of any of the Debtors and such current and former directors', officers', and managers' respective Affiliates than the Indemnification Obligations in place prior to the Petition Date, and to the extent any such Indemnification Obligations are obligations of a non-Debtor Affiliate of any of the Debtors, such Indemnification Obligations shall be assigned on the Effective Date to the Wind Down Estate.

**ARTICLE VI.  
PROVISIONS GOVERNING DISTRIBUTIONS**

*A. Timing and Calculation of Amounts to Be Distributed*

Unless otherwise provided in the Plan, on the Effective Date or as soon as reasonably practicable thereafter (or, if a Claim is not an Allowed Claim on the Effective Date, on the date that such Claim becomes Allowed or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim, including any portion of a Claim that is an Allowed Claim notwithstanding that other portions of such Claim are a Disputed Claim, shall receive the full amount of the distributions that the Plan provides for Allowed Claims in each applicable Class. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article VII of the Plan. Except as otherwise provided in the Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

*B. Disbursing Agent.*

All distributions under the Plan shall be made by the Disbursing Agent. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. Additionally, in the event that the Disbursing Agent is so otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Wind Down Estate or the GUC Trust (as applicable).

*a. Powers of the Disbursing Agent*

The Disbursing Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions of the Plan.

*b. Expenses Incurred On or After the Effective Date*

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable and documented fees and expenses incurred by the Disbursing Agent on or after the Effective Date,

and any reasonable and documented compensation and expense reimbursement claims (including reasonable and documented attorney fees and expenses), made by the Disbursing Agent shall be paid in Cash by the Purchaser, the Wind Down Estate, or the Wind Down Administrator (as applicable).

c. No Liability

Except on account of gross negligence, fraud, or willful misconduct, the Disbursing Agent shall have no (a) liability to any party for actions taken in accordance with the Plan or in reliance upon information provided to it in accordance with the Plan or (b) obligation or liability to any party who does not hold a Claim against the Debtors as of the Distribution Record Date or any other date on which a distribution is made or who does not otherwise comply with the terms of the Plan.

C. *Delivery of Distributions and Undeliverable or Unclaimed Property*

1. Delivery of Distributions

a. Distribution Record Date

As of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims and Interests maintained by the Debtors, or their respective agents, shall be deemed closed, and there shall be no further changes in the record Holders of any of the Claims and Interests. The Disbursing Agent shall have no obligation to recognize any transfer of the Claims or Interests occurring on or after the Distribution Record Date.

b. Delivery of Distributions in General

Except as otherwise provided herein, the Disbursing Agent shall make distributions to Holders of Allowed Claims and Allowed Interests as of the Distribution Record Date at the address for each such Holder as indicated on the Debtors' records as of the date of any such distribution; *provided, however*, that the manner of such distributions shall be determined at the discretion of the Debtors, the Purchaser, the Wind Down Administrator, or the GUC Trustee (as applicable).

c. Delivery of Distributions on Secured Party Claims.

The Prepetition Credit Agreement Agent shall be deemed to be the Holder of all Secured Party Claims for purposes of distributions to be made hereunder, and all distributions on account of such Allowed Claims shall be made to the Prepetition Credit Agreement Agent. As soon as practicable following compliance with the requirements set forth in Article VI of the Plan, the Prepetition Credit Agreement Agent shall arrange to deliver or direct the delivery of such distributions to or on behalf of the Holders of Allowed Secured Party Claims in accordance with the terms of the Prepetition Credit Agreement Documents, subject to any modifications to such distributions in accordance with the terms of the Plan.

d. Delivery of Distributions on DIP Claims

The DIP Agent shall be deemed to be the Holder of all DIP Claims for purposes of distributions to be made hereunder, and all distributions on account of such DIP Claims shall be made to the DIP Agent. As soon as practicable following compliance with the requirements set forth in Article VI of the Plan, the DIP Agent shall arrange to deliver or direct the delivery of such distributions to or on behalf of the Holders of DIP Claims in accordance with the terms of the DIP Facility Documents, subject to any modifications to such distributions in accordance with the terms of the Plan.

e. Minimum Distributions

No Distribution shall be made by the Disbursing Agent on account of an Allowed Claim if the amount to be distributed to the Holder of such Claim on the applicable Distribution Date has an economic value of less than \$250.

2. Undeliverable Distributions and Unclaimed Property

In the event that any distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Debtors or the Wind Down Estate, as applicable, shall have determined the then-current address of such Holder, at which time such distribution shall be made to such Holder without interest; *provided that* such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one year from the Effective Date. After such date, all unclaimed property or interests in property shall be redistributed Pro Rata (it being understood that, for purposes of this Article VI.C, "Pro Rata" shall be determined as if the Claim underlying such unclaimed distribution had been Disallowed) without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal, provincial, or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any Holder to such property or interest in property shall be discharged and forever barred.

D. *Compliance with Tax Requirements*

In connection with the Plan, to the extent applicable, the Debtors, Wind Down Administrator, GUC Trustee, Disbursing Agent, and any applicable withholding agent shall comply with all applicable tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, such parties shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions until receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. For these purposes, all distributions made on behalf of the Debtors pursuant to the Plan shall if applicable be first in satisfaction of the portion of Claims that are not subject to any withholding tax obligation. All Persons holding Claims against any Debtor shall be required to provide any additional information reasonably necessary for the Debtors, Wind Down Administrator, GUC Trustee, Disbursing Agent, and any applicable withholding agent to comply with all tax

withholding and reporting requirements imposed on them by any Governmental Unit, including an IRS Form W-8 or W-9, as applicable, and any other applicable tax forms. The Debtors, Wind Down Estate, Wind Down Administrator, GUC Trustee, and Disbursing Agent (as applicable) reserve the right to allocate all distributions made under the Plan in a manner that complies with all other legal requirements, such as applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances. Any amounts withheld pursuant to the Plan shall be deemed to have been distributed to and received by the applicable recipient for all purposes of the Plan. Notwithstanding any other provision of the Plan to the contrary, each Holder of an Allowed Claim or Allowed Interest shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any Governmental Unit, including income, withholding and other tax obligations, on account of such distribution.

E. *Foreign Currency Exchange Rate*

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in The Wall Street Journal, National Edition, on the Effective Date.

F. *Surrender of Cancelled Instruments or Securities*

As a condition precedent to receiving any distribution on account of its Allowed Claim, each Holder of a Claim shall be deemed to have surrendered the certificates or other documentation underlying each such Claim, and all such surrendered certificates and other documentation shall be deemed to be cancelled pursuant to Article IV of the Plan, except to the extent otherwise provided in the Plan.

G. *Allocations*

The aggregate consideration to be distributed to each Holder of an Allowed Claim will be allocated first to the principal amount of such Allowed Claim, with any excess allocated to unpaid interest that accrued on such Allowed Claims, if any.

H. *No Postpetition Interest on Claims*

Unless otherwise specifically provided for in an order of the Bankruptcy Court, the Plan, or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims or Interests and no Holder of a Claim or Interest shall be entitled to interest accruing on or after the Petition Date on any such Claim.

I. *Setoffs and Recoupment*

The Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), may, but shall not be required to, set off against, or recoup from, any Allowed Claim (other than an Allowed General Unsecured Claim) against a Debtor of any nature whatsoever that the applicable Debtor, Wind Down Estate, Wind Down Administrator, GUC Trust, or GUC Trustee (as applicable) may have against the Holder of such Claim, but neither the failure to do so nor the allowance of any Claim against a Debtor hereunder shall constitute a

waiver or release by the applicable Debtor, Wind Down Estate, Wind Down Administrator, GUC Trust, or GUC Trustee (as applicable) of any such Claim it may have against the Holder of such Allowed Claim.

J. *Claims Paid or Payable by Third Parties*

1. Claims Paid by Third Parties

The Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), shall reduce in full an Allowed Claim (including any applicable Cure Claim of a Transferred Contract paid by the Purchaser), and such Claim shall be Disallowed without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor, Wind Down Estate, the Wind Down Administrator, GUC Trust, or the GUC Trustee (as applicable); *provided that* the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) shall provide 21 days' notice to the Holder prior to any disallowance of such Claim during which period the Holder may object to such disallowance, and if the parties cannot reach an agreed resolution, the matter shall be decided by the Bankruptcy Court. Subject to the last sentence of this paragraph, to the extent a Holder of a Claim receives a distribution on account of such Claim and thereafter receives payment from a party that is not a Debtor, Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) on account of such Claim, such Holder shall, within 14 days of receipt thereof, repay or return the distribution to the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the Petition Date. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the 14-day grace period specified above until the amount is repaid.

2. Claims Payable by Insurers

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim, then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without an objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court; *provided that* the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), shall provide 21 days' notice to the Holder of such Claim prior to any disallowance of such Claim during which period the Holder may object to such disallowance, and if the parties cannot reach an agreed resolution, the matter shall be decided by the Bankruptcy Court.



3. Applicability of Insurance Policies

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity may hold against any insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

**ARTICLE VII.  
PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED, AND DISPUTED CLAIMS**

A. *Allowance of Claims*

On or after the Effective Date, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) shall have and retain any and all rights and defenses that the Debtors had with respect to any Claim immediately prior to the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim. All settlements of Claims approved prior to the Effective Date pursuant to a Final Order of the Bankruptcy Court, pursuant to Bankruptcy Rule 9019, or otherwise shall be binding on all parties.

B. *Claims and Interests Administration Responsibilities*

Except as otherwise specifically provided in the Plan and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, after the Effective Date, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), by order of the Bankruptcy Court, shall together have the sole authority to: (1) File, withdraw, or litigate to judgment objections to Claims or Interests; (2) settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court. In any action or proceeding to determine the existence, validity, or amount of any General Unsecured Claim, any and all claims or defenses that could have been asserted by the applicable Debtor(s) or the Entity holding such General Unsecured Claim are preserved as if the Chapter 11 Cases had not been commenced.

C. *Adjustment to Claims or Interests Without Objection*

Any duplicate Claim or Interest or any Claim or Interest that has been paid or satisfied, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register without the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) having to File an application, motion, complaint, objection, or any

other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

D. *Time to File Objections to Claims*

Any objections to Claims, which, prior to the Effective Date, may be Filed by any party, shall be Filed on or before the Claims Objection Deadline.

E. *Disallowance of Claims*

Any Claims held by Entities from which property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims until such time as such Causes of Action (other than Causes of Action that constitute a Transferred Asset under the Purchase Agreement) against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid to the Debtors, the Wind Down Estate or the Wind Down Administrator (as applicable).

**ANY CLAIM THAT HAS BEEN LISTED IN THE SCHEDULES AS DISPUTED, CONTINGENT, OR UNLIQUIDATED, AND FOR WHICH NO PROOF OF CLAIM HAS BEEN TIMELY FILED, SHALL BE DEEMED DISALLOWED AND SHALL BE EXPUNGED WITHOUT FURTHER ACTION AND WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT.**

**EXCEPT AS PROVIDED HEREIN, IN AN ORDER OF THE BANKRUPTCY COURT, OR OTHERWISE AGREED, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE APPLICABLE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS AT OR PRIOR TO THE CONFIRMATION HEARING SUCH LATE CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

F. *Amendments to Claims*

On or after the Effective Date, except as provided in the Plan or the Confirmation Order, a Claim may not be Filed or amended without the prior authorization of the Bankruptcy Court and any such new or amended Claim Filed shall be deemed Disallowed in full and expunged without any further action, order, or approval of the Bankruptcy Court.

G. *No Distributions Pending Allowance*

Notwithstanding any other provision of this Plan to the contrary, no payment or distribution of any kind or nature provided under the Plan shall be made to the extent that all or any portion of any Claim is a Disputed Claim, including if an objection to a Claim or portion thereof is Filed as

set forth in Article VII, unless and until such Disputed Claim becomes an Allowed Claim; *provided that* any portion of a Claim that is an Allowed Claim shall receive the payment or distribution provided under the Plan thereon notwithstanding that any other portion of such Claim is a Disputed Claim.

H. *Single Satisfaction of Claims*

Holders of Allowed Claims may assert such Claims against each Debtor obligated with respect to such Claim, and such Claims shall be entitled to share in the recovery provided for the applicable Class of Claims against each obligated Debtor based upon the full Allowed amount of the Claim. Notwithstanding the foregoing, in no case shall the aggregate value of all property received or retained under the Plan on account of any Allowed Claim exceed 100% of such Allowed Claim.

**ARTICLE VIII.  
SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS**

A. *Compromise and Settlement of Claims, Interests, and Controversies*

Pursuant to sections 363 and 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions, releases, and other benefits provided pursuant to the Plan, which distributions, releases, and other benefits shall be irrevocable and not subject to challenge upon the Effective Date, the provisions of the Plan, and the distributions, releases, and other benefits provided hereunder, shall constitute a good-faith compromise and settlement of all Claims and Interests and controversies resolved pursuant to the Plan.

The Plan shall be deemed a motion to approve the good-faith compromise and settlement of all such Claims, Interests, and controversies pursuant to Bankruptcy Rule 9019, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise and settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that all such compromises and settlements are in the best interests of the Debtors, their Estates, and Holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) may compromise and settle Claims against, and Interests in, the Debtors and their Estates and Causes of Action against other Entities.

In accordance with Bankruptcy Rule 9019, the Plan constitutes the good-faith compromise and settlement among the Global Settlement Parties regarding the matters set forth in the Global Settlement Term Sheet, and reflects and implements such compromise and settlement, including by the establishment and funding of the GUC Trust. Such compromise and settlement is made in exchange for consideration and is in the best interests of the Global Settlement Parties and the Holders of General Unsecured Claims, is within the reasonable range of possible litigation outcomes, is fair, equitable, and reasonable, and is an essential element of the resolution of these Chapter 11 Cases.

B. *Discharge of Claims and Termination of Interests*

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Sale Order, the Plan and/or the Plan Supplement, the distributions, rights, and treatment that are provided in the Sale Order or the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Wind Down Estate or the Wind Down Administrator, as applicable), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and interests in, the Debtors or any of their assets or properties, regardless of whether any property, including, without limitation, the Transferred Assets, shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (a) a Proof of Claim based upon such debt or right is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (b) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (c) the Holder of such a Claim or Interest has accepted the Plan. Any default or “event of default” by the Debtors or Affiliates with respect to any Claim or Interest that existed immediately before or on account of the Filing of the Chapter 11 Cases shall be deemed cured (and no longer continuing) as of the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring.

C. *Term of Injunctions or Stays*

Unless otherwise provided herein, the Confirmation Order, the Confirmation Recognition Order or in a Final Order, all injunctions or stays arising under or entered during the Chapter 11 Cases under section 362 of the Bankruptcy Code or otherwise, or ordered by the CCAA Court in the CCAA Recognition Proceeding, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date set forth in the order providing for such injunction or stay.

D. *Release of Liens*

**Except as otherwise specifically provided in the Sale Order (solely with respect to any Permitted Encumbrances and Assumed Liabilities), the Plan, and/or the Plan Supplement, on the Effective Date and concurrently with the applicable distributions or other treatment made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates, including, without limitation, the Transferred Assets, shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Wind Down Estate or the GUC Trust and its successors and assigns, in each case, without any further approval or order of the Bankruptcy Court or the CCAA Court and without any action or Filing being required to be made by the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable).**

E. *Releases by the Debtors*

Pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, on and after the Effective Date, each Released Party is hereby released and discharged by the Debtors, their Estates, and the Wind Down Estate (as applicable) from any and all Claims, Causes of Action, Avoidance Actions, obligations, suits, judgments, damages, demands, losses, liabilities, and remedies whatsoever (including any derivative claims, asserted or assertable on behalf of the Debtors, their Estates, or the Wind Down Estate), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, accrued or unaccrued, existing or hereinafter arising, in law, equity, contract, tort, or otherwise, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), their Estates, the Wind Down Estate, the Debtors' in- or out-of-court restructuring efforts, the Debtors' intercompany transactions, the Prepetition Credit Agreement Documents, the Note Purchase Agreement Documents, the Professional Services Agreement Documents, the DIP Facility Documents (and any payments or transfers in connection therewith), the Sale Transaction, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the formulation, preparation, dissemination, negotiation, or Filing of the Restructuring Support Agreement, the restructuring of any Claim or Interest before or during the Chapter 11 Cases, or any Restructuring, contract, instrument, document, release, or other agreement or document (including any legal opinion regarding any such transaction, contract, instrument, document, release, or other agreement or the reliance by any Released Party on the Sale Order, the Plan, the Confirmation Order, or Confirmation Recognition Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, the Plan, the Plan Supplement, the DIP Facility, the DIP Facility Documents, the Sale Transaction, and other documents (including the Definitive Documentation), the Chapter 11 Cases, the CCAA Recognition Proceedings, the filing of the Chapter 11 Cases, the filing of the CCAA Recognition Proceedings, the Sales Process, the Global Settlement, the pursuit of Confirmation, the pursuit of Consummation, the solicitation of votes with respect to the Plan, the administration and implementation of the Plan and the Sales Process, including the issuance or distribution of any property pursuant to the Plan and the Sales Process, the Definitive Documentation, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to the foregoing. Notwithstanding anything to the contrary in the foregoing, (i) the releases set forth in this Article VIII.E do not release any post-Effective Date obligations of any party or Entity under the Plan, including any such obligations created in connection with the Restructuring or the assumption of the Indemnification Obligations as set forth in the Plan; (ii) nothing in this Article VIII.E shall, nor shall it be deemed to, release any Released Party from any Claims or Causes of Action arising from any obligations of any party under the Purchase Agreement; (iii) nothing in this Article VIII.E shall, nor shall it be deemed to, release any Released Party from any Claims or Causes of Action that are found, pursuant to a Final Order, to be the result of such Released Party's gross negligence, fraud or willful misconduct; (iv) nothing in this Article VIII.E shall, nor shall it be deemed to, release any Causes of Action specifically

enumerated in the List of Retained Causes of Action; and (v) nothing in this Article VIII.E shall, nor shall it be deemed to, release any of the Debtor Retained Causes of Action.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases by the Debtors set forth in this Article VIII.E, which includes by reference each of the related provisions and definitions contained herein, and, further, shall constitute the Bankruptcy Court's finding that such releases are: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the Claims and Causes of Action released by such releases; (3) in the best interests of the Debtors and their Estates; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors or their Estates asserting any Claim or Cause of Action released pursuant to such releases.

F. *Releases by Releasing Parties*

As of the Effective Date, each Releasing Party hereby releases and discharges each Debtor, Estate, Wind Down Estate, and Released Party from any and all Claims, Causes of Action, Avoidance Actions, obligations, suits, judgments, damages, demands, losses, liabilities, and remedies whatsoever (including any derivative claims, asserted or assertable on behalf of the Debtors, the Wind Down Estate, or their Estates), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, accrued or unaccrued, existing or hereinafter arising, in law, equity, contract, tort, or otherwise, that such Releasing Party or its estate, heirs, executors, administrators, successors, or assigns would have been legally entitled to assert in his, her, or its own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), their Estates, the Wind Down Estate, the Debtors' in- or out-of-court restructuring efforts, the Debtors' intercompany transactions, the Prepetition Credit Agreement Documents, the Note Purchase Agreement Documents, the Professional Services Agreement Documents, the DIP Facility Documents (and any payments or transfers in connection therewith), the Sale Transaction, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Releasing Party, the formulation, preparation, dissemination, negotiation, or Filing of the Restructuring Support Agreement, the restructuring of any Claim or Interest before or during the Chapter 11 Cases, or any Restructuring, contract, instrument, document, release, or other agreement or document (including any legal opinion regarding any such transaction, contract, instrument, document, release, or other agreement or the reliance by any Releasing Party on the Sale Order, the Plan, the Confirmation Order, or the Confirmation Recognition Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, the Plan, the Plan Supplement, the DIP Facility, the DIP Facility Documents, the related agreements, instruments, and other documents (including the Definitive Documentation), the Chapter 11 Cases, the CCAA Recognition Proceedings, the filing of the Chapter 11 Cases, the filing of the CCAA Recognition Proceedings, the Sales Process, the Global Settlement, the pursuit of

**Confirmation, the pursuit of Consummation, the solicitation of votes with respect to the Plan, the administration and implementation of the Plan and the Sales Process, including the issuance or distribution of any property pursuant to the Plan and the Sales Process, the Definitive Documentation, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to the foregoing; *provided, however*, that except as expressly provided under the Plan, the foregoing releases shall not release obligations of the Debtors on account of any Allowed Claims that are treated under the Plan. Notwithstanding anything to the contrary in the foregoing, (i) the releases set forth in this Article VIII.F do not release any post-Effective Date obligations of any party or Entity under the Plan, including any such obligations created in connection with the Restructuring or the Global Settlement or the assumption of the Indemnification Obligations as set forth in the Plan; (ii) nothing in this Article VIII.F shall, nor shall it be deemed to, release any Released Party from any Claims or Causes of Action arising from any obligations of any party under the Purchase Agreement; (iii) nothing in this Article VIII.F shall, nor shall it be deemed to, release any Released Party from any Claims or Causes of Action that are found, pursuant to a Final Order, to be the result of such Released Party's gross negligence, fraud, or willful misconduct; (iv) nothing in this Article VIII.F shall, nor shall it be deemed to, release any of the Lender Retained Causes of Action; (v) nothing herein shall, nor shall it be deemed to, release any of the non-Debtor Affiliates of the Released Parties party to the Prepetition Credit Agreement Documents from the Wind Down Claims; and (vii) nothing in this Article VIII.F shall, nor shall it be deemed to, release any of the Debtor Retained Causes of Action. For the avoidance of doubt, nothing in this Article VIII.F shall, nor shall it be deemed to, release any Causes of Action specifically enumerated in the List of Retained Causes of Action.**

**Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases by Holders of Claims and Interests set forth in this Article VIII.F, which includes by reference each of the related provisions and definitions contained herein, and, further, shall constitute the Bankruptcy Court's finding that such releases are: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the Claims and Causes of Action released by such releases; (3) in the best interests of the Debtors and their Estates; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; (6) an essential component of the Plan and the Restructuring; and (7) a bar to any of the Releasing Parties asserting any Claim or Cause of Action released pursuant to such releases.**

**G. *Exculpation***

**Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur liability for, and each Exculpated Party is hereby exculpated from, any Claim, Cause of Action, obligation, suit, judgment, damage, demand, loss, or liability for any claim related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, Filing, or termination of the Restructuring Support Agreement and related prepetition transactions, the Disclosure Statement, the Plan, the Sale Process, the Sale Transaction, the related agreements, instruments, and other documents (including the Definitive Documentation), the solicitation**

of votes with respect to the Plan, or the Restructuring, or any related contract, instrument, release or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Person on the Plan or the Confirmation Order or Confirmation Recognition Order in lieu of such legal opinion) created or entered into in connection with the Debtors' in or out-of-court restructuring efforts, the Sale Process, the Disclosure Statement, the Plan, the Restructuring Support Agreement, the related agreements, instruments, and other documents (including the Definitive Documentation), the Chapter 11 Cases, the CCAA Recognition Proceedings, the filing of the Chapter 11 Cases, the filing of the CCAA Recognition Proceedings, the Sales Process, the Global Settlement, solicitation of votes with respect to the Plan, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan and the Sales Process, including the issuance of or distribution of any property pursuant to the Plan and the Sales Process, the related agreements, instruments, and other documents (including the Definitive Documentation), or any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related to the foregoing, except for claims related to any act or omission that is determined in a Final Order to have constituted fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Confirmation Order shall provide that the Exculpated Parties (to the extent applicable) have, and upon completion of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of, and distribution of, consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan. For the avoidance of doubt, nothing in this Article VIII.G shall, nor shall it be deemed to, exculpate the Debtors from any Lender Retained Causes of Action or any Exculpated Party from any Causes of Action (i) arising from any obligations of any party under the Purchase Agreement; or (ii) specifically enumerated in the List of Retained Causes of Action.

H. *Injunction*

Except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or Confirmation Order, all Entities who have held, hold, or may hold Claims, Interests, or Causes of Action that have been released pursuant to Article VIII.E or Article VIII.F, discharged pursuant to Article VIII.B, or are subject to exculpation pursuant to Article VIII.G, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Wind Down Estate, the Released Parties, or the Exculpated Parties: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (c) creating, perfecting, or enforcing any Lien or encumbrance of any kind against such Entities or the property, including, without limitation, the Transferred Assets, or the estates of such Entities on



account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; or (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action. Notwithstanding anything to the contrary in the foregoing, this injunction does not enjoin any party under the Plan or under any document, instrument, or agreement (including the Disclosure Statement or set forth in the Plan Supplement, to the extent finalized) executed to implement the Plan from bringing an action in the Bankruptcy Court to enforce the terms of the Plan or such document, instrument, or agreement (including those attached to the Disclosure Statement or set forth in the Plan Supplement, to the extent finalized) executed to implement the Plan. Subject in all respects to Article XI, no entity or person may commence or pursue a Claim or Cause of Action of any kind against any Released Party or Exculpated Party that arose or arises from, in whole or in part, the Chapter 11 Cases, the CCAA Recognition Proceedings, the Debtors, the Wind Down Estate, the Plan, the Plan Supplement, the Disclosure Statement, the Restructuring Support Agreement, the Sale Process, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Plan, the Disclosure Statement, the Chapter 11 Cases, the CCAA Recognition Proceedings, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the distribution of property under the Plan, or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such Claim or Cause of Action represents a colorable Claim or Cause of Action of any kind, including negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Released Party or Exculpated Party and (ii) specifically authorizing such entity or person to bring such Claim or Cause of Action against any such Released Party or Exculpated Party. The Bankruptcy Court shall have sole and exclusive jurisdiction to determine whether a Claim or Cause of Action is colorable and, only to the extent legally permissible and as provided for in Article XI, shall have jurisdiction to adjudicate the underlying colorable Claim or Cause of Action.

I. *Protection Against Discriminatory Treatment*

Consistent with section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against the Wind Down Estate or the Wind Down Administrator (as applicable) or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Wind Down Estate or the Wind Down Administrator (as applicable), or another Entity with whom the Wind Down Estate or the Wind Down Administrator (as applicable) have been associated, solely because each Debtor has been a debtor under chapter 11 of the Bankruptcy Code, has been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtors are granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

J. *Recoupment*

In no event shall any Holder of Claims or Interests be entitled to recoup any Claim or Interest against any Claim, right, or Cause of Action of the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), unless such Holder actually has performed such recoupment and provided notice thereof in writing to the Debtors on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

K. *Subordination Rights*

Any distributions under the Plan shall be received and retained free from any obligations to hold or transfer the same to any other Holder and shall not be subject to levy, garnishment, attachment, or other legal process by any Holder by reason of claimed contractual subordination rights. Any such subordination rights shall be waived, and the Confirmation Order shall constitute an injunction enjoining any Entity from enforcing or attempting to enforce any contractual, legal, or equitable subordination rights to property distributed under the Plan, in each case other than as provided in the Plan.

L. *Reimbursement or Contribution*

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Confirmation Date: (1) such Claim has been adjudicated as non-contingent; or (2) the relevant Holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered prior to the Confirmation Date determining such Claim as no longer contingent.

M. *Document Retention.*

On and after the Effective Date, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) may maintain documents in accordance with their standard document retention policy, as may be altered, amended, modified, or supplemented by the Wind Down Estate or the Wind Down Administrator (as applicable).

**ARTICLE IX.  
CONDITIONS PRECEDENT TO CONFIRMATION  
AND CONSUMMATION OF THE PLAN**

A. *Conditions Precedent to Confirmation*

It shall be a condition to Confirmation of the Plan that the following conditions, as determined by the Debtors with the consent of the DIP Agent, the Prepetition Secured Parties, and the Purchaser shall have been satisfied (or waived pursuant to the provisions of Article IX.C of the Plan):

1. the Restructuring Support Agreement shall not have been breached or terminated and shall be in full force and effect;
2. the Bankruptcy Court shall have entered a Final Order approving the Disclosure Statement with respect to the Plan as containing adequate information within the meaning of section 1125 of the Bankruptcy Code;
3. a Final DIP Approval Order shall have been entered by the Bankruptcy Court and the Final DIP Recognition Order shall have been entered by the CCAA Court, and each shall not have been breached or terminated, shall be in full force and effect, and no stay thereof shall be in effect;
4. the Purchase Agreement shall have been executed by the parties thereto, shall not have been breached or terminated and shall be in full force and effect;
5. all provisions, terms, and conditions hereof shall have been approved in the Confirmation Order;
6. the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount shall have been funded by cash on hand of the Debtors and the proceeds of the DIP Facility into a reserve account and shall be added to the outstanding obligations under the DIP Facility (less cash on hand);
7. the Special Committee's investigation shall have concluded; and
8. a motion (including any exhibits, schedules, amendments, modifications or supplements thereto) shall have been filed in the CCAA Recognition Proceedings seeking the issuance of the Sale Recognition Order pursuant the Purchase Agreement and consistent with the terms of the Restructuring Support Agreement and the Restructuring Support Agreement Documentation.

**B. *Conditions Precedent to the Effective Date***

It shall be a condition to the occurrence of the Effective Date that the following conditions, as determined by the Debtors with the consent of the DIP Agent, the Prepetition Secured Parties, and the Purchaser shall have been satisfied (or waived pursuant to the provisions of Article IX.C of the Plan):

1. the Restructuring Support Agreement shall not have been breached or terminated and shall be in full force and effect;
2. the Confirmation Order and Confirmation Recognition Order shall have been entered and neither the Confirmation Order nor the Confirmation Recognition Order shall have been stayed, modified, or vacated on appeal;
3. the Sale Order shall have been entered (whether or not included as a part of the Confirmation Order and Confirmation Recognition Order, as applicable), and shall not have been stayed, modified, or vacated on appeal;

4. the Sale Transaction (including with respect to the sale of the Canadian Transferred Assets to Purchaser pursuant to the CCAA Recognition Proceedings) shall have been consummated in accordance with the terms of the Purchase Agreement;

5. a Final DIP Approval Order shall have been entered by the Bankruptcy Court and Final DIP Recognition Order shall have been entered by the CCAA Court, and each shall not have been breached or terminated, shall be in full force and effect, and no stay thereof shall be in effect;

6. the Professional Fee Escrow Account shall be funded using cash on hand of the Debtors, proceeds of the DIP Facility, or proceeds of the Sale Transaction, as applicable, in an amount equal to the Professional Fee Reserve Amount;

7. all required governmental and third-party approvals and consents, including Bankruptcy Court approval, necessary in connection with the transactions provided for in the Plan shall have been obtained, shall not be subject to unfulfilled conditions, and shall be in full force and effect, and all applicable waiting periods shall have expired without any action having been taken by any competent authority that would restrain or prevent such transactions;

8. all documents and agreements necessary to implement the Plan and the Restructuring shall have been (a) tendered for delivery and (b) effected or executed by all Entities party thereto, and all conditions precedent to the effectiveness of such documents and agreements (other than any conditions related to the occurrence of the Effective Date) shall have been satisfied or waived pursuant to the terms of such documents or agreements;

9. the Bankruptcy Court shall have approved the Plan's releases and such approval shall have been recognized and given effect in Canada by the CCAA Court;

10. all Restructuring Expenses shall have been paid in Cash in full;

11. the GUC Trust shall have been created and funded in accordance with the Plan;

12. the Post-Sale Reserve shall have been funded using cash on hand of the Debtors, proceeds of the DIP Facility, or the Sale Transaction proceeds, as applicable; and

13. the Foreign Sale Reserve shall have been funded using Sale Transaction proceeds and distributed to the Netherlands Subsidiaries.

C. *Waiver of Conditions*

The conditions precedent to Confirmation of the Plan and to the Effective Date of the Plan set forth in Article IX.A and Article IX.B may be amended, modified, supplemented, or waived in writing by mutual agreement of the Debtors, the DIP Secured Parties, the Prepetition Secured Parties, and the Purchaser without notice, leave, or order of the Bankruptcy Court or any formal action other than proceedings to confirm or consummate the Plan.

**ARTICLE X.  
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

A. *Modification and Amendments*

Subject to the limitations contained herein, in the Global Settlement, and in the Restructuring Support Agreement, the Debtors reserve the right to alter, amend, or modify the Plan, subject to the consent of the Prepetition Secured Parties, and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code, Bankruptcy Rule 3019, and the restrictions on modifications set forth in the Plan and the Restructuring Support Agreement, the Debtors expressly reserve their rights to alter, amend, or modify the Plan, one or more times, after Confirmation, and, to the extent necessary, initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan.

B. *Effect of Confirmation on Modifications*

Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and shall constitute a finding that such modifications or amendments to the Plan do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

C. *Revocation or Withdrawal of the Plan*

Subject to the conditions and limitations set forth in the Restructuring Support Agreement, the Debtors reserve the right to revoke or withdraw the Plan with respect to any or all Debtors prior to the Confirmation Date and to File subsequent plans of reorganization. If the Debtors revoke or withdraw the Plan, or if Confirmation and Consummation do not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (3) nothing contained in the Plan shall: (i) constitute a waiver or release of any Claims or Interests; (ii) prejudice in any manner the rights of the Debtors or any other Entity, including the Holders of Claims; (iii) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors or any other Entity; or (iv) be used by the Debtors or any other Entity as evidence (or in any other way) in any litigation, including with regard to the strengths or weaknesses of any of the parties' positions, arguments, or claims; *provided that*, the foregoing reservation of rights shall not in any way amend, nullify, or void any action, act, or right ratified upon the Bankruptcy Court's entry of the Sale Approval Order.

**ARTICLE XI.  
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases and all matters, arising out of, or related to, the Chapter 11 Cases and the Plan, including jurisdiction to:

1. Allow, Disallow, determine, liquidate, classify, estimate, or establish the priority, Secured, Unsecured, or subordinated status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections relating to any of the foregoing;

2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals;

3. resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Cures pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; and (c) any dispute regarding whether a contract or lease is or was executory or expired;

4. ensure that distributions to Holders of Allowed Claims or Interests are accomplished pursuant to the provisions of the Plan;

5. consider any modifications of the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code, the Confirmation Order, the Sale Approval Order or any contract, instrument, release, or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement, the Confirmation Order, or the Sale Approval Order in each case, to remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order, the Sale Approval Order, or any contract, instrument, release, or other agreement or document entered into, delivered, or created in connection with the Plan, the Disclosure Statement, the Confirmation Order, or the Sale Approval Order in such manner as may be necessary or appropriate to consummate the Plan;

6. adjudicate, decide, or resolve any motions, adversary proceedings, contested, or litigated matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

7. adjudicate, decide, or resolve any and all matters related to Causes of Action by or against a Debtor, the GUC Trust, or GUC Trustee;

8. adjudicate, decide, or resolve any and all matters related to sections 1141, 1145, and 1146 of the Bankruptcy Code;

9. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan, and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan;
10. enter and enforce any order for the sale of property pursuant to sections 363 or 1123 of the Bankruptcy Code, including for the avoidance of doubt the Sale Approval Order;
11. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;
12. adjudicate, decide, or resolve any dispute and all matters related to the Sale Transaction and Sale Transaction Documents;
13. adjudicate, decide, or resolve any dispute and all matters arising under the GUC Trust Agreement;
14. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;
15. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, discharges, releases, injunctions, exculpations, and other provisions contained in Article VIII of the Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;
16. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid pursuant to Article VII of the Plan;
17. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;
18. determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, the Plan Supplement, or the Sale Approval Order;
19. adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein, including any Restructuring Transactions;
20. determine requests for the payment of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code;
21. hear and determine matters concerning state, local, and U.S. federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;
22. hear and determine matters concerning section 1145 of the Bankruptcy Code;

23. hear and determine all disputes involving the existence, nature, or scope of the release provisions set forth in the Plan, including any dispute or matter relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

24. enforce all orders previously entered by the Bankruptcy Court;

25. enter a final decree concluding or closing the Chapter 11 Cases;

26. enforce the injunction, release, and exculpation provisions set forth in Article VIII of the Plan;

27. hear any other matter not inconsistent with the Bankruptcy Code; and

28. the CCAA Court shall retain jurisdiction over the CCAA Recognition Proceedings and all matters, arising out of, or related to, the CCAA Recognition Proceedings including the orders of the CCAA Court.

## **ARTICLE XII. MISCELLANEOUS PROVISIONS**

### **A. *Immediate Binding Effect***

Subject to Article IX.B of the Plan and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the final versions of the documents contained in the Plan Supplement, the Confirmation Order, and the Sale Approval Order shall be immediately effective and enforceable and deemed binding upon the Debtors or the Wind Down Estate, as applicable, and any and all Holders of Claims or Interests (regardless of whether the Holders of such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions provided for in the Plan, each Entity acquiring property under the Plan or the Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases. All Claims and debts shall be fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

### **B. *Additional Documents***

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee, as applicable, and all Holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.



C. *Reservation of Rights*

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court enters the Confirmation Order, and the Confirmation Order shall have no force or effect unless the Effective Date occurs. Prior to the Effective Date, neither the Plan, any statement or provision contained in the Plan, nor any action taken or not taken by any Debtor with respect to the Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Interests.

D. *Successors and Assigns*

The rights, benefits, and obligations of any Entity named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, manager, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

E. *Service of Documents*

Any pleading, notice, or other document required by the Plan to be served on or delivered to the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee as applicable, shall be served on:

**Debtors or the  
Wind Down Estate**

**KidKraft Inc.**  
4630 Olin Road  
Dallas, TX 75244  
Attn: Geoffrey Walker

**Attorneys to the Debtors**

**Vinson & Elkins LLP**  
2001 Ross Avenue, Suite 3900  
Dallas, TX 75201  
Attn: William L. Wallander  
Matthew D. Struble  
Kiran Vakamudi

and

**Vinson & Elkins LLP**  
1114 Avenue of the Americas, 32nd Floor  
New York, NY 10036  
Attn: David S. Meyer  
Lauren R. Kanzer

**Wind Down Administrator**

**SierraConstellation Partners, LLC**  
3090 Olive St., 3rd Floor  
Dallas, TX 75219  
Attn: Carl Moore

**GUC Trustee**

**Jiangang Ou, Esq.**  
1222 Howard Lane  
Bellaire, Texas 77401

**United States Trustee**

**Office of the United States Trustee  
for the Northern District of Texas**  
Earle Cabell Federal Building  
1100 Commerce Street, Room 976  
Attn: Meredyth Kippes

**Prepetition Credit Agreement  
Agent and DIP Agent**

**GB Funding, LLC**  
101 Huntington Avenue, Suite 1100  
Boston, Massachusetts 02199  
Attn: David Braun  
Kyle Shonak

**Counsel to the Prepetition Credit  
Agreement Agent and DIP Agent**

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50 Rockefeller Plaza  
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Lucy F. Kweskin

**Purchaser**

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Attn: Thomas van der Meulen

**Counsel to Purchaser**

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Attn: Spencer Stockdale  
Michael Fishel

**MidOcean**

**MidOcean Partners**  
245 Park Avenue  
38th Floor  
New York, NY 10167  
Attn: Daniel Penn

**Counsel to MidOcean**

**Gibson Dunn & Crutcher LLP**

200 Park Avenue  
New York, NY 10166  
Attn: Andrew Herman

F. *Term of Injunctions or Stays*

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court or the CCAA Court, and existing on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan, the Confirmation Order, the Confirmation Recognition Order or the Sale Order shall remain in full force and effect in accordance with their terms.

G. *Entire Agreement*

Except as otherwise indicated, and without limiting the effectiveness of the Global Settlement and the Restructuring Support Agreement and any related agreements thereto, on the Effective Date, the Plan, the Plan Supplement, and the Confirmation Order shall supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

H. *Exhibits*

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the Debtors' restructuring website at <https://www.stretto.com/kidkraft> or the Bankruptcy Court's website at <https://www.txnb.uscourts.gov/>. To the extent any exhibit or document is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall control.

I. *Nonseverability of Plan Provisions*

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such terms or provision shall then be applicable as altered or interpreted, *provided that* any such alteration or interpretation shall be acceptable to the Debtors, the DIP Agent, the Prepetition Secured Parties, and the Purchaser. Notwithstanding any such alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such alteration or

interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtors', the Prepetition Secured Parties', and the Purchaser's consent; and (3) nonseverable and mutually dependent.

J. *Votes Solicited in Good Faith*

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities (if any) offered and sold under the Plan and any previous plan, and, therefore, neither any of such parties or individuals nor the Wind Down Estate or Wind Down Administrator (as applicable) will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities (if any) offered and sold under the Plan and any previous plan.

K. *Request for Expedited Determination of Taxes*

The Debtors, the Wind Down Estate, the Wind Down Administrator, or the GUC Trustee, as the case may be, shall have the right to request an expedited determination under section 505(b) of the Bankruptcy Code with respect to tax returns filed, or to be filed, for any and all taxable periods ending after the Petition Date through the Effective Date.

L. *Closing of Chapter 11 Cases*

The Wind Down Estate or the Wind Down Administrator (as applicable) shall, promptly after the full administration of the Chapter 11 Cases, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to issue a final decree closing the Chapter 11 Cases and file materials with the CCAA Court to terminate the CCAA Recognition Proceedings.

M. *No Stay of Confirmation Order*

The Confirmation Order and Confirmation Recognition Order shall contain a waiver of any stay of enforcement otherwise applicable, including pursuant to Bankruptcy Rules 3020(e) and 7062.

N. *Waiver or Estoppel*

Each Holder of a Claim or Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement or the Debtors,' Wind Down Estate's, or the Wind Down Administrator's (as applicable) right to enter into settlements was not

disclosed in the Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court or the Noticing and Claims Agent prior to the Confirmation Date.

O. *Dissolution of Statutory Committees*

On the Effective Date, any statutory committee formed in connection with the Chapter 11 Cases shall dissolve automatically and all members thereof (solely in their capacities as such) shall be released and discharged from all rights, duties, and responsibilities arising from, or related to, the Chapter 11 Cases.

\* \* \* \*

Respectfully submitted, as of the date first set forth below,

Dated: July 10, 2024  
Dallas, Texas

KIDKRAFT, INC.  
on behalf of itself and all other Debtors

*/s/ Geoffrey Walker*

Geoffrey Walker  
President & Chief Executive Officer

**Exhibit A-1**

**Redline of Third Amended Plan Against Second Amended Plan**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:** § **Case No. 24-80045-mvl11**  
§  
**KIDKRAFT, INC., et al.,** § **(Chapter 11)**  
§  
**Debtors.<sup>1</sup>** § **(Jointly Administered)**  
§

**DEBTORS' ~~SECOND~~THIRD AMENDED JOINT PREPACKAGED CHAPTER 11 PLAN**

William L. Wallander (Texas Bar No. 20780750)  
Matthew D. Struble (Texas Bar No. 24102544)  
Kiran Vakamudi (Texas Bar No. 24106540)  
2001 Ross Avenue, Suite 3900  
Dallas, TX 75201  
**VINSON & ELKINS LLP**

David S. Meyer (admitted *pro hac vice*)  
Lauren R. Kanzer (admitted *pro hac vice*)  
1114 Avenue of the Americas, 32nd Floor  
New York, NY 10036

**ATTORNEYS FOR THE DEBTORS AND  
DEBTORS IN POSSESSION**

**Dated: July ~~6~~10, 2024**

---

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft Partners, LLC (3268), KidKraft International IP Holdings, LLC (1841), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc (4302). The location of the Debtors' U.S. corporate headquarters and the Debtors' service address is: 4630 Olin Road, Dallas, TX 75244.



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## INTRODUCTION

KidKraft and its affiliated debtors, as Debtors and debtors in possession in the above-captioned chapter 11 cases, jointly propose this prepackaged chapter 11 plan for the resolution of outstanding Claims against, and Interests in, the Debtors. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims against, and Interests in, such Debtor. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in Article I.A of the Plan or the Bankruptcy Code or Bankruptcy Rules. Holders of Claims and Interests should refer to the Disclosure Statement for a discussion of the Debtors' history, businesses, Assets, results of operations, and historical financial information, as well as a summary and description of the Plan. The Debtors are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

**ALL HOLDERS OF CLAIMS WHO ARE ELIGIBLE TO VOTE ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.**

## ARTICLE I. DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW

### A. *Defined Terms*

As used in the Plan, capitalized terms have the meanings set forth below.

1. “**363 Sale**” means the sale of the Transferred Assets pursuant to section 363 of the Bankruptcy Code in accordance with the terms of the Purchase Agreement and Sale Approval Order.

2. “**503(b)(9) Claim**” means a Claim pursuant to section 503(b)(9) of the Bankruptcy Code for the value of goods received by the Debtors in the 20 days immediately prior to the Petition Date and sold to the Debtors in the ordinary course of the Debtors' business.

3. “**549 Causes of Action**” means any Claim or Cause of Action pursuant to section 549 of the Bankruptcy Code.

4. ~~3.~~ “**Adequate Protection Claim**” means any Claim for adequate protection within the meaning of section 361 of the Bankruptcy Code arising under applicable law or pursuant to Final Order of the Bankruptcy Court.

5. ~~4.~~ “**Administrative Expense Claim**” means any Claim (other than any Adequate Protection Claims or DIP Claims) for costs and expenses of administration of the Debtors' Estates pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (i) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Debtors' Estates and operating the Debtors' businesses, (ii) any Allowed requests for compensation or expense reimbursement for making a substantial

contribution in the Chapter 11 Cases pursuant to sections 503(b)(3), (4), and (5) of the Bankruptcy Code, and (iii) any Unpaid Employee Severance Obligations.

6. ~~5.~~ “**Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount**” means the amount set forth in the Approved Budget (or as otherwise agreed upon by the Debtors, the DIP Secured Parties, and the Purchaser), and funded by cash on hand of the Debtors and the proceeds of the DIP Facility prior to the Confirmation Date, sufficient to satisfy the agreed upon estimated amount of the Allowed Administrative Expense Claims, Allowed Priority Tax Claims, and Allowed Other Priority Claims; *provided that* in no event will the DIP Secured Parties’ obligations to provide such funding exceed the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount.

7. ~~6.~~ “**Administrative Expense Claims Bar Date**” means the deadline for Filing requests for payment of Administrative Expense Claims (other than 503(b)(9) Claims), which: (a) with respect to Administrative Expense Claims other than Professional Fee Claims, shall be 30 days after the Effective Date; and (b) with respect to Professional Fee Claims of Professionals, shall be 45 days after the Effective Date.

8. ~~7.~~ “**Affiliate**” shall have the meaning set forth in section 101(2) of the Bankruptcy Code when used in reference to a Debtor, and when used in reference to an Entity other than a Debtor, means any other Entity that controls, is controlled by, or is under common control with such Entity, other than a Debtor.

9. ~~8.~~ “**Allowed**” means with reference to any Claim or Interest, (i) any Claim or Interest arising on or before the Effective Date (a) as to which no objection to allowance has been interposed within the time period set forth in the Plan and such Claim or Interest is not Disputed or (b) as to which any objection has been determined by a Final Order of the Bankruptcy Court to the extent such objection is determined in favor of the respective Holder, (ii) any Claim or Interest as to which the liability of the Debtors and the amount thereof are determined by a Final Order of a court of competent jurisdiction other than the Bankruptcy Court, or (iii) any Claim or Interest expressly allowed under the Plan; *provided, however*, that notwithstanding the foregoing, the Wind Down Estate (to the extent applicable) will retain all claims and defenses with respect to Allowed Claims that are Reinstated or otherwise Unimpaired pursuant to the Plan.

10. ~~9.~~ “**Approved Budget**” means the weekly budget, as defined in paragraph G(iv) of the DIP Approval Order.

11. ~~10.~~ “**Assets**” means all of the Debtors’ property, rights, and interests that are property of the Estates pursuant to section 541 of the Bankruptcy Code.

12. ~~11.~~ “**Assigned Avoidance Actions**” means all Avoidance Actions other than those against (i) any parties identified on Schedule 1 to the Global Settlement Term Sheet, unless any such party makes a GUC Settlement Opt-In Election, (ii) any other “Designated Parties” (as that term is defined in the Purchase Agreement) under Section 2.1(k)(ii) through (iv) of the Purchase Agreement, and (iii) any Released Parties.

13. ~~12.~~ “**Assumed Liabilities**” shall have the meaning set forth in Section 2.3 of the Purchase Agreement.

14. ~~13.~~ “**Avoidance Actions**” means any and all actual or potential Claims and Causes of Action to avoid a transfer of property or an obligation incurred by the Debtors arising under chapter 5 of the Bankruptcy Code, including sections 502, 510, 544, 545, 547 through 553, and 724(a) of the Bankruptcy Code or under similar or related state or federal statutes and common law, including fraudulent transfer and preference laws.

15. ~~14.~~ “**Ballots**” means the ballots distributed to certain Holders of Impaired Claims entitled to vote on the Plan upon which such Holders shall, among other things, indicate their acceptance or rejection of the Plan in accordance with the Plan and the procedures governing the solicitation process.

16. ~~15.~~ “**Bankruptcy Code**” means title 11 of the United States Code, as amended and in effect during the pendency of the Chapter 11 Cases.

17. ~~16.~~ “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure promulgated under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court, in each case, as amended from time to time.

18. ~~17.~~ “**Bankruptcy Court**” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division.

19. ~~18.~~ “**Bar Date Order**” means the order entered by the Bankruptcy Court setting the Claims Bar Date and the Governmental Bar Date.

20. ~~19.~~ “**Bidder Protections**” means, collectively, the Break-Up Fee and Expense Reimbursement.

21. ~~20.~~ “**Break-Up Fee**” shall have the meaning set forth in Section 9.3(a) of the Purchase Agreement, as may be modified by a subsequent order of the Bankruptcy Court.

22. ~~21.~~ “**Business Day**” means any day other than a Saturday, Sunday, or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

23. ~~22.~~ “**Canadian Debtors**” means, collectively, the following Debtors: Solowave Design Holdings Limited, Solowave Design LP, Solowave Design Inc., and Solowave International Inc. Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Canadian Debtors shall mean the Wind Down Estate to the extent context requires.

24. ~~23.~~ “**Canadian Property**” means the assets, undertakings and property of the Canadian Debtors and any other assets, undertakings and property of the Debtors that may be located in Canada.

25. ~~24.~~ “**Canadian Transferred Assets**” means the Transferred Assets of the Canadian Debtors and any other Transferred Assets of the Debtors that may be located in Canada.

26. ~~25.~~ “**Cash**” means cash in legal tender of the United States of America and cash equivalents, including bank deposits, checks, and other similar items.



27. ~~26.~~ “**Cause of Action**” means any action, claim, cause of action, controversy, third-party claim, dispute, demand, right, action, Lien, indemnity, contribution, guaranty, suit, obligation, liability, loss, debt, fee or expense, damage, interest, judgment, account, defense, remedy, power, privilege, license, and franchise of any kind or character whatsoever, whether known, unknown, foreseen or unforeseen, existing or hereafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, Disputed or undisputed, Secured or Unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract, in tort, in law, or in equity or pursuant to any other theory of law. For the avoidance of doubt, a “Cause of Action” includes: (a) any right of setoff, counterclaim, or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Interests; (c) any Claim pursuant to section 362 or chapter 5 of the Bankruptcy Code (including Avoidance Actions); (d) any claim or defense including fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any state or foreign law fraudulent transfer or similar claim.

28. ~~27.~~ “**CCAA Court**” means the Ontario Superior Court of Justice (Commercial List).

29. ~~28.~~ “**CCAA Recognition Proceedings**” means the recognition proceedings commenced pursuant to Part IV of the *Companies’ Creditors Arrangement Act* (Canada) in respect of the Chapter 11 Cases of KidKraft and the Canadian Debtors.

30. ~~29.~~ “**Chapter 11 Cases**” means each individual case or the jointly administered cases pending under chapter 11 of the Bankruptcy Code for each individual Debtor or the Debtors, as applicable, in the Bankruptcy Court.

31. ~~30.~~ “**Claim**” shall have the meaning set forth in section 101(5) of the Bankruptcy Code, against any Debtor.

32. ~~31.~~ “**Claims Bar Date**” means such time and date established pursuant to the Bar Date Order by which Proofs of Claim (other than for Administrative Expense Claims and Claims held by Governmental Units), including 503(b)(9) Claims, must be Filed.

33. ~~32.~~ “**Claims Objection Deadline**” means the deadline for objecting to a Claim against a Debtor, which shall be on the date that is the later of (a) 120 days after the Effective Date, subject to extension by order of the Bankruptcy Court, (b) 90 days after the Filing of a Proof of Claim, or (c) such other period of limitation as may be fixed by the Plan, the Confirmation Order, the Bankruptcy Rules, or a Final Order for objecting to a Claim.

34. ~~33.~~ “**Claims Register**” means the official register of Claims against and Interests in the Debtors maintained by the Noticing and Claims Agent.

35. ~~34.~~ “**Class**” means a category of Claims against or Interests in the Debtors as set forth in Article III of the Plan pursuant to section 1122(a) of the Bankruptcy Code.

36. ~~35.~~ “**Committee**” means the official committee of unsecured creditors of the Debtors appointed by the U.S. Trustee in the Chapter 11 Cases on May 23, 2024, pursuant to section 1102 of the Bankruptcy Code.

37. ~~36.~~ “**Confirmation**” means the entry of the Confirmation Order on the docket of the Chapter 11 Cases.

38. ~~37.~~ “**Confirmation Date**” means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases, within the meaning of Bankruptcy Rules 5003 and 9021.

39. ~~38.~~ “**Confirmation Hearing**” means the hearing held by the Bankruptcy Court to consider Confirmation of the Plan pursuant to section 1128(a) of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

40. ~~39.~~ “**Confirmation Order**” means the Order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code, which Order may include the Sale Approval Order.

41. ~~40.~~ “**Confirmation Recognition Order**” means an Order of the CCAA Court in the CCAA Recognition Proceedings recognizing and giving effect in Canada to the Confirmation Order.

42. ~~41.~~ “**Consummation**” means the occurrence of the Effective Date.

43. ~~42.~~ “**Cure Claim**” means a monetary Claim based upon a Debtor’s defaults under an Executory Contract or Unexpired Lease at the time such contract or lease is assumed, or assumed and assigned by such Debtor pursuant to section 365 of the Bankruptcy Code.

44. ~~43.~~ “**Cure Notice**” means a notice of a proposed amount to be paid on account of a Cure Claim in connection with an Executory Contract or Unexpired Lease to be assumed under the Plan pursuant to section 365 of the Bankruptcy Code, which notice shall include (a) procedures for objecting to proposed assumptions of Executory Contracts and Unexpired Leases, (b) Cure Claims to be paid in connection therewith and (c) procedures for resolution by the Bankruptcy Court of any related disputes.

45. ~~44.~~ “**D&O Liability Insurance Policies**” means all unexpired directors’, managers’, and officers’ liability insurance policies (including any “tail policy”) maintained by any of the Debtors with respect to directors, managers, officers, and employees of the Debtors.

46. “**Debtor Retained Causes of Action**” means any and all potential Claims and Causes of Action held by the Debtors against (i) the Debtors’ Officers; or (ii) SCP, in each case related solely to: (a) the Debtors’ reporting obligations under the DIP Approval Order or DIP Facility Documents; or (b) any payment in violation of the Prepetition Credit Agreement Documents, the Restructuring Support Agreement, and/or the DIP Documents; *provided, that any potential recovery against the Debtors’ Officers shall be limited to insurance proceeds (if any) available from the Debtors’ insurance policies, including the D&O Liability Insurance Policies; provided, further, that such insurance limitation shall not apply to Claims and Causes of Action arising as a result of gross negligence, fraud, or willful misconduct. Notwithstanding any other releases provided herein by the Debtors, the Debtor Retained Causes of Action shall not be released; provided, further, that any and all potential Claims and Causes of Action held by the*



Debtors against any Released Party other than those parties specifically identified in clauses (i) and (ii) above shall not constitute Debtor Retained Causes of Action.

47. ~~45.~~ “**Debtors**” means, collectively, the following: KidKraft, Inc.; KidKraft Europe, LLC; KidKraft Intermediate Holdings, LLC; KidKraft International Holdings, Inc.; KidKraft International IP Holdings, LLC; KidKraft Partners, LLC; Solowave Design Corp.; Solowave Design Holdings Limited; Solowave Design Inc.; Solowave Design LP; and Solowave International Inc. Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors shall mean the Wind Down Estate to the extent context requires.

48. ~~46.~~ “**Debtors’ Officers**” means the Debtors’ officers as of the Petition Date; *provided*, that any such officer shall be deemed not to be a Debtors’ Officer for so long as such officer is employed by the Purchaser.

49. ~~47.~~ “**Definitive Documentation**” means, without limitation, the following definitive documents and agreements: (a) this Plan and all exhibits hereto, including the Plan Supplement documents; (b) the Confirmation Order and Confirmation Recognition Order; (c) the Disclosure Statement; (d) the solicitation materials with respect to the Plan; (e) the Purchase Agreement, including the exhibits and schedules thereto; (f) the Sale Order, if not incorporated as part of the Confirmation Order and Confirmation Recognition Order, as applicable; (g) any documentation or budget related to the Post-Sale Reserve and Foreign Sale Reserve; (h) the DIP Order; (i) all “first day” motions, applications, and other documents that any Debtor intends to file with the Bankruptcy Court and seeks to have heard on an expedited basis at the “first-day hearing” in the Chapter 11 Cases and any proposed orders related thereto; (j) all motions, applications, and other documents that any Debtor (including a foreign representative appointed by the Bankruptcy Court for any Debtor) or any Canadian Affiliates of Debtors intend to file with the CCAA Court in the CCAA Recognition Proceedings, and any proposed orders related thereto; (k) any provision in any documentation regarding (i) releases of Claims, causes of action, and avoidance actions or (ii) Assumed Liabilities or Transferred Contracts under the Purchase Agreement; (l) such other agreements, instruments, and documentation as may be necessary or reasonably desirable to consummate and document the Restructuring and Sale Transaction (including, without limitation, in connection with the CCAA Recognition Proceedings); and (m) to the extent not included, any motions and related proposed orders seeking approval of each of the above. For the avoidance of doubt, the Definitive Documentation shall be in form and substance acceptable to the Debtors, the Prepetition Secured Parties, the Purchaser, and with respect to MidOcean, solely with respect to any provision therein having a material effect on MidOcean or releasing Claims or causes of action by or against MidOcean or its affiliates thereunder.

50. ~~48.~~ “**De Minimis Assets**” means assets with a total transaction value, as calculated within the Debtors’ or Wind Down Administrator’s reasonable discretion, in consultation with the Prepetition Secured Parties, less than or equal to \$50,000.

51. ~~49.~~ “**DIP Agent**” means GB Funding, LLC, in its capacity as administrative agent and collateral agent under the DIP Facility.

52. ~~50.~~ “**DIP Approval Order**” means the interim order entered by the Bankruptcy Court approving the DIP Facility and the Final DIP Approval Order.

53. ~~51.~~ “**DIP Claim**” means any Claim of the DIP Agent or any DIP Lender on account of or arising from, under or in connection with the DIP Facility.

54. ~~52.~~ “**DIP Facility**” means the senior secured superpriority debtor-in-possession financing facility to be provided by the DIP Lenders, all as set forth in, and consistent with and subject to, the terms and conditions of the DIP Facility Documents.

55. ~~53.~~ “**DIP Facility Documents**” means the DIP Facility Term Sheet, the DIP Credit Agreement (as applicable) and all other agreements, documents, instruments, and amendments related thereto, including any DIP Order, and any guaranty agreements, pledge and collateral agreements, UCC financing statements, or other perfection documents, subordination agreements, fee letters, and any other security agreements.

56. ~~54.~~ “**DIP Facility Term Sheet**” means that certain term sheet regarding the terms of debtor-in-possession financing between KidKraft, Inc., as borrower, certain of KidKraft’s subsidiaries and affiliates, as guarantors, the DIP Agent, and the DIP Lender, attached as Exhibit A to the DIP Approval Order.

57. ~~55.~~ “**DIP Lender**” means 1903 Partners, LLC, in its capacity as lender under the DIP Facility.

58. ~~56.~~ “**DIP Liens**” mean the Liens granted to the DIP Agent under the DIP Order to secure the DIP Claims.

59. ~~57.~~ “**DIP Order**” means the DIP Approval Order and the DIP Recognition Order, as applicable.

60. ~~58.~~ “**DIP Recognition Order**” means one or more orders of the CCAA Court in the CCAA Recognition Proceedings recognizing and giving effect in Canada to the DIP Approval Order, including the Final DIP Recognition Order.

61. ~~59.~~ “**DIP Secured Parties**” means collectively, the DIP Lender and the DIP Agent, in their respective capacities under the DIP Facility.

62. ~~60.~~ “**DIP Secured Parties Advisors**” means Katten Muchin Rosenman LLP, as counsel to the DIP Secured Parties and Fasken Martineau DuMoulin LLP as Canadian Counsel to the DIP Secured Parties.

63. ~~61.~~ “**Disallowed**” means, with respect to any Claim, or any portion thereof, that such Claim, or such portion thereof, is not Allowed; *provided, however*, that a Disputed Claim shall not be considered Disallowed until so determined by entry of a Final Order.

64. ~~62.~~ “**Disbursing Agent**” means the Debtors, the Wind Down Estate, the GUC Trust, or the Entity or Entities selected by the Debtors, the Wind Down Estate, or the GUC Trust as applicable, to make or facilitate distributions pursuant to the Plan.

65. ~~63.~~ “**Disclosure Statement**” means the *Disclosure Statement for the Debtors’ Joint Prepackaged Chapter 11 Plan*, dated as of May 8, 2024, as may be amended, supplemented, or

modified from time to time, including all exhibits and schedules thereto and references therein that relate to the Plan, that is prepared and distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law.

66. ~~64.~~ “**Disputed**” means, with respect to any Claim or Interest, that such Claim or Interest (a) is not yet Allowed, (b) is not Disallowed by the Plan, the Bankruptcy Code, or a Final Order, as applicable, (c) as to which a dispute is being adjudicated by a court of competent jurisdiction in accordance with non-bankruptcy law, or (d) is or is hereafter listed in the Schedules as contingent, unliquidated, or disputed and for which a Proof of Claim is or has been timely Filed in accordance with the Bar Date Order.

67. ~~65.~~ “**Dissolution Transactions**” means the transactions that the Debtors or Wind Down Administrator, with the consent of the Prepetition Secured Parties, determine to be necessary or appropriate to implement the terms of the Plan, and ultimately result in the dissolution or other termination of the corporate entities that comprise the Debtors.

68. ~~66.~~ “**Distributable Value**” means (a) the Purchase Price *plus* (b) any of the Debtors’ cash on hand as of the Effective Date *plus* (c) proceeds of the monetization of any Excluded Assets of the Debtors, whenever received by the Debtors or the Wind Down Estates *plus* (d) surrender of collateral or proceeds of any other collateral securing the DIP Claims or Prepetition Secured Party Claims, whenever received by the Debtors or the Wind Down Estates; *minus* (e) amounts held-back to secure any purchase price adjustments pursuant to the Purchase Agreement (unless and until distributed to the Debtors in accordance therewith); *minus* (f) amounts necessary to fund the Professional Fee Escrow Account in the Professional Fee Reserve Amount; *minus* (g) amounts necessary to satisfy Restructuring Expenses; *minus* (h) amounts necessary to fund the Post-Sale Reserve; *minus* (g) amounts necessary to fund the Foreign Sale Reserve; *provided that* any unused amounts remaining from the Professional Fee Escrow Account, the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount, and the Post-Sale Reserve shall be considered Distributable Value; *provided that*, for the avoidance of doubt, no GUC Trust Assets shall be included as Distributable Value.

69. ~~67.~~ “**Distribution Record Date**” means the record date for purposes of making distributions under the Plan on account of Allowed Claims, which date shall be the Confirmation Date or such other date as designated in an order of the Bankruptcy Court.

70. ~~68.~~ “**Effective Date**” means the date selected by the Debtors on which: (a) no stay of the Confirmation Order, Confirmation Recognition Order or Sale Order (if separately entered) is in effect; (b) all conditions precedent specified in Article IX have been satisfied or waived (in accordance with Article IX.C); and (c) the Plan becomes effective; *provided, however*, that if such date does not occur on a Business Day, the Effective Date shall be deemed to occur on the first Business Day after such date.

71. ~~69.~~ “**Entity**” shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

72. ~~70.~~ “**Estate**” means, as to each Debtor, the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

73. ~~71.~~ “**Excluded Assets**” shall have the meaning set forth in Section 2.2 of the Purchase Agreement.

74. ~~72.~~ “**Exculpated Party**” means each of the following solely in its capacity as such and to the maximum extent permitted by law: (a) the Debtors; (b) the Committee; and (c) the members of the Committee, solely in their capacities as such.

75. ~~73.~~ “**Executory Contract**” means a contract to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

76. ~~74.~~ “**Expense Reimbursement**” shall have the meaning set forth in Section 9.3(a) of the Purchase Agreement, as may be modified by a subsequent order of the Bankruptcy Court.

77. ~~75.~~ “**Federal Judgment Rate**” means the federal judgment rate in effect as of the Petition Date, compounded annually.

78. ~~76.~~ “**File**,” “**Filed**,” or “**Filing**” means file, filed, or filing in the Chapter 11 Cases with the Bankruptcy Court or, with respect to the filing of a Proof of Claim, the Noticing and Claims Agent or the Bankruptcy Court through the PACER or CM/ECF website.

79. ~~77.~~ “**Final Decree**” means the decree contemplated under Bankruptcy Rule 3022.

80. ~~78.~~ “**Final DIP Approval Order**” means the Final Order entered by the Bankruptcy Court approving the DIP Facility.

81. ~~79.~~ “**Final DIP Recognition Order**” means the Final Order of the CCAA Court recognizing and giving effect in Canada to the Final DIP Approval Order.

82. ~~80.~~ “**Final Order**” means an order or judgment of a court of competent jurisdiction that has been entered on the docket maintained by the clerk of such court, which has not been reversed, vacated, or stayed and as to which (i) the time to appeal, petition for certiorari, or move for a new trial, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for a new trial, reargument, or rehearing shall then be pending, or (ii) if an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought, such order or judgment shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari, or move for a new trial, reargument, or rehearing shall have expired; provided, however, that no order or judgment shall fail to be a “Final Order” solely because of the possibility that a motion under Rules 59 or 60 of the Federal Rules of Civil Procedure or any analogous Bankruptcy Rule (or any analogous rules applicable in another court of competent jurisdiction) or sections 502(j) or 1144 of the Bankruptcy Code has been or may be filed with respect to such order or judgment.

83. ~~81.~~ “**Foreign Sale Reserve**” means the amount of the Purchase Price allocated to the inventory transferred from the Netherlands Subsidiaries to facilitate the Sale Transaction,

which amount will be distributed from Debtors to the Netherlands Subsidiaries pursuant to the Plan.

84. ~~82.~~ “**General Unsecured Claim**” means any Claim that is not secured, subordinated, or entitled to priority under the Bankruptcy Code or any Final Order of the Bankruptcy Court (other than an Intercompany Claim or a Subordinated Claim).

85. ~~83.~~ “**Global Settlement**” means the global settlement between the Global Settlement Parties pursuant to the term sheet (the “**Global Settlement Term Sheet**”) attached to the *Notice of Filing Global Settlement Term Sheet* [Docket No. 195].

86. ~~84.~~ “**Global Settlement Parties**” means the Debtors, the Committee, the DIP Secured Parties, the Prepetition Secured Parties, the Purchaser, and MidOcean.

87. ~~85.~~ “**Governmental Bar Date**” means such time and date established pursuant to the Bar Date Order by which Proofs of Claim of Governmental Units must be Filed.

88. ~~86.~~ “**Governmental Unit**” shall have the meaning set forth in section 101(27) of the Bankruptcy Code.

89. ~~87.~~ “**GUC Critical Vendor Cash**” means any amounts permitted to be paid under the *Final Order (I) Authorizing the Debtors to Pay (A) Critical Vendors, (B) Lien Claimants, and (C) 503(b)(9) Claimants; (II) Confirming Administrative Expense Priority of Outstanding Orders; and (III) Granting Related Relief* [Docket No. 200] that are unused as of the Effective Date (with the Debtors having sole discretion to pay amounts authorized under such order, except that any Allowed Claims entitled to priority status under section 503(b)(9) of the Bankruptcy Code shall be paid in full to the Holders thereof).

90. ~~88.~~ “**GUC L/C Cash**” means 40% of any cash collateral recovered from the former prepetition agent pursuant to the Assignment and Assumption dated as of January 31, 2024 by and between (i) Antares AssetCo LP, Antares Capital LP, Antares Holdings LP, Antares CLO 2017-2, LTD., Antares CLO 2018-1, LTD., Fifth Third Bank, N.A., and PNC Bank, N.A., as assignors, and (ii) 1903 Partners, LLC, as assignee.

91. ~~89.~~ “**GUC Purchase Price Cash**” means (i) \$350,000 if, on the Effective Date, the calculation of the Purchase Price Calculation is within a 0-5% variance of \$39,322,916; (ii) \$250,000 if, on the Effective Date, the Purchase Price Calculation is within a 6-10% variance of \$39,322,916; (iii) \$200,000 if, on the Effective Date, the Purchase Price Calculation is within a 11-20% variance of \$39,322,916; or (iv) \$150,000 if, on the Effective Date, the Purchase Price Calculation is a more than 20% variance of \$39,322,916.

92. “**GUC Retained Causes of Action**” means, collectively, (i) the Debtor Retained Causes of Action; (ii) 549 Causes of Action; and (iii) the Professional Fee Reduction Amount.

93. “**GUC Retained Causes of Action Potential Recovery**” means any recovery from the GUC Retained Causes of Action. For the avoidance of doubt, the GUC Retained Causes of Action Potential Recovery shall be shared Pro Rata among the GUC Trust Beneficiaries.



94. ~~90.~~ ***“GUC Retained Causes of Action Transfer”*** means the assignment, conveyance, or other transfer of the GUC Retained Causes of Action to the GUC Trust, which shall occur on the next Business Day following the GUC Settlement Opt-In Election Deadline.

95. ~~91.~~ ***“GUC Settlement Opt-In Election”*** means the affirmative election by a Holder of a General Unsecured Claim to opt-in to the settlement under the Global Settlement Term Sheet and receive its Pro Rata share of 100% of the GUC Trust Interests.

96. ~~92.~~ ***“GUC Settlement Opt-In Election Deadline”*** means the date that is thirty (30) days after the Effective Date.

97. ~~93.~~ ***“GUC Settlement Opt-In Form”*** means the form by which a potential holder of a General Unsecured Claim may make a GUC Settlement Opt-In Election, which form shall be included in the Plan Supplement.

98. ~~94.~~ ***“GUC Settlement Opt-In Procedures”*** means the procedures set forth in the GUC Settlement Opt-In Form for a potential holder of an Allowed General Unsecured Claim to make a GUC Settlement Opt-In Election.

99. ~~95.~~ ***“GUC Trust”*** means the trust established pursuant to Article IV.C of the Plan to, among other things, hold and liquidate the GUC Trust Assets and GUC Retained Causes of Action and make distributions to ~~Holder of Allowed General Unsecured Claims that make a GUC Settlement Opt-In Election pursuant to the Plan~~ GUC Trust Beneficiaries.

100. ~~96.~~ ***“GUC Trust Accounts”*** means the bank accounts to be held in the name of the GUC Trustee that are created pursuant to Article IV.C of the Plan.

101. ~~97.~~ ***“GUC Trust Agreement”*** means the agreement establishing and governing the GUC Trust, which agreement shall be included in the Plan Supplement and executed as of the Effective Date, and which agreement shall be acceptable in form and substance to the Debtors, the Committee, and the Prepetition Secured Parties.

102. ~~98.~~ ***“GUC Trust Assets”*** means, in the aggregate, (i) the GUC Trust Expense Reserve; (ii) \$125,000 in Cash; (iii) the Sponsor Cash Contribution; (iv) the GUC L/C Cash; (v) the GUC Purchase Price Cash; (vi) any unused amounts in the Approved Budget that are designated for fees and expenses of the Committee’s professionals; (vii) the GUC Critical Vendor Cash, if any; (viii) all commercial tort claims (as that term is defined in Article 9 of the Uniform Commercial Code) of the Debtors other than any such claims against any Released Party under the Plan; and (ix) the Assigned Avoidance Actions.

103. ~~99.~~ ***“GUC Trust Assets Transfer”*** means the assignment, conveyance, or other transfer of the GUC Trust Assets to the GUC Trust, which shall occur on the next Business Day following the GUC Settlement Opt-In Election Deadline.

104. ~~100.~~ ***“GUC Trust Beneficiaries”*** means any Holder of an Allowed General Unsecured Claim that has made a GUC Settlement Opt-In Election and thereby obtained one or more GUC Trust Interests and the Prepetition Secured Parties. For the avoidance of doubt, the

Prepetition Secured Parties shall be deemed to have made a GUC Settlement Opt-In Election and shall be GUC Trust Beneficiaries without the need to submit any opt-in election or otherwise comply with the GUC Settlement Opt-In Procedures.

105. ~~100.~~ “*GUC Trust Expense Reserve*” means a reserve in the amount of \$75,000 funded from Cash on hand of the U.S. Debtors to the GUC Trust on the Effective Date to allow the GUC Trustee to maintain and administer the GUC Trust Assets.

106. ~~101.~~ “*GUC Trust Interests*” means the beneficial interests in the GUC Trust.

107. ~~102.~~ “*GUC Trustee*” means the trustee appointed pursuant to Article IV.C of the Plan (or any successor trustee), in its capacity as the trustee of the GUC Trust, who shall be solely responsible for overseeing the reconciliation, objection, settlement, or other disposition of General Unsecured Claims asserted in these Chapter 11 Cases.

108. ~~103.~~ “*Holder*” means a Person or Entity holding a Claim against or Interest in a Debtor, as applicable.

109. ~~104.~~ “*Impaired*” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is not Unimpaired.

110. ~~105.~~ “*Indemnification Obligations*” means each of the Debtors’ indemnification obligations, whether in the bylaws, certificates of incorporation or formation, limited liability company agreements, other organizational or formation documents, board resolutions, management or indemnification agreements, or employment contracts, for the current and former directors and the officers of the Debtors.

111. ~~106.~~ “*Intercompany Claim*” means any Claim against a Debtor held by another Debtor.

112. ~~107.~~ “*Intercompany Interest*” means any Interest in a Debtor held by another Debtor.

113. ~~108.~~ “*Interest*” means any equity interest (as defined in section 101(16) of the Bankruptcy Code) in any Debtor, including all ordinary shares, units, common stock, preferred stock, membership interest, partnership interest, or other instrument, evidencing any fixed or contingent ownership interest in the Debtors, whether or not transferable, including any option, warrant, or other right, contractual or otherwise, to acquire any such interest, that existed immediately before the Effective Date.

114. ~~109.~~ “*Internal Revenue Code*” means the Internal Revenue Code of 1986, as amended.

115. ~~110.~~ “*IRS*” means the Internal Revenue Service.

116. ~~111.~~ “*Judicial Code*” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001.

117. ~~112.~~ “**KidKraft**” means KidKraft, Inc.

118. ~~113.~~ “**Lender Retained Causes of Action**” means any and all potential Claims and Causes of Action held by the DIP Secured Parties or the Prepetition Secured Parties against (i) the Debtors; (ii) the Debtors’ Officers; or (iii) ~~Sierra Constellation Partners, LLC SCP,~~ in each case related solely to: (a) the Debtors’ reporting obligations under the DIP Approval Order or DIP Facility Documents; or (b) any payment in violation of the Prepetition Credit Agreement Documents, the Restructuring Support Agreement, and/or the DIP Documents; *provided*, that any potential recovery against the Debtors and the Debtors’ Officers shall be limited to insurance proceeds (if any) available from the Debtors’ insurance policies, including the D&O Liability Insurance Policies; *provided, further*, that such insurance limitation shall not apply to Claims and Causes of Action arising as a result of gross negligence, fraud, or willful misconduct. Notwithstanding any other releases provided herein by the DIP Secured Parties or the Prepetition Secured Parties, the Lender Retained Causes of Action shall not be released; *provided, further*, that any and all potential Claims and ~~causes~~ Causes of ~~action~~ Action held by the DIP Secured Parties or the Prepetition Secured Parties against any Released Party other than those parties specifically identified in clauses (i), (ii), and (iii) above shall not constitute Lender Retained Causes of Action.

119. ~~114.~~ “**Lien**” shall have the meaning set forth in section 101(37) of the Bankruptcy Code.

120. ~~115.~~ “**List of Retained Causes of Action**” means the schedule of certain Causes of Action of the Debtors which shall be included in the Plan Supplement.

121. ~~116.~~ “**Local Rules**” means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas.

122. ~~117.~~ “**MidOcean**” means MidOcean Partners IV, L.P. in its capacity as the holder of Preferred A Units and Preferred C Units in KidKraft Group Holdings, LLC and party to that certain *Note Purchase Agreement* dated as of January 13, 2023, pursuant to which, KidKraft agreed to issue and sell to and MidOcean agreed to purchase, notes in the aggregate principal amount of up to \$5,000,000 and MidOcean US Advisor, L.P. as party to that certain *Professional Services Agreement* dated as of July 15, 2015 by and among KidKraft Group Holdings, LLC, KidKraft, and MidOcean US Advisor, L.P., as amended by that First Amendment to the Professional Services Agreement dated as of September 30, 2016.

123. ~~118.~~ “**Netherlands Asset Sale**” has the meaning set forth in Article IV.A.3. of the Plan.

124. ~~119.~~ “**Netherlands Liquidation**” has the meaning set forth in Article IV.A.3. of the Plan.

125. ~~120.~~ “**Netherlands Subsidiaries**” means non-debtors KidKraft Netherlands C.V., KidKraft Holdings B.V., and KidKraft Netherlands B.V.

126. ~~121.~~ “**Note Purchase Agreement Documents**” means that certain *Note Purchase Agreement* dated as of January 13, 2023 by and among certain of the Debtors and MidOcean and all other agreements, documents, instruments, and amendments related thereto.



127. ~~122.~~ “**Noticing and Claims Agent**” means Stretto Inc., the noticing, claims, and solicitation agent proposed to be retained by the Debtors in the Chapter 11 Cases.

128. ~~123.~~ “**Other Priority Claim**” means any Claim that is entitled to priority of payment under section 507(a) of the Bankruptcy Code other than an Administrative Expense Claim or a Priority Tax Claim.

129. ~~124.~~ “**Other Secured Claims**” means Secured Claims other than Priority Tax Claims, DIP Claims, or Prepetition Secured Party Claims.

130. ~~125.~~ “**Person**” shall have the meaning set forth in section 101(41) of the Bankruptcy Code.

131. ~~126.~~ “**Petition Date**” means the date on which each Debtor Filed its voluntary petition for relief commencing the Chapter 11 Cases.

132. ~~127.~~ “**Plan**” means this chapter 11 plan, as it may be altered, amended, modified, or supplemented from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the terms of the Plan, including the Plan Supplement and all exhibits, supplements, appendices, and schedules to the Plan, which shall be consistent with, and subject to the approvals and consents as to form and substance set forth in, the Restructuring Support Agreement.

133. ~~128.~~ “**Plan Supplement**” means, to the extent applicable, the compilation of documents and forms of documents, and all exhibits, attachments, schedules, agreements, documents and instruments referred to therein, ancillary or otherwise, including, without limitation, the Purchase Agreement, the Schedule of Assumed Executory Contracts and Unexpired Leases, the GUC Trust Agreement, the Global Settlement Term Sheet, the GUC Settlement Opt-In Form, the identity of the Wind Down Administrator, and the List of Retained Causes of Action all of which shall be incorporated by reference into, and are an integral part of, the Plan, as may be amended, modified, replaced and/or supplemented from time to time, subject to the consent of the Prepetition Secured Parties.

134. ~~129.~~ “**Post-Sale Reserve**” means a cash reserve in the amount of \$650,000 to fund the reasonably anticipated costs necessary for the wind down of the Wind Down Estate, including an estimated amount of reasonable fees and expenses that may be incurred by professionals for services rendered after the Effective Date and statutory fees, which cash reserve shall be funded into a segregated account on the Effective Date.

135. ~~130.~~ “**Prepetition Credit Agreement**” means that certain *Amended and Restated First Lien Credit Agreement*, dated as of April 3, 2020 (as amended from time to time), by and among KidKraft, Inc. and KidKraft Netherlands B.V., jointly and severally, as borrowers, the guarantors thereto, GB Funding, LLC, as Prepetition Credit Agreement Agent, and 1903 Partners, LLC, as Lender.

136. ~~131.~~ “**Prepetition Credit Agreement Agent**” means GB Funding, LLC, in its capacity as Administrative Agent and Collateral Agent (as such terms are defined in the Prepetition Credit Agreement) under the Prepetition Credit Agreement.

137. ~~132.~~ “*Prepetition Credit Agreement Documents*” means the Prepetition Credit Agreement and all other agreements, documents, instruments, and amendments related thereto, including any guaranty agreements, pledge and collateral agreements, UCC financing statements, or other perfection documents, subordination agreements, fee letters, and any other security agreements.

138. ~~133.~~ “*Prepetition Secured Parties*” means GB Funding, LLC, as Administrative Agent and Collateral Agent, and 1903 Partners, LLC, as Lender, in their respective capacities under the Prepetition Credit Agreement.

139. ~~134.~~ “*Prepetition Secured Party Advisors*” means Katten Muchin Rosenman LLP, as counsel to the Prepetition Secured Parties and Fasken Martineau DuMoulin LLP as Canadian counsel to the Prepetition Secured Parties.

140. ~~135.~~ “*Prepetition Secured Party Claims*” means all Claims, including “Parallel Debts” (as defined in the Prepetition Credit Agreement Documents) held by the Prepetition Secured Parties on account of, arising under, or relating to their respective capacities as lender or agent under the Prepetition Credit Agreement Documents.

141. ~~136.~~ “*Prepetition Secured Parties’ Deficiency Claims*” means the deficiency Claims held by the Prepetition Secured Parties. Solely for purposes of any distributions to be made from the GUC Trust Assets to GUC Trust Beneficiaries, the Prepetition Secured Parties’ Deficiency Claims shall be capped at \$55 million.

142. ~~137.~~ “*Prepetition Secured Party Liens*” means all Liens granted to the Prepetition Credit Agreement Agent to secure the Prepetition Secured Party Claims.

143. ~~138.~~ “*Priority Tax Claim*” means a Claim held by a Governmental Unit of the kind entitled to priority of payment as specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

144. ~~139.~~ “*Pro Rata*” means the proportion that an Allowed Claim or an Allowed Interest bears to the aggregate amount of Allowed Claims, Allowed Interests, or other matter so referenced, as the context requires.

145. ~~140.~~ “*Professional*” means an Entity employed pursuant to a Bankruptcy Court order in accordance with sections 327 or 1103 of the Bankruptcy Code and to be compensated for services rendered before or on the Effective Date, pursuant to sections 327, 328, 329, 330, or 331 of the Bankruptcy Code.

146. ~~141.~~ “*Professional Fee Claims*” means a Claim for the compensation of the Professionals and other professionals (including, for certainty, professionals to be compensated pursuant to the orders of the CCAA Court in the CCAA Recognition Proceedings) and the reimbursement of expenses incurred by such professionals through and including the Effective Date to the extent such fees and expenses have not been previously paid, including, for the avoidance of doubt, any costs, fees, expenses, or commissions (including with respect to any investment banking transaction fees or commissions) incurred in connection with the Restructuring; *provided that* to the extent a Debtor Professional (as defined in the DIP Approval

Order) agrees with the DIP Lender to a modification to the Debtor Professional fees in accordance with Section 1.8 of the DIP Approval Order, the Claim as modified shall be included in the applicable Professional Fee Claim. Professional Fee Claims of the Committee's Professionals shall not exceed the aggregate amounts set forth in the Approved Budget, consistent with the Global Settlement Term Sheet.

147. ~~142.~~ "**Professional Fee Escrow Account**" means an interest-bearing account funded by the Debtors on the Effective Date in an amount equal to the Professional Fee Reserve Amount, pursuant to Article II.B.

148. "Professional Fee Reduction Amount" means the amount, if any, by which the professional fee budget for SCP in the DIP Facility Documents exceeds the amount of Allowed Professional Fee Claims of SCP, where the budget savings is obtained consensually or is the result of an objection to SCP's fee application.

149. ~~143.~~ "**Professional Fee Reserve Amount**" means the total amount of Professional Fee Claims estimated in accordance with Article II.B.

150. ~~144.~~ "**Professional Services Agreement Documents**" means that certain *Professional Services Agreement* dated as of July 15, 2015 by and among certain of the Debtors and MidOcean and all other agreements, documents, instruments, and amendments related thereto.

151. ~~145.~~ "**Proof of Claim**" means a proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

152. ~~146.~~ "**Purchase Agreement**" means that certain Amended and Restated Asset Purchase Agreement dated as of ~~April 25~~July 5, 2024, as amended, modified, or supplemented from time to time, among Purchaser and certain of the Debtors, including all schedules and exhibits thereto, which shall be Filed with the Plan Supplement.

153. ~~147.~~ "**Purchase Price**" shall have the meaning set forth in the Purchase Agreement.

154. ~~148.~~ "**Purchase Price Calculation**" means the calculation of the "Purchase Price at close" in accordance with Exhibit B of the Purchase Agreement.

155. ~~149.~~ "**Purchaser**" means Backyard Products, LLC, and permitted successors, assigns, and designees, as applicable.

156. ~~150.~~ "**Qualifying Alternative Transaction**" shall have the meaning set forth in the Purchase Agreement.

157. ~~151.~~ "**Reinstated**" or "**Reinstatement**" means, with respect to Claims and Interests, the treatment provided for in section 1124 of the Bankruptcy Code, which, in all instances, shall be acceptable to the Prepetition Secured Parties and the Purchaser in their sole and absolute discretion.

158. ~~152.~~ "**Released Party**" means each of the following solely in its capacity as such: (a) the Debtors; (b) the DIP Agent; (c) the DIP Lender; (d) MidOcean; (e) the Prepetition Secured

Parties; (f) the Purchaser; (g) the Committee; and (h) with respect to each of the foregoing under (a) through (g) such Entity and its current and former Affiliates, and such Entity's and its current and former Affiliates' current and former directors, managers, officers, employees, managed accounts and funds, predecessors, successors, assigns, subsidiaries, equity Holders, members, agents, attorneys, accountants, investment bankers, consultants, and other professionals, each solely in their capacity as such.

159. ~~153.~~ “**Releasing Party**” means each of the following solely in its capacity as such: (a) all Released Parties; (b) all Holders of Claims who affirmatively cast a timely ballot to accept the Plan and did not affirmatively opt out of the releases set forth in Article VIII.F herein; (c) all Holders of Claims and Interests that were given notice of the opportunity to opt out of granting the releases set forth in Article VIII.F herein but did not otherwise affirmatively opt out of such releases; and (d) all GUC Trust Beneficiaries.

160. ~~154.~~ “**Restructuring**” means all actions that may be necessary or appropriate to effectuate the transactions described in, approved by, contemplated by, or necessary to effectuate, the Plan.

161. ~~155.~~ “**Restructuring Expenses**” means the reasonable and documented professional fees and expenses incurred by the DIP Secured Party Advisors, the DIP Secured Parties, the Prepetition Secured Party Advisors and the Prepetition Secured Parties, in each case, in connection with or arising as a result of the Restructuring, the Restructuring Support Agreement, Sale Transaction, the Plan, or the Chapter 11 Cases.

162. ~~156.~~ “**Restructuring Support Agreement**” means that certain *Restructuring Support Agreement*, dated April 25, 2024, by and among the Debtors, the Prepetition Secured Parties, the DIP Secured Parties, the Purchaser, and MidOcean, as may be further amended, restated, modified, supplemented, or replaced from time to time in accordance with the terms thereof.

163. ~~157.~~ “**Retained Causes of Action**” means those Causes of Action identified on the List of Retained Causes of Action that are not released, waived, or transferred pursuant to the Plan or any Sale Transaction.

164. ~~158.~~ “**RSA Parties**” mean, collectively, the Debtors, the Prepetition Secured Parties, the DIP Secured Parties, the Purchaser, and MidOcean.

165. ~~159.~~ “**Sale Approval Order**” means the order of the Bankruptcy Court approving the Purchase Agreement and the Sale Transaction, which order may be, but is not required to be, part of the Confirmation Order.

166. ~~160.~~ “**Sale Hearing**” means the hearing held by the Bankruptcy Court to consider Confirmation of the Sale Order, as such hearing may be adjourned or continued from time to time.

167. ~~161.~~ “**Sale Order**” means the Sale Approval Order and the Sale Recognition Order, as applicable.

168. ~~162.~~ “**Sale Recognition Order**” means an order of the CCAA Court in the CCAA Recognition Proceedings recognizing and giving effect in Canada to the Sale Approval Order, which order may be, but is not required to be, part of the Confirmation Recognition Order.

169. ~~163.~~ “**Sales Process**” means the marketing and sales process for the Debtors’ Assets.

170. ~~164.~~ “**Sale Transaction**” means the sale by the Debtors that are party to the Purchase Agreement of all of their respective right, title, and interest in, to and under the Transferred Assets to the Purchaser in accordance with the terms of the Purchase Agreement and the Sale Order.

171. ~~165.~~ “**Sale Transaction Documents**” means the Sale Order, the Purchase Agreement, and all other documents required to consummate the Sale Transaction (with respect to such other documents required to consummate the Sale Transaction, in form and substance acceptable to each party thereto).

172. ~~166.~~ “**Schedule of Assumed Executory Contracts and Unexpired Leases**” means the schedule of Executory Contracts and Unexpired Leases to be assumed and assigned to Purchaser pursuant to the Plan, as set forth in the Plan Supplement, as may be amended from time to time prior to the Effective Date.

173. ~~167.~~ “**Schedules**” means, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs Filed by the Debtors pursuant to section 521 of the Bankruptcy Code and in substantial conformance with the official bankruptcy forms, as the same may have been amended, modified, or supplemented from time to time.

174. [“SCP” means SierraConstellation Partners, LLC.](#)

175. ~~168.~~ “**SEC**” means the United States Securities and Exchange Commission.

176. ~~169.~~ “**Secured Claim**” means a Claim (i) secured by a lien on collateral to the extent of the value of such collateral as (a) set forth in the Plan, (b) agreed to by the Holder of such Claim and the Debtors, or (c) determined by a Final Order in accordance with section 506(a) of the Bankruptcy Code, or (ii) secured by the amount of any right of setoff of the Holder thereof in accordance with section 553 of the Bankruptcy Code.

177. ~~170.~~ “**Security**” shall have the meaning set forth in section 101(49) of the Bankruptcy Code.

178. ~~171.~~ “**Special Committee**” means the Special Committee of the Board of Directors of KidKraft, Inc.

179. ~~172.~~ “**Sponsor Cash Contribution**” has the meaning set forth in Article IV.C.8 of the Plan.

180. ~~173.~~ “*Sponsor Claims Waiver*” has the meaning set forth in Article IV.C.8 of the Plan.

181. ~~174.~~ “*Subordinated Claim*” means any Claim against a Debtor arising from (a) rescission of a purchase or sale of a Security in any Debtor or an Affiliate of any Debtor, (b) purchase or sale of such a Security, or (c) reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim.

182. ~~175.~~ “*Transferred Assets*” shall have the meaning set forth in Section 2.1 of the Purchase Agreement, *provided, however*, the Assigned Avoidance Actions shall not be Transferred Assets.

183. ~~176.~~ “*Transferred Contracts*” shall have the meaning set forth in Section 2.1(e) of the Purchase Agreement.

184. ~~177.~~ “*Unclaimed Property*” means any distribution under the Plan on account of an Allowed Claim whose Holder has not: (a) accepted such distribution or, in the case of distributions made by check, negotiated such check; (b) given notice to the Wind Down Estate of an intent to accept such distribution; (c) responded to the Debtors’, Wind Down Administrator’s, or GUC Trustee’s (as applicable) requests for information necessary to facilitate such distribution; or (d) taken any other action necessary to facilitate such distribution.

185. ~~178.~~ “*Unexpired Lease*” means a lease of nonresidential real property to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

186. ~~179.~~ “*Unimpaired*” means, with respect to a Class of Claims or Interests, a Class consisting of Claims or Interests that are not “impaired” within the meaning of section 1124 of the Bankruptcy Code, including through payment in full in Cash or Reinstatement.

187. ~~180.~~ “*Unpaid Employee Severance Obligations*” means those obligations owed to certain eligible employees who were terminated prior to the Petition Date and who executed a separation agreement after the Petition Date and prior to the Effective Date, which obligations shall be deemed to have been incurred after the Petition Date and treated as Administrative Expense Claims for purposes of this Plan.

188. ~~181.~~ “*Unsecured*” means, with respect to a Claim, not Secured.

189. ~~182.~~ “*U.S. Trustee*” means the Office of the United States Trustee for the Northern District of Texas.

190. ~~183.~~ “*U.S. Trustee Fees*” means fees arising under 28 U.S.C. § 1930(a)(6) and, to the extent applicable, accrued interest thereon arising under 31 U.S.C. § 3717.

191. ~~184.~~ “*Wind Down Administrator*” means the Person or Persons identified in the Plan Supplement (as determined by the Debtors), if known, and appointed on the Effective Date, who will serve as the trustee and administrator overseeing the Wind Down Estate and dissolution of the Debtors and their Estates in accordance with the Plan.



192. ~~185.~~ “*Wind Down Claims*” means the Prepetition Secured Party Claims that remain outstanding on the Effective Date, in an amount not to exceed \$10,000,000, and the Prepetition Secured Party Liens securing such Prepetition Secured Party Claims, which Prepetition Secured Party Claims and Liens shall be automatically released and discharged following the orderly wind down of the Debtors and the other borrower and guarantors under the Prepetition Credit Agreement and after the proceeds of the Netherlands Asset Sale and Netherlands Liquidation, if any, are indefeasibly distributed in Cash to the Prepetition Secured Parties as provided in Article IV of the Plan.

193. ~~186.~~ “*Wind Down Estate*” means, collectively, (i) the Estates of the Debtors and (ii) the Debtors’ non-Debtor affiliates, as applicable, following the Effective Date.

194. ~~187.~~ “*Wind Down Estate Assets*” means (i) any Assets of the Debtors’ Estates that are not GUC Trust Assets and not sold pursuant to the Sale Transaction, including, but not limited to, the Excluded Assets, Interests in the Debtors’ non-Debtor affiliates, and any Cause of Action specifically enumerated in the List of Retained Causes of Action and (ii) Cash in the amount set forth in the Post-Sale Reserve; *provided that* proceeds of any Wind Down Estate Assets, including without limitation, Excluded Assets and such Retained Causes of Action shall become Distributable Value. For the avoidance of doubt, no GUC Trust Assets shall be Wind Down Estate Assets.

195. ~~188.~~ “*Wind Down Estate Expenses*” means any and all reasonable and documented fees, costs, and expenses incurred by the Wind Down Estate or the Wind Down Administrator (or any Person, entity, or professional engaged to assist the Wind Down Administrator) in connection with the Wind Down Transactions, including, without limitation, any reasonable and documented administrative fees, attorneys’ or other professionals’ fees and expenses, insurance fees, taxes, escrow expenses and fees payable under 28 U.S.C. § 1930, costs associated with any maintenance of any going concern as part of the wind down of such going concern’s business operations, or costs to maintain certain assets while they are held, in each case, in accordance with and subject to the Post-Sale Reserve.

196. ~~189.~~ “*Wind Down Transactions*” means the transactions that the Debtors or Wind Down Administrator, as applicable, with the consent of the Prepetition Secured Parties, determines to be necessary or appropriate to implement the terms of the Plan, and that ultimately result in the dissolution or other termination of KidKraft and its Affiliates.

#### B. *Rules of Interpretation*

For purposes herein: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) except as otherwise provided, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified, or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (3) except as otherwise provided, any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter

be amended, restated, supplemented, or otherwise modified in accordance with the terms of the Plan; (4) unless otherwise specified, all references herein to “Articles” are references to Articles of the Plan; (5) unless otherwise stated, the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (6) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (7) the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, and shall be deemed to be followed by the words “without limitation;” (8) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (9) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (10) any docket number references in the Plan shall refer to the docket number of any document Filed with the Bankruptcy Court in the Chapter 11 Cases.

C. *Computation of Time*

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction, action, or event shall or may occur pursuant to the Plan is a day that is not a Business Day, then such transaction, action, or event shall instead occur on the next succeeding Business Day.

D. *Governing Law*

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated herein, the laws of the State of New York without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); *provided that* the corporate or limited liability company governance matters relating to the Debtors shall be governed by the laws of the state of incorporation or formation (as applicable) of the applicable Debtor.

E. *Reference to Monetary Figures*

All references in the Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided herein.

F. *Reference to the Debtors or the Wind Down Estate*

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or the Wind Down Estate shall mean the Debtors and the Wind Down Estate, as applicable, to the extent the context requires.



G. *Controlling Document*

In the event of an inconsistency between the Plan, the Disclosure Statement, or any other Final Order (other than the Confirmation Order or Sale Approval Order, as applicable) referenced in the Plan (or any exhibits, schedules, appendices, supplements or amendments to any of the foregoing, other than the Plan Supplement), the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and the Plan Supplement, the terms of the relevant document in the Plan Supplement shall control (unless stated otherwise in such Plan Supplement document or in the Confirmation Order). In the event of an inconsistency between the Confirmation Order or Sale Approval Order and the Plan, the Confirmation Order or Sale Approval Order, as applicable, shall control.

**ARTICLE II.  
ADMINISTRATIVE EXPENSE CLAIMS AND PRIORITY CLAIMS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, Professional Fee Claims, DIP Claims, Adequate Protection Claims, and Priority Tax Claims have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in Article III of the Plan.

A. *Administrative Expense Claims*

Except (i) with respect to Administrative Expense Claims that are Professional Fee Claims and Bidder Protections, or (ii) to the extent that (x) an Administrative Expense Claim has already been paid during the Chapter 11 Cases or a Holder of an Allowed Administrative Expense Claim and the applicable Debtor(s) or (y) Wind Down Administrator (as applicable) agrees to less favorable treatment, each Holder of an Allowed Administrative Expense Claim shall be paid in full in Cash; on the latest of: (a) on or as soon as reasonably practicable after the Effective Date if such Administrative Expense Claim is Allowed as of the Effective Date; (b) on or as soon as reasonably practicable after the date such Administrative Expense Claim is Allowed; and (c) the date such Allowed Administrative Expense Claim becomes due and payable, or as soon thereafter as is reasonably practicable; *provided that* in no event shall the amount paid in the aggregate to Administrative Expense Claims (excluding Professional Fee Claims) in accordance with this Article II.A, Priority Tax Claims under Article II.E hereof, and Other Priority Claims under Article III.B hereof exceed the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount. For the avoidance of doubt, the Bidder Protections shall be an Administrative Expense Claim in accordance with any applicable orders of the Bankruptcy Court.

Except as otherwise provided in this Article II.A of the Plan and except with respect to Administrative Expense Claims that are Professional Fee Claims, Unpaid Employee Severance Obligations, or Bidder Protection Claims, requests for allowance and payment of Administrative Expense Claims must be Filed and served on the Debtors, the Wind Down Estate, or the Wind Down Administrator (as applicable), pursuant to the procedures specified in the Bar Date Order, the Confirmation Order, and the notice of entry of the Confirmation Order no later than the Administrative Expense Claims Bar Date. Holders of Administrative Expense Claims that are required to, but do not, File and serve on the Debtors, the Wind Down Estate, or the Wind Down Administrator (as applicable) a request for allowance and payment of such Administrative Expense

Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Expense Claims against the Debtors, the Wind Down Estate, or their respective assets or property and such Administrative Expense Claims shall be deemed discharged as of the Effective Date. Objections to such requests, if any, must be Filed and served on the Debtors, the Wind Down Estate, or the Wind Down Administrator (as applicable) and the requesting party no later than 90 days after the Effective Date or such other date fixed by the Bankruptcy Court. Notwithstanding the foregoing, no request for payment of an Administrative Expense Claim need be Filed with respect to an Administrative Expense Claim previously Allowed.

B. *Professional Compensation*

1. Final Fee Applications

All final requests for payment of Professional Fee Claims of Professionals, including such Professional Fee Claims incurred during the period from the Petition Date through and including the Effective Date, shall be Filed and served on the Debtors, the Wind Down Estate, or the Wind Down Administrator, as applicable, no later than 45 days after the Effective Date. Each such final request will be subject to approval by the Bankruptcy Court after notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Bankruptcy Court in the Chapter 11 Cases, and once approved by the Bankruptcy Court, such Allowed Professional Fee Claims shall be promptly paid in Cash from the Professional Fee Escrow Account up to its full Allowed amount.

Objections to any Professional Fee Claim of Professionals must be Filed and served on the Debtors, the Wind Down Estate, or the Wind Down Administrator, as applicable, and the applicable Professional no later than 24 days after such Professional Fee Claim is Filed with the Bankruptcy Court.

2. Professional Fee Escrow Account

On the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the “Professional Fee Reserve Amount” described in Article II.B.3 herein. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and the other professionals with Professional Fee Claims. The Debtors shall utilize the Funded Reserve Account (as defined in the DIP Approval Order) to fund the Professional Fee Escrow Account, *provided that* the Funded Reserve Account is not a limitation on the amount funded to the Professional Fee Escrow Account. The Professional Fee Escrow Account and funds therein shall not be considered property of the Estates of the Debtors or the Wind Down Estate. The amount of Allowed Professional Fee Claims shall be paid in Cash to the Professionals by the Disbursing Agent or the Wind Down Administrator from the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed, and the amount of all other Professional Fee Claims shall be paid in Cash to the applicable professionals by the Disbursing Agent or the Wind Down Administrator from the Professional Fee Escrow Account on the Effective Date. After all such Professional Fee Claims have been paid in full, any remaining amount in the Professional Fee Escrow Account shall promptly be distributed to the Wind Down Estate and deemed Distributable Value and distributed to the holders of Prepetition Secured Party Claims without any further action or order of the Bankruptcy Court.

3. Professional Fee Reserve Amount

No later than five Business Days prior to the Effective Date, the Debtors shall solicit Professionals and the other professionals with Professional Fee Claims for estimates of their unpaid Professional Fee Claims before and as of the Effective Date, and such Professionals and other professionals shall deliver such estimate to the Debtors in writing via email two Business Days prior to the Effective Date; *provided, however*, that such estimate shall not be deemed to limit the amount of the fees and expenses that are the subject of any such professional's final request for payment of Professional Fee Claims. If any professional does not timely provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such professional.

4. Post-Effective Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Effective Date, the Disbursing Agent, the Wind Down Estate, or the Wind Down Administrator (as applicable) shall, in the ordinary course of business and without any further notice or application to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable, actual, and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred on or after the Effective Date by the Professionals and other professionals (including any fees related to the preparation of Professional fee applications). Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors, the Wind Down Estate, or the Wind Down Administrator (as applicable) may employ and pay any Professional or other professional for fees and expenses incurred after the Effective Date in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court. Notwithstanding the foregoing, in no circumstances shall the payment of any post-Effective Date fees and/or expenses and other Wind Down Estate Expenses exceed the amount of the Post-Sale Reserve.

C. *DIP Claims*

Notwithstanding anything to the contrary herein, in full and final satisfaction, settlement, release, and discharge of and in exchange for release of all DIP Claims, on the Effective Date, the DIP Claims shall: (i) be indefeasibly paid in Cash in full, or (ii) receive such other treatment as agreed by the Debtors and the applicable Holder of a DIP Claim. Notwithstanding anything herein, the Prepetition Secured Parties and DIP Secured Parties may, in their sole discretion, apply any recovery received on the DIP Claims against the Prepetition Secured Party Claims and vice versa; provided that any such application shall not affect the Prepetition Secured Parties' Deficiency Claims or the agreements set forth in the Global Settlement Term Sheet.

D. *Adequate Protection Claims*

On the Effective Date, the Adequate Protection Claims shall (i) be paid in Cash in full or (ii) receive such other treatment as agreed by (a) to the extent such Adequate Protection Claims are held by the Prepetition Secured Parties, the Debtors and the Prepetition Secured Parties or

(b) to the extent such Adequate Protection Claims are not held by a Prepetition Secured Party, the Debtors and the applicable Holder of such Adequate Protection Claims.

E. *Priority Tax Claims*

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall receive Cash in an amount equal to such Allowed Priority Tax Claim on the Effective Date or as soon as practicable thereafter or such other treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.

F. *Statutory Fees*

All Statutory Fees due and payable prior to, and that remain unpaid as of, the Effective Date shall be paid by the applicable Debtors on the Effective Date. No statutory fees shall be paid on the initial funding of the Post-Sale Reserve or the GUC Trust. Statutory fees shall only be paid on subsequent disbursement of Cash by the Wind Down Estate or the GUC Trust, as applicable. Any Statutory Fees that may be owed by the Debtors, the Wind Down Estate, or the GUC Trust, as applicable, after the Confirmation Date related to the reduction to Cash of non-Cash assets shall be paid by the Debtors, the Wind Down Estate, or the GUC Trust, as applicable, until the case is closed, dismissed, or converted. If no disbursements are made by the Debtors, the Wind Down Estate, or the GUC Trust for any quarter post-confirmation, only the minimum statutory fee will be owed in accordance with 28 U.S.C. § 1930(a)(6). The Wind Down Estate and the GUC Trust shall file post-confirmation operating reports with respect to their respective operations and disbursements until these Chapter 11 Cases are closed, dismissed, or converted to cases under chapter 7 of the Bankruptcy Code.

G. *Restructuring Expenses*

The Debtors will promptly pay in full in Cash any Restructuring Expenses in accordance with the terms of the Restructuring Support Agreement and the DIP Approval Order. To the extent any Restructuring Expenses remain unpaid on the Effective Date, such Restructuring Expenses shall constitute Allowed Administrative Expense Claims and shall be paid in full in Cash, subject to the Restructuring Support Agreement and the DIP Approval Order without the need to file a proof of such Claim and without further order of the Court. On the Effective Date, the Disbursing Agent or the Wind Down Estate, as applicable, shall pay the Restructuring Expenses that have accrued and are unpaid as of the Effective Date.

**ARTICLE III.  
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

A. *Classification of Claims*

The Plan constitutes a separate Plan proposed by each Debtor. Except for the Claims addressed in Article II of the Plan, all Claims and Interests are classified in the Classes set forth below in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest fits within the

description of that Class and is classified in other Class(es) to the extent that any portion of the Claim or Interest fits within the description of such other Class(es). A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

The classification of Claims and Interests against the Debtors pursuant to the Plan is as follows:

| <b>Class</b> | <b>Claim or Interest</b>                      | <b>Status</b>       | <b>Voting Rights</b>                |
|--------------|---|---------------------|-------------------------------------|
| 1            | Other Priority Claims                         | Unimpaired          | Presumed to Accept                  |
| 2            | Other Secured Claims                          | Unimpaired          | Presumed to Accept                  |
| 3            | Prepetition Secured Party Claims              | Impaired            | Entitled to Vote                    |
| 4            | General Unsecured Claims                      | Impaired            | Deemed to Reject                    |
| 5            | Intercompany Claims                           | Unimpaired/Impaired | Presumed to Accept/Deemed to Reject |
| 6            | Intercompany Interests                        | Unimpaired/Impaired | Presumed to Accept/Deemed to Reject |
| 7            | KidKraft Intermediate Holdings, LLC Interests | Impaired            | Deemed to Reject                    |

**B. *Treatment of Claims and Interests***

**1. Class 1 — Other Priority Claims**

- a. *Classification:* Class 1 consists of all Other Priority Claims.
- b. *Treatment:* Except to the extent that a Holder of an Allowed Other Priority Claim agrees to less favorable treatment, in full and final satisfaction of such Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim will, (i) be paid in full in Cash or (ii) otherwise receive treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code, payable on the later of the Effective Date and the date that is 10 business days after the date on which such Other Priority Claim becomes an Allowed Other Priority Claim, in each case, or as soon as reasonably practicable thereafter; *provided that* in no event shall the amount paid in the aggregate for Administrative Expense Claims (excluding Professional Fee Claims) in accordance with Article II.A hereof, Priority Tax Claims under Article II.E hereof, and Other Priority Claims under this Article III.B exceed the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount.

- c. *Voting:* Class 1 is Unimpaired under the Plan. Holders of Class 1 Other Priority Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject the Plan.

2. Class 2 — Other Secured Claims

- a. *Classification:* Class 2 consists of all Other Secured Claims.
- b. *Treatment:* Except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment, in full and final satisfaction of such Allowed Other Secured Claim, at the option of Debtors or the Wind Down Estate, as applicable, each Holder shall receive either (i) cash equal to the full allowed amount of its claim, (ii) reinstatement of such holder's claim, (iii) the return to or abandonment of the collateral securing such holder's claim, or (iv) such other treatment as may otherwise be agreed to by such Holder and the Debtors.
- c. *Voting:* Class 2 is Unimpaired under the Plan. Holders of Class 2 Other Secured Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject the Plan.

3. Class 3 — Prepetition Secured Party Claims

- a. *Classification:* Class 3 consists of all Prepetition Secured Party Claims.
- b. *Treatment:* Except to the extent that the Holder of Prepetition Secured Party Claims agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and discharge of each Allowed Prepetition Secured Party Claim (which satisfaction, settlement, release, and discharge shall occur (i) on the Effective Date for all Prepetition Secured Party Claims other than the Wind Down Claims, and (ii) after the orderly wind down of the Debtors and other borrower and guarantors under the Prepetition Credit Agreement for all Wind Down Claims), each Holder of an Allowed Prepetition Secured Party Claim shall receive the remaining Distributable Value following payment of Administrative Expense Claims and Priority Tax Claims, DIP Claims, Other Priority Claims, Other Secured Claims, (which amount may be paid directly by the Purchaser on the Effective Date), and GUC Trust Interests (subject to the terms of the Global Settlement) on the Effective Date and any Distributable Value that is available for distribution after the Effective Date shall be promptly distributed by the Debtors or Wind Down Estate to holders of Prepetition Secured Party Claims.
- c. *Voting:* Class 3 is Impaired under the Plan. Holders of Class 3 Secured Party Claims will be entitled to vote to accept or reject the Plan.



4. Class 4 — General Unsecured Claims

- a. *Classification:* Class 4 consists of all General Unsecured Claims.
- b. *Treatment:* On the Effective Date, all General Unsecured Claims will be canceled, released, extinguished and discharged, and Holders of General Unsecured Claims will receive no recovery or distribution on account of such claims; *provided, however,* that any Holder of Allowed General Unsecured Claims who timely makes a GUC Settlement Opt-In Election in compliance with the GUC Settlement Opt-In Procedures shall receive its Pro Rata share of 100% of the GUC Trust Interests.
- c. *Voting:* Class 4 is Impaired under the Plan. Holders of Class 4 General Unsecured Claims will be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such Holders will not be entitled to vote to accept or reject the Plan.

5. Class 5 — Intercompany Claims

- a. *Classification:* Class 5 consists of all Intercompany Claims.
- b. *Treatment:* All Intercompany Claims will be unaltered and otherwise unaffected by the Plan, or canceled on the Effective Date, in the Debtors' discretion, with the consent of Purchaser.
- c. *Voting:* Class 5 is Unimpaired/Impaired under the Plan. Holders of Class 5 Intercompany Claims are proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code. Therefore, the vote of such Holders to accept or reject the Plan will not be solicited.

6. Class 6 — Intercompany Interests

- a. *Classification:* Class 6 consists of all Intercompany Interests.
- b. *Treatment:* All Intercompany Interests shall be maintained under the Plan, solely for purposes of administrative convenience or canceled on the Effective Date, in the Debtors' discretion, subject to the consent of the Prepetition Secured Parties and the Purchaser.
- c. *Voting:* Class 6 is Unimpaired/Impaired under the Plan. Holders of a Class 6 Intercompany Interests are proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code. Therefore, the vote of such Holders to accept or reject the Plan will not be solicited.

7. Class 7 — KidKraft Intermediate Holdings, LLC Interests

- a. *Classification:* Class 7 consists of all KidKraft Intermediate Holdings, LLC Interests.

- b. *Treatment:* All prepetition Interests in KidKraft Intermediate Holdings, LLC will be canceled on the Effective Date and Holders shall receive no recovery or distribution on account of their Interests.
- c. *Voting:* Class 7 is Impaired under the Plan. For purposes of solicitation, it is presumed that Holders of Class 7 KidKraft Intermediate Holdings, LLC Interests shall not receive any distribution on account of such KidKraft Intermediate Holdings, LLC Interests and will be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such Holders will not be entitled to vote to accept or reject the Plan.

C. *Special Provision Governing Unimpaired or Reinstated Claims*

Nothing under the Plan shall affect the Debtors', the Wind Down Estate's, or the Wind Down Administrator's (as applicable) claims, Causes of Action, rights, or defenses in respect of any Unimpaired Claims or Reinstated Claims, including all rights in respect of legal and equitable defenses to or setoffs or recoupment against any such Unimpaired Claims or Reinstated Claims.

D. *Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code*

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by one or more of the Classes entitled to vote pursuant to Article III.B of the Plan. The Debtors reserve the right to modify the Plan in accordance with Article X of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

E. *Elimination of Vacant Classes*

Any Class of Claims that does not contain an Allowed Claim or a Claim temporarily Allowed by the Bankruptcy Court for voting purposes as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

F. *Voting Classes; Presumed Acceptance by Non-Voting Classes*

If a Class contains Claims eligible to vote and no Holder of Claims eligible to vote in such Class votes to accept or reject the Plan, the Plan shall be presumed accepted by such Class.

G. *Controversy Concerning Impairment*

If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date



H. *Subordinated Claims*

The allowance, classification, and treatment of all Claims and Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors, Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) reserve(s) the right to reclassify any Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

**ARTICLE IV.  
MEANS FOR IMPLEMENTATION OF THE PLAN**

A. *Means for Implementation*

1. Sale Transaction

On ~~the Effective Date~~ July 5, 2024, the applicable Debtors ~~shall consummate~~ consummated the Sale Transaction and the Transferred Assets ~~shall vest~~ vested in the Purchaser free and clear of all Liens, Claims, charges, or encumbrances pursuant to section 1123 of the Bankruptcy Code and the CCAA and the Sale Transaction Documents; ~~provided, that, the conditions precedent set forth in the Purchase Agreement shall have been satisfied or waived in accordance with the terms thereof.~~ Upon entry of the Sale Approval Order by the Bankruptcy Court and the Sale Recognition Order by the CCAA Court, all matters provided for under the Purchase Agreement and the other Sale Transaction Documents ~~will be~~ were deemed authorized and approved without any requirement of further act or action by the Debtors or the Debtors' governing bodies. The applicable Debtors are authorized to execute and deliver, and to consummate the transactions contemplated by the Sale Transaction Documents, as well as to execute, deliver, file, record and issue any documents, or agreements in connection therewith, without further notice to or order of the Bankruptcy Court or the CCAA Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity.

In the alternative, the Plan shall serve as a motion under section 363 of the Bankruptcy Code to authorize the sale of the Transferred Assets pursuant to the terms of the Sale Transaction Documents. Section 363(f) of the Bankruptcy Code provides that the Debtors' assets may be sold free and clear of any and all liens, claims, interests, and encumbrances with any such liens, claims, interests, and encumbrances attaching to the proceeds of the Sale Transaction. The Debtors submit that the Sale Transaction satisfies the requirements of section 363(f) of the Bankruptcy Code. To the extent a party objects to Sale Transaction on the basis that it holds a lien or encumbrance on the Transferred Assets, the Debtors believe that any such party could be compelled to accept a monetary satisfaction of such claims under section 365(f)(5) of the Bankruptcy Code and the CCAA. In addition, to the extent the Debtors discover any party may hold a lien on all, or a portion of, the Assets, the Debtors have provided such party with notice of, and an opportunity to object to, the Sale Transaction. Absent objection, each such party will be deemed to have consented to the sale of the Transferred Assets.

Except as otherwise expressly provided in the Sale Transaction Documents, (a) the Purchaser and all of its Affiliates shall not be liable for any Claims against the Debtors or any of their predecessors or direct or indirect subsidiaries, and (b) neither the Purchaser nor any of its affiliates shall have successor or vicarious liabilities of any kind or character, including under any theory of successor or transferee liability, labor, employment, tort, products liability, or benefits law, whether known or unknown as of the closing, then existing or hereafter arising, whether fixed or contingent, asserted or unasserted, liquidated or unliquidated, in each case, with respect to the Debtors or any obligations of the Debtors arising prior to the closing, including liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Debtors prior to the closing (except as otherwise expressly provided in the Sale Transaction Documents). For the avoidance of doubt, any Avoidance Actions purchased by the Purchaser will not be pursued by the Purchaser.

The transactions contemplated by the Sale Transaction Documents are undertaken by the applicable Debtors and the Purchaser without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided therein to consummate the Sale Transaction shall not affect the validity of such sale, unless such authorization and consummation of such sale are duly stayed pending such appeal. 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.

[On or before the Effective Date, the Purchaser shall transfer back to the Debtors any 549 Causes of Action that were included within the Transferred Assets, and such 549 Causes of Action shall be transferred to the GUC Trust in accordance and consistent with Article IV.C.2.](#)

## 2. Break-Up Fee and Expense Reimbursement

Consistent with the Sale Transaction Documents, the payment of the Break-Up Fee and Expense Reimbursement for the Purchaser are hereby authorized in the event: (i) the Debtors that are party to the Purchase Agreement consummate or enter into a Qualifying Alternative Transaction and the Purchase Agreement is terminated in connection therewith; (ii) the Debtors that are party to the Purchase Agreement publicly announce or support any plan of reorganization or plan of liquidation other than the Plan and other than a plan that includes a conversion of any of the Chapter 11 Cases to chapter 7 of the Bankruptcy Code or that would not prevent or materially delay consummation of the Closing (as defined in the Purchase Agreement) in accordance with the terms of the Purchase Agreement; or (iii) the board of directors or board of managers, as applicable, of any Debtor that is party to the Purchase Agreement determines, in good faith based upon advice of outside legal counsel, that proceeding with the Purchase Agreement or the transactions contemplated thereunder (including the Plan or solicitation of the Plan) or taking any action (or refraining from taking any action) in relation thereto, would be inconsistent with the exercise of its fiduciary duties under applicable law, and the Purchase Agreement is terminated in connection therewith (in each of the foregoing cases as further set forth in and subject to the terms of the Purchase Agreement). The potential remedy of the Break-Up Fee and Expense Reimbursement was a condition of the Purchaser entering into the Purchase Agreement, which is the best option for the Debtors to maximize the value of their estates. The Break-Up Fee and Expense Reimbursement are the product of arm's-length, good faith negotiations among the

Debtors and the Purchaser, and as a result, the Debtors believe that the agreement to pay such fees to the Purchaser (if and when the same become due to the Purchaser pursuant to, and in accordance with the terms and conditions in, the Purchase Agreement) is a valid exercise of their business judgment and should be approved if required under the Sale Transaction Documents.

3. Transactions with Netherlands Affiliates

On or prior to the closing of the transactions contemplated by the Purchase Agreement, the assets of the Netherlands Subsidiaries that would otherwise be Transferred Assets under the Purchase Agreement if such assets were owned by a Seller (as defined in the Purchase Agreement) shall be sold to KidKraft, or another Debtor designated by KidKraft, in exchange for the portion of the Purchase Price attributable to such assets (the “*Netherlands Asset Sale*”). The transactions contemplated by the Netherlands Asset Sale are undertaken by the Netherlands Subsidiaries and the Debtors without collusion and in good faith. The Netherlands Subsidiaries’ assets that do not become Transferred Assets shall be liquidated with the consent of the Prepetition Secured Parties and the Netherlands Subsidiaries (the “*Netherlands Liquidation*”). The Netherlands Subsidiaries will create a right of pledge in favor of the Prepetition Secured Parties over the proceeds of the Netherlands Asset Sale and the proceeds of the Netherlands Liquidation.

The proceeds of the Netherlands Asset Sale (i.e. the Foreign Sale Reserve) and proceeds of the Netherlands Liquidation, in each case with the consent of the Prepetition Secured Parties, shall be used to implement the orderly out-of-court wind down of the Netherlands Subsidiaries (the “*Netherlands Wind Down*,” collectively, with the Netherlands Asset Sale and Netherlands Liquidation, the “*Netherlands Transactions*”).

To the extent proceeds of the Netherlands Asset Sale (i.e. the Foreign Sale Reserve) or Netherlands Liquidation remain, after the Netherlands Wind Down is complete, such proceeds shall be distributed to the Prepetition Secured Parties in a manner to be determined by the Prepetition Secured Parties, the Debtors, and the Wind Down Administrator, as applicable, and the Netherlands Subsidiaries. Following the distribution of such proceeds, the Prepetition Secured Parties and the Netherlands Subsidiaries shall execute a mutual release of all Claims and Causes of Action.

Upon the Bankruptcy Court entering the Sale Approval Order, the Netherlands Asset Sale will be deemed authorized and approved without any requirement or further act or action by the Debtors or the Debtors’ governing bodies.

4. Vesting of Wind Down Estate Assets in the Wind Down Estate

Except as otherwise provided in the Plan, the Plan Supplement, or the Confirmation Order, on the Effective Date, all Wind Down Estate Assets (including all interests, rights, and privileges related thereto) and all GUC Trust Assets (solely until the GUC Trust Assets Transfer occurs) in each Estate and all Causes of Action that are retained under the Plan shall vest in the Wind Down Estate, to be administered by the Wind Down Administrator in accordance with the Plan, free and clear of all Claims, Liens, and encumbrances (except for the Wind Down Claims) to the fullest extent provided by section 363 or 1123 of the Bankruptcy Code; *provided that*, for the avoidance of doubt, no Assets that are, or shall be, transferred to Purchaser as Transferred Assets before or

after the Effective Date in accordance with the Purchase Agreement and the Sale Approval Order shall vest in the Wind Down Estate.

The vesting of the Wind Down Estate Assets, as authorized by the Plan, shall not be construed to destroy or limit any such Assets or rights or be construed as a waiver of any right, and such rights may be asserted by the Wind Down Estate as if such Asset or right was still held by the Debtors.

On the next Business Day following the GUC Settlement Opt-In Election Deadline, the Wind Down Estate shall complete the GUC Trust Assets Transfer.

#### 5. Wind Down Administrator

The Wind Down Administrator shall be selected by the Debtors, with the consent of the Prepetition Secured Parties and the DIP Secured Parties. The Wind Down Administrator shall be the successor to and representative of the Estate of each of the Debtors appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The powers, rights, and responsibilities of the Wind Down Administrator shall include the authority and responsibility to fulfill the obligations of the Plan consistent with the Confirmation Order.

On the Effective Date, the authority, power, and incumbency of the Persons acting as managers, directors, and officers of the Debtor entities comprising the Wind Down Estate shall vest in the Wind Down Administrator. The Wind Down Administrator shall be appointed the sole manager, sole director, and sole officer of the Debtor entities comprising the Wind Down Estate, as applicable, and shall succeed to the powers of the Debtors' managers, directors, and officers. From and after the Effective Date, the Wind Down Administrator shall be the sole Representative of the Wind Down Estate and shall have the authority to sell, liquidate, or otherwise dispose of any and all of the Wind Down Estate Assets without any additional notice to or approval from the Bankruptcy Court.

In the event the Wind Down Administrator becomes incapacitated or unable to continue serving in such role for any reason, the Prepetition Secured Parties shall select a suitable replacement Wind Down Administrator as promptly as possible without the need for any further action or order of the Bankruptcy Court.

#### 6. Wind Down Transactions

The Wind Down Administrator shall retain the authority to take all necessary actions to wind down the operations of the Wind Down Estate and dissolve the entities comprising the Wind Down Estate, to the extent required by applicable law. Subject in all respects to the terms of this Plan, the Wind Down Administrator shall have the power and authority to take any action necessary to dissolve the entities comprising the Wind Down Estate, and may: (i) file a certificate of dissolution for the Wind Down Estate, together with all other necessary corporate and company documents, to effect the dissolution of the Wind Down Estate under applicable laws; (ii) complete and file all final or otherwise required federal, state, and local tax returns and pay all required taxes, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of any of the Debtors, their respective Estates, or the entities comprising the Wind Down Estate for any tax incurred during the administration of these Chapter 11 Cases,

as determined under applicable tax laws; and (iii) represent the interests of the Debtors, their respective Estates, and entities comprising the Wind Down Estate before any taxing authority in all tax matters, including any action, suit, proceeding, or audit.

Any applicable filing by the Wind Down Administrator of any certificates of dissolution (or similar documentation) of the entities comprising the Wind Down Estate shall be authorized and approved in all respects without further action under applicable law, regulation, order, or rule, including any action by the stockholder, members, officers, board of directors, or board of managers of the Debtors or any of their respective Affiliates. As the entities comprising the Wind Down Estate will be dissolved upon completion of the administration of this Plan, no new corporate organizational documents will be executed by the Wind Down Administrator.

For the avoidance of doubt, the Wind Down Administrator shall not be empowered to perform any actions designated to the GUC Trust or the GUC Trustee under the Plan or the GUC Trust Agreement.

7. Fees and Expenses of the Wind Down Administrator

The Wind Down Estate Expenses shall be paid after the Effective Date solely using the Post-Sale Reserve. The Wind Down Administrator, on behalf of the Wind Down Estate, may employ, without further order of the Bankruptcy Court, professionals (including professionals previously employed by the Debtors) to assist in carrying out duties for the Wind Down Estate and may compensate and reimburse the expenses of such professionals in the ordinary course, without further order of the Bankruptcy Court, subject to the Post-Sale Reserve.

8. Settlement of Claims

Except as otherwise provided in the Plan, on and after the Effective Date, the Wind Down Administrator may compromise or settle any Claims related to the Wind Down Estate Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules and may pay the charges that it incurs on or after the Effective Date for Wind Down Estate Expenses, professionals' fees, disbursements, expenses, or related support services (including fees relating to the preparation of Professional fee applications) without application to the Bankruptcy Court.

9. Sales of Assets by the Wind Down Estate

The Wind Down Administrator may conduct any sales or liquidations of De Minimis Assets on any terms it deems reasonable, subject to the consent of the Prepetition Secured Parties (with such consent not to be unreasonably withheld), without further order of the Bankruptcy Court. In lieu of conducting sales or liquidating its assets, with the consent of the Prepetition Secured Parties, the Wind Down Administrator may transfer any Wind Down Estate Assets to the Prepetition Secured Parties free and clear of all liens, claims, and encumbrances after the Effective Date.



10. Abandonment of Assets by the Wind Down Estate

The Wind Down Administrator may, with the consent of the Prepetition Secured Parties, on no less than 14 days' written notice to the U.S. Trustee, abandon any Wind Down Estate Assets which the Wind Down Administrator determines are burdensome to the Wind Down Estate, including any pending adversary proceeding or other legal action commenced or commenceable by any Debtor prior to the Effective Date; *provided that* if the U.S. Trustee provides a written objection to the Wind Down Administrator prior to the expiration of such 14 day period with respect to the proposed abandonment of any Wind Down Estate Asset, then such property may be abandoned only pursuant to an order by the Bankruptcy Court.

11. Plan Distributions

a. Sources of Consideration for Plan Distributions

On the Effective Date, the Debtors will fund the Debtors' distributions under the Plan with (i) the proceeds of the Sale Transaction, subject in all respects to amounts held-back in accordance with the Purchase Agreement, (ii) the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount, (iii) the Debtors' available Cash on hand, and (iv) with the consent of the DIP Secured Parties, the proceeds of the DIP Facility. After the Effective Date, other than with respect to funds held in the Professional Fee Escrow Account, the Post-Sale Reserve shall be held in a separate account from any other funds held by the Wind Down Estate.

b. Professional Fee Escrow Account

The Professional Fee Reserve Amount shall be held in trust in a segregated Professional Fee Escrow Account by the Wind Down ~~Administrator~~Estate for distributions or payment in accordance with the terms of Article II of the Plan.

12. Corporate Existence

On or after the Effective Date, each of the Debtors will be subject to a Dissolution Transaction. The equity or membership interests of each Debtor entity that is not subject to a Dissolution Transaction on the Effective Date will vest in the Wind Down Estate pursuant to this Plan. For the avoidance of doubt, the Debtor entities that are not subject to a Dissolution Transaction on the Effective Date will continue to exist after the Effective Date for the limited purpose of completing the GUC Trust Assets Transfer and the Wind Down Transactions. Promptly after completing the Wind Down Transactions, such entities shall be dissolved by the Wind Down Administrator.

13. Dissolution Transactions

On or after the Effective Date, the Debtors or the Wind Down Administrator will enter into such Dissolution Transactions and will take such actions as may be necessary or appropriate to merge, dissolve, or otherwise terminate the corporate existence of the Debtors. The actions to effect the Dissolution Transactions may include: (i) the execution and delivery of appropriate agreements or other documents of transfer, merger, consolidation, disposition, liquidation, or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the

requirements of applicable law, as well as other terms to which these entities may agree; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, duty or obligation on terms consistent with the terms of the Plan and having such other terms as these entities may agree; (iii) the filing of appropriate certificates or articles of merger, consolidation, continuance, or dissolution or similar instruments with the applicable governmental authorities; and (iv) the taking of all other actions that the Wind Down Administrator determines to be necessary or appropriate, including making other filings or recordings that may be required by applicable law in connection with the Dissolution Transactions.

14. Recourse Solely to Wind Down Estate Assets

All Claims against the Debtors and against the GUC Trust are deemed satisfied, waived, and released as to the Debtors and the GUC Trust, as applicable, in exchange for the treatment of such Claims under the Plan or the distributions made from the GUC Trust, and Holders of Allowed Claims against any Debtor will have recourse solely to the Wind Down Estate Assets (and, in the case of the Prepetition Secured Parties, to the unused amounts, if any, of the Post-Sale Reserve and Professional Fee Escrow Account) for the payment of their Allowed Claims in accordance with the terms of the Plan. There will be no recourse for claims other than as to non-Debtors.

15. Cancellation of Existing Securities and Agreements

On the Effective Date, except to the extent otherwise expressly provided in the Plan (including with respect to the Prepetition Credit Agreement Documents), (i) all notes, bonds, debentures, instruments, certificates, credit agreements, indentures, collateral documents, guarantees, filings, recordings, registrations, and other documents and instruments evidencing, securing, or governing Claims or Interests, and any Interests that are not represented by certificates or other instruments, shall be canceled, terminated, released, and surrendered automatically without any action on the part of any party, (ii) all Liens of any nature or any assets of any Debtor securing, or purporting to secure, such Claims shall be fully, finally, and irrevocably released and extinguished automatically without any action on the part of any party (and (x) the Debtors are hereby irrevocably authorized to make such filings, recordings, registrations, and notifications, and take such other actions, as the Debtors shall deem necessary or advisable to carry out such release and extinguishment and (y) the holders of such Claims shall take such actions and execute such instruments as the Debtors may reasonably request to carry out such release and extinguishment) and (iii) the obligations of the Debtors in respect of such Claims or in any way related thereto or arising therefrom (except with respect to any Indemnification Obligations, which obligations shall be assumed and assigned as set forth in Article V.G of the Plan) shall be deemed satisfied in full, terminated, canceled, released, and of no force or effect against the Debtors or the Wind Down Estate, without any further action on the part of the Debtors, the Wind Down Estate, or any other Person. Holders of or parties to such canceled instruments, Securities, and other documentation will have no rights arising from or relating to such instruments, Securities, and other documentation, or the cancellation thereof, except the rights provided for pursuant to the Plan. To the extent applicable, the Debtors' corporate charters shall be deemed amended by the Confirmation Order to provide that no nonvoting equity securities will be issued and to otherwise comply with the requirements of section 1123(a)(6) of the Bankruptcy Code.

Notwithstanding anything to the contrary herein, but subject to any applicable provisions of Articles IV and VI of the Plan, the Prepetition Credit Agreement Documents shall continue in effect as between all Debtors and the non-Debtors party thereto until the wind down of the Debtors and the Netherlands Wind Down is complete. Following completion of the wind down of the Debtors and the Netherlands Wind Down and distribution of the proceeds after the Netherlands Wind Down is complete, if any, to the Prepetition Secured Parties, as provided in Article IV of the Plan, the Prepetition Credit Agreement Documents shall be canceled and surrendered and the obligations of the Debtors thereunder or in any way related thereto shall be deemed satisfied in full, canceled, and of no force or effect against the Debtors or the Wind Down Estate, without any further action on the part of the Debtors, the Wind Down Estate, or any other Person. Except as provided in the Plan (including Article VI of the Plan), on the Effective Date, the Prepetition Credit Agreement Agent, its respective agents, successors, and assigns shall be automatically and fully discharged of all of their duties and obligations associated with the Prepetition Credit Agreement Documents (as applicable). The commitments and obligations (if any) of the Prepetition Credit Agreement Lenders to extend any further or future credit or financial accommodations to any of the Debtors, any of their respective subsidiaries, including, any non-Debtors, or any of their respective successors or assigns under the Prepetition Credit Agreement Documents shall fully terminate and be of no further force or effect on the Effective Date.

16. Release of Liens

Except for the Wind Down Claims (which include the Prepetition Secured Party Liens securing such Claims), and as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date concurrently and consistent with the treatment provided for Claims and Interests in Article III, all mortgages, deeds of trust, Liens against, security interests in, or other encumbrances or interests in property of any Estate shall be deemed fully released and discharged. After the wind down of the Debtors and the Netherlands Wind Down is complete and after the proceeds of the Netherlands Asset Sale and Netherlands Liquidation, if any, are indefeasibly distributed in Cash to the Prepetition Secured Parties as provided in Article IV of the Plan, all mortgages, deeds of trust, Liens against, security interests in, or other encumbrances or interests in property of any Estate on account of the Wind Down Claims shall be deemed fully released and discharged. Notwithstanding anything contained herein to the contrary, until completion of the wind down of the Debtors and the Netherlands Wind Down and distribution of the proceeds after the Netherlands Wind Down is complete, if any, to the Prepetition Secured Parties, as provided in Article IV of the Plan, the Plan shall not operate as a waiver of any right, power or remedy of the Prepetition Agent or Prepetition Lenders, or constitute a waiver of any provision of the Prepetition Credit Agreement Documents in respect of any non-Debtor affiliate of the Debtors party thereto and the obligations of the non-Debtor affiliates thereunder shall remain in full force and effect.

17. Corporate Governance, Directors and Officers.

a. Certificates of Incorporation and Bylaws

Consistent with the Plan, all existing certificates of incorporation and by-laws will be canceled; accordingly, no new certificates of incorporation and by-laws will be necessary for any Debtors. Certain of the Debtor entities comprising the Wind Down Estate will continue to exist



after the Effective Date for the purpose of completing the GUC Trust Assets Transfer and the Wind Down Transactions.

b. Directors and Officers

As of the Effective Date, the term of the current members of the boards of directors or boards of managers, as applicable, of KidKraft and its Debtor Affiliates shall expire automatically and each person serving as a director of KidKraft and each of its Debtor Affiliates shall be removed and shall be deemed to have resigned and cease to serve automatically. Consistent with the Plan, each of the Estates will vest in the Wind Down Estate effective as of the Effective Date and, thus, no individuals will serve as directors, officers, or voting trustees after the Effective Date for any Debtors. The Wind Down Administrator will be the sole member, manager, director, officer, or other governing body or controlling authority of each Debtor entity that is not subject to a Dissolution Transaction on the Effective Date.

18. Insurance Policies

To the extent that any of the Debtors' insurance policies constitute Executory Contracts, such insurance policies and any agreements, documents, or instruments relating thereto, are treated as and deemed to be Executory Contracts under the Plan and shall be assumed by the Debtors and assigned to the Wind Down Estate on the Effective Date. All other insurance policies shall vest in the Wind Down Estate.

19. D&O Liability Insurance Policies

Notwithstanding anything in the Plan to the contrary, as of the Effective Date, the Debtors shall be deemed to assume and vest in the Wind Down Estate all D&O Liability Insurance Policies (including tail coverage liability insurance) pursuant to section 365(a) of the Bankruptcy Code, to the extent they are Executory Contracts. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Debtors' assumption of each of the D&O Liability Insurance Policies, to the extent they are Executory Contracts. Notwithstanding anything to the contrary contained in the Plan, Confirmation of the Plan shall not discharge, impair, or otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O Liability Insurance Policies, and each such indemnity obligation will be deemed and treated as an Executory Contract that has been assumed by the Debtors under the Plan as to which no Proof of Claim need be Filed, and shall survive the Effective Date. Nothing shall alter, modify, or amend, affect, or impair the terms and conditions of (or the coverage provided by) any of the D&O Liability Insurance Policies, including the coverage for defense and indemnity under any of the D&O Liability Insurance Policies, which shall remain available to all individuals within the definition of "Insured" in any of the D&O Liability Insurance Policies in accordance with and subject to the terms and conditions thereof regardless of whether such individuals remain in their capacity as an Insured Person after the Effective Date. For the avoidance of doubt, the D&O Liability Insurance Policies will continue to apply with respect to actions, or failures to act, that occurred on or prior to the Effective Date, in accordance with and subject to the terms and conditions of the D&O Liability Insurance Policies. On the Effective Date, all D&O Liability Insurance Policies shall vest in the Wind Down Estate consistent with the Confirmation Order without further order of the Bankruptcy Court.

20. Preservation of Causes of Action

Except as provided in the Plan, or in any contract, instrument, release, or other agreement entered into or delivered in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, the Wind Down Estate will retain and may enforce any claims, demands, rights, and causes of action that any Estate may hold against any Person to the extent not satisfied, settled, and released under the Plan or otherwise, including the Retained Causes of Action; *provided that*, the Wind Down Estate will not retain any Causes of Action (including Avoidance Actions) that are assigned to Purchaser as Transferred Assets in connection with the Sale Transaction, or any Causes of Action that may be included in the GUC Trust Assets and transferred to the GUC Trust, or Causes of Action that are transferred to the GUC Trust in accordance with the Plan (including the GUC Retained Causes of Action). The Wind Down Administrator may pursue any such retained claims, demands, rights, or causes of action, as appropriate, in accordance with the best interests of the Wind Down Estate. Except to the extent any such claim is specifically satisfied, settled, and released herein, in accordance with and subject to any applicable law, the Debtor's inclusion or failure to include any Cause of Action on the List of Retained Causes of Action shall not be deemed an admission, denial, or waiver of any claims, demands, rights, or causes of action that the Debtor or Estate may hold against any Person. Except to the extent any such claim is specifically satisfied, settled, and released herein, the Debtor intends to preserve those claims, demands, rights, or causes of action designated as Retained Causes of Action. For the avoidance of doubt, in no instance will any Cause of Action preserved pursuant to this Article IV.A.20 include any claim or Cause of Action with respect to, or against, a Released Party.

21. Substitution in Pending Legal Actions

On the Effective Date, the Wind Down Estate or the Wind Down Administrator, as applicable, shall be deemed to be substituted as the party to any litigation in which the Debtors are a party, including (but not limited to) (i) pending contested matters or adversary proceedings in the Bankruptcy Court or the CCAA Court, (ii) any appeals of orders of the Bankruptcy Court, and (iii) any state court or federal or state administrative proceedings or equivalent in Canada or any other applicable jurisdiction pending as of the Petition Date. The Wind Down Administrator and its professionals are not required to, but may, take such steps as are appropriate to provide notice of such substitution.

22. Effectuating Documents; Further Transactions

The Debtors (prior to the Effective Date) and the Wind Down Administrator (on or after the Effective Date) are authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and evidence the terms and conditions of the Plan, the Purchase Agreement, and the Dissolution Transactions, in each case, in the name of and on behalf of any Debtor or the Wind Down Estate, as applicable, without the need for any approvals, authorizations, or consents except those expressly required pursuant to the Plan.

Pursuant to section 1146(a) of the Bankruptcy Code, the following will not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales or use tax, mortgage recording tax, Uniform Commercial Code filing or

recording fee, regulatory filing or recording fee or other similar tax or governmental assessment: (a) any transfer made by the Debtors to the Wind Down Estate; (b) any transfer made by the Debtors and, if applicable, the Wind Down Estate to the Purchaser pursuant to the Plan, the Purchase Agreement, and/or the Sale Order; (c) any sales made by the Wind Down Estate to liquidate such assets in the trust and convert such assets into Cash; (d) the making or assignment of any lease or sublease; (e) any Dissolution Transaction; and (f) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including any merger agreements, agreements of consolidation, restructuring, disposition, liquidation or dissolution, deeds, bills of sale, or assignments executed in connection with any of the foregoing or pursuant to the Plan.

B. *Restructuring Support Agreement*

Upon the later of (i) the Effective Date or (ii) the consummation of the Sale Transaction, any surviving obligations under the Restructuring Support Agreement shall terminate on a final basis.

C. *Global Settlement*

1. GUC Trust

On the Effective Date, the GUC Trust will be established with the primary purpose of liquidating the GUC Trust Assets and [GUC Retained Causes of Action and](#) making distributions to GUC Trust Beneficiaries on account of their Allowed General Unsecured Claims.

Subject to and to the extent set forth in the Plan, the Confirmation Order, the GUC Trust Agreement, or any other order of the Bankruptcy Court entered in connection therewith, the GUC Trust shall be empowered to: (a) perform all actions and execute all agreements, instruments, and other documents necessary to implement the terms of the Plan to the extent applicable to the GUC Trust; (b) establish, maintain, and administer the GUC Trust Accounts; (c) accept, preserve, receive, collect, manage, invest, sell, liquidate, transfer, supervise, and protect, as applicable, the GUC Trust Assets (directly or through its professionals or a Disbursing Agent), in accordance with the Plan; (d) subject to the GUC Trust Agreement, the Plan, and the Confirmation Order, as applicable, review, reconcile, settle, or object to all General Unsecured Claims that are not Allowed Claims as of the Effective Date pursuant to the procedures for allowing or disputing Claims prescribed in the Plan; (e) calculate and make distributions of the proceeds of the GUC Trust Assets to Holders of Allowed General Unsecured Claims that are GUC Trust Beneficiaries in accordance with the terms of the Plan and the GUC Trust Agreement and otherwise implement the terms of the Plan to the extent applicable to the GUC Trust; (f) retain, compensate, and employ professionals to represent or advise the GUC Trust; (g) file, in accordance with the GUC Trust Agreement, appropriate tax returns on behalf of the GUC Trust and pay any and all taxes or other obligations arising in connection therewith; (h) exercise such other powers as may be vested in the GUC Trust under the GUC Trust Agreement and the Plan, or as are deemed by the GUC Trustee to be necessary and proper to implement the provisions of the Plan and the GUC Trust Agreement; and (i) terminate the GUC Trust in accordance with the terms of the GUC Trust Agreement. For the avoidance of doubt, the GUC Trust shall not be empowered with performing any actions designated to the Wind Down Estate created pursuant to Article IV.A of the Plan and shall have

no authority to pursue any Claims or Causes of Action against Released Parties or Exculpated Parties, other than the GUC Retained Causes of Action.

Notwithstanding anything to the contrary in this Article IV.C, the GUC Trust shall have no objective to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, the GUC Trust's purpose as described herein and in the GUC Trust Agreement and as may be reasonably necessary to conserve and protect the GUC Trust Assets and GUC Retained Causes of Action and provide for the orderly liquidation and distribution thereof. Accordingly, the GUC Trustee shall, in an orderly manner, liquidate the GUC Trust Assets and make timely distributions pursuant to the Plan and not unduly prolong the duration of the GUC Trust.

The GUC Trust Beneficiaries, who will be treated as grantors and deemed owners for federal income tax purposes, will be holders of GUC Trust Interests. The GUC Trust shall file federal income tax returns for the GUC Trust as a grantor trust pursuant to Section 671 of the Tax Code and the Treasury Regulations promulgated thereunder. The parties shall not take any position on their respective tax returns with respect to any other matter related to taxes that is inconsistent with treating the GUC Trust as a "liquidating trust" within the meaning of Treasury Regulation Section 301.7701-4(d), unless any party receives definitive guidance from the Internal Revenue Service.

The GUC Trust shall be responsible for paying any (i) U.S. Trustee fees accruing in relation to disbursements by the GUC Trust and (ii) taxes related to the GUC Trust Assets or the liquidation thereof. Any professionals hired by the GUC Trustee will be compensated for services in such capacity solely from the GUC Trust Assets or proceeds thereof.

## 2. Funding of and Transfer of Assets into the GUC Trust

Except as otherwise provided in the Plan or the Confirmation Order, on the next Business Day following the GUC Settlement Opt-In Election Deadline, the Wind Down Estate shall complete the GUC Trust Assets Transfer and the GUC Retained Causes of Action Transfer, and all such assets shall vest in the GUC Trust on such date, to be administered by the GUC Trustee in accordance with the Plan and the GUC Trust Agreement. Except as set forth in the Plan, the GUC Trust Assets and GUC Retained Causes of Action shall be transferred to the GUC Trust free and clear of all Claims, Liens, and encumbrances to the fullest extent provided by section 363 or 1123 of the Bankruptcy Code. All Cash amounts ~~funded~~ and Causes of Action transferred into the GUC Trust from the Debtors shall be ~~funded~~ transferred by the U.S. Debtors.

For all federal and applicable state and local income tax purposes, all Persons (including without limitation the Debtors, the GUC Trustee and the GUC Trust Beneficiaries) will treat the transfers and assignment of the GUC Trust Assets and the GUC Retained Causes of Action to the GUC Trust for the benefit of the GUC Trust Beneficiaries as (a) a transfer of the GUC Trust Assets and the GUC Retained Causes of Action directly to the GUC Trust Beneficiaries followed by (b) the transfer of the GUC Trust Assets and the GUC Retained Causes of Action by the GUC Trust Beneficiaries to the GUC Trust. The GUC Trust will be treated as a grantor trust for federal tax purposes and, to the extent permitted under applicable law, for state and local income tax purposes. The GUC Trust Beneficiaries will be treated as the grantors and deemed owners of their allocable

portion of the GUC Trust Assets [and the GUC Retained Causes of Action](#) for federal income tax purposes.

The fair market value of the portion of the GUC Trust Assets [and the GUC Retained Causes of Action](#) that is treated for U.S. federal income tax purposes as having been transferred to each GUC Trust Beneficiary will be determined by the GUC Trustee, and all parties (including, without limitation, the GUC Trustee and the GUC Trustee Beneficiaries) must utilize such fair market values determined by the GUC Trustee for federal and applicable state and local income tax purposes.

The GUC Trust's taxable income, gain, loss, deduction or credit will be allocated to the GUC Trust Beneficiaries in accordance with their relative beneficial interests in the GUC Trust during the applicable taxable period. Such allocation will be binding on all parties for federal and applicable state and local income tax purposes, and the parties will be responsible for the payment of any federal, state and local income tax due on the income and gain so allocated to them.

The act of transferring the GUC Trust Assets [and GUC Retained Causes of Action](#), as authorized by the Plan, shall not be construed to destroy or limit any such assets or rights or be construed as a waiver of any right, and such rights may be asserted by the GUC Trust as if the asset or right was still held by the Debtors.

### 3. GUC Trustee

Solely with respect to the GUC Trust Assets, [the GUC Retained Causes of Action](#), and the administration of General Unsecured Claims, the GUC Trustee shall be the successor to and representative of the Estate of each of the Debtors appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The powers, rights, and responsibilities of the GUC Trustee shall be specified in the GUC Trust Agreement and shall include the authority and responsibility to fulfill the items identified in the Plan. Other rights and duties of the GUC Trustee and the GUC Trust Beneficiaries shall be as set forth in the GUC Trust Agreement.

The Committee shall select the GUC Trustee, subject to the consent, not to be unreasonably withheld, of the Debtors and the Prepetition Secured Parties.

### 4. GUC Trust Agreement

The GUC Trust Agreement will contain certain provisions to comply with Internal Revenue Service guidance for trusts treated as liquidating trusts. Among other things, the GUC Trust Agreement will require that the GUC Trust terminate no later than three years from the Effective Date; *provided, however*, that the Bankruptcy Court, upon motion by the GUC Trustee, may extend the term of the GUC Trust for a reasonable finite period if (a) such extension is necessary to the purpose of the GUC Trust, (b) the GUC Trustee receives an opinion of counsel or a ruling from the IRS stating that such an extension would not adversely affect the status of the GUC Trust as a liquidating trust for federal income tax purposes, and (c) such an extension is obtained within the six (6) month period prior to the GUC Trust's third (3rd) anniversary or the end of the immediately preceding extension period, as applicable; *provided, however*, each finite extension may be no more than six months (and such extension shall not exceed a total of four extensions unless the GUC Trustee received a favorable ruling from the Internal Revenue Service



that any further extension would not adversely affect the status of the GUC Trust as a grantor trust for U.S. federal income tax purposes. The GUC Trust Agreement generally will also provide for, among other things: (i) the payment of reasonable and documented compensation to the GUC Trustee; (ii) the payment of other expenses of the GUC Trust; (iii) the retention of counsel, accountants, financial advisors, or other professionals and the payment of their compensation; (iv) the investment of Cash by the GUC Trustee within certain limitations; (v) the preparation and filing of appropriate tax returns and other reports on behalf of the GUC Trust and the Debtors and the payment of taxes or other obligations owed by the GUC Trust, if any; (vi) the distribution at least annually to the GUC Trust Beneficiaries the GUC Trust's net Cash income and all other Cash proceeds received by the GUC Trust in excess of an amount reasonably necessary to meet Claims and contingent liabilities and to maintain the value of the GUC Trust Assets; (vii) the orderly liquidation of the GUC Trust Assets; and (viii) any reconciliation, administration, objection, resolution, and distribution on account of General Unsecured Claims. For the avoidance of doubt, any payments to be made by the GUC Trust shall be paid solely from the GUC Trust Assets or the proceeds thereof.

The Prepetition Secured Parties and DIP Secured Parties shall work in good faith with the Committee to conform the GUC Trust Agreement to the terms of the Plan, including providing the Prepetition Secured Parties and DIP Secured Parties with certain reporting and consultation rights. Additional terms of the GUC Trust and Obligations of the GUC Trustee, if any, will be addressed in the Plan Supplement or GUC Trust Agreement, as applicable.

5. Settlement of Claims and Causes of Action

Except as otherwise provided in the Plan or the GUC Trust Agreement, on and after the Effective Date, the GUC Trustee may compromise or settle any General Unsecured Claims or any Causes of Action that are GUC Trust Assets or GUC Retained Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules and may pay the charges that it incurs on or after the Effective Date for GUC Trust Expenses, professionals' fees, disbursements, expenses, or related support services (including fees relating to the preparation of Professional fee applications) without application to the Bankruptcy Court.

6. Recourse Solely to GUC Trust Assets

All Claims against the Debtors are deemed satisfied, waived, and released as to the Debtors in exchange for the treatment of such Claims under the Plan, and Holders of Allowed General Unsecured Claims against any Debtor will have recourse solely to the GUC Trust Assets for the payment of their Allowed General Unsecured Claims, and only if such Holder made a GUC Settlement Opt-In Election, all in accordance with the terms of the Plan and the GUC Trust Agreement. A Holder of Allowed General Unsecured Claims that does not make a GUC Settlement Opt-In Election will receive no recovery or distribution on account of such claims, as set forth in Article III.B.4 of the Plan.

Potential Avoidance Actions against a Holder of General Unsecured Claims that is listed on Schedule 1 to the Global Settlement Term Sheet will (i) be purchased by the Purchaser as part of the Sale Transaction, subject to the occurrence of the GUC Settlement Election Opt-In Deadline,

(ii) be held by the Wind Down Administrator pending the occurrence of the GUC Settlement Election Opt-In Deadline, (iii) to the extent any such Holder does not make a GUC Settlement Opt-In Election, will be conveyed to the Purchaser on the next Business Day following the GUC Settlement Opt-In Election Deadline, and (iv) will not be pursued by the Purchaser. **For the avoidance of doubt, if a Holder of General Unsecured Claims that is listed on Schedule 1 makes a GUC Settlement Opt-In Election, any potential Avoidance Actions against such Holder will not be conveyed to the Purchaser and instead will become GUC Trust Assets, and such potential Avoidance Actions may be pursued against such Holder.**

7. Distribution of GUC Trust Assets and GUC Retained Causes of Action Potential Recovery

All Holders of Allowed General Unsecured Claims that are GUC Trust Beneficiaries (including the Prepetition Secured Parties' Deficiency Claims) shall receive their Pro Rata share of the GUC Retained Causes of Action Potential Recovery, after the payment of any fees and expenses associated with the collection of the GUC Retained Causes of Action Potential Recovery.

The GUC Trust Assets, including any proceeds received by the GUC Trust on account of the prosecution or settlement of any commercial tort claims or Avoidance Actions that are GUC Trust Assets, net of any GUC Trust expenses (including professional fees) not covered by the GUC Trust Expense Reserve, shall be distributed at least annually as follows:

- (i) Holders of Allowed General Unsecured Claims that are GUC Trust Beneficiaries other than the Prepetition Secured Parties and/or DIP Secured Parties shall receive their Pro Rata share of 100% of the GUC Trust Assets up to \$1,000,000; and
- (ii) thereafter, all Holders of Allowed General Unsecured Claims that are GUC Trust Beneficiaries (including the Prepetition Secured Parties' Deficiency Claims) shall receive their Pro Rata share of 100% of the GUC Trust Assets.

8. MidOcean Waiver of Claims and Cash Contribution

On the Effective Date, MidOcean will (i) contribute \$100,000 in Cash to the GUC Trust (the "***Sponsor Cash Contribution***") and (ii) waive any General Unsecured Claims it may have against the Debtors, including any claims under the subordinated note and services agreement (the "***Sponsor Claims Waiver***"); *provided, however*, that nothing in the foregoing shall result in any of the Debtors' directors that are MidOcean designees waiving or releasing any rights to assert indemnification claims against the Debtors or any of its insurance carriers or any rights as beneficiaries of any insurance policies.

MidOcean is a Released Party under the Plan and has provided valuable consideration to the Estates in the form of the Sponsor Cash Contribution and the Sponsor Claims Waiver. Accordingly, notwithstanding anything set forth in the Plan, neither the GUC Trust nor the Debtors (nor any entity on behalf of the Debtors' Estates, including the Wind Down Estate) shall bring or be entitled to bring any claims or Causes of Action against (i) the Debtors' current and former directors and officers appointed and/or designated by MidOcean or (ii) MidOcean or any of its current and former Affiliates or it or its current and former Affiliates' current and former directors, managers, officers, employees, managed accounts and funds, predecessors, successors, assigns,

subsidiaries, equity holders, members, agents, attorneys, accountants, investment bankers, consultants, and other professionals, each solely in their capacity as such, and all such claims shall be deemed and hereby are waived and released, and each of the foregoing Persons shall be a “Released Party” for purposes of the Plan.

**ARTICLE V.**  
**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

*A. Assumption and Rejection of Executory Contracts and Unexpired Leases*

On the Effective Date, except as otherwise provided herein or in any contract, instrument, release, or other agreement or document entered into in connection with the Plan, the Plan shall serve as a motion under sections 365 and 1123(b)(2) of the Bankruptcy Code to assume, assume and assign, or reject Executory Contracts and Unexpired Leases, and all Executory Contracts or Unexpired Leases shall be rejected as of the Effective Date without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease: (i) is designated on a schedule of assumed contracts by the Purchaser; (ii) is designated as a Transferred Contract pursuant to the Purchase Agreement on the Schedule of Assumed Executory Contracts and Unexpired Leases in the Plan Supplement; (iii) was previously assumed or rejected by the Debtors, pursuant to a Final Order of the Bankruptcy Court; (iv) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (v) is the subject of a motion to reject filed by the Debtors on or before the Confirmation Date; or (vi) is subject to a motion to reject pursuant to which the requested effective date of such rejection is after the Effective Date.

Entry of the Confirmation Order and/or Sale Approval Order, as applicable, shall constitute the Bankruptcy Court’s order approving the assumptions, assumptions and assignments, or rejections, as applicable, of Executory Contracts or Unexpired Leases as set forth in the Plan pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Each Executory Contract or Unexpired Lease comprising a Transferred Contract shall re-vest in and be fully enforceable by the Purchaser in accordance with its terms, except as such terms may have been modified by the provisions of the Plan or any order of the Bankruptcy Court. Notwithstanding anything to the contrary in the Plan, the Debtors reserve the right to, with the consent of the Purchaser, alter, amend, modify, or supplement the Schedule of Assumed Executory Contracts and Unexpired Leases at any time prior to the Effective Date on no less than two business days’ notice to the applicable non-Debtor counterparties.

Unless otherwise indicated, assumptions, assumptions and assignments, or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Any motions to reject Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by the Bankruptcy Court on or after the Effective Date.

*B. Claims Based on Rejection of Executory Contracts or Unexpired Leases*

Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be Filed with the Bankruptcy Court



in accordance with the Bar Date Order. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, the Wind Down Estate, the Estates, or their property (as applicable), without the need for any objection by the Wind Down Estate or Wind Down Administrator (as applicable), or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied and released, notwithstanding anything in the Proof of Claim to the contrary.** All Allowed Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims and shall be treated in accordance with Article III.B of the Plan.

C. *Cure of Defaults for Assumed Executory Contracts and Unexpired Leases*

Any monetary defaults under an Executory Contract or Unexpired Lease, as reflected on the applicable Cure Notice, shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the proposed cure amount (if any) in Cash by the Debtors, the Wind Down Estate, or for the Transferred Contracts, by the Purchaser, as applicable, on the Effective Date or as soon as reasonably practicable thereafter, subject to the limitations described below or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree.

1. Cure of Defaults for Transferred Contracts Under the Purchase Agreement

Consistent with the Purchase Agreement and subject to the terms and conditions therein, within three business days after the Petition Date the Debtors shall deliver a Cure Notice, in form and substance reasonably acceptable to Buyer, of potential assumption and assignment and proposed cure of the Transferred Contracts to the applicable counterparty (each a "***Contract Counterparty***"), which shall specify: (a) that such contract is contemplated to be assumed and assigned to Purchaser as a Transferred Contract in connection with the Sale Transactions; (b) the proposed Cure Claim with respect to each Transferred Contract; (c) that each respective Contract Counterparty may file an objection (a "***Contract Objection***") to the proposed assumption and assignment of the applicable Transferred Contract or the proposed Cure Claim, if any. Such Contract Objection must (i) be in writing; (ii) comply with the Federal Rules of Bankruptcy Procedure and any applicable local rules of the U.S. Bankruptcy Court; (iii) be Filed with the Bankruptcy Court, together with proof of service, on or before 5:00 p.m. (Central Time) on the date that is 21 days after the date the Debtors delivered the Cure Notice (the "***Cure Notice Objection Deadline***"); (iv) be served, so such objection is actually received on or before the Cure Notice Objection Deadline on counsel to the Debtors, counsel to the DIP Secured Parties, counsel to the Purchaser, and the Office of the U.S. Trustee for the Northern District of Texas; and (v) state with specificity the grounds for such objection, including, without limitation, the asserted amount of the fully liquidated Cure Claim and the legal and factual bases for any unliquidated portion of the Cure Claim that the Contract Counterparty believes is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code for the applicable Transferred Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise to any such defaults. If a Contract Counterparty files a Contract Objection in a manner that is consistent with the requirements set forth above and the parties are unable to consensually resolve the dispute prior to the Sale Hearing, the amount to be

paid or reserved with respect to such Contract Objection will be determined at the Confirmation Hearing or such other date determined by the U.S. Bankruptcy Court.

2. Cure of Defaults for Other Assumed Executory Contracts and Unexpired Leases

For all other Executory Contracts or Unexpired Leases not deemed “Transferred Contracts,” at least 14 days before the Confirmation Hearing, the Debtors shall distribute, or cause to be distributed, Cure Notices of proposed assumption and proposed cure amounts to the applicable third parties. Unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption or related cure amount paid or proposed to be paid by the Debtors or the Wind Down Estate to such counterparty must be filed with the Bankruptcy Court and served on and actually received by the Debtors at least 7 days before the Confirmation Hearing. **Any counterparty that fails to timely object to the proposed assumption or proposed cure amount shall be deemed to have assented to such assumption and cure amount, and any such objection shall be Disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against the Debtors or the Wind Down Estate, without the need for any objection by the Wind Down Estate or any other party in interest or any further notice to or action, order, or approval of the Bankruptcy Court.**

Any Cure Claim shall be deemed fully satisfied, released, and discharged upon payment by the Debtors or the Wind Down Estate of the amount set forth in the applicable Cure Notice or, if the Allowed Cure Claim with respect to any Executory Contract or Unexpired Lease is determined by a Final Order to be greater than the applicable amount set forth in the Cure Notice, the amount of such Allowed Cure Claim; *provided, however*, that following entry of a Final Order resolving any such dispute, the applicable Debtor shall, with the consent of the Purchaser, have the right to reject any Executory Contract or Unexpired Lease within thirty (30) days of such resolution; *provided further, however*, that nothing herein shall prevent the Wind Down Estate from paying any Cure Claim despite the failure of the relevant counterparty to file such request for payment of such Cure Claim. The Wind Down Estate also may settle any Cure Claim without any further notice to or action, order, or approval of the Bankruptcy Court.

If there is any dispute regarding any Cure Claim, the ability of the Wind Down Estate or any assignee to provide “adequate assurance of future performance” within the meaning of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption, then payment of the Cure Claim shall occur as soon as reasonably practicable after entry of a Final Order resolving such dispute, approving such assumption (and, if applicable, assignment), or as may be agreed upon by the Debtors or the Wind Down Estate, as applicable, and the counterparty to the Executory Contract or Unexpired Lease, in each case with the consent of the Purchaser. Notwithstanding the foregoing, to the extent the dispute relates solely to any Cure Claims, the applicable Debtor may, with the consent of the Purchaser, assume the Executory Contract or Unexpired Lease prior to the resolution of any such dispute; *provided, however*, that the Debtor reserves Cash in an amount sufficient to pay the full amount reasonably asserted as the required Cure Claim by the contract counterparty; *provided further, however*, that following entry of a Final Order resolving any such dispute, the applicable Debtor shall, with the consent of the Purchaser, have the right to reject any Executory Contract or Unexpired Lease within 30 days of such resolution.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy or insolvency-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the date that the Debtors assume such Executory Contract or Unexpired Lease. Any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed, including pursuant to the Confirmation Order, shall be deemed Disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court.

D. *Modifications, Amendments, Supplements, Restatements, or Other Agreements*

Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed or assumed and assigned shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and Executory Contracts and Unexpired Leases related thereto, if any, including easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

E. *Reservation of Rights*

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Schedule of Assumed Executory Contracts and Unexpired Leases, nor anything contained in the Plan or the Sale Transaction Documents, shall constitute an admission by the Debtors, the Wind Down Estate, the Purchaser, or the Wind Down Administrator (as applicable) that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Debtor, Wind Down Estate, the Purchaser, or the Wind Down Administrator (as applicable) has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors, or, after the Effective Date, the Wind Down Estate, the Purchaser, or the Wind Down Administrator (as applicable) shall have 30 days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

F. *Nonoccurrence of Effective Date*

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

G. *Indemnification Obligations*

All Indemnification Obligations shall not be discharged or impaired by Confirmation of the Plan or entry of the Confirmation Order and shall be assumed by the Wind Down Estate and remain intact, irrevocable, and shall survive the entry of the Confirmation Order and Effective Date of the Plan on terms no less favorable to such current and former directors, officers, managers, equity holders, employees, attorneys, accountants, investment bankers, and other professionals of any of the Debtors and such current and former directors', officers', and managers' respective Affiliates than the Indemnification Obligations in place prior to the Petition Date, and to the extent any such Indemnification Obligations are obligations of a non-Debtor Affiliate of any of the Debtors, such Indemnification Obligations shall be assigned on the Effective Date to the Wind Down Estate.

## **ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS**

### *A. Timing and Calculation of Amounts to Be Distributed*

Unless otherwise provided in the Plan, on the Effective Date or as soon as reasonably practicable thereafter (or, if a Claim is not an Allowed Claim on the Effective Date, on the date that such Claim becomes Allowed or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim, including any portion of a Claim that is an Allowed Claim notwithstanding that other portions of such Claim are a Disputed Claim, shall receive the full amount of the distributions that the Plan provides for Allowed Claims in each applicable Class. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article VII of the Plan. Except as otherwise provided in the Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

### *B. Disbursing Agent.*

All distributions under the Plan shall be made by the Disbursing Agent. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. Additionally, in the event that the Disbursing Agent is so otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Wind Down Estate or the GUC Trust (as applicable).

#### *a. Powers of the Disbursing Agent*

The Disbursing Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions of the Plan.

b. Expenses Incurred On or After the Effective Date

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable and documented fees and expenses incurred by the Disbursing Agent on or after the Effective Date, and any reasonable and documented compensation and expense reimbursement claims (including reasonable and documented attorney fees and expenses), made by the Disbursing Agent shall be paid in Cash by the Purchaser, the Wind Down Estate, or the Wind Down Administrator (as applicable).

c. No Liability

Except on account of gross negligence, fraud, or willful misconduct, the Disbursing Agent shall have no (a) liability to any party for actions taken in accordance with the Plan or in reliance upon information provided to it in accordance with the Plan or (b) obligation or liability to any party who does not hold a Claim against the Debtors as of the Distribution Record Date or any other date on which a distribution is made or who does not otherwise comply with the terms of the Plan.

C. *Delivery of Distributions and Undeliverable or Unclaimed Property*

1. Delivery of Distributions

a. Distribution Record Date

As of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims and Interests maintained by the Debtors, or their respective agents, shall be deemed closed, and there shall be no further changes in the record Holders of any of the Claims and Interests. The Disbursing Agent shall have no obligation to recognize any transfer of the Claims or Interests occurring on or after the Distribution Record Date.

b. Delivery of Distributions in General

Except as otherwise provided herein, the Disbursing Agent shall make distributions to Holders of Allowed Claims and Allowed Interests as of the Distribution Record Date at the address for each such Holder as indicated on the Debtors' records as of the date of any such distribution; *provided, however*, that the manner of such distributions shall be determined at the discretion of the Debtors, the Purchaser, the Wind Down Administrator, or the GUC Trustee (as applicable).

c. Delivery of Distributions on Secured Party Claims.

The Prepetition Credit Agreement Agent shall be deemed to be the Holder of all Secured Party Claims for purposes of distributions to be made hereunder, and all distributions on account of such Allowed Claims shall be made to the Prepetition Credit Agreement Agent. As soon as practicable following compliance with the requirements set forth in Article VI of the Plan, the Prepetition Credit Agreement Agent shall arrange to deliver or direct the delivery of such distributions to or on behalf of the Holders of Allowed Secured Party Claims in accordance with the terms of the Prepetition Credit Agreement Documents, subject to any modifications to such distributions in accordance with the terms of the Plan.



d. Delivery of Distributions on DIP Claims

The DIP Agent shall be deemed to be the Holder of all DIP Claims for purposes of distributions to be made hereunder, and all distributions on account of such DIP Claims shall be made to the DIP Agent. As soon as practicable following compliance with the requirements set forth in Article VI of the Plan, the DIP Agent shall arrange to deliver or direct the delivery of such distributions to or on behalf of the Holders of DIP Claims in accordance with the terms of the DIP Facility Documents, subject to any modifications to such distributions in accordance with the terms of the Plan.

e. Minimum Distributions

No Distribution shall be made by the Disbursing Agent on account of an Allowed Claim if the amount to be distributed to the Holder of such Claim on the applicable Distribution Date has an economic value of less than \$250.

2. Undeliverable Distributions and Unclaimed Property

In the event that any distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Debtors or the Wind Down Estate, as applicable, shall have determined the then-current address of such Holder, at which time such distribution shall be made to such Holder without interest; *provided that* such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one year from the Effective Date. After such date, all unclaimed property or interests in property shall be redistributed Pro Rata (it being understood that, for purposes of this Article VI.C, "Pro Rata" shall be determined as if the Claim underlying such unclaimed distribution had been Disallowed) without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal, provincial, or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any Holder to such property or interest in property shall be discharged and forever barred.

D. *Compliance with Tax Requirements*

In connection with the Plan, to the extent applicable, the Debtors, Wind Down Administrator, GUC Trustee, Disbursing Agent, and any applicable withholding agent shall comply with all applicable tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, such parties shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions until receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. For these purposes, all distributions made on behalf of the Debtors pursuant to the Plan shall if applicable be first in satisfaction of the portion of Claims that are not subject to any withholding tax obligation. All Persons holding Claims against any Debtor shall be required to provide any additional information reasonably necessary for the Debtors, Wind Down Administrator, GUC Trustee, Disbursing Agent, and any applicable withholding agent to comply with all tax

withholding and reporting requirements imposed on them by any Governmental Unit, including an IRS Form W-8 or W-9, as applicable, and any other applicable tax forms. The Debtors, Wind Down Estate, Wind Down Administrator, GUC Trustee, and Disbursing Agent (as applicable) reserve the right to allocate all distributions made under the Plan in a manner that complies with all other legal requirements, such as applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances. Any amounts withheld pursuant to the Plan shall be deemed to have been distributed to and received by the applicable recipient for all purposes of the Plan. Notwithstanding any other provision of the Plan to the contrary, each Holder of an Allowed Claim or Allowed Interest shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any Governmental Unit, including income, withholding and other tax obligations, on account of such distribution.

E. *Foreign Currency Exchange Rate*

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in The Wall Street Journal, National Edition, on the Effective Date.

F. *Surrender of Cancelled Instruments or Securities*

As a condition precedent to receiving any distribution on account of its Allowed Claim, each Holder of a Claim shall be deemed to have surrendered the certificates or other documentation underlying each such Claim, and all such surrendered certificates and other documentation shall be deemed to be cancelled pursuant to Article IV of the Plan, except to the extent otherwise provided in the Plan.

G. *Allocations*

The aggregate consideration to be distributed to each Holder of an Allowed Claim will be allocated first to the principal amount of such Allowed Claim, with any excess allocated to unpaid interest that accrued on such Allowed Claims, if any.

H. *No Postpetition Interest on Claims*

Unless otherwise specifically provided for in an order of the Bankruptcy Court, the Plan, or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims or Interests and no Holder of a Claim or Interest shall be entitled to interest accruing on or after the Petition Date on any such Claim.

I. *Setoffs and Recoupment*

The Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), may, but shall not be required to, set off against, or recoup from, any Allowed Claim (other than an Allowed General Unsecured Claim) against a Debtor of any nature whatsoever that the applicable Debtor, Wind Down Estate, Wind Down Administrator, GUC Trust, or GUC Trustee (as applicable) may have against the Holder of such Claim, but neither the failure to do so nor the allowance of any Claim against a Debtor hereunder shall constitute a

waiver or release by the applicable Debtor, Wind Down Estate, Wind Down Administrator, GUC Trust, or GUC Trustee (as applicable) of any such Claim it may have against the Holder of such Allowed Claim.

J. *Claims Paid or Payable by Third Parties*

1. Claims Paid by Third Parties

The Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), shall reduce in full an Allowed Claim (including any applicable Cure Claim of a Transferred Contract paid by the Purchaser), and such Claim shall be Disallowed without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor, Wind Down Estate, the Wind Down Administrator, GUC Trust, or the GUC Trustee (as applicable); *provided that* the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) shall provide 21 days' notice to the Holder prior to any disallowance of such Claim during which period the Holder may object to such disallowance, and if the parties cannot reach an agreed resolution, the matter shall be decided by the Bankruptcy Court. Subject to the last sentence of this paragraph, to the extent a Holder of a Claim receives a distribution on account of such Claim and thereafter receives payment from a party that is not a Debtor, Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) on account of such Claim, such Holder shall, within 14 days of receipt thereof, repay or return the distribution to the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the Petition Date. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the 14-day grace period specified above until the amount is repaid.

2. Claims Payable by Insurers

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim, then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without an objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court; *provided that* the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), shall provide 21 days' notice to the Holder of such Claim prior to any disallowance of such Claim during which period the Holder may object to such disallowance, and if the parties cannot reach an agreed resolution, the matter shall be decided by the Bankruptcy Court.



3. Applicability of Insurance Policies

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity may hold against any insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

**ARTICLE VII.  
PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED, AND DISPUTED CLAIMS**

A. *Allowance of Claims*

On or after the Effective Date, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) shall have and retain any and all rights and defenses that the Debtors had with respect to any Claim immediately prior to the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim. All settlements of Claims approved prior to the Effective Date pursuant to a Final Order of the Bankruptcy Court, pursuant to Bankruptcy Rule 9019, or otherwise shall be binding on all parties.

B. *Claims and Interests Administration Responsibilities*

Except as otherwise specifically provided in the Plan and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, after the Effective Date, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), by order of the Bankruptcy Court, shall together have the sole authority to: (1) File, withdraw, or litigate to judgment objections to Claims or Interests; (2) settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court. In any action or proceeding to determine the existence, validity, or amount of any General Unsecured Claim, any and all claims or defenses that could have been asserted by the applicable Debtor(s) or the Entity holding such General Unsecured Claim are preserved as if the Chapter 11 Cases had not been commenced.

C. *Adjustment to Claims or Interests Without Objection*

Any duplicate Claim or Interest or any Claim or Interest that has been paid or satisfied, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register without the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) having to File an application, motion, complaint, objection, or any

other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

D. *Time to File Objections to Claims*

Any objections to Claims, which, prior to the Effective Date, may be Filed by any party, shall be Filed on or before the Claims Objection Deadline.

E. *Disallowance of Claims*

Any Claims held by Entities from which property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims until such time as such Causes of Action (other than Causes of Action that constitute a Transferred Asset under the Purchase Agreement) against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid to the Debtors, the Wind Down Estate or the Wind Down Administrator (as applicable).

**ANY CLAIM THAT HAS BEEN LISTED IN THE SCHEDULES AS DISPUTED, CONTINGENT, OR UNLIQUIDATED, AND FOR WHICH NO PROOF OF CLAIM HAS BEEN TIMELY FILED, SHALL BE DEEMED DISALLOWED AND SHALL BE EXPUNGED WITHOUT FURTHER ACTION AND WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT.**

**EXCEPT AS PROVIDED HEREIN, IN AN ORDER OF THE BANKRUPTCY COURT, OR OTHERWISE AGREED, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE APPLICABLE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS AT OR PRIOR TO THE CONFIRMATION HEARING SUCH LATE CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

F. *Amendments to Claims*

On or after the Effective Date, except as provided in the Plan or the Confirmation Order, a Claim may not be Filed or amended without the prior authorization of the Bankruptcy Court and any such new or amended Claim Filed shall be deemed Disallowed in full and expunged without any further action, order, or approval of the Bankruptcy Court.

G. *No Distributions Pending Allowance*

Notwithstanding any other provision of this Plan to the contrary, no payment or distribution of any kind or nature provided under the Plan shall be made to the extent that all or any portion of any Claim is a Disputed Claim, including if an objection to a Claim or portion thereof is Filed as

set forth in Article VII, unless and until such Disputed Claim becomes an Allowed Claim; *provided that* any portion of a Claim that is an Allowed Claim shall receive the payment or distribution provided under the Plan thereon notwithstanding that any other portion of such Claim is a Disputed Claim.

H. *Single Satisfaction of Claims*

Holders of Allowed Claims may assert such Claims against each Debtor obligated with respect to such Claim, and such Claims shall be entitled to share in the recovery provided for the applicable Class of Claims against each obligated Debtor based upon the full Allowed amount of the Claim. Notwithstanding the foregoing, in no case shall the aggregate value of all property received or retained under the Plan on account of any Allowed Claim exceed 100% of such Allowed Claim.

**ARTICLE VIII.  
SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS**

A. *Compromise and Settlement of Claims, Interests, and Controversies*

Pursuant to sections 363 and 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions, releases, and other benefits provided pursuant to the Plan, which distributions, releases, and other benefits shall be irrevocable and not subject to challenge upon the Effective Date, the provisions of the Plan, and the distributions, releases, and other benefits provided hereunder, shall constitute a good-faith compromise and settlement of all Claims and Interests and controversies resolved pursuant to the Plan.

The Plan shall be deemed a motion to approve the good-faith compromise and settlement of all such Claims, Interests, and controversies pursuant to Bankruptcy Rule 9019, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise and settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that all such compromises and settlements are in the best interests of the Debtors, their Estates, and Holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) may compromise and settle Claims against, and Interests in, the Debtors and their Estates and Causes of Action against other Entities.

In accordance with Bankruptcy Rule 9019, the Plan constitutes the good-faith compromise and settlement among the Global Settlement Parties regarding the matters set forth in the Global Settlement Term Sheet, and reflects and implements such compromise and settlement, including by the establishment and funding of the GUC Trust. Such compromise and settlement is made in exchange for consideration and is in the best interests of the Global Settlement Parties and the Holders of General Unsecured Claims, is within the reasonable range of possible litigation outcomes, is fair, equitable, and reasonable, and is an essential element of the resolution of these Chapter 11 Cases.

B. *Discharge of Claims and Termination of Interests*

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Sale Order, the Plan and/or the Plan Supplement, the distributions, rights, and treatment that are provided in the Sale Order or the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Wind Down Estate or the Wind Down Administrator, as applicable), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and interests in, the Debtors or any of their assets or properties, regardless of whether any property, including, without limitation, the Transferred Assets, shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (a) a Proof of Claim based upon such debt or right is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (b) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (c) the Holder of such a Claim or Interest has accepted the Plan. Any default or “event of default” by the Debtors or Affiliates with respect to any Claim or Interest that existed immediately before or on account of the Filing of the Chapter 11 Cases shall be deemed cured (and no longer continuing) as of the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring.

C. *Term of Injunctions or Stays*

Unless otherwise provided herein, the Confirmation Order, the Confirmation Recognition Order or in a Final Order, all injunctions or stays arising under or entered during the Chapter 11 Cases under section 362 of the Bankruptcy Code or otherwise, or ordered by the CCAA Court in the CCAA Recognition Proceeding, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date set forth in the order providing for such injunction or stay.

D. *Release of Liens*

**Except as otherwise specifically provided in the Sale Order (solely with respect to any Permitted Encumbrances and Assumed Liabilities), the Plan, and/or the Plan Supplement, on the Effective Date and concurrently with the applicable distributions or other treatment made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates, including, without limitation, the Transferred Assets, shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Wind Down Estate or the GUC Trust and its successors and assigns, in each case, without any further approval or order of the Bankruptcy Court or the CCAA Court and without any action or Filing being required to be made by the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable).**

E. *Releases by the Debtors*

Pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, on and after the Effective Date, each Released Party is hereby released and discharged by the Debtors, their Estates, and the Wind Down Estate (as applicable) from any and all Claims, Causes of Action, Avoidance Actions, obligations, suits, judgments, damages, demands, losses, liabilities, and remedies whatsoever (including any derivative claims, asserted or assertable on behalf of the Debtors, their Estates, or the Wind Down Estate), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, accrued or unaccrued, existing or hereinafter arising, in law, equity, contract, tort, or otherwise, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), their Estates, the Wind Down Estate, the Debtors' in- or out-of-court restructuring efforts, the Debtors' intercompany transactions, the Prepetition Credit Agreement Documents, the Note Purchase Agreement Documents, the Professional Services Agreement Documents, the DIP Facility Documents (and any payments or transfers in connection therewith), the Sale Transaction, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the formulation, preparation, dissemination, negotiation, or Filing of the Restructuring Support Agreement, the restructuring of any Claim or Interest before or during the Chapter 11 Cases, or any Restructuring, contract, instrument, document, release, or other agreement or document (including any legal opinion regarding any such transaction, contract, instrument, document, release, or other agreement or the reliance by any Released Party on the Sale Order, the Plan, the Confirmation Order, or Confirmation Recognition Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, the Plan, the Plan Supplement, the DIP Facility, the DIP Facility Documents, the Sale Transaction, and other documents (including the Definitive Documentation), the Chapter 11 Cases, the CCAA Recognition Proceedings, the filing of the Chapter 11 Cases, the filing of the CCAA Recognition Proceedings, the Sales Process, the Global Settlement, the pursuit of Confirmation, the pursuit of Consummation, the solicitation of votes with respect to the Plan, the administration and implementation of the Plan and the Sales Process, including the issuance or distribution of any property pursuant to the Plan and the Sales Process, the Definitive Documentation, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to the foregoing. Notwithstanding anything to the contrary in the foregoing, (i) the releases set forth in this Article VIII.E do not release any post-Effective Date obligations of any party or Entity under the Plan, including any such obligations created in connection with the Restructuring or the assumption of the Indemnification Obligations as set forth in the Plan; (ii) nothing in this Article VIII.E shall, nor shall it be deemed to, release any Released Party from any Claims or Causes of Action arising from any obligations of any party under the Purchase Agreement; (iii) nothing in this Article VIII.E shall, nor shall it be deemed to, release any Released Party from any Claims or Causes of Action that are found, pursuant to a Final Order, to be the result of such Released Party's gross negligence, fraud or willful misconduct; (iv) nothing in this Article VIII.E shall, nor shall it be deemed to, release any Causes of Action specifically



**enumerated in the List of Retained Causes of Action; and (v) nothing in this Article VIII.E shall, nor shall it be deemed to, release any of the Debtor Retained Causes of Action.**

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases by the Debtors set forth in this Article VIII.E, which includes by reference each of the related provisions and definitions contained herein, and, further, shall constitute the Bankruptcy Court's finding that such releases are: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the Claims and Causes of Action released by such releases; (3) in the best interests of the Debtors and their Estates; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors or their Estates asserting any Claim or Cause of Action released pursuant to such releases.

F. *Releases by Releasing Parties*

As of the Effective Date, each Releasing Party hereby releases and discharges each Debtor, Estate, Wind Down Estate, and Released Party from any and all Claims, Causes of Action, Avoidance Actions, obligations, suits, judgments, damages, demands, losses, liabilities, and remedies whatsoever (including any derivative claims, asserted or assertable on behalf of the Debtors, the Wind Down Estate, or their Estates), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, accrued or unaccrued, existing or hereinafter arising, in law, equity, contract, tort, or otherwise, that such Releasing Party or its estate, heirs, executors, administrators, successors, or assigns would have been legally entitled to assert in his, her, or its own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), their Estates, the Wind Down Estate, the Debtors' in- or out-of-court restructuring efforts, the Debtors' intercompany transactions, the Prepetition Credit Agreement Documents, the Note Purchase Agreement Documents, the Professional Services Agreement Documents, the DIP Facility Documents (and any payments or transfers in connection therewith), the Sale Transaction, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Releasing Party, the formulation, preparation, dissemination, negotiation, or Filing of the Restructuring Support Agreement, the restructuring of any Claim or Interest before or during the Chapter 11 Cases, or any Restructuring, contract, instrument, document, release, or other agreement or document (including any legal opinion regarding any such transaction, contract, instrument, document, release, or other agreement or the reliance by any Releasing Party on the Sale Order, the Plan, the Confirmation Order, or the Confirmation Recognition Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, the Plan, the Plan Supplement, the DIP Facility, the DIP Facility Documents, the related agreements, instruments, and other documents (including the Definitive Documentation), the Chapter 11 Cases, the CCAA Recognition Proceedings, the filing of the Chapter 11 Cases, the filing of the CCAA Recognition Proceedings, the Sales Process, the Global Settlement, the pursuit of

Confirmation, the pursuit of Consummation, the solicitation of votes with respect to the Plan, the administration and implementation of the Plan and the Sales Process, including the issuance or distribution of any property pursuant to the Plan and the Sales Process, the Definitive Documentation, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to the foregoing; *provided, however*, that except as expressly provided under the Plan, the foregoing releases shall not release obligations of the Debtors on account of any Allowed Claims that are treated under the Plan. Notwithstanding anything to the contrary in the foregoing, (i) the releases set forth in this Article VIII.F do not release any post-Effective Date obligations of any party or Entity under the Plan, including any such obligations created in connection with the Restructuring or the Global Settlement or the assumption of the Indemnification Obligations as set forth in the Plan; (ii) nothing in this Article VIII.F shall, nor shall it be deemed to, release any Released Party from any Claims or Causes of Action arising from any obligations of any party under the Purchase Agreement; (iii) nothing in this Article VIII.F shall, nor shall it be deemed to, release any Released Party from any Claims or Causes of Action that are found, pursuant to a Final Order, to be the result of such Released Party's gross negligence, fraud, or willful misconduct; (iv) nothing in this Article VIII.F shall, nor shall it be deemed to, release any of the Lender Retained Causes of Action; ~~and~~ (v) nothing herein shall, nor shall it be deemed to, release any of the non-Debtor Affiliates of the Released Parties party to the Prepetition Credit Agreement Documents from the Wind Down Claims; and (vii) nothing in this Article VIII.F shall, nor shall it be deemed to, release any of the Debtor Retained Causes of Action. For the avoidance of doubt, nothing in this Article VIII.F shall, nor shall it be deemed to, release any Causes of Action specifically enumerated in the List of Retained Causes of Action.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases by Holders of Claims and Interests set forth in this Article VIII.F, which includes by reference each of the related provisions and definitions contained herein, and, further, shall constitute the Bankruptcy Court's finding that such releases are: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the Claims and Causes of Action released by such releases; (3) in the best interests of the Debtors and their Estates; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; (6) an essential component of the Plan and the Restructuring; and (7) a bar to any of the Releasing Parties asserting any Claim or Cause of Action released pursuant to such releases.

G. *Exculpation*

Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur liability for, and each Exculpated Party is hereby exculpated from, any Claim, Cause of Action, obligation, suit, judgment, damage, demand, loss, or liability for any claim related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, Filing, or termination of the Restructuring Support Agreement and related prepetition transactions, the Disclosure Statement, the Plan, the Sale Process, the Sale Transaction, the related agreements, instruments, and other documents (including the Definitive Documentation), the solicitation

of votes with respect to the Plan, or the Restructuring, or any related contract, instrument, release or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Person on the Plan or the Confirmation Order or Confirmation Recognition Order in lieu of such legal opinion) created or entered into in connection with the Debtors' in or out-of-court restructuring efforts, the Sale Process, the Disclosure Statement, the Plan, the Restructuring Support Agreement, the related agreements, instruments, and other documents (including the Definitive Documentation), the Chapter 11 Cases, the CCAA Recognition Proceedings, the filing of the Chapter 11 Cases, the filing of the CCAA Recognition Proceedings, the Sales Process, the Global Settlement, solicitation of votes with respect to the Plan, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan and the Sales Process, including the issuance of or distribution of any property pursuant to the Plan and the Sales Process, the related agreements, instruments, and other documents (including the Definitive Documentation), or any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related to the foregoing, except for claims related to any act or omission that is determined in a Final Order to have constituted fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Confirmation Order shall provide that the Exculpated Parties (to the extent applicable) have, and upon completion of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of, and distribution of, consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan. For the avoidance of doubt, nothing in this Article VIII.G shall, nor shall it be deemed to, exculpate the Debtors from any Lender Retained Causes of Action or any Exculpated Party from any Causes of Action (i) arising from any obligations of any party under the Purchase Agreement; or (ii) specifically enumerated in the List of Retained Causes of Action.

#### H. *Injunction*

Except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or Confirmation Order, all Entities who have held, hold, or may hold Claims, Interests, or Causes of Action that have been released pursuant to Article VIII.E or Article VIII.F, discharged pursuant to Article VIII.B, or are subject to exculpation pursuant to Article VIII.G, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Wind Down Estate, the Released Parties, or the Exculpated Parties: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (c) creating, perfecting, or enforcing any Lien or encumbrance of any kind against such Entities or the property, including, without limitation, the Transferred Assets, or the estates of such Entities on



account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; or (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action. Notwithstanding anything to the contrary in the foregoing, this injunction does not enjoin any party under the Plan or under any document, instrument, or agreement (including the Disclosure Statement or set forth in the Plan Supplement, to the extent finalized) executed to implement the Plan from bringing an action in the Bankruptcy Court to enforce the terms of the Plan or such document, instrument, or agreement (including those attached to the Disclosure Statement or set forth in the Plan Supplement, to the extent finalized) executed to implement the Plan. Subject in all respects to Article XI, no entity or person may commence or pursue a Claim or Cause of Action of any kind against any Released Party or Exculpated Party that arose or arises from, in whole or in part, the Chapter 11 Cases, the CCAA Recognition Proceedings, the Debtors, the Wind Down Estate, the Plan, the Plan Supplement, the Disclosure Statement, the Restructuring Support Agreement, the Sale Process, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Plan, the Disclosure Statement, the Chapter 11 Cases, the CCAA Recognition Proceedings, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the distribution of property under the Plan, or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such Claim or Cause of Action represents a colorable Claim or Cause of Action of any kind, including negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Released Party or Exculpated Party and (ii) specifically authorizing such entity or person to bring such Claim or Cause of Action against any such Released Party or Exculpated Party. The Bankruptcy Court shall have sole and exclusive jurisdiction to determine whether a Claim or Cause of Action is colorable and, only to the extent legally permissible and as provided for in Article XI, shall have jurisdiction to adjudicate the underlying colorable Claim or Cause of Action.

I. *Protection Against Discriminatory Treatment*

Consistent with section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against the Wind Down Estate or the Wind Down Administrator (as applicable) or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Wind Down Estate or the Wind Down Administrator (as applicable), or another Entity with whom the Wind Down Estate or the Wind Down Administrator (as applicable) have been associated, solely because each Debtor has been a debtor under chapter 11 of the Bankruptcy Code, has been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtors are granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

J. *Recoupment*

In no event shall any Holder of Claims or Interests be entitled to recoup any Claim or Interest against any Claim, right, or Cause of Action of the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable), unless such Holder actually has performed such recoupment and provided notice thereof in writing to the Debtors on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

K. *Subordination Rights*

Any distributions under the Plan shall be received and retained free from any obligations to hold or transfer the same to any other Holder and shall not be subject to levy, garnishment, attachment, or other legal process by any Holder by reason of claimed contractual subordination rights. Any such subordination rights shall be waived, and the Confirmation Order shall constitute an injunction enjoining any Entity from enforcing or attempting to enforce any contractual, legal, or equitable subordination rights to property distributed under the Plan, in each case other than as provided in the Plan.

L. *Reimbursement or Contribution*

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Confirmation Date: (1) such Claim has been adjudicated as non-contingent; or (2) the relevant Holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered prior to the Confirmation Date determining such Claim as no longer contingent.

M. *Document Retention.*

On and after the Effective Date, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee (as applicable) may maintain documents in accordance with their standard document retention policy, as may be altered, amended, modified, or supplemented by the Wind Down Estate or the Wind Down Administrator (as applicable).

**ARTICLE IX.  
CONDITIONS PRECEDENT TO CONFIRMATION  
AND CONSUMMATION OF THE PLAN**

A. *Conditions Precedent to Confirmation*

It shall be a condition to Confirmation of the Plan that the following conditions, as determined by the Debtors with the consent of the DIP Agent, the Prepetition Secured Parties, and the Purchaser shall have been satisfied (or waived pursuant to the provisions of Article IX.C of the Plan):

1. the Restructuring Support Agreement shall not have been breached or terminated and shall be in full force and effect;
2. the Bankruptcy Court shall have entered a Final Order approving the Disclosure Statement with respect to the Plan as containing adequate information within the meaning of section 1125 of the Bankruptcy Code;
3. a Final DIP Approval Order shall have been entered by the Bankruptcy Court and the Final DIP Recognition Order shall have been entered by the CCAA Court, and each shall not have been breached or terminated, shall be in full force and effect, and no stay thereof shall be in effect;
4. the Purchase Agreement shall have been executed by the parties thereto, shall not have been breached or terminated and shall be in full force and effect;
5. all provisions, terms, and conditions hereof shall have been approved in the Confirmation Order;
6. the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount shall have been funded by cash on hand of the Debtors and the proceeds of the DIP Facility into a reserve account and shall be added to the outstanding obligations under the DIP Facility (less cash on hand);
7. the Special Committee's investigation shall have concluded; and
8. a motion (including any exhibits, schedules, amendments, modifications or supplements thereto) shall have been filed in the CCAA Recognition Proceedings seeking the issuance of the Sale Recognition Order pursuant the Purchase Agreement and consistent with the terms of the Restructuring Support Agreement and the Restructuring Support Agreement Documentation.

**B. *Conditions Precedent to the Effective Date***

It shall be a condition to the occurrence of the Effective Date that the following conditions, as determined by the Debtors with the consent of the DIP Agent, the Prepetition Secured Parties, and the Purchaser shall have been satisfied (or waived pursuant to the provisions of Article IX.C of the Plan):

1. the Restructuring Support Agreement shall not have been breached or terminated and shall be in full force and effect;
2. the Confirmation Order and Confirmation Recognition Order shall have been entered and neither the Confirmation Order nor the Confirmation Recognition Order shall have been stayed, modified, or vacated on appeal;
3. the Sale Order shall have been entered (whether or not included as a part of the Confirmation Order and Confirmation Recognition Order, as applicable), and shall not have been stayed, modified, or vacated on appeal;

4. the Sale Transaction (including with respect to the sale of the Canadian Transferred Assets to Purchaser pursuant to the CCAA Recognition Proceedings) shall have been consummated in accordance with the terms of the Purchase Agreement;

5. a Final DIP Approval Order shall have been entered by the Bankruptcy Court and Final DIP Recognition Order shall have been entered by the CCAA Court, and each shall not have been breached or terminated, shall be in full force and effect, and no stay thereof shall be in effect;

6. the Professional Fee Escrow Account shall be funded using cash on hand of the Debtors, proceeds of the DIP Facility, or proceeds of the Sale Transaction, as applicable, in an amount equal to the Professional Fee Reserve Amount;

7. all required governmental and third-party approvals and consents, including Bankruptcy Court approval, necessary in connection with the transactions provided for in the Plan shall have been obtained, shall not be subject to unfulfilled conditions, and shall be in full force and effect, and all applicable waiting periods shall have expired without any action having been taken by any competent authority that would restrain or prevent such transactions;

8. all documents and agreements necessary to implement the Plan and the Restructuring shall have been (a) tendered for delivery and (b) effected or executed by all Entities party thereto, and all conditions precedent to the effectiveness of such documents and agreements (other than any conditions related to the occurrence of the Effective Date) shall have been satisfied or waived pursuant to the terms of such documents or agreements;

9. the Bankruptcy Court shall have approved the Plan's releases and such approval shall have been recognized and given effect in Canada by the CCAA Court;

10. all Restructuring Expenses shall have been paid in Cash in full;

11. the GUC Trust shall have been created and funded in accordance with the Plan;

12. the Post-Sale Reserve shall have been funded using cash on hand of the Debtors, proceeds of the DIP Facility, or the Sale Transaction proceeds, as applicable; and

13. the Foreign Sale Reserve shall have been funded using Sale Transaction proceeds and distributed to the Netherlands Subsidiaries.

C. *Waiver of Conditions*

The conditions precedent to Confirmation of the Plan and to the Effective Date of the Plan set forth in Article IX.A and Article IX.B may be amended, modified, supplemented, or waived in writing by mutual agreement of the Debtors, the DIP Secured Parties, the Prepetition Secured Parties, and the Purchaser without notice, leave, or order of the Bankruptcy Court or any formal action other than proceedings to confirm or consummate the Plan.

**ARTICLE X.  
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

A. *Modification and Amendments*

Subject to the limitations contained herein, in the Global Settlement, and in the Restructuring Support Agreement, the Debtors reserve the right to alter, amend, or modify the Plan, subject to the consent of the Prepetition Secured Parties, and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code, Bankruptcy Rule 3019, and the restrictions on modifications set forth in the Plan and the Restructuring Support Agreement, the Debtors expressly reserve their rights to alter, amend, or modify the Plan, one or more times, after Confirmation, and, to the extent necessary, initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan.

B. *Effect of Confirmation on Modifications*

Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and shall constitute a finding that such modifications or amendments to the Plan do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

C. *Revocation or Withdrawal of the Plan*

Subject to the conditions and limitations set forth in the Restructuring Support Agreement, the Debtors reserve the right to revoke or withdraw the Plan with respect to any or all Debtors prior to the Confirmation Date and to File subsequent plans of reorganization. If the Debtors revoke or withdraw the Plan, or if Confirmation and Consummation do not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (3) nothing contained in the Plan shall: (i) constitute a waiver or release of any Claims or Interests; (ii) prejudice in any manner the rights of the Debtors or any other Entity, including the Holders of Claims; (iii) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors or any other Entity; or (iv) be used by the Debtors or any other Entity as evidence (or in any other way) in any litigation, including with regard to the strengths or weaknesses of any of the parties' positions, arguments, or claims; *provided that*, the foregoing reservation of rights shall not in any way amend, nullify, or void any action, act, or right ratified upon the Bankruptcy Court's entry of the Sale Approval Order.

**ARTICLE XI.  
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases and all matters, arising out of, or related to, the Chapter 11 Cases and the Plan, including jurisdiction to:

1. Allow, Disallow, determine, liquidate, classify, estimate, or establish the priority, Secured, Unsecured, or subordinated status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections relating to any of the foregoing;

2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals;

3. resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Cures pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; and (c) any dispute regarding whether a contract or lease is or was executory or expired;

4. ensure that distributions to Holders of Allowed Claims or Interests are accomplished pursuant to the provisions of the Plan;

5. consider any modifications of the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code, the Confirmation Order, the Sale Approval Order or any contract, instrument, release, or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement, the Confirmation Order, or the Sale Approval Order in each case, to remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order, the Sale Approval Order, or any contract, instrument, release, or other agreement or document entered into, delivered, or created in connection with the Plan, the Disclosure Statement, the Confirmation Order, or the Sale Approval Order in such manner as may be necessary or appropriate to consummate the Plan;

6. adjudicate, decide, or resolve any motions, adversary proceedings, contested, or litigated matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

7. adjudicate, decide, or resolve any and all matters related to Causes of Action by or against a Debtor, the GUC Trust, or GUC Trustee;

8. adjudicate, decide, or resolve any and all matters related to sections 1141, 1145, and 1146 of the Bankruptcy Code;



9. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan, and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan;
10. enter and enforce any order for the sale of property pursuant to sections 363 or 1123 of the Bankruptcy Code, including for the avoidance of doubt the Sale Approval Order;
11. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;
12. adjudicate, decide, or resolve any dispute and all matters related to the Sale Transaction and Sale Transaction Documents;
13. adjudicate, decide, or resolve any dispute and all matters arising under the GUC Trust Agreement;
14. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;
15. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, discharges, releases, injunctions, exculpations, and other provisions contained in Article VIII of the Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;
16. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid pursuant to Article VII of the Plan;
17. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;
18. determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, the Plan Supplement, or the Sale Approval Order;
19. adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein, including any Restructuring Transactions;
20. determine requests for the payment of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code;
21. hear and determine matters concerning state, local, and U.S. federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;
22. hear and determine matters concerning section 1145 of the Bankruptcy Code;

23. hear and determine all disputes involving the existence, nature, or scope of the release provisions set forth in the Plan, including any dispute or matter relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;
24. enforce all orders previously entered by the Bankruptcy Court;
25. enter a final decree concluding or closing the Chapter 11 Cases;
26. enforce the injunction, release, and exculpation provisions set forth in Article VIII of the Plan;
27. hear any other matter not inconsistent with the Bankruptcy Code; and
28. the CCAA Court shall retain jurisdiction over the CCAA Recognition Proceedings and all matters, arising out of, or related to, the CCAA Recognition Proceedings including the orders of the CCAA Court.

## **ARTICLE XII. MISCELLANEOUS PROVISIONS**

### **A. *Immediate Binding Effect***

Subject to Article IX.B of the Plan and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the final versions of the documents contained in the Plan Supplement, the Confirmation Order, and the Sale Approval Order shall be immediately effective and enforceable and deemed binding upon the Debtors or the Wind Down Estate, as applicable, and any and all Holders of Claims or Interests (regardless of whether the Holders of such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions provided for in the Plan, each Entity acquiring property under the Plan or the Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases. All Claims and debts shall be fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

### **B. *Additional Documents***

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee, as applicable, and all Holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.



C. *Reservation of Rights*

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court enters the Confirmation Order, and the Confirmation Order shall have no force or effect unless the Effective Date occurs. Prior to the Effective Date, neither the Plan, any statement or provision contained in the Plan, nor any action taken or not taken by any Debtor with respect to the Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Interests.

D. *Successors and Assigns*

The rights, benefits, and obligations of any Entity named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, manager, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

E. *Service of Documents*

Any pleading, notice, or other document required by the Plan to be served on or delivered to the Debtors, the Wind Down Estate, the Wind Down Administrator, the GUC Trust, or the GUC Trustee as applicable, shall be served on:

**Debtors or the  
Wind Down Estate**

**KidKraft Inc.**  
4630 Olin Road  
Dallas, TX 75244  
Attn: Geoffrey Walker

**Attorneys to the Debtors**

**Vinson & Elkins LLP**  
2001 Ross Avenue, Suite 3900  
Dallas, TX 75201  
Attn: William L. Wallander  
Matthew D. Struble  
Kiran Vakamudi

and

**Vinson & Elkins LLP**  
1114 Avenue of the Americas, 32nd Floor  
New York, NY 10036  
Attn: David S. Meyer  
Lauren R. Kanzer

**Wind Down Administrator**

**SierraConstellation Partners, LLC**  
3090 Olive St., 3rd Floor  
Dallas, TX 75219  
Attn: Carl Moore

**GUC Trustee**

**Jiangang Ou, Esq.**  
1222 Howard Lane  
Bellaire, Texas 77401

**United States Trustee**

**Office of the United States Trustee  
for the Northern District of Texas**  
Earle Cabell Federal Building  
1100 Commerce Street, Room 976  
Attn: Meredyth Kippes

**Prepetition Credit Agreement  
Agent and DIP Agent**

**GB Funding, LLC**  
101 Huntington Avenue, Suite 1100  
Boston, Massachusetts 02199  
Attn: David Braun  
Kyle Shonak

**Counsel to the Prepetition Credit  
Agreement Agent and DIP Agent**

**Katten Muchin Rosenman LLP**  
50 Rockefeller Plaza  
New York, NY 10020  
Attn: Cindi M. Giglio  
Lucy F. Kweskin

**Purchaser**

**Backyard Products LLC**  
317 S. Main Street  
Ann Arbor, MI 48104  
Attn: Thomas van der Meulen

**Counsel to Purchaser**

**King & Spalding LLP**  
[1180 Peachtree Street, NE](#)  
~~1185 6th Avenue~~ [Suite 1600](#)  
~~New York, NY 10036~~  
[Atlanta, GA 30309](#)  
Attn: Spencer Stockdale  
Michael Fishel  
~~Jeff Dutson~~

**MidOcean**

**MidOcean Partners**  
245 Park Avenue  
38th Floor  
New York, NY 10167  
Attn: Daniel Penn

**Counsel to MidOcean**

**Gibson Dunn & Crutcher LLP**

200 Park Avenue  
New York, NY 10166  
Attn: Andrew Herman

F. *Term of Injunctions or Stays*

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court or the CCAA Court, and existing on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan, the Confirmation Order, the Confirmation Recognition Order or the Sale Order shall remain in full force and effect in accordance with their terms.

G. *Entire Agreement*

Except as otherwise indicated, and without limiting the effectiveness of the Global Settlement and the Restructuring Support Agreement and any related agreements thereto, on the Effective Date, the Plan, the Plan Supplement, and the Confirmation Order shall supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

H. *Exhibits*

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the Debtors' restructuring website at <https://www.stretto.com/kidkraft> or the Bankruptcy Court's website at <https://www.txnb.uscourts.gov/>. To the extent any exhibit or document is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall control.

I. *Nonseverability of Plan Provisions*

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such terms or provision shall then be applicable as altered or interpreted, *provided that* any such alteration or interpretation shall be acceptable to the Debtors, the DIP Agent, the Prepetition Secured Parties, and the Purchaser. Notwithstanding any such alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such alteration or

interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtors', the Prepetition Secured Parties', and the Purchaser's consent; and (3) nonseverable and mutually dependent.

J. *Votes Solicited in Good Faith*

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities (if any) offered and sold under the Plan and any previous plan, and, therefore, neither any of such parties or individuals nor the Wind Down Estate or Wind Down Administrator (as applicable) will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities (if any) offered and sold under the Plan and any previous plan.

K. *Request for Expedited Determination of Taxes*

The Debtors, the Wind Down Estate, the Wind Down Administrator, or the GUC Trustee, as the case may be, shall have the right to request an expedited determination under section 505(b) of the Bankruptcy Code with respect to tax returns filed, or to be filed, for any and all taxable periods ending after the Petition Date through the Effective Date.

L. *Closing of Chapter 11 Cases*

The Wind Down Estate or the Wind Down Administrator (as applicable) shall, promptly after the full administration of the Chapter 11 Cases, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to issue a final decree closing the Chapter 11 Cases and file materials with the CCAA Court to terminate the CCAA Recognition Proceedings.

M. *No Stay of Confirmation Order*

The Confirmation Order and Confirmation Recognition Order shall contain a waiver of any stay of enforcement otherwise applicable, including pursuant to Bankruptcy Rules 3020(e) and 7062.

N. *Waiver or Estoppel*

Each Holder of a Claim or Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement or the Debtors', Wind Down Estate's, or the Wind Down Administrator's (as applicable) right to enter into settlements was not

disclosed in the Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court or the Noticing and Claims Agent prior to the Confirmation Date.

O. *Dissolution of Statutory Committees*

On the Effective Date, any statutory committee formed in connection with the Chapter 11 Cases shall dissolve automatically and all members thereof (solely in their capacities as such) shall be released and discharged from all rights, duties, and responsibilities arising from, or related to, the Chapter 11 Cases.

\* \* \* \*

Respectfully submitted, as of the date first set forth below,

Dated: July ~~6~~10, 2024  
Dallas, Texas

KIDKRAFT, INC.  
on behalf of itself and all other Debtors

*/s/ Geoffrey Walker*

---

Geoffrey Walker  
President & Chief Executive Officer

**Exhibit B**

**Revised Proposed Plan Modification Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:** § **Case No. 24-80045-mvl11**  
§  
**KIDKRAFT, INC., et al.,** § **Chapter 11**  
§  
**Debtors.**<sup>1</sup> § **(Jointly Administered)**  
§  
§ **Re: Docket. No. 266**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
GRANTING EMERGENCY JOINT MOTION OF THE DEBTORS  
AND PREPETITION AND DIP SECURED PARTIES FOR AN ORDER  
(I) APPROVING LIMITED MODIFICATIONS TO THE CONFIRMED PLAN  
PURSUANT TO 11 U.S.C. § 1127(B); AND (II) GRANTING RELATED RELIEF**

Upon the joint Motion<sup>2</sup> filed by the above-referenced debtors and debtors in possession (collectively, the “Debtors”) and GB Funding, LLC and 1903 Partners, LLC (together the

---

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft Partners, LLC (3268), KidKraft International IP Holdings, LLC (1841), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc. (4302). The location of the Debtors’ U.S. corporate headquarters and the Debtors’ service address is: 4630 Olin Road, Dallas, TX 75244.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.



“Prepetition and DIP Secured Parties”), and for entry of an order: (a) confirming the modified Plan (the “Modified Post-Confirmation Plan”) attached hereto as Exhibit 1, and (b) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final 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 the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that under the circumstances proper and adequate notice of the Motion and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, the Court hereby makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Modified Post-Confirmation Plan does not include any modification that materially affects or alters either the classification or treatment of any creditor that voted to accept the Plan [Docket No. 220].
2. At the time of the hearing on the Motion, the Plan had not been substantially consummated and the Court may approve the Modified Post-Confirmation Plan under 11 U.S.C. § 1127(b).
3. Due, timely, proper, and adequate notice of the Motion and the Modified Post-Confirmation Plan was provided.

4. The Modified Post-Confirmation Plan does not violate sections 1122 or 1123 of the Bankruptcy Code.

5. The Modified Post-Confirmation Plan meets all of the requirements of section 1129 of the Bankruptcy Code.

6. All creditors who voted to accept the Plan (and prior versions of the plan) are deemed to have accepted the Modified Post-Confirmation Plan.

### **ORDER**

It is therefore ordered that:

7. The Modified Post-Confirmation Plan is now the confirmed plan in these chapter 11 cases under 11 U.S.C. § 1127(b).

8. Except as expressly stated otherwise in this Order, all findings of fact and conclusions of law in the *Findings of Fact, Conclusions of Law, and Order (I) Approving the Disclosure Statement; and (II) Confirming the Debtors' Amended Joint Prepackaged Chapter 11 Plan* [Docket No. 241] shall be deemed applicable to the Modified Post-Confirmation Plan.

9. As of the Effective Date, the Purchase Agreement is hereby amended to exclude Causes of Action arising under section 549 of the Bankruptcy Code from Transferred Assets.

10. In the event of any inconsistency between the terms of this Order, the *Amended Order (I) Authorizing the Sale of the Debtors' Assets Free and Clear of all Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. §§ 105 and 363, (II) Approving the Purchase Agreement, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [Docket No. 249], the Modified Post-Confirmation Plan, or the Purchase Agreement, the terms of this Order shall control.

11. The requirements of Bankruptcy Rule 6004(a) are waived.

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

13. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

**Order submitted by:**

**VINSON & ELKINS LLP**

William L. Wallander (Texas Bar No. 20780750)  
Matthew D. Struble (Texas Bar No. 24102544)  
Kiran Vakamudi (Texas Bar No. 24106540)  
2001 Ross Avenue, Suite 3900  
Dallas, TX 75201  
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- and -

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lkanzer@velaw.com

**ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION**

**KATTEN MUCHIN ROSENMAN LLP**

Michaela C. Crocker (Texas Bar No. 24031985)  
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- and -

Cindi M. Giglio (admitted *pro hac vice*)  
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- and -

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**ATTORNEYS FOR GB FUNDING, LLC AND 1903 PARTNERS, LLC**

**Exhibit B-1**

**Redline of Revised Proposed Plan  
Modification Order Against Proposed Plan Modification Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:** § **Case No. 24-80045-mvl11**  
§  
**KIDKRAFT, INC., et al.,** § **Chapter 11**  
§  
**Debtors.**<sup>1</sup> § **(Jointly Administered)**  
§  
§ **Re: Docket. No. 266**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
GRANTING EMERGENCY JOINT MOTION OF THE DEBTORS  
AND PREPETITION AND DIP SECURED PARTIES FOR AN ORDER  
(I) APPROVING LIMITED MODIFICATIONS TO THE CONFIRMED PLAN  
PURSUANT TO 11 U.S.C. § 1127(B); AND (II) GRANTING RELATED RELIEF**

Upon the joint Motion<sup>2</sup> filed by the above-referenced debtors and debtors in possession (collectively, the “Debtors”) and GB Funding, LLC and 1903 Partners, LLC (together the

---

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft Partners, LLC (3268), KidKraft International IP Holdings, LLC (1841), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc. (4302). The location of the Debtors’ U.S. corporate headquarters and the Debtors’ service address is: 4630 Olin Road, Dallas, TX 75244.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

“Prepetition and DIP Secured Parties”), and for entry of an order: (a) confirming the modified Plan (the “Modified Post-Confirmation Plan”) attached hereto as Exhibit 1, and (b) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final 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 the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that under the circumstances proper and adequate notice of the Motion and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, the Court hereby makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Modified Post-Confirmation Plan does not include any modification that materially affects or alters either the classification or treatment of any creditor that voted to accept the Plan [Docket No. 220].
2. At the time of the hearing on the Motion, the Plan had not been substantially consummated and the Court may approve the Modified Post-Confirmation Plan under 11 U.S.C. § 1127(b).
3. Due, timely, proper, and adequate notice of the Motion and the Modified Post-Confirmation Plan was provided.

4. The Modified Post-Confirmation Plan does not violate sections 1122 or 1123 of the Bankruptcy Code.

5. The Modified Post-Confirmation Plan meets all of the requirements of section 1129 of the Bankruptcy Code.

6. All creditors who voted to accept the Plan (and prior versions of the plan) are deemed to have accepted the Modified Post-Confirmation Plan.

### **ORDER**

It is therefore ordered that:

7. The Modified Post-Confirmation Plan is now the confirmed plan in these chapter 11 cases under 11 U.S.C. § 1127(b).

8. Except as expressly stated otherwise in this Order, all findings of fact and conclusions of law in the *Findings of Fact, Conclusions of Law, and Order (I) Approving the Disclosure Statement; and (II) Confirming the Debtors' Amended Joint Prepackaged Chapter 11 Plan* [Docket No. 241] shall be deemed applicable to the Modified Post-Confirmation Plan.

9. As of the Effective Date, the Purchase Agreement is hereby amended to exclude Causes of Action arising under section 549 of the Bankruptcy Code from Transferred Assets.

10. In the event of any inconsistency between the terms of this Order, the Amended Order (I) Authorizing the Sale of the Debtors' Assets Free and Clear of all Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. §§ 105 and 363, (II) Approving the Purchase Agreement, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief [Docket No. 249], the Modified Post-Confirmation Plan, or the Purchase Agreement, the terms of this Order shall control.

11. ~~9.~~ The requirements of Bankruptcy Rule 6004(a) are waived.



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

13. ~~11.~~ The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

**Order submitted by:**

**VINSON & ELKINS LLP**

William L. Wallander (Texas Bar No. 20780750)  
Matthew D. Struble (Texas Bar No. 24102544)  
Kiran Vakamudi (Texas Bar No. 24106540)  
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**ATTORNEYS FOR THE DEBTORS AND  
DEBTORS IN POSSESSION**

**KATTEN MUCHIN ROSENMAN LLP**

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**ATTORNEYS FOR GB FUNDING, LLC  
AND 1903 PARTNERS, LLC**

THIS IS **EXHIBIT “H”** REFERRED TO IN THE AFFIDAVIT OF  
GEOFFREY WALKER SWORN BEFORE ME over video  
teleconference this 11<sup>th</sup> day of July, 2024 pursuant to O. Reg 431/20,  
Administering Oath or Declaration Remotely. The affiant was located in  
the City of Dallas, in the State of Texas, while the Commissioner was  
located in the City of Toronto, in the Province of Ontario.



---

Commissioner for Taking Affidavits  
EMILIE DILLON (LSO # 85199L)

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF KIDKRAFT, INC., SOLOWAVE DESIGN  
HOLDINGS LIMITED, SOLOWAVE DESIGN INC., SOLOWAVE  
INTERNATIONAL INC. AND SOLOWAVE DESIGN LP

APPLICATION OF KIDKRAFT, INC. UNDER SECTION 46 OF THE  
*COMPANIES CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED

Applicant

**AFFIDAVIT OF GEOFFREY WALKER**

I, Geoffrey Walker, of the City of Dallas, in the State of Texas, MAKE OATH AND SAY:

1. I am the Chief Executive Officer and President of KidKraft, Inc. (“**KidKraft**”), and together with its debtor and non-debtor affiliates, the “**Company**”). I joined the Company in 2019 and have served in my current role since that time.
  
2. As Chief Executive Officer and President of the KidKraft, I am familiar with, and have personal knowledge regarding, the Chapter 11 Debtors’ (defined below) businesses, day-to-day operations, financial affairs, and books and records, including those of Solowave Design Holdings Limited, Solowave International Inc. and Solowave Design Inc. (collectively, the “**Canadian Corporate Debtors**”), and Solowave Design LP (together with the Canadian Corporate Debtors, the “**Canadian Debtors**”). As such, I have personal knowledge of the matters deposed herein. Where I have relied on other sources of information, I have so stated and believe them to be true. In preparing this affidavit, I have also consulted with the Company’s senior management team,

and financial and legal advisors. The Company does not waive or intend to waive any applicable privilege by any statement in this affidavit.

3. On May 10, 2024, KidKraft, the Canadian Debtors, and six other debtors and debtors in possession<sup>1</sup> (collectively, the “**Chapter 11 Debtors**”) filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code with the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “**U.S. Court**”). The cases commenced by the Chapter 11 Debtors in the U.S. Court are referred to herein as the “**Chapter 11 Cases**”.

4. I affirm this affidavit in support of the application by KidKraft, in its capacity as the proposed foreign representative of the Chapter 11 Debtors (in such capacity, the “**Foreign Representative**”), for an order (the “**Interim Stay Order**”) pursuant to Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and section 106 of the *Courts of Justice Act*, R.S.O. 1990, c C.43, among other things, granting an interim stay of proceedings in respect of the Canadian Debtors and KidKraft, and their respective directors and officers.

5. In its notice of application, KidKraft is also seeking the following orders, *inter alia*, which will be the subject of a future hearing following the entry of orders (the “**First Day Orders**”) by the U.S. Court in respect of certain First Day Motions (as defined below):

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<sup>1</sup> The Chapter 11 Debtors are KidKraft, Inc., KidKraft Europe, LLC, KidKraft Intermediate Holdings, LLC, KidKraft International Holdings, Inc., KidKraft Partners, LLC, KidKraft International IP Holdings, LLC, Solowave Design Corp., Solowave Design Holdings Limited, Solowave Design Inc., Solowave Design LP, and Solowave International Inc.

- (a) an order (the “**Initial Recognition Order**”), among other things:
- (i) recognizing the Chapter 11 Cases in respect of KidKraft and the Canadian Debtors as “foreign main proceedings” pursuant to Part IV of the of the CCAA; and
  - (ii) recognizing KidKraft as the “foreign representative” in respect of the Chapter 11 Cases of KidKraft and the Canadian Debtors; and
- (b) an order (the “**Supplemental Order**”), among other things:
- (i) recognizing certain other First Day Orders issued by the U.S. Court in the Chapter 11 Cases, including the Foreign Representative Order (as defined below);
  - (ii) granting a stay of proceedings in respect of KidKraft and the Canadian Debtors and their respective directors and officers;
  - (iii) appointing KSV Restructuring Inc. as the information officer in this proceeding (in such capacity, the “**Information Officer**”);
  - (iv) granting a Court-ordered charge on the present and future assets, property and undertakings of KidKraft located in Canada and of the Canadian Debtors (the “**Canadian Property**”) to secure:
    - (A) the professional fees and disbursements incurred in respect of this proceeding by the Information Officer, its counsel and KidKraft and the Canadian Debtors’ Canadian counsel (up to a maximum amount of CAD\$750,000);
    - (B) the indemnity granted by KidKraft and the Canadian Debtors in favour of their respective directors and officers in respect of obligations and liabilities in Canada that they may incur as directors or officers after the commencement of this proceeding (up to a maximum amount of CAD\$100,000); and
    - (C) advances under a debtor-in-possession credit facility.

6. The Interim Stay Order is being sought as soon as possible to ensure that the status quo is preserved in respect of KidKraft, the Canadian Debtors and the Canadian Property pending the granting of the First Day Orders by the U.S. Court, including an order authorizing KidKraft to act as Foreign Representative (the “**Foreign Representative Order**”). In particular, I am concerned that certain of the agreements held by KidKraft relating to its Canadian business and by the Canadian Debtors contain provisions allowing the counterparties to terminate such agreements upon commencement of insolvency proceedings or a change in the Chapter 11 Debtors’ financial condition. Further, a third-party logistics provider is in possession of inventory in Canada owned by KidKraft and/or the Canadian Debtors in respect of which the third-party logistics provider may be able to exercise remedies in the absence of a stay. Accordingly, the Interim Stay Order is being requested to protect the Company’s Canadian business and the Canadian Property from immediate actions of creditors and contract counterparties in Canada.

7. Shortly after the U.S. Court has issued the Foreign Representative Order and the other First Day Orders, KidKraft, in its capacity as the Foreign Representative, intends to return to this Court to seek the Initial Recognition Order and the Supplemental Order.

8. All monetary references in this affidavit are in U.S. dollars, unless otherwise stated.

9. This affidavit is organized into the following sections:

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## PART I - OVERVIEW

10. On May 10, 2024 (the “**Petition Date**”), each of the Chapter 11 Debtors filed voluntary petitions for relief (together, the “**Petitions**”) pursuant to Chapter 11 of the U.S. Bankruptcy Code with the U.S. Court.

11. Also on May 10, 2024, the Chapter 11 Debtors filed or intend to file several first day motions and applications, including a motion seeking the Foreign Representative Order, with the U.S. Court (collectively, the “**First Day Motions**”). A hearing in respect of the following First Day Motions is expected to be heard by the U.S. Court on May 13:

- (a) *Emergency Motion for Entry of an Order (I) Authorizing KidKraft, Inc. to Act as Foreign Representative and (II) Granting Related Relief;*
- (b) *Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System and Maintain Existing Bank Accounts, (B) Continue Using Existing Checks and Business Forms, (C) Maintain Their Corporate Card Program, and (D) Continue Intercompany Transactions and (II) Granting Related Relief;*
- (c) *Emergency Application for Entry of Order Appointing Stretto, Inc. as Claims, Noticing, and Solicitation Agent;*



- (d) *Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) File a Consolidated Creditor Matrix; (B) File a Consolidated List of 30 Largest Unsecured Creditors; and (C) Redact Certain Personal Identification Information; and (II) Granting Related Relief;*
- (e) *Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay (A) Critical Vendors, (B) Lien Claimants, and (C) 503(b)(9) Claimants; (II) Confirming Administrative Expense Priority of Outstanding Orders; and (III) Granting Related Relief;*
- (f) *Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Maintain and Administer Their Customer Programs; (B) Renew, Replace, Implement, or Modify Their Customer Programs; and (C) Honor Their Obligations Related to the Customer Programs, and (II) Granting Related Relief;*
- (g) *Emergency Motion for Entry of an Order (I) Scheduling a Combined Hearing, (II) Establishing Objection Deadlines, (III) Approving the Solicitation Materials and Tabulation Procedures, and (IV) Granting Related Relief;*
- (h) *Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief;*
- (i) *Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) Continue Their Prepetition Insurance Coverage and Satisfy Prepetition Obligations Related Thereto; (B) Renew, Amend, Supplement, Extend, or Purchase Insurance Coverage on a Postpetition Basis in the Ordinary Course; and (C) Continue Their Prepetition Customs Bond Program and Satisfy Prepetition Obligations Related Thereto; (II) Modifying the Automatic Stay Solely With Respect to Workers' Compensation Claims; and (III) Granting Related Relief;*
- (j) *Emergency Motion for Entry of an Order Directing Joint Administration of the Debtors' Chapter 11 Cases;*
- (k) *Emergency Motion for an Order Pursuant to Bankruptcy Rule 1007 Granting an Extension of Time for Filing Schedules and Statements of Financial Affairs;*
- (l) *Emergency Motion for Entry of an Order (I) Approving the Debtors' Proposed Adequate Assurance Payments for Future Utility Services; (II) Prohibiting Utility Companies from Altering, Discontinuing, or Refusing Services; (III) Approving the Debtors' Proposed Procedures for Resolving Additional Adequate Assurance Requests; and (IV) Granting Related Relief;*
- (m) *Emergency Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507 and Fed. R. Bankr. P. 2002, 4001 and 9014 (I) Authorizing the Debtors to Obtain Postpetition Senior Secured Superpriority Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting*

*Adequate Protection to the Prepetition Secured Lenders, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief; and*

- (n) *Motion for Entry of an Order (I) Authorizing the Debtors to Pay Certain Taxes and Fees and (II) Granting Related Relief.*

12. In support of the First Day Motions, I will submit a declaration (the “**First Day Declaration**”) to the U.S. Court.

13. The First Day Declaration will provide a comprehensive overview of the Company and the events leading up to the commencement of the Chapter 11 Cases. As such, this Affidavit provides only a general overview of the foregoing and focuses on giving this Court information about the operations of the Chapter 11 Debtors incorporated or established under the law of Canada or one of the provinces (*i.e.*, the Canadian Debtors) or otherwise holding any of the Canadian Property, as relevant to the granting of the proposed Interim Stay Order and these proceedings.

14. I, or another representative of KidKraft, will provide a further affidavit containing information to support a finding of the centre of main interest of each of the Chapter 11 Debtors and the granting of the other relief sought in the proposed Initial Recognition Order and Supplemental Order.

15. In addition, I understand that copies of the Petitions and the filed First Day Declaration will be attached to the affidavit of Emilie Dillon, an associate lawyer with the law firm Osler, Hoskin & Harcourt LLP (“**Osler**”), Canadian counsel to the Chapter 11 Debtors, and will be provided to the Court at or before the hearing of the application for the Interim Stay Order. I am advised by the Chapter 11 Debtors’ U.S. counsel and believe that the U.S. Court office was unable to process certified copies of the Petitions on May 10, 2024. The Foreign Representative will

obtain certified copies of the Petitions as soon as it is able and then immediately forward them to Osler. The certified copies will be provided to this Court as soon as possible upon arrival.

## PART II - THE BUSINESS

### A. Overview

16. Founded in Dallas in 1968, KidKraft is a privately held company that is a leader in branded, sustainable, wood-based active and imaginative play products such as swing sets, dollhouses, playhouses, and more. Originally focused on made-from-wood children's furniture, the Company later expanded its product offerings, focusing on imaginative play including dollhouses and role-play kitchens, and in 2008 and 2009 expanded its global footprint by opening offices in the Netherlands to serve the European, Middle Eastern, African, and Asian markets and China to facilitate the production and distribution of the Company's products. The Company further expanded its product offerings to include outdoor playhouses and swing sets and, in 2016, acquired the Solowave Design business — a leading maker of outdoor wood play sets in Canada.

17. The Company's various product lines are generally divided between products sold for use outdoors (the "**Outdoor Business**") and products sold for use indoors (the "**Indoor Business**"). Approximately 59% of the Company's sales were attributable to the Outdoor Business with the remaining 41% attributable to the Indoor Business during the fiscal year ended March 31, 2024.

- (a) The Outdoor Business has several product lines, including swing sets, playhouses, outdoor furniture, and climbers, with swing sets and playhouses making up the majority of the Company's sales in the Outdoor Business.
- (b) The Indoor Business similarly has several product lines, including indoor furniture, vehicles and playsets, role play, and doll play. The Indoor Business is well

diversified, with each product category making up between 16% to 35% of the Indoor Business sales. The products are designed to be easily assembled in the home, creating imaginative play for children.

**B. The Chapter 11 Debtors and Their Non-Debtor Affiliates**

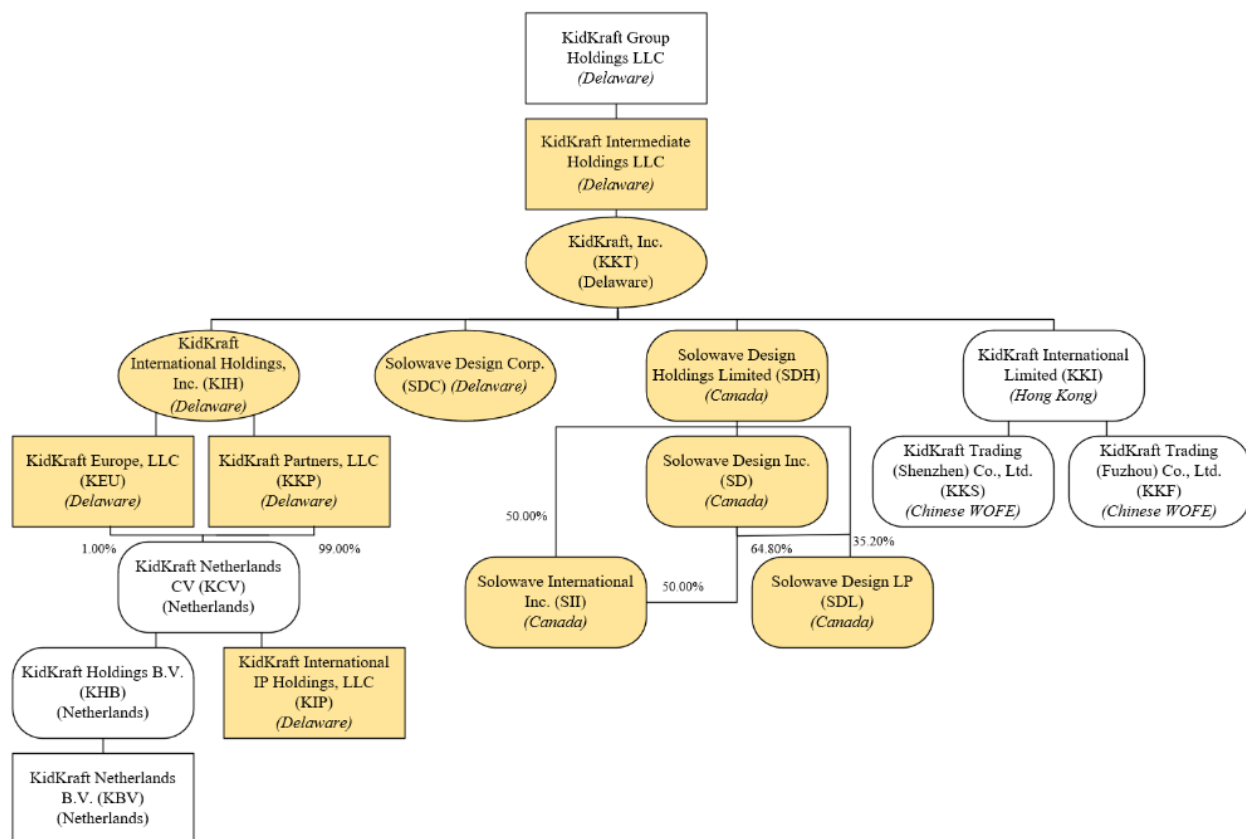
18. The Company's organizational structure consists of eighteen entities, of which eleven are debtors in the Chapter 11 Cases. All of the Chapter 11 Debtors are incorporated or established under the laws of the U.S., with the exception of the Canadian Debtors.

19. Each of the Canadian Corporate Debtors is incorporated under the laws of Ontario. Solowave Design LP is a limited partnership formed under the laws of the Province of Alberta.

20. Solowave Design Holdings Limited is a direct wholly-owned subsidiary of KidKraft. Solowave Design Inc. is a direct wholly-owned subsidiary of Solowave Design Holdings Limited. Solowave International Inc. is 50% owned by Solowave Design Inc. and 50% owned by Solowave Design Holdings Limited. Solowave Design LP's limited partner is Solowave Design Holdings Limited and its general partner is Solowave Design Inc.

21. Each of the other Chapter 11 Debtors are also direct or indirect wholly-owned subsidiaries of KidKraft, or its immediate parent, KidKraft Intermediate Holdings LLC. The Netherlands and Chinese Company entities are not Chapter 11 Debtors in the Chapter 11 Cases. The following is a simplified organization chart of the Company, with the Chapter 11 Debtor entities highlighted in yellow:

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22. The non-debtors include the ultimate parent company, KidKraft Group Holdings LLC, which is not a guarantor or borrower on any of the Company's funded debt, as well as the Company's subsidiaries in China and the Netherlands. The China subsidiaries oversee production and distribution of the Company's products in China, and are also not guarantors or borrowers on any of the Company's funded debt. The Netherlands subsidiaries support sales and distribution of the Company's products in Europe, the Middle East, Africa, and Asia-Pacific. As noted below, KidKraft Netherlands B.V. is a borrower and the other Netherlands subsidiaries are guarantors under the Prepetition Credit Agreement (defined below), but the obligations of each of the Netherlands subsidiaries is not to exceed \$10,000,000.

### **C. The Financial Position of the Canadian Debtors**

23. There are no stand-alone audited financial statements for the Canadian Debtors. The financial results of these entities have historically been consolidated with the Company's financial statements, and an audit is performed on a consolidated basis only.

24. Based on the trial balance for Solowave Design LP, which partnership carries on the business of the Canadian Debtors, as at March 31, 2024 (the "**March 2024 Trial Balance**"), the Canadian Debtors had total assets of approximately CAD\$5,643,477, including accounts receivable of approximately CAD\$3,259,732 and inventory of approximately CAD\$564,753.

25. Based on the March 2024 Trial Balance, the Canadian Debtors had liabilities of approximately CAD\$1,893,682, before considering their potentially substantial obligations under their guarantees of Chapter 11 Debtors' indebtedness under the Prepetition Credit Agreement (as defined below). Those contingent obligations would in all likelihood erode the book value of any equity that may be reflected on the Canadian Debtors' unaudited financial statements.

26. Based on the March 2024 Trial Balance, during the fiscal year ended March 31, 2024, the Canadian Debtors had gross sales of approximately CAD\$10,970,094.

### **D. Operations**

#### **(a) General**

27. KidKraft distributes its products through several large stores, including Costco, Sam's Club, Target, and Walmart, online retailers, including Amazon and Wayfair, and direct-to-consumer sales from the Company's website. In recent years the Company has scaled its global drop-shipping infrastructure to support continued growth in its online direct to consumer sales and complement its existing warehouse and distribution capabilities. In addition, the Company has

strong business relationships across global retailers with more than 3,000 points of distribution in over 90 countries, as well as within the global logistics community.

**(b) Operations in Canada**

28. The Company is headquartered at 4630 Olin Road in Dallas, Texas. The business of the Chapter 11 Debtors, including the Canadian Debtors, is run out of the U.S. headquarters. The Company has no Canadian headquarters or office locations.

29. The Company's business in Canada is principally as a distributor. Both KidKraft and Solowave Design LP sell products to Canadian customers. The Company has no retail locations in Canada. Rather, the Company's key customers in Canada are retailers, including Costco, Toys "R" Us, Canadian Tire, Home Depot and Walmart. The Company also sells its products through Wayfair on a consignment basis. Canadian consumers can also place orders directly through the Company's website, which is operated by KidKraft.

30. In Canada, the Company supplies its products to its customers via a third-party logistics provider, Mainfreight Inc. ("**Mainfreight**"), pursuant to a logistics services agreement between KidKraft and Mainfreight, dated July 28, 2023. As of April 30, 2024, Mainfreight was in possession of inventory valued at approximately CAD\$323,000, all of which inventory is owned by KidKraft or Solowave Design LP and is maintained at Mainfreight's facility in Mississauga (or is in transit thereto or therefrom).

31. On a consolidated basis, during the fiscal year ended March 31, 2024, the Company's gross sales to Canadian customers exceeded \$12.8 million.

32. KidKraft and Solowave Design LP have entered into Receivables Sales Agreements dated August 4, 2021 and April 21, 2022, respectively, with Coface Finanz GmbH (“**Coface**”), pursuant to which Coface purchases accounts receivable from KidKraft and Solowave Design LP (the “**KidKraft Receivables Sale Agreement**” and the “**Solowave Receivables Sale Agreement**”, respectively). Among other things, the parties to these agreements and the lenders under the Prepetition Credit Agreement (as defined below) have entered into lien release and acknowledgment agreements that govern the respective security interests over the accounts receivable of KidKraft and Solowave Design LP. On April 20, 2022, Coface registered financing statements pursuant to the *Personal Property Security Act* (Ontario) and the *Personal Property Security Act* (Alberta) against Solowave Design LP and Solowave Design Inc. Coface’s financing statements are for a period of ten years and cover the accounts receivable and other security as provided for under the Solowave Receivables Sale Agreement. To the extent the terms of the KidKraft Receivables Sale Agreement and the Solowave Receivables Sale Agreement are relevant to the granting of the Initial Recognition Order and Supplemental Order, additional information will be included in the affidavit made in support thereof.

#### **E. Employees**

33. As of the Petition Date, the Chapter 11 Debtors employ over 60 individuals on a full-time or part-time basis in the U.S. and Canada (the “**Employees**”).<sup>2</sup> The Company’s management team is supported by mid-level executives who are vital to the Company’s operations, these Chapter 11 Cases, and the ability to successfully consummate the Sale Transaction (as defined below). Their skills, knowledge, and understanding of the Debtors’ operations are essential to preserving

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<sup>2</sup> The Company’s non-debtor affiliates in the Netherlands and China employ an additional 170 individuals.



operational stability, safety, and efficiency. KidKraft employs one full-time Employee in Canada. The Canadian Debtors do not employ any Employees, in Canada or otherwise.

34. None of the Employees are represented by a union or are subject to a collective bargaining agreement. There is no registered pension plan in Canada.

### PART III - PREPETITION CAPITAL STRUCTURE AND INDEBTEDNESS

35. As of the Petition Date, the Chapter 11 Debtors' funded debt liabilities total approximately \$151.9 million, including approximately (i) \$149.9 million in outstanding principal and (ii) \$2.0 million in accrued and unpaid interest. The Chapter 11 Debtors' funded debt obligations include:

| Facility   | Maturity     | Total Approx. Principal Amount Outstanding |
|--|--------------|--|
| Prepetition First Lien Revolving Facility <sup>3</sup> | June 2024    | \$63.2 million                             |
| Prepetition First Lien Term Facility <sup>3</sup>      | June 2024    | \$81.7 million                             |
| <b>Total Funded Secured Debt</b>                       |              | <b>\$144.9 million</b>                     |
| Subordinated Unsecured Note <sup>4</sup>               | January 2025 | \$5.0 million                              |
| <b>Total Funded Debt</b>                               |              | <b>\$149.9 million</b>                     |

#### A. Prepetition Credit Agreement

36. The Chapter 11 Debtors' primary long-term debt consists of that certain Amended and Restated First Lien Credit Agreement dated as of April 3, 2020, among KidKraft and KidKraft Netherlands B.V., a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of The Netherlands, as borrowers, KidKraft Intermediate Holdings, LLC and its subsidiaries that are guarantors thereto, the lender party

<sup>3</sup> As described below, the Canadian Debtors are guarantors of the Prepetition First Lien Revolving Facility and the Prepetition First Lien Term Facility.

<sup>4</sup> The Canadian Debtors are neither obligors, nor guarantors, of the subordinated unsecured note.

thereto, and the administrative agent (as amended by that certain (a) Forbearance and Amendment No. 1 to Amended and Restated First Lien Credit Agreement, dated as of January 13, 2023 (the “**First Amendment**”), (b) Amendment No. 2 to Amended and Restated First Lien Credit Agreement, dated as of March 22, 2023, (c) Forbearance and Amendment No. 3 to Amended and Restated First Lien Credit Agreement, dated as of September 29, 2023 (the “**Third Amendment**”), (d) Amendment No. 4 to Amended and Restated First Lien Credit Agreement, dated as of October 27, 2023, (e) Forbearance, Amendment No. 5 and Joinder to Amended and Restated First Lien Credit Agreement, dated as of January 31, 2024 (the “**Fifth Amendment**”), and (f) Amendment No. 6 to the Amended and Restated First Lien Credit Agreement, dated as of May 9, 2024 (the “**Sixth Amendment**”), and as may be further amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the “**Prepetition Credit Agreement**”). The lender has provided commitments under the Prepetition Credit Agreement consisting of revolving credit commitments (such commitments, collectively, the “**Prepetition First Lien Revolving Facility**”) and term loan commitments (such commitments, collectively, the “**Prepetition First Lien Term Facility**”), each of which is secured by a first priority lien on substantially all of the Chapter 11 Debtors’ assets, as well as liens on the Company’s Dutch subsidiaries’ assets.

37. The Fifth Amendment was entered in connection with the Debt Sale (defined below) and joined KidKraft’s Dutch and Canadian affiliates (i.e., the Canadian Debtors) as guarantors under the Prepetition Credit Agreement, joined KidKraft Netherlands B.V. as a co-borrower, increased the priority revolving commitments under the Prepetition Credit Agreement to \$26,780,000, and extended the maturity of the term loans under the Prepetition Credit Agreement from June 30, 2023 to June 30, 2024, giving the Company crucial liquidity and runway to pursue

restructuring alternatives. As security for the guarantees, *inter alia*, the following agreements were entered into:

- (a) a security agreement supplement dated January 31, 2024, whereby the Canadian Debtors became parties to the original security agreement securing the obligations under the Prepetition Credit Agreement;
- (b) a general security agreement dated January 31, 2024, whereby the Canadian Debtors pledged a security interest in all of the Canadian Debtors' personal property and securities (except certain excluded personal property and interests over which Coface holds security pursuant to the Solowave Receivables Sale Agreement);
- (c) patent security agreements dated January 31, 2024 and February 8, 2024, whereby security interests were granted over certain U.S. and Canadian patents held by Solowave Design Inc., Solowave Design LP and/or KidKraft; and
- (d) trademark security agreements dated January 31, 2024 and February 8, 2024, whereby security interests were granted over certain U.S. and Canadian trademark registrations and applications owned by Solowave Design Inc. and/or KidKraft.

38. Prior to the Petition Date, the Sixth Amendment was entered into to document the amendments to the Prepetition First Lien Term Facility pursuant to the RSA (as hereinafter defined) and account for the \$4,766,198 in additional priority revolving commitments that had been advanced since entry into the Fifth Amendment.

39. As of the Petition Date, the Chapter 11 Debtors' aggregate principal outstanding funded debt obligations under the Prepetition Credit Agreement total approximately \$144,900,000, comprised of: (i) \$81,700,000 under the Prepetition First Lien Term Facility; and (ii) \$63,200,000 under the Prepetition First Lien Revolving Facility. In addition, the Chapter 11 Debtors owe accrued and unpaid interest under both the Prepetition First Lien Term Facility and the Prepetition First Lien Revolving Facility.

**B. Subordinated Note, Trade Vendors, and Other Unsecured Liabilities**

40. In connection with the First Amendment, MidOcean Partners IV, L.P. ("**MidOcean**"), the Company's equity sponsor, agreed to provide an unsecured subordinated loan to KidKraft in the amount of \$5,000,000 (the "**Subordinated Note**"). The loan is documented in that certain Note Purchase Agreement, dated as of January 13, 2023 among KidKraft and MidOcean, and subordinated to the Prepetition Credit Agreement via a Subordination Agreement, dated as of January 13, 2023 among KidKraft, MidOcean, KidKraft Intermediate Holdings, LLC and the administrative agent under the Prepetition Credit Agreement. As of the Petition Date, the Subordinated Note is outstanding; however, MidOcean has agreed under the RSA (as defined below) to a waiver of the Subordinated Note obligations on the effective date of the Plan.

41. In the ordinary course of business, the Chapter 11 Debtors rely on numerous trade vendors to operate their businesses. These trade vendors include producers of the Chapter 11 Debtors' products, marketing and advertising services, and shipping and logistics services that deliver the finished products to the Chapter 11 Debtors and to various customers. As a result of the Chapter 11 Debtors' business with these trade vendors, the Chapter 11 Debtors (which for greater certainty includes the Canadian Debtors) have accrued approximately \$30,000,000 in unsecured trade claims as of the Petition Date.

**C. Equity Interests in KidKraft Intermediate Holdings, LLC**

42. Non-Chapter 11 Debtor KidKraft Group Holdings LLC owns 100% of the equity interests in KidKraft Intermediate Holdings, LLC. KidKraft Group Holdings LLC is majority owned by MidOcean.

**D. Canadian PPSA Searches**

43. I am advised by Justin Kanji, a lawyer at Osler, and believe, that lien searches were conducted on or about April 7 (in the case of Ontario) and April 8 (in the case of Alberta), 2024, against the Canadian Debtors under the *Personal Property Security Act* (or equivalent legislation) in Ontario and Alberta (the “**PPSA Searches**”). Copies of the PPSA Searches are attached hereto as **Exhibit “A”**.

44. Of the entities with PPSA registrations against the Canadian Debtors and/or KidKraft, other than the PPSA registrations in respect of the Prepetition Credit Agreement and the guarantees thereof, the only entity that is currently a creditor of the Canadian Debtors and/or KidKraft is Coface.

**PART IV - EVENTS LEADING TO THE CHAPTER 11 CASES**

45. As will be set out in greater detail in the First Day Declaration, the Company is currently facing significant balance sheet and liquidity challenges, caused by a range of factors that ultimately resulted in the Company’s operating margins being squeezed. In addition, the Company was unable to refinance or replace its funded debt that originally matured in June 2023 (now June 2024). The Company proactively worked to address their balance sheet and liquidity challenges, including through a balance sheet restructuring in 2023 and by running multiple robust out-of-court sale processes prior to the Petition Date.

46. In connection with these actions, the Company engaged advisors to explore strategic alternatives, including a potential sale of all or substantially all of the assets or equity of the Company. After a sale process undertaken in the fall of 2023 failed to result in a sale, the Company continued to face significant liquidity challenges and worked with its advisors to begin contingency planning for a potential in-court restructuring process in December 2023 and January 2024. Subsequently, an agreement was reached pursuant to which 1903 Partners, LLC (“**Gordon Brothers**”) purchased the existing debt under the Prepetition Credit Agreement (the “**Debt Sale**”). In connection therewith, Gordon Brothers provided additional financing in the form of revolving priority loans to the Company to maintain its operations and prevent further degradation of its business while the Company and Gordon Brothers worked collaboratively to explore value-maximizing strategic alternatives.

47. Following a second sale process in the spring of 2024, Backyard Products, LLC (the “**Purchaser**”) emerged with a bid to purchase a substantial majority of the Company’s assets with such sale to be effectuated in Chapter 11 (the “**Sale Transaction**”). On April 25, 2024, the Chapter 11 Debtors, Gordon Brothers, MidOcean and the Purchaser entered into a restructuring support agreement (the “**RSA**”), documenting the parties’ commitment to the restructuring transactions described in the RSA.

48. Among other things, the RSA contemplates Gordon Brothers voting in favour of a joint prepackaged Chapter 11 plan (the “**Plan**”) and providing debtor-in-possession financing, and the sale of certain of the Chapter 11 Debtors’ assets to the Purchaser through the Chapter 11 Cases. Additional information regarding the RSA, the Plan and the proposed debtor-in-possession facility will be included in the further affidavit made in support of the Initial Recognition Order and Supplemental Order.

**PART V - URGENT NEED FOR RELIEF IN CANADA**

49. Given the filing of the Petitions with the U.S. Court and the commencement of the Chapter 11 Cases, and the nature of the operations in Canada, KidKraft and the Canadian Debtors are in urgent need of an interim stay of proceedings in Canada pending the entry of the First Day Orders and a further hearing in Canada seeking their recognition and commencing proceedings under the CCAA.

50. Maintaining the status quo will prevent unnecessary disruptions within the Chapter 11 Debtors' Canadian supply chain and Canadian business. In particular, an interim stay is necessary to protect the Company's valuable inventory, which is currently stored in, or in transit within, Canada by third parties. Preservation of such inventory is essential to the success of the Chapter 11 Cases given that such inventory is proposed to secure the Company's proposed debtor-in-possession facility and be included as part of the Sale Transaction.

51. Subject to the automatic stay that arises upon the filing of the Petitions with the U.S. Court and the proposed Canadian stay of proceedings requested from this Court, (a) counterparties to agreements with KidKraft relating to its Canadian business and with the Canadian Debtors could seek to terminate such agreements due to the recent commencement of Chapter 11 Cases; and (b) creditors of KidKraft and the Canadian Debtors could seek to pursue self-help remedies against the Canadian Property in Canada.

**PART VI - RELIEF SOUGHT**

52. By operation of the U.S. Bankruptcy Code, the Chapter 11 Debtors obtained the benefit of a stay of proceedings upon filing the Petitions with the U.S. Court.

53. The proposed Interim Stay Order provides for a stay of proceedings in favour of KidKraft and the Canadian Debtors in respect of the Canadian Property. The proposed Interim Stay Order also provides for a stay of proceedings in favour of the directors and officers of the KidKraft and the Canadian Debtors. The proposed Interim Stay Order will give effect in Canada to the stay of proceedings in the Chapter 11 Cases and provide stability and preserve the value of the Canadian business until KidKraft can be duly authorized to act as the Foreign Representative by the U.S. Court and return before this Court to seek the Initial Recognition Order and Supplemental Order.

54. It is important for KidKraft and the Canadian Debtors to be protected by a stay of proceedings and from the potential exercise of enforcement rights in Canada pursuant to a Canadian court order. It is critical to the preservation of the value of the business in Canada and the Chapter 11 Debtors' overall efforts to proceed with the Chapter 11 Cases and the completion of a restructuring.

#### **PART VII - PROPOSED NEXT HEARING**

55. After the First Day Orders have been entered by the U.S. Court, KidKraft intends to return to this Court, in its capacity as Foreign Representative, to seek the Initial Recognition Order and Supplemental Order. As noted above, I, or another representative of KidKraft, will make an affidavit in support thereof.

#### **PART VIII - NOTICE**

56. This application has been brought on notice to counsel for Gordon Brothers, the Purchaser and the proposed Information Officer. The major stakeholders of the Chapter 11 Debtors are located outside of Canada and notice will be given to them within the Chapter 11 Cases.



**SWORN BEFORE ME** over  
videoconference in accordance with the  
*Administering Oath or Declaration Remotely  
Regulation*, O. Reg 431/20, on May 10, 2024,  
while I was located in the City of Toronto, in  
the Province of Ontario, and the affiant was  
located in Dallas in the State of Texas.



---

EMILIE DILLON  
LSO # 85199L  
Commissioner for Taking Affidavits  
(or as may be)

---

**GEOFFREY WALKER**

THIS IS **EXHIBIT "I"** REFERRED TO IN THE AFFIDAVIT OF  
GEOFFREY WALKER SWORN BEFORE ME over video  
teleconference this 11<sup>th</sup> day of July, 2024 pursuant to O. Reg 431/20,  
Administering Oath or Declaration Remotely. The affiant was located in  
the City of Dallas, in the State of Texas, while the Commissioner was  
located in the City of Toronto, in the Province of Ontario.



---

Commissioner for Taking Affidavits  
EMILIE DILLON (LSO # 85199L)

Court File No. CV-24-00720035-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF KIDKRAFT, INC., SOLOWAVE DESIGN  
HOLDINGS LIMITED, SOLOWAVE DESIGN INC., SOLOWAVE  
INTERNATIONAL INC. AND SOLOWAVE DESIGN LP

APPLICATION OF KIDKRAFT, INC. UNDER SECTION 46 OF THE  
*COMPANIES CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED

Applicant

**SECOND AFFIDAVIT OF GEOFFREY WALKER  
(Initial Recognition Order and Supplemental Order)**

**(Sworn May 15, 2024)**

I, Geoffrey Walker, of the City of Dallas, in the State of Texas, MAKE OATH AND SAY:

1. I am the Chief Executive Officer and President of KidKraft, Inc. (“**KidKraft**”), and together with its debtor and non-debtor affiliates, the “**Company**”). I joined the Company in 2019 and have served in my current role since that time.
2. As Chief Executive Officer and President of KidKraft, I am familiar with, and have personal knowledge regarding, the Chapter 11 Debtors’ (defined below) businesses, day-to-day operations, financial affairs, and books and records, including those of Solowave Design Holdings Limited, Solowave International Inc. and Solowave Design Inc. (collectively, the “**Canadian Corporate Debtors**”), and Solowave Design LP (together with the Canadian Corporate Debtors, the “**Canadian Debtors**”). As such, I have personal knowledge of the matters deposed herein. Where I have relied on other sources of information, I have so stated and believe them to be true.

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In preparing this affidavit (the “**Second Affidavit**”), I have also consulted with the Company’s senior management team, and financial and legal advisors. The Company does not waive or intend to waive any applicable privilege by any statement in this Second Affidavit.

3. Capitalized terms used and not otherwise defined in this Second Affidavit have the meanings given to them in my initial affidavit sworn May 10, 2024 (the “**Initial Affidavit**”). Unless otherwise indicated, dollar amounts referenced in this Second Affidavit are references to United States Dollars.

4. This Second Affidavit supplements the Initial Affidavit and is sworn in support of an application by KidKraft in its capacity as the Foreign Representative (as defined below), for the following orders:

- (a) an order (the “**Initial Recognition Order**”), among other things:
  - (i) recognizing the Chapter 11 Cases (as defined below) in respect of KidKraft and the Canadian Debtors as “foreign main proceedings” pursuant to Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCAA**”); and
  - (ii) recognizing KidKraft as the “foreign representative” in respect of the Chapter 11 Cases of KidKraft and the Canadian Debtors; and
  
- (b) an order (the “**Supplemental Order**”), among other things:
  - (i) recognizing certain other First Day Orders (as defined below) issued by the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “**U.S. Court**”) in the Chapter 11 Cases, including the Foreign Representative Order (as defined below);

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- (ii) granting a stay of proceedings in respect of KidKraft and the Canadian Debtors and their respective directors and officers;
- (iii) appointing KSV Restructuring Inc. (“**KSV Restructuring**”) as the information officer in this proceeding (in such capacity, the “**Information Officer**”);
- (iv) granting a Court-ordered charge on the present and future assets, property and undertakings of KidKraft located in Canada and of the Canadian Debtors (the “**Canadian Property**”) to secure:
  - (A) the professional fees and disbursements incurred in respect of this proceeding by the Information Officer, its counsel and KidKraft and the Canadian Debtors’ Canadian counsel (up to a maximum amount of CAD\$750,000);
  - (B) the indemnity granted by KidKraft and the Canadian Debtors in favour of their respective directors and officers in respect of obligations and liabilities in Canada that they may incur as directors or officers after the commencement of this proceeding (up to a maximum amount of CAD\$100,000); and
  - (C) advances under a debtor-in-possession credit facility.

5. This Second Affidavit is organized into the following sections:

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## PART I - OVERVIEW

6. On May 10, 2024 (the “**Petition Date**”), KidKraft, the Canadian Debtors, and six other debtors and debtors in possession (collectively, the “**Chapter 11 Debtors**”) filed voluntary petitions for relief (together, the “**Petitions**”) pursuant to Chapter 11 of the U.S. Bankruptcy Code with the U.S. Court. The cases commenced by the Chapter 11 Debtors in the U.S. Court are referred to herein as the “**Chapter 11 Cases**”. The Chapter 11 Cases have been assigned to the Honourable Judge Michelle V. Larson.

7. Uncertified copies of the Petitions as filed were appended to the affidavit of Emilie Dillon, an associate lawyer with the law firm Osler, Hoskin & Harcourt LLP (“**Osler**”), Canadian counsel to the Chapter 11 Debtors, sworn May 10, 2024 as Exhibits “A” to “K” thereto. I am advised by the Chapter 11 Debtor’s U.S. counsel that certified copies of the Petitions have been obtained from the U.S. Court and are currently in transit to Osler, and will be provided to this Court as soon as they are available.

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8. I am advised by the Chapter 11 Debtors' U.S. counsel that a certified copy of the Foreign Representative Order has been obtained from the U.S. Court and is currently in transit to Osler, and will be provided to this Court as soon as it is available.

9. On May 10, 2024, the Chapter 11 Debtors filed several first day motions and applications, including a motion seeking the Foreign Representative Order, with the U.S. Court (collectively, the "**First Day Motions**").

10. Also on May 10, 2024, KidKraft, in its capacity as the proposed foreign representative of itself and the Canadian Debtors in respect of the Chapter 11 Cases (the "**Foreign Representative**"), brought an application before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") for an order (the "**Interim Stay Order**") pursuant to Part IV of the CCAA and section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, among other things, granting a stay of proceedings in respect of KidKraft and the Canadian Debtors, and their respective directors and officers. The Interim Stay Order was necessary to create a direct stay in Canada, alongside the automatic stay of proceedings created under the U.S. Bankruptcy Code upon the electronic filing of the Petitions. A copy of the Interim Stay Order is attached hereto as **Exhibit "A"**.

11. On May 13, 2024, the U.S. Court heard the First Day Motions, including the following:

- (a) The "**Joint Administration Motion**": *Emergency Motion for Entry of an Order Directing Joint Administration of the Debtors' Chapter 11 Cases*;
- (b) The "**Claim Agent Retention Motion**": *Emergency Application for Entry of Order Appointing Stretto, Inc. as Claims, Noticing, and Solicitation Agent*;
- (c) The "**Employee Wages Motion**": *Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief*;

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- (d) The “**Foreign Representative Motion**”: *Emergency Motion for Entry of an Order (I) Authorizing KidKraft, Inc. to Act as Foreign Representative and (II) Granting Related Relief;*
- (e) The “**Cash Management Motion**”: *Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System and Maintain Existing Bank Accounts, (B) Continue Using Existing Checks and Business Forms, (C) Maintain Their Corporate Card Program, and (D) Continue Intercompany Transactions and (II) Granting Related Relief;*
- (f) The “**Insurance Motion**”: *Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) Continue Their Prepetition Insurance Coverage and Satisfy Prepetition Obligations Related Thereto; (B) Renew, Amend, Supplement, Extend, or Purchase Insurance Coverage on a Postpetition Basis in the Ordinary Course; and (C) Continue Their Prepetition Customs Bond Program and Satisfy Prepetition Obligations Related Thereto; (II) Modifying the Automatic Stay Solely With Respect to Workers’ Compensation Claims; and (III) Granting Related Relief;*
- (g) The “**Taxes and Fees Motion**”: *Motion for Entry of an Order (I) Authorizing the Debtors to Pay Certain Taxes and Fees and (II) Granting Related Relief.*
- (h) The “**Utilities Motion**”: *Emergency Motion for Entry of an Order (I) Approving the Debtors’ Proposed Adequate Assurance Payments for Future Utility Services; (II) Prohibiting Utility Companies from Altering, Discontinuing, or Refusing Services; (III) Approving the Debtors’ Proposed Procedures for Resolving Additional Adequate Assurance Requests; and (IV) Granting Related Relief;*
- (i) The “**Critical Vendors Motion**”: *Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay (A) Critical Vendors, (B) Lien Claimants, and (C) 503(b)(9) Claimants; (II) Confirming Administrative Expense Priority of Outstanding Orders; and (III) Granting Related Relief;*
- (j) The “**Customer Programs Motion**”: *Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Maintain and Administer Their Customer Programs; (B) Renew, Replace, Implement, or Modify Their Customer Programs; and (C) Honor Their Obligations Related to the Customer Programs, and (II) Granting Related Relief; and*
- (k) The “**DIP Motion**”: *Emergency Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507 and Fed. R. Bankr. P. 2002, 4001 and 9014 (I) Authorizing the Debtors to Obtain Postpetition Senior Secured Superpriority Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured*



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*Lenders, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief.*

12. In support of the First Day Motions, I submitted a declaration (the “**First Day Declaration**”) to the U.S. Court, a copy of which is attached hereto as **Exhibit “B”**.

13. As discussed further below, on May 13 and 14, 2024, the U.S. Court entered orders in respect of the First Day Motions listed above in paragraph 11 (the “**First Day Orders**”). The First Day Orders that KidKraft, as Foreign Representative, seeks recognition in Canada pursuant to the Supplemental Order are set out in further detail in Part III of this Second Affidavit.

14. Background information with respect to the Chapter 11 Debtors, including KidKraft and the Canadian Debtors, and the reasons for the commencement of the Chapter 11 Cases, are set out in the Initial Affidavit and the First Day Declaration.

## **PART II - ADDITIONAL INFORMATION REGARDING KIDKRAFT AND THE CANADIAN DEBTORS**

15. The Initial Affidavit at Section II provides information regarding the Company’s business, including the business of the Canadian Debtors.

16. This section provides certain additional information regarding KidKraft and the Canadian Debtors and should be read in conjunction with Section II of the Initial Affidavit.

### **A. Cash Management System and Intercompany Transactions**

17. The Chapter 11 Debtors and their non-debtor affiliates manage their cash, receivables, and payables, in the ordinary course of business, through a centralized cash management system (the “**Cash Management System**”). The Chapter 11 Debtors use the Cash Management System to efficiently collect, transfer, concentrate, and disburse funds generated from their operations. The

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Cash Management System also enables the Chapter 11 Debtors to monitor the collection and disbursement of funds and the administration of their bank accounts, which are maintained at JPMorgan Chase Bank, N.A. (“**JPMorgan**”), HSBC Bank USA, and China Merchants Bank (each, a “**Bank**,” and collectively, the “**Banks**”).

18. The Chapter 11 Debtors maintain accounting controls with respect to each of their bank accounts and are able to accurately trace the funds through their Cash Management System to ensure that all transactions are adequately documented and readily ascertainable, including in connection with the intercompany transactions more fully described below. The Chapter 11 Debtors will continue to maintain their books and records relating to the Cash Management System to the same extent such books and records were maintained prior to the Petition Date. Accordingly, the Chapter 11 Debtors will be able to accurately document, record, and track the transactions occurring within the Cash Management System for the benefit of their estates.

19. The Chapter 11 Debtors’ Cash Management System consists of a total of 16 bank accounts (collectively, the “**Bank Accounts**”), which are maintained at the Banks, held by either KidKraft, Inc., Solowave Design Corp, or Solowave Design LP.<sup>1</sup>

20. KidKraft holds eight Bank Accounts in total, including a “**Main Operating Account**” with JPMorgan, which is primarily used for the day-to-day operating disbursements (automated clearing house transfers, wires, auto drafts) for KidKraft and its domestic affiliates, including taxes and other expenses. Funds are transferred to and from the various other Bank Accounts in the ordinary course on an as-needed basis. The Main Operating Account is subject to a deposit account

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<sup>1</sup> Each of the Canadian Corporate Debtors has a bank account for each of their respective disbursements, which accounts are not part of the Cash Management System. These accounts generally had minimal activity. These accounts will be repurposed for the uses specified in the Cash Management Motion.

control agreement in favor of GB Funding, LLC, in its capacity as the administrative agent under the Prepetition Credit Agreement (the “**Prepetition and DIP Agent**”).

21. Solowave Design LP holds four Bank Accounts at JPMorgan:

- (a) The “**SDL USD Factoring Account**”: This account is primarily used to collect receipts paid in USD from Solowave Design LP’s sales that are subject to the Solowave Receivables Sale Agreement (defined below). The SDL USD Factoring Account is subject to a deposit account control agreement in favor of Coface Finanz GmbH (“**Coface**”) and the Prepetition and DIP Agent.
- (b) The “**SDL USD Operating Account**”: This account is primarily used to collect receipts paid in USD on account of Solowave Design LP’s non-factored receivables. Unused amounts in the SDL USD Factoring Account are transferred into this account. The SDL USD Operating Account is subject to a deposit account control agreement in favor of the Prepetition and DIP Agent.
- (c) The “**SDL CAD Factoring Account**”: This account is primarily used to collect receipts paid in CAD from Solowave Design LP’s sales that are subject to the Solowave Receivables Sale Agreement. The SDL CAD Factoring Account is subject a deposit account control agreement in favor of Coface (defined below) and the Prepetition and DIP Agent.
- (d) The “**SDL CAD Operating Account**”: This account is primarily used to collect receipts paid in CAD on account of Solowave Design LP’s non-factored receivables. Unused amounts in the SDL CAD Factoring Account are transferred

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into this account. The SDL CAD Operating Account is subject to a deposit account control agreement in favor of the Administrative Agent.

22. As of the Petition Date, the Bank Accounts had a combined value of approximately \$3,510,000, with less than 10% being held in Solowave Design LP's Bank Accounts.

23. A more detailed description of each of the Bank Accounts, the relationship between them, and the general flow of funds in the Cash Management System is included in the Cash Management Motion, a copy of which is attached as **Exhibit "C"**.

24. In the ordinary course of business, the Chapter 11 Debtors maintain business relationships with each other and with certain of their non-debtor affiliates, conducting intercompany transactions from time-to-time that result in intercompany receivables and payables. The Chapter 11 Debtors track all fund transfers in their respective accounting systems through the centralized Cash Management System and can ascertain, trace, and account for all intercompany transactions and will continue to do so postpetition.

25. Among the Chapter 11 Debtors, intercompany transactions are made periodically to reimburse certain Chapter 11 Debtors for various expenditures associated with their businesses or to fund certain Chapter 11 Debtors' accounts in anticipation of certain upcoming expenditures, as needed. Transferring cash to the Main Operating Account allows the Chapter 11 Debtors to run their operations and financing activities from a centralized Bank Account. This system not only maximizes efficiency but also simplifies third-party interactions with the Chapter 11 Debtors as an enterprise.

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**B. The Canadian Debtors' Integrated Operations with the U.S.**

26. The Canadian Debtors are fully integrated with the Company's U.S. operations and managed by senior leadership from the U.S. In particular:

- (a) the Canadian Debtors are wholly-owned subsidiaries of KidKraft, a Delaware corporation;
- (b) each of the Canadian Corporate Debtors' directors and officers are U.S. residents and are directors or officers of KidKraft;
- (c) KidKraft and the Canadian Debtors' senior leadership is located in the U.S. and exercises primary strategic management and control of the Chapter 11 Debtors, including all of the Canadian Debtors;
- (d) Canadian sales make up approximately 7% of the Company's annual net revenue;
- (e) the Chapter 11 Debtors' only Employee in Canada (out of the Chapter 11 Debtors' 66 employees) is employed by KidKraft and not by any of the Canadian Debtors;
- (f) payroll processing for the one Canadian employee of KidKraft is processed in the U.S. through KidKraft's third-party payroll services provider (Ultimate Kronos Group, Inc.), directed by U.S.-based employees at KidKraft's headquarters in Dallas, Texas;
- (g) the controllers and administrators of all Bank Accounts, including Solowave Design LP's accounts, are not in Canada and are primarily based in the U.S.;

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- (h) the Canadian Debtors' overall financial position is managed on a consolidated basis by the Company's management team located in the U.S.;
- (i) the Chapter 11 Debtors (including the Canadian Debtors) operate an integrated, centralized Cash Management System to collect, transfer and disburse funds generated by their operations;
- (j) much of the Company's funded indebtedness is owed to U.S.-based lenders and governed by U.S. law; and
- (k) the Canadian Debtors primarily rely on the purchasing power and supplier relationships of the Chapter 11 Debtors in the U.S.

27. In summary, the Canadian Debtors are integrated members of the broader group of Chapter 11 Debtors that is centrally managed from an overall strategic and financial perspective by a management team in the U.S., with creditors looking to the parties in the U.S. for action on their contractual obligations.

### **C. Coface Matters**

28. As set out in my Initial Affidavit, KidKraft and Solowave Design LP have entered into Receivables Sales Agreements dated August 4, 2021 and April 21, 2022, respectively, with Coface, pursuant to which Coface purchases accounts receivable from KidKraft and Solowave Design LP (the "**KidKraft Receivables Sale Agreement**" and the "**Solowave Receivables Sale Agreement**", respectively, and together, the "**Receivables Sale Agreements**"). On April 20, 2022, Coface registered financing statements pursuant to the *Personal Property Security Act* (Ontario) and the *Personal Property Security Act* (Alberta) against Solowave Design LP and Solowave

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Design Inc. (two of the Canadian Debtors). Coface's Canadian financing statements cover the purchased accounts receivable, funds in the SDL USD Factoring Account and the SDL CAD Factoring Account, and other security as provided for under the Solowave Receivables Sale Agreement.

29. Coface has first ranking security over the purchased accounts receivable under the Receivables Sales Agreements. The Receivables Sale Agreements each include the following provision granting security (capitalized terms as defined therein, emphasis added):

10.1 In the event that the sale of the Purchased Receivables and their Related Assets contemplated herein is for any reason *not deemed to be a true sale thereof* despite the parties' intentions, and in any event, as security for all of the obligations of [KidKraft / Solowave Design LP], [KidKraft / Solowave Design LP] grants to [Coface] ...

30. As this provision indicates, Coface's security over the accounts receivable acts as a backstop in the event that its purchases of accounts receivable are found to not be "true sales". The Chapter 11 Debtors do not dispute that the sales of accounts receivable to Coface under the Receivables Sale Agreements were "true sales". Further, the Chapter 11 Debtors do not expect that any receivables generated postpetition will be subject to the Receivables Sale Agreements. Copies of the KidKraft Receivables Sale Agreement and the Solowave Receivables Sale Agreement are attached as **Exhibits "D"** and **"E"**, respectively.

#### **D. Creditors of the Canadian Debtors and the Canadian Business**

31. As described in the Initial Affidavit, the Canadian Debtors have certain liabilities in addition to their obligations as guarantors of the Chapter 11 Debtors' indebtedness under the Prepetition Credit Agreement. Based on a preliminary trial balance for the Canadian Debtors for

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the period ending April 30, 2024, as of that date, the Canadian Debtors (on a consolidated basis) had total liabilities of approximately CAD\$998,000, as follows (in approximate amounts):

- (a) Accounts payable: CAD\$834,500
- (b) Canadian sales tax accruals: CAD\$27,800
- (c) Canadian income tax accruals: CAD\$136,000.

32. The approximately CAD\$834,500 in accounts payable includes the following:<sup>2</sup>
- (a) approximately CAD\$749,000 was owing to ShingFai, a Chinese supplier;
  - (b) approximately CAD\$74,000 was accounts receivables refunds owing to one of the Canadian Debtors' Canadian customers (Costco); and
  - (c) approximately CAD\$10,500 was owing to FedEx Canada, a former supplier of logistics services to the Canadian Debtors.

33. In addition, as of April 30, 2024, KidKraft owed certain amounts to Mainfreight, the third-party logistics provider for the Canadian business. Immediately prior to the Petition Date, KidKraft made payment to Mainfreight to bring its account current.

### **PART III - RELIEF SOUGHT**

#### **A. Recognition of Foreign Main Proceedings**

34. The Foreign Representative seeks recognition of the Chapter 11 Cases as “foreign main proceedings” pursuant to Part IV of the CCAA.

35. Other than the Canadian Debtors, the remaining Chapter 11 Debtors are incorporated or formed under U.S. law, have their registered head offices and corporate headquarters in the U.S.,

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<sup>2</sup> Amounts below CAD\$2,000 are not included.



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carry out their businesses in the U.S., and have all, or substantially all, of their assets located in the U.S.

36. As described above, the Canadian Debtors are managed on a consolidated basis and are wholly reliant on the Chapter 11 Debtors for corporate, administrative, and back-office support. The Canadian Corporate Debtors have a registered office address in Canada (1565 Carling Avenue, #400, Ottawa, Ontario) through the services of a registered agent CT Corporation System for compliance purposes only. The Canadian operations are dependent on and integrated with the U.S. operations. The Canadian Debtors would not be able to function independently without the corporate functions performed by the Chapter 11 Debtors in the U.S.

37. Other than the Chapter 11 Proceedings, no other foreign proceeding (as defined in subsection 45(1) of the CCAA) in respect of KidKraft and the Canadian Debtors has been commenced.

**B. Stay of Proceedings in Canada**

38. By operation of the U.S. Bankruptcy Code, the Chapter 11 Debtors obtained the benefit of an automatic stay of proceedings upon filing the Petitions with the U.S. Court.

39. In issuing the Interim Stay Order, this Court granted a stay of proceedings in favour of KidKraft and the Canadian Debtors (including Solowave Design LP) and their respective officers and directors, in respect of their business and property in Canada.

40. In the proposed Initial Recognition Order and Supplemental Order, the Foreign Representative is seeking a similar stay of proceedings and extension of protections and authorizations granted pursuant to the Interim Stay Order.

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41. As set out in the Initial Affidavit, it is important for the Canadian Debtors to be protected by a stay of proceedings and from enforcement rights in Canada pursuant to a Canadian court order. This is critical to the preservation of the value of the business in Canada and the Chapter 11 Debtors' overall efforts to proceed with the Chapter 11 Cases and the completion of the Sale Transaction.

**C. Recognition of Certain U.S. Orders**

42. Pursuant to the proposed Supplemental Order, the Foreign Representative seeks recognition by this Court of the following First Day Orders that have been entered by the U.S. Court.

**(a) Foreign Representative Order**

43. A copy of the entered *Order (I) Authorizing KidKraft, Inc. to Act as Foreign Representative, and (II) Granting Related Relief* (the "**Foreign Representative Order**"), provided by the Chapter 11 Debtors' U.S. counsel, is attached hereto as **Exhibit "F"**.

44. The Foreign Representative Order authorizes KidKraft to act as the Foreign Representative on behalf of itself and the Canadian Debtors in these CCAA Part IV proceedings. I am advised by Justin Kanji of Osler that the form of order requested is similar to such orders granted in other cross-border proceedings.

45. I am advised by the Chapter 11 Debtors' U.S. counsel that a certified copy of the Foreign Representative Order has been obtained from the U.S. Court and is currently in transit to Osler, and will be provided to this Court as soon as it is available.

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**(b) Joint Administration Order**

46. A copy of the entered *Order Directing Joint Administration of the Debtors' Chapter 11 Cases* (the “**Joint Administration Order**”) is attached hereto as **Exhibit “G”**.

47. The Joint Administration Order consolidates the administration of the Chapter 11 Cases for procedural purposes only, pursuant to the terms and conditions as set out therein.

48. Given the integrated nature of the operations of the Chapter 11 Debtors, including the Canadian Debtors, joint administration of the Chapter 11 Cases provides significant administrative convenience without harming the substantive rights of any party in interest, and reduces fees and costs by avoiding duplicative filings and objections.

**(c) Claims Agent Retention Order**

49. A copy of the entered *Order Authorizing the Employment and Retention of Stretto, Inc. as Claims, Noticing, and Solicitation Agent* (the “**Claims Agent Retention Order**”) is attached hereto as **Exhibit “H”**.

50. The Claims Agent Retention Order authorizes Stretto Inc. (“**Stretto**”) — a chapter 11 administrator comprised of leading industry professionals with significant experience in both the legal and administrative aspects of large, complex Chapter 11 cases — to act as the Chapter 11 Debtors’ claims, noticing, and solicitation agent in the Chapter 11 Cases. The work to be performed by Stretto will include, among other things:

- (a) assisting the Chapter 11 Debtors with the preparation and distribution of all required notices and documents in accordance with the U.S. Bankruptcy Code and

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the U.S. Bankruptcy Rules in the form and manner directed by the Chapter 11 Debtors and/or the U.S. Court;

- (b) maintaining an official copy of the Chapter 11 Debtors' schedules of assets and liabilities and statements of financial affairs, listing the Chapter 11 Debtors' known creditors and the amounts owed thereto;
- (c) assisting in the dissemination of information to the public and responding to requests for administrative information regarding the Chapter 11 Cases as directed by the Chapter 11 Debtors or the U.S. Court;
- (d) assisting the Chapter 11 Debtors with plan solicitation services; and
- (e) managing and coordinating any distributions pursuant to a chapter 11 plan.

51. I believe Stretto's services, as authorized by the Claims Agent Retention Order, will ensure the efficient, orderly and fair treatment of creditors, equity security holders, and all parties in interest in the Chapter 11 Cases including with respect to the Canadian Debtors and the business in Canada.

**(d) Interim Customer Programs Order**

52. A copy of the entered *Interim Order (I) Authorizing the Debtors to (A) Maintain and Administer Their Customer Programs; (B) Renew, Replace, Implement, or Modify Their Customer Programs; and (C) Honor Their Obligations Related to the Customer Programs, and (II) Granting Related Relief* (the "**Interim Customer Programs Order**") is attached hereto as **Exhibit "I"**.

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53. The Interim Customer Programs Order, among other things, authorizes the Chapter 11 Debtors to: (a) maintain and administer certain of their customer programs, promotions, and practices (the “**Customer Programs**”); and (b) honour certain prepetition obligations related thereto.

54. The Chapter 11 Debtors have developed their brand and designed various marketing strategies to generate business in the face of sophisticated competition. Among these strategies are the Customer Programs, which are designed to enhance revenues by, among other things, encouraging repeat business and developing new customer relationships. As of the Petition Date, Customer Programs consist of various discounts, rebates, returns, and markdowns, all of which are considered when determining the transaction price. The Customer Programs offered are unique to each customer and may be contractual or discretionary depending on the customer and the circumstances. In general, the Chapter 11 Debtors offer (i) discounts that range from 0.5 percent to 10 percent of sales; (ii) rebates that range from 1 percent to 6 percent of sales; (iii) allowances to cover returns that range from 1 percent to 5 percent of sales; and (iv) markdowns that range from 0.5 percent to 5 percent of sales, in each case to a given customer. The majority of these Customer Programs are booked as deductions from invoices, and the remainder are paid through invoices received from customers.

55. The success of the Chapter 11 Debtors’ businesses is highly dependent upon the loyalty of the Chapter 11 Debtors’ customers. Consequently, continuation of the Customer Programs is vital to maintaining and maximizing the value of the Chapter 11 Debtors’ estates. If the Chapter 11 Debtors are unable to honor Customer Program obligations, the Chapter 11 Debtors’ brand could be immediately and irreparably harmed. Continued use of the Customer Programs, on the other

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hand, will enable the Chapter 11 Debtors to protect their customer base and maximize the value of their estates.

56. Once a final version of the Interim Customer Programs Order is obtained and issued in the U.S. Court, the Foreign Representative intends to return to this Court to seek recognition of such order.

**(e) Insurance Order**

57. A copy of the entered *Order (I) Authorizing the Debtors to (A) Continue Their Prepetition Insurance Coverage and Satisfy Prepetition Obligations Related Thereto; (B) Renew, Amend, Supplement, Extend, or Purchase Insurance Coverage on a Postpetition Basis in the Ordinary Course; and (C) Continue Their Prepetition Customs Bond Program and Satisfy Prepetition Obligations Related Thereto; (II) Modifying the Automatic Stay Solely With Respect to Workers' Compensation Claims; and (III) Granting Related Relief* (the “**Insurance Order**”) is attached hereto as **Exhibit “J”**.

58. The Insurance Order authorizes the Chapter 11 Debtors to maintain their existing insurance policies, pay prepetition obligations related thereto upon entry of the order renew, amend, supplement, extend, or purchase new insurance policies, and maintain their Customs Bond on a postpetition basis in the ordinary course of business.

59. It is essential that the Chapter 11 Debtors have the ability to continue or renew their insurance policies and enter into new insurance policies or agreements to preserve the value of their businesses. In many cases, regulations, laws, and contract provisions that govern the Chapter 11 Debtors' commercial activities require the types of coverage provided under the insurance policies.

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60. Further, the Chapter 11 Debtors, in the ordinary course of business, are required to maintain one or more bonds to assure the United States Customs and Border Protection Agency of their ability to pay applicable duties, taxes, and fees on account of their imports. As of the Petition Date, the Chapter 11 Debtors maintain one customs bond in the bond amount of approximately \$400,000 (the “**Customs Bond**”). Failure to provide, maintain, or timely replace the Customs Bond may prevent the Chapter 11 Debtors from importing essential products, which may create an interruption in the Chapter 11 Debtors’ business operations, and thus it is essential that the Chapter 11 Debtors be authorized to pay any prepetition and postpetition amounts in the ordinary course of business associated with the continuation, renewal, or extension of the Customs Bond.

**(f) Utilities Order**

61. A copy of the entered *Order (I) Approving the Debtors’ Proposed Adequate Assurance Payments for Future Utility Services; (II) Prohibiting Utility Companies from Altering, Discontinuing, or Refusing Services; (III) Approving the Debtors’ Proposed Procedures for Resolving Additional Adequate Assurance Requests; and (IV) Granting Related Relief* (the “**Utilities Order**”) is attached hereto as **Exhibit “K”**.

62. The Utilities Order, among other things: (a) approves the Chapter 11 Debtors’ proposed adequate assurance of payment for future utility services; (b) prohibits utility providers from altering, refusing, or discontinuing services; and (c) approves the Chapter 11 Debtors’ proposed procedures for resolving adequate assurance requests.

63. Certain companies (the “**Utility Companies**”) provide the Chapter 11 Debtors with traditional utility services (the “**Utility Services**”), such as electricity, gas, water, waste disposal, telecommunications, internet, and other similar services that the Chapter 11 Debtors utilize in the

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ordinary course of business and are necessary for the continued operation of their day-to-day affairs. Uninterrupted Utility Services are critical to the Chapter 11 Debtors' ability to operate and maintain the value of their businesses while maximizing value for the benefit of their estates. Should any Utility Company alter, refuse, or discontinue service, even for a brief period, the Chapter 11 Debtors' business operations could be significantly disrupted, which could immediately and irreparably harm and jeopardize the Chapter 11 Debtors' operations and strategic objectives. Accordingly, it is essential that the Utility Services continue uninterrupted during the Chapter 11 Cases.

**(g) Taxes and Fees Order**

64. A copy of the entered *Order (I) Authorizing the Debtors to Pay Certain Taxes and Fees and (II) Granting Related Relief* (the "**Taxes and Fees Order**") is attached hereto as **Exhibit "L"**.

65. The Taxes and Fees order authorizes the Chapter 11 Debtors to remit and pay (or use tax credits to offset) certain accrued and outstanding prepetition taxes and fees that will become payable during the pendency of the Chapter 11 Cases in the ordinary course of business.

66. In the ordinary course of business, the Chapter 11 Debtors collect, withhold, or incur property taxes, franchise taxes, and sales, use, and excise taxes (collectively, the "**Taxes and Fees**"). The Chapter 11 Debtors remit and pay the Taxes and Fees to various state, local, and national governments, including taxing authorities in the U.S. and Canada (collectively, the "**Authorities**"). The Chapter 11 Debtors remit and pay the Taxes and Fees through cheques and electronic funds transfers that are processed through their Banks and other financial institutions. The Chapter 11 Debtors may also receive tax credits from time-to-time for overpayments or refunds in respect of the Taxes and Fees, which the Chapter 11 Debtors generally use to offset



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against future Taxes and Fees or have the amount of such credits refunded to the Chapter 11 Debtors. As of the Petition Date, the Chapter 11 Debtors estimate that approximately \$292,000 in Taxes and Fees is accrued and is outstanding (approximately CAD\$26,000 in Canada), approximately \$144,000 of which will become due and payable within the first 21 days after the Petition Date.

67. That the payment of the Taxes and Fees, including by the Canadian Debtors, is necessary to avoid potential administrative difficulties is unquestionable. If the Taxes and Fees are not paid, the Authorities may attempt to take precipitous action, including additional state audits, lien filings, and lift stay motions. Only the prompt and regular payment of the Taxes and Fees will avoid these and other unnecessary governmental actions.

**(h) Interim Critical Vendors Order**

68. A copy of the entered *Interim Order (I) Authorizing the Debtors to Pay (A) Critical Vendors, (B) Lien Claimants, and (C) 503(b)(9) Claimants; (II) Confirming Administrative Expense Priority of Outstanding Orders; and (III) Granting Related Relief* (the “**Interim Critical Vendors Order**”) is attached hereto as **Exhibit “M”**.

69. The Interim Critical Vendors Order, among others things, authorizes the Chapter 11 Debtors to pay in the ordinary course of business, based on their sound business judgment, prepetition amounts owed to: (a) critical vendors; (b) lien claimants, and (c) vendors from whom the Chapter 11 Debtors received goods within 20 days before the Petition Date in the ordinary course of business (collectively, the “**Vendors**,” and the Vendors’ prepetition claims, collectively, the “**Vendor Claims**”). The Interim Critical Vendors Order also confirms the administrative expense priority status and treatment of the Chapter 11 Debtors’ outstanding orders.

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70. The Chapter 11 Debtors rely on continuing access to, and relationships with, the Vendors, which provide the Chapter 11 Debtors with goods and services that are critical to their ongoing business operations, including software and internet services, marketing and brand awareness services, and shipping services, among others. Any disruption in the Chapter 11 Debtors' access to these services would have significant and detrimental economic and operational impacts on the Chapter 11 Debtors' businesses.

71. Accordingly, it is critical that the Chapter 11 Debtors, including the Canadian Debtors, pay certain of the Vendor Claims so that the Chapter 11 Debtors, including the Canadian Debtors, can maintain the going concern value of the Chapter 11 Debtors' business and minimizing operational degradation as they work to effect a comprehensive reorganization of their business under Chapter 11 of the U.S. Bankruptcy Code.

**(i) Interim Cash Management Order**

72. A copy of the entered *Interim Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System and Maintain Existing Bank Accounts, (B) Continue Using Existing Checks and Business Forms, (C) Maintain Their Corporate Card Program, and (D) Continue Intercompany Transactions and (II) Granting Related Relief* (the "**Interim Cash Management Order**") is attached hereto as **Exhibit "N"**.

73. The Interim Cash Management Order, among other things, authorizes the Chapter 11 Debtors to: (a) continue to operate their Cash Management System and maintain existing Bank Accounts; (b) continue using their existing business forms and cheques; (c) maintain their corporate card program; and (d) continue to engage in intercompany transactions.

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74. The Canadian Debtors are dependent on the continued operation of the Cash Management System (as described above) to collect, transfer, and disburse funds and to facilitate cash monitoring, forecasting, and reporting. The Canadian Debtors' continued access to the Cash Management System is important to meet immediate-term obligations and preserve the value of the business in Canada. Any disruption to the Cash Management System could have an immediate and significant effect on the Canadian Debtors to the detriment of all stakeholders. The Interim Cash Management Order in the Chapter 11 Cases addresses these issues. Further, the Interim Cash Management Order ensures that the Chapter 11 Debtors can (and will) accurately document, record, and track postpetition transactions occurring within the Cash Management System, for the benefit of their estates.

**(j) Employee Wages Order**

75. A copy of the entered *Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief* (the "**Employee Wages Order**") is attached hereto as **Exhibit "O"**.

76. The Employee Wages Order, among other things, authorizes the Chapter 11 Debtors to:

- (a) pay prepetition wages, salaries, other compensation, and reimbursable expenses; and
- (b) continue benefits programs.

77. The Chapter 11 Debtors' employees (the "**Employees**"), including the one Employee of KidKraft resident in Canada, perform a wide variety of functions that support the Chapter 11 Debtors' operations and will be critical to the administration of the Chapter 11 Cases and to maximizing the value of the Chapter 11 Debtors' estates. Their skills, knowledge, and

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understanding of the Chapter 11 Debtors' operations are essential to preserving operational stability and efficiency during the Chapter 11 Cases. Without the continued, uninterrupted services of the Employees, the Chapter 11 Debtors' business operations will suffer immediate and irreparable harm.

78. The Employee Wages Order authorizes the Chapter 11 Debtors to continue their prepetition compensation and benefits programs in the ordinary course of business and consistent with past practices. The Employee Wages Order also authorizes the Chapter 11 Debtors to continue paying wages to Employees of their non-Chapter 11 Debtor subsidiaries in China in the ordinary course of business on a postpetition basis, as such Employees have skills and knowledge of the Chapter 11 Debtors' operations in China that will be essential to keeping the Chapter 11 Debtors' operations running during the course of the Chapter 11 Cases.

**(k) Interim DIP Order**

79. A copy of the entered *Interim Order (I) Authorizing Debtors and Debtors in Possession to Obtain Postpetition Senior Secured Superpriority Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the "**Interim DIP Order**") is attached hereto as **Exhibit "P"**.

80. As described in Part III of the Initial Affidavit, the Chapter 11 Debtors' funded secured debt arises from the Prepetition Credit Agreement, which was most recently amended: (a) on January 31, 2024 by the Fifth Amendment in connection with the Debt Sale to 1903 Partners, LLC (the "**Prepetition and DIP Lender**"), and together with the Prepetition and DIP Agent, "**Gordon**

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**Brothers**”), which increased the available priority revolving commitments to \$26.8 million and extended the maturity of the term loans under the Prepetition Credit Agreement from June 30, 2023, to June 30, 2024; and (b) on May 9, 2024 by the Sixth Amendment which increased the total available priority revolving commitments to \$31.5 million. All of the Chapter 11 Debtors’ cash on hand as of the Petition Date (the “**Cash Collateral**”) and any proceeds of the of the Chapter 11 Debtors’ assets and property other than Excluded Assets, Excluded Receivables and Consumer Goods (as each such term is defined in the Prepetition Credit Agreement) are subject to the first ranking liens of the Gordon Brothers.

81. The Chapter 11 Debtors’ postpetition operations in the near-term will not generate sufficient cash to continue operations in the ordinary course while funding the expenses associated with the Chapter 11 Cases and these CCAA Part IV proceedings. Access to cash is essential to ensure the viability of the Company as a going concern and to preserve the value of the Chapter 11 Debtors’ estates. The harm caused by a failure to meet liquidity needs could destabilize the Company’s business operations and jeopardize the Sale Transaction to the Purchaser, which is described in Part IV of the Initial Affidavit.

82. Accordingly, the Chapter 11 Debtors require immediate access to debtor-in-possession financing and authority to use cash collateral to maintain sufficient liquidity to continue to operate and consummate the Sale Transaction to maximize value for their stakeholders. Pursuant to the restructuring support agreement (“**RSA**”) entered into on April 25, 2024 by the Chapter 11 Debtors, Gordon Brothers, MidOcean and the Purchaser, among other things, Gordon Brothers agreed to provide such debtor-in-possession financing (the “**DIP Facility**”). The RSA sets forth the commitments of the parties to implement the proposed Sale Transaction through the Plan, including the DIP Facility in accordance with a term sheet (the “**DIP Term Sheet**”). A copy of the

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RSA is attached as Exhibit “B” to the First Day Declaration, which is attached hereto as **Exhibit “B”**. A copy of the DIP Term Sheet is attached as Exhibit “A” to the Interim DIP Order, which is attached hereto as **Exhibit “P”**.

83. The Interim DIP Order, among other things authorizes: (a) KidKraft as borrower to receive a senior secured superpriority multi-draw debtor-in-possession term loan credit facility (the DIP Facility) from the Prepetition and DIP Lender on the terms set forth in the DIP Term Sheet and in accordance with an approved budget (included as Exhibit “B” to the Interim DIP Order); and (b) the Chapter 11 Debtors to use, on a consensual basis, the Cash Collateral of the Gordon Brothers under the Prepetition Credit Agreement.

84. Each of the Canadian Debtors, as well as other affiliates of KidKraft, are guarantors and pledgors under the DIP Facility.

85. The DIP Facility consists of an aggregate principal amount of:

- (a) \$10.5 million, consisting of (i) \$4.0 million of interim commitment (available upon entry of the Interim DIP Order) (the “**Interim DIP Commitment**”) and (ii) an incremental \$6.5 million of final commitment (available upon entry of a final order) (the “**Final DIP Commitment**”, and together, the “**New Money DIP Loans**”); and
- (b) \$23.3 million of roll-up loans (the “**Limited Roll-Up**”), plus the consensual use of the Cash Collateral.

86. Given that substantially all of the Chapter 11 Debtors’ unrestricted cash is Cash Collateral, the Chapter 11 Debtors need access to such Cash Collateral and the proceeds of the DIP Facility to operate their businesses in the ordinary course during these Chapter 11 Cases.

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87. In exchange for this essential liquidity provided by the New Money DIP Loans and the Cash Collateral, the Chapter 11 Debtors agreed to certain reasonable protections for the Gordon Brothers, including superpriority liens on collateral, payment of interest and fees on amounts borrowed, and a limited “roll-up” of approximately \$23.3 million (the “**Limited Roll-Up Amount**”) of prepetition financing under the Prepetition Credit Agreement which provided the Chapter 11 Debtors with a liquidity runway to file the Chapter 11 Cases and maximize the value of their estates. The proposed Limited Roll-Up Amount is limited to the new capital that the prepetition secured parties, Gordon Brothers, provided the Chapter 11 Debtors after the Debt Sale closed on January 31, 2024. Importantly, this liquidity provided a runway for the Chapter 11 Debtors to commence the sale process, which in turn led to the Purchaser’s offer and the proposed Sale Transaction and has allowed the Chapter 11 Debtors to maintain their operations and preserve the value of their estates leading up to the Chapter 11 Cases. The Limited Roll-Up is a material component of the structure of the DIP Facility and was required by the Prepetition and DIP Lender as a condition to its commitment to provide postpetition financing and its consent to the Chapter 11 Debtors’ use of Cash Collateral. Additionally, the proposed Limited Roll-Up is reasonable in light of the ratio of new money provided by the Prepetition and DIP Lender to the Limited Roll-Up Amount.

88. The proceeds from the proposed DIP Facility will be used for, among other things, making payments integral to the Chapter 11 Debtors’ business operations, paying administrative expenses associated with the Chapter 11 Cases and these CCAA Part IV proceedings, and satisfying working capital needs in the ordinary course of business. Moreover, the liquidity to be provided under the DIP Facility, combined with access to existing Cash Collateral, will enable the Chapter 11 Debtors to: (i) fund their operations during the course of the Chapter 11 Cases and these CCAA Part IV

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proceedings, including the administrative costs; (ii) ensure that value is preserved during the course of the Chapter 11 Debtors' Chapter 11 Cases; and (iii) consummate the Sale Transaction and confirm the Plan to maximize value for the Chapter 11 Debtors' estates.

89. Because the Chapter 11 Debtors will continue their pre-filing Cash Management System, funds available under the DIP Facility will indirectly flow to the Canadian Debtors to enable their continued operation during these CCAA Part IV proceedings.

90. I believe that the amount available to draw under the DIP Facility upon the entry of the Interim DIP Order addresses the Chapter 11 Debtors' (including the Canadian Debtors') immediate liquidity needs during the case and prior to the U.S. Court approving the DIP Facility on a final basis.

91. The DIP Facility is the product of arm's-length negotiations and represents the best available option for the Chapter 11 Debtors and will benefit all parties in interest. Prior to the Petition Date, the Chapter 11 Debtors and their advisors contacted other parties to seek proposals for third-party postpetition financing. No potential lenders were willing to provide financing on an unsecured or junior lien basis. Financing on a postpetition basis is not otherwise available and is not available on terms more favourable than the terms contained in the DIP Facility.

92. The amounts owing by the Chapter 11 Debtors under the DIP Facility are proposed to be secured in Canada by the DIP Charge (defined below) on the Canadian Property, ranking in priority to all other secured and unsecured claims in Canada, other than the Administration Charge and the D&O Charge (each as defined below), and subject to the relative priority of liens as set forth in the Interim DIP Order.



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93. The Chapter 11 Debtors do not dispute that the sales of accounts receivable to Coface under the Receivables Sales Agreements were “true sales”. Accordingly, the relief granted under the Interim DIP Order will not materially prejudice Coface as there is no dispute as to the priority of its liens on its separate collateral, as such receivables are the property of Coface and not the Chapter 11 Debtors.

94. I understand that KSV Restructuring, in its capacity as the proposed Information Officer, will be filing a pre-appointment report to the Court that will, among other things, include an analysis of the attributes of the DIP Facility, including its costs and the Limited Roll-Up feature, and the proposed Information Officer’s conclusion that the DIP Facility is reasonable and appropriate in the circumstances.

95. The Interim DIP Order only authorizes the borrowing of the New Money DIP Loans up to an aggregate amount equal to the Interim DIP Commitment. Once a final order in respect of the DIP Facility — which provides for the borrowing of the Final DIP Commitment and the Limited Roll-Up Amount — is obtained and issued in the U.S. Court, the Foreign Representative intends to return to this Court to seek recognition of such order.

96. I am advised by the Chapter 11 Debtors’ U.S. counsel and believe that although the U.S. Trustee for the Northern District of Texas filed an objection to the entry of the Interim DIP Order, these issues were either resolved consensually or through a revised form of order, which was consistent with the rulings of the U.S. Court and entered as the Interim DIP Order, including that the Limited Roll-Up Amount be subject to approval at the second day hearing in the U.S. Court.

97. Additional details about the DIP Facility and the Interim DIP Order are included in the DIP Motion, a copy of which is attached as **Exhibit “Q”**.

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**D. Appointment of Information Officer**

98. As part of its application, the Foreign Representative is seeking to appoint KSV Restructuring as the Information Officer in this proceeding. KSV Restructuring is a licensed trustee in bankruptcy in Canada and its principals have acted as an information officer in several previous ancillary proceedings (both under Part IV of the CCAA as well as the former section 18.6 of the CCAA).

99. KSV Restructuring has consented to acting as Information Officer in this proceeding. A copy of KSV Restructuring's consent to act as Information Officer is attached hereto as **Exhibit "R"**.

**E. Administration Charge**

100. The proposed Supplemental Order provides that the Information Officer, along with its counsel, and KidKraft and the Canadian Debtors' Canadian counsel will be granted an administration charge with respect to their fees and disbursements up to a maximum amount of CAD\$750,000 (the "**Administration Charge**") on the Canadian Property. The Administration Charge is proposed to have first priority over all other charges on the Canadian Property.

101. I believe the amount of the Administration Charge to be reasonable in the circumstances, having regard to the size and complexity of these proceedings and the roles that will be required of the proposed Information Officer, its legal counsel, and KidKraft and the Canadian Debtors' Canadian counsel.

**F. D&O Charge**

102. I am advised by Justin Kanji of Osler and believe that, in certain circumstances, directors can be held liable for certain obligations of a company owing to employees and government entities, which may include unpaid wages and vacation pay, together with unremitted retail sales, goods and services, and harmonized sales taxes.

103. It is my understanding that the directors and officers of the Canadian Corporate Debtors (and by extension, in effect, Solowave Design LP) are potential beneficiaries of director and officer liability insurance maintained by the Company (the “**D&O Insurance**”) with an aggregate coverage limit of \$21 million. While the D&O Insurance insures directors and officers of the Canadian Corporate Debtors (and by extension, in effect, Solowave Design LP) for certain claims that may arise against them in such capacity as directors and/or officers, that coverage is not absolute. Rather, it is subject to several exclusions and limitations which may result in there being no coverage or insufficient coverage for potential liabilities. It is unclear whether the D&O Insurance provides sufficient coverage against the potential liability that the directors and officers of the Canadian Corporate Debtors (and by extension, in effect, of Solowave Design LP) could incur during these CCAA Part IV proceedings.

104. In light of the potential liabilities and the potential insufficiency of available insurance and the need for the continued service of the directors and officers of the Canadian Corporate Debtors (and by extension, in effect, of Solowave Design LP) in this proceeding, KidKraft, as the Foreign Representative, seeks the granting of a charge on the property and assets of the Canadian Debtors in favour of the directors and officers of the Canadian Corporate Debtors (and by extension, in effect, Solowave Design LP) in the maximum amount of CAD \$100,000 (the “**D&O Charge**”).

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105. The D&O Charge is necessary to secure the indemnity obligations of KidKraft and the Canadian Debtors to their directors and officers in respect of obligations and liabilities that such directors and officers may incur during this proceeding in their capacities as directors and officers. The D&O Charge would only be relied upon to the extent of the insufficiency of the existing D&O Insurance in covering any exposure of the directors and officers of the Canadian Debtors (and by extension, in effect, of Solowave Design LP).

106. The D&O Charge is proposed to rank in priority to all other secured and unsecured claims, other than the Administration Charge over the Canadian Property.

107. The amount of the proposed D&O Charge has been estimated, in consultation with the proposed Information Officer, with reference to the Canadian Debtors' federal and provincial tax liability exposure. I believe the amount of the proposed D&O Charge to be reasonable in the circumstances.

#### **G. DIP Charge**

108. The amounts owing by the Chapter 11 Debtors under the DIP Facility are proposed to be secured by, among other things, Court-ordered charges on the Canadian Property that rank in priority to all secured and unsecured claims and are subject to the relative priority of liens as set forth in the Interim DIP Order on the Canadian Property, but subordinate to the proposed Administration Charge and D&O Charge (the "**DIP Charge**").

### **PART IV - CONCLUSION**

109. I believe that the relief sought in the proposed Initial Recognition Order and Supplemental Order is necessary to protect and preserve the operations and value of the Company's business in Canada, while the Chapter 11 Debtors, including the Canadian Debtors, pursue a comprehensive

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and coordinated restructuring in the Chapter 11 Cases, with a view to emerging as a strong and sustainable enterprise for the benefit of a broad range of stakeholders.

**SWORN BEFORE ME** over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg 431/20, on May 15, 2024, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in Dallas in the State of Texas.



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EMILIE DILLON  
Commissioner for Taking Affidavits  
(or as may be)



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**GEOFFREY WALKER**

THIS IS **EXHIBIT “J”** REFERRED TO IN THE AFFIDAVIT OF  
GEOFFREY WALKER SWORN BEFORE ME over video  
teleconference this 11<sup>th</sup> day of July, 2024 pursuant to O. Reg 431/20,  
Administering Oath or Declaration Remotely. The affiant was located in  
the City of Dallas, in the State of Texas, while the Commissioner was  
located in the City of Toronto, in the Province of Ontario.



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Commissioner for Taking Affidavits  
EMILIE DILLON (LSO # 85199L)

Court File No. CV-24-00720035-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF KIDKRAFT, INC., SOLOWAVE DESIGN  
HOLDINGS LIMITED, SOLOWAVE DESIGN INC., SOLOWAVE  
INTERNATIONAL INC. AND SOLOWAVE DESIGN LP

APPLICATION OF KIDKRAFT, INC. UNDER SECTION 46 OF THE  
*COMPANIES CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED

Applicant

**THIRD AFFIDAVIT OF GEOFFREY WALKER  
(Recognition Order (Bar Dates Order, Second Interim DIP Order, and  
Final Customer Programs Order))**

**(Sworn June 17, 2024)**

I, Geoffrey Walker, of the City of Dallas, in the State of Texas, MAKE OATH AND SAY:

1. I am the Chief Executive Officer and President of KidKraft, Inc. (“**KidKraft**”), and together with its debtor and non-debtor affiliates, the “**Company**”). I joined the Company in 2019 and have served in my current role since that time.
2. As Chief Executive Officer and President of KidKraft, I am familiar with, and have personal knowledge regarding, the Chapter 11 Debtors’ (defined below) businesses, day-to-day operations, financial affairs, and books and records, including those of Solowave Design Holdings Limited, Solowave International Inc. and Solowave Design Inc. (collectively, the “**Canadian Corporate Debtors**”), and Solowave Design LP (together with the Canadian Corporate Debtors, the “**Canadian Debtors**”). As such, I have personal knowledge of the matters deposed herein. Where I have relied on other sources of information, I have so stated and believe them to be true.

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In preparing this affidavit (the “**Third Affidavit**”), I have also consulted with the Company’s senior management team, and financial and legal advisors. The Company does not waive or intend to waive any applicable privilege by any statement in this Third Affidavit.

3. KidKraft, the Canadian Debtors, and six other debtors and debtors in possession (collectively, the “**Chapter 11 Debtors**”) recently filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code with the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “**U.S. Court**”). The cases commenced by the Chapter 11 Debtors in the U.S. Court are referred to herein as the “**Chapter 11 Cases**”.

4. I swear this Third Affidavit in support of a motion by KidKraft in its capacity as the foreign representative of the Chapter 11 Debtors (in such capacity, the “**Foreign Representative**”), for an order (the “**Third Recognition Order**”), among other things:

- (a) recognizing and enforcing the Bar Dates Order, the Second Interim DIP Order and the Final Customer Programs Order (each as defined below) entered by the U.S. Court, pursuant to section 49 of the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCAA**”); and
- (b) such further and other relief as counsel may request and this Honourable Court may grant.

5. I previously swore an initial affidavit on May 10, 2024 (the “**Initial Affidavit**”) and a second affidavit on May 15, 2024 (the “**Second Affidavit**”) in support of the Foreign Representative’s application for the Interim Stay Order, Initial Recognition Order, and Supplemental Order (all defined below). Copies of the Initial Affidavit and the Second Affidavit,



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without exhibits, are attached hereto as **Exhibits “A”** and **“B”**, respectively. Capitalized terms used and not otherwise defined in this Third Affidavit have the meanings given to them in the Initial Affidavit and Second Affidavit. Unless otherwise indicated, dollar amounts referenced in this Third Affidavit are references to United States Dollars.

**A. Background**

6. On May 10, 2024 (the **“Petition Date”**), each of the Chapter 11 Debtors filed voluntary filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code with the U.S. Court. The Chapter 11 Cases have been assigned to the Honourable Judge Michelle V. Larson.

7. On May 10, 2024, the Chapter 11 Debtors filed several first day motions and applications with the U.S. Court (collectively, the **“First Day Motions”**).

8. The U.S. Court entered the following interim and/or final orders (the **“First Day Orders”**):

- (a) *Order (I) Authorizing KidKraft, Inc. to Act as Foreign Representative and (II) Granting Related Relief;*
- (b) *Order Directing Joint Administration of the Debtors’ Chapter 11 Cases;*
- (c) *Order Authorizing the Employment and Retention of Stretto, Inc. as Claims, Noticing, and Solicitation Agent (the **“Claims Agent Retention Order”**);*
- (d) *Interim Order (I) Authorizing the Debtors to (A) Maintain and Administer Their Customer Programs; (B) Renew, Replace, Implement, or Modify Their Customer Programs; and (C) Honor Their Obligations Related to the Customer Programs, and (II) Granting Related Relief (the **“Interim Customer Programs Order”**);*
- (e) *Order (I) Authorizing the Debtors to (A) Continue Their Prepetition Insurance Coverage and Satisfy Prepetition Obligations Related Thereto; (B) Renew, Amend, Supplement, Extend, or Purchase Insurance Coverage on a Postpetition Basis in the Ordinary Course; and (C) Continue Their Prepetition Customs Bond Program and Satisfy Prepetition Obligations Related Thereto; (II) Modifying the Automatic Stay Solely With Respect to Workers’ Compensation Claims; and (III) Granting Related Relief;*

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- (f) *Order (I) Approving the Debtors' Proposed Adequate Assurance Payments for Future Utility Services; (II) Prohibiting Utility Companies From Altering, Discontinuing, or Refusing Services; (III) Approving the Debtors' Proposed Procedures for Resolving Additional Adequate Assurance Requests; and (IV) Granting Related Relief;*
- (g) *Order (I) Authorizing the Debtors to Pay Certain Taxes and Fees and (II) Granting Related Relief;*
- (h) *Interim Order (I) Authorizing the Debtors to Pay (A) Critical Vendors, (B) Lien Claimants, and (C) 503(B)(9) Claimants; (II) Confirming Administrative Expense Priority of Outstanding Orders; and (III) Granting Related Relief;*
- (i) *Interim Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System and Maintain Existing Bank Accounts, (B) Continue Using Existing Checks and Business Forms, (C) Maintain Their Corporate Card Program, and (D) Continue Intercompany Transactions, and (II) Granting Related Relief;*
- (j) *Order (I) Authorizing the Debtors to (A) Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief; and*
- (k) *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Senior Secured Superpriority Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens And Providing Superpriority Administrative Expense Status, (IV), Granting Adequate Protection to the Prepetition Secured Lenders, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief (the "**First Interim DIP Order**").*

9. By order dated May 10, 2024, the Ontario Superior Court of Justice (Commercial List) (the "**Ontario Court**") granted an interim stay of proceeding in respect of KidKraft and the Canadian Debtors, and their respective directors and officers (the "**Interim Stay Order**").

10. Subsequently, by order dated May 17, 2024, the Ontario Court recognized the Chapter 11 Cases as "foreign main proceedings", recognized the appointment of the Foreign Representative, and granted related stays of proceeding in favour of the Chapter 11 Debtors (the "**Initial**

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**Recognition Order**”). By further order dated May 17, 2024, the Ontario Court recognized the First Day Orders (the “**Supplemental Order**”). In addition, the Supplemental Order appointed KSV Restructuring Inc. as the information officer in these CCAA Part IV proceedings (in such capacity, the “**Information Officer**”), granted an Administration Charge in the amount of CAD \$750,000.00 in favour of Canadian counsel to the Chapter 11 Debtors, the Information Officer and counsel for the Information Officer, a D&O Charge in the amount of CAD\$100,000, and a DIP Charge for advances under the DIP Facility (defined below). Copies of the Initial Recognition Order, the Supplemental Order and Justice Cavanagh’s endorsement in respect of same are attached as **Exhibits “C”, “D” and “E”**, respectively.

11. Background information with respect to the Chapter 11 Debtors, including KidKraft and the Canadian Debtors, and the reasons for the commencement of the Chapter 11 Cases, are set out in the Initial Affidavit, the Second Affidavit, and the declaration I submitted on May 10, 2024 to the U.S. Court in support of the First Day Motions.

**B. Update on Chapter 11 Cases**

12. Since I swore the Initial Affidavit and Second Affidavit, the Chapter 11 Debtors continue to advance their restructuring objectives and continue to operate in the ordinary course as contemplated in the Chapter 11 Cases. During this period, the Chapter 11 Debtors have engaged with their vendors, creditors, employees, customers, landlords and other stakeholders to stabilize their post-filing operations.

13. On May 23, 2024, the Office of the United States Trustee for the Northern District of Texas (the “**U.S. Trustee**”) appointed an official unsecured creditors’ committee (the “**Committee**”), consisting of:

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- (a) Fiona Yao of Dongguan Shing Fai Furniture Co. Ltd. (a Chinese supplier to the Chapter 11 Debtors and an unsecured creditor of the Canadian Debtors); and
- (b) Anna Liu of Kong Richs Furniture Vietnam Co. Ltd (a Vietnamese supplier to the Chapter 11 Debtors).

14. Following the Committee's appointment, the Chapter 11 Debtors agreed to adjourn the hearing of the motions seeking the Second Day Orders (as defined below) from June 5 to June 13, 2024 (the "**Second Day Hearing**"). In order to adjourn the Second Day Hearing and consistent with the form of budget attached to the First Interim DIP Order, the Chapter 11 Debtors required additional funding under the DIP Facility (as defined below) and sought and obtained the Second Interim DIP Order (as defined below), discussed in greater detail below.

15. On June 10, 2024, the Chapter 11 Debtors filed their (a) schedules of assets and liabilities, (b) statements of financial affairs, (c) schedules of current income and expenditures, and (d) statements of executory contracts and unexpired leases (collectively, the "**Schedules**").

16. Also on June 10, 2024, the U.S. Court entered the following final orders, as no objections had been filed in respect thereof:

- (a) *Final Order (I) Authorizing the Debtors to (A) Maintain and Administer Their Customer Programs; (B) Renew, Replace, Implement, or Modify Their Customer Programs; and (C) Honor Their Obligations Related to the Customer Programs, and (II) Granting Related Relief* (the "**Final Customer Programs Order**"); and
- (b) *Order (I) Establishing Bar Dates and Procedures and (II) Approving the Form and Manner of Notice Thereof* (the "**Bar Dates Order**").

17. On June 11, 2024, the U.S. Court entered the following interim order:

- (a) *Second Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507 and Fed. R. Bankr. P. 2002, 4001, and 9014 (I) Authorizing Debtors and Debtors*

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*in Possession to Obtain Postpetition Senior Secured Superpriority Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief (the “**Second Interim DIP Order**”).*

18. Stretto, Inc. (“**Stretto**”), which was authorized to act as the Chapter 11 Debtors’ claims, noticing and solicitation agent in the Chapter 11 Cases by the Claims Agent Retention Order (including in respect of Canadian creditors), posted on its website for the Chapter 11 Cases copies of the Final Customer Programs Order and the Bar Dates Order on June 10, 2024, and the Second Interim DIP Order on June 11, 2024. Copies of the Final Customer Programs Order, the Bar Dates Order and the Second Interim DIP Order are attached as **Exhibits “F”, “G” and “H”**, respectively.

19. In light of continued discussions between the Chapter 11 Debtors, the Committee, and certain other key stakeholders, on June 12, 2024, the Chapter 11 Debtors agreed to adjourn the Second Day Hearing from June 13 to June 17.

20. Following further discussions and a potential global resolution, on June 17, 2024, the Chapter 11 Debtors further adjourned the Second Day Hearing to June 21.

### **C. The Third Recognition Order**

21. Pursuant to the proposed Third Recognition Order, the Foreign Representative seeks recognition by the Ontario Court of the Bar Dates Order, the Second Interim DIP Order, and the Final Customer Programs Order. The Second Interim DIP Order and the Final Customer Programs Order are further interim and final versions, respectively, of the First Interim DIP Order and the

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Interim Customer Programs Order that were initially granted on an interim basis by the U.S. Court and were previously recognized by the Ontario Court pursuant to the Supplemental Order.

**(a) Second Interim DIP Order**

22. As described in the Initial Affidavit and Second Affidavit, the Chapter 11 Debtors' post-petition operations in the near-term will not generate sufficient cash to continue operations in the ordinary course while funding the expenses associated with the Chapter 11 Cases and these CCAA Part IV proceedings. Accordingly, pursuant to the restructuring support agreement (the "**RSA**") entered into by the Chapter 11 Debtors, 1903 Partners, LLC (the lender under the Prepetition Credit Agreement, the "**Prepetition and DIP Lender**"), GB Funding, LLC (the administrative agent under the Prepetition Credit Agreement, the "**Prepetition and DIP Agent**"), and together with the Prepetition and DIP Lender, "**Gordon Brothers**"), MidOcean and Backyard Products, LLC (the "**Purchaser**"), Gordon Brothers agreed to provide a multi-draw debtor-in-possession term loan facility (the "**DIP Facility**") to meet the Chapter 11 Debtors' liquidity needs. Access to cash is essential to ensure the viability of the Company as a going concern, ensure the consummation of the Sale Transaction to the Purchaser, and to preserve the value of the Chapter 11 Debtors' estates. Because the Chapter 11 Debtors will continue their pre-filing Cash Management System, funds available under the DIP Facility will indirectly flow to the Canadian Debtors to enable their continued operation during these CCAA Part IV proceedings.

23. The First Interim DIP Order and the Second Interim DIP Order, among other things, authorize: (a) KidKraft as borrower to receive senior secured super-priority priming debtor-in-possession loans (each, a "**DIP Loan**" and in the aggregate, the "**DIP Loans**") from the Prepetition and DIP Lender on the terms set forth in the DIP Term Sheet and in accordance with an approved budget (included as Exhibit "B" to the First Interim DIP Order); and (b) the Chapter 11 Debtors to

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use, on a consensual basis, the Cash Collateral of Gordon Brothers under the Prepetition Credit Agreement.

24. The Second Interim DIP Order includes certain important differences from the First Interim DIP Order, including, most notably:

- (a) increasing the interim commitment under the DIP Facility from \$4.0 million to \$5.5 million, available upon entry of the Second Interim DIP Order (the “**Interim DIP Commitment**”);
- (b) decreasing the incremental final commitment under the DIP Facility from \$6.5 million to \$5.0 million, available upon entry of the Final DIP Order (as defined below) (the “**Final DIP Commitment**”); and
- (c) providing a deadline for the Committee to serve and file written objections to the entry of the Final DIP Order of June 11, 2024.

25. Accordingly, following the entry of the Second Interim DIP Order, the DIP Facility consists of an aggregate principal amount of:

- (a) \$10.5 million, consisting of the Interim DIP Commitment and the Final DIP Commitment (collectively, the “**New Money DIP Loans**”);
- (b) \$23.3 million of Prepetition Obligations, which will be deemed to have been advanced and shall convert into DIP Loans on a dollar-for dollar cashless basis upon entry of the proposed Final DIP Order (the “**Limited Roll-Up**”); and
- (c) use of the Cash Collateral from the time of the entry of the First Interim DIP Order until the Carve-Out Termination Date (as such term is defined in the Second Interim DIP Order and the proposed Final DIP Order).

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26. As noted in the Second Affidavit, the proceeds from the proposed DIP Facility will be used for, among other things, making payments integral to the Chapter 11 Debtors' business operations, paying administrative expenses associated with the Chapter 11 Cases and these CCAA Part IV proceedings, and satisfying working capital needs in the ordinary course of business. Moreover, the liquidity to be provided under the DIP Facility, combined with access to existing Cash Collateral, will enable the Chapter 11 Debtors to: (i) fund their operations during the course of the Chapter 11 Cases and these CCAA Part IV proceedings, including the administrative costs; (ii) ensure that value is preserved during the course of the Chapter 11 Debtors' Chapter 11 Cases; and (iii) consummate the Sale Transaction and confirm the Plan to maximize value for the Chapter 11 Debtors' estates.

27. Because the Chapter 11 Debtors will continue their pre-filing Cash Management System, funds available under the DIP Facility will indirectly flow to the Canadian Debtors to enable their continued operation during these CCAA Part IV proceedings.

28. I believe that the amount available to draw under the DIP Facility upon the entry of the Second Interim DIP Order addresses the Chapter 11 Debtors' (including the Canadian Debtors') immediate liquidity needs during the case and prior to the U.S. Court entering the proposed Final DIP Order.

29. In its pre-appointment report to the Ontario Court, dated May 16, 2024, the (then proposed) Information Officer included an analysis of the attributes of the DIP Facility, including its costs and the Limited Roll-Up feature, and its conclusion that the DIP Facility is reasonable and appropriate in the circumstances. I understand that the Information Officer will be filing a report to the Ontario Court (the "**First Report**") that will, among other things, include the Information



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Officer's conclusion that recognizing the Second Interim DIP Order is reasonable and appropriate in the circumstances.

**(b) Bar Dates Order**

30. The Bar Dates Order, among other things: (a) establishes claims bar dates and related procedures; and (ii) approves the form and manner of notice thereof. The key elements of the Bar Dates Order are as follows:<sup>1</sup>

- (a) the general bar date to file proof of claims for prepetition claims (the “**General Bar Date**”), including claims arising under section 503(b)(9) of the U.S. Bankruptcy Code (*i.e.*, claims for the value of any goods received by the Chapter 11 Debtors in the ordinary course within 20 days before the Petition Date), is **June 28, 2024 at 5:00 p.m. (prevailing Central Time)**;
- (b) the bar date for governmental units to file proofs of claim for prepetition claims (the “**Governmental Bar Date**”) is **November 6, 2024 at 5:00 p.m. (prevailing Central Time)**;
- (c) in the event the Chapter 11 Debtors file a previously unfiled Schedule, or amend or supplement their Schedules, the bar date for claimants holding claims affected by such filing, amendment or supplement (the “**Amended Schedules Bar Date**”) is **the later of (i) the General Bar Date or the Governmental Bar Date, as applicable, and (ii) 5:00 p.m. (prevailing Central Time) on the date that is 21 days from the date on which the Chapter 11 Debtors provide notice of the previous unfiled Schedule or amendment or supplement to the Schedules**;

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<sup>1</sup> Capitalized terms referred to in this section of this Third Affidavit and not otherwise defined have the meaning ascribed to them in the Bar Dates Order.

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- (d) the bar date for claims relating to the rejection of an executory contract or unexpired lease (the “**Rejection Damages Bar Date**”) is the later of (i) the **General Bar Date or Governmental Bar Date, as applicable, and (ii) 5:00 p.m. (prevailing Central Time) on the date that is 21 days following service of an order approving the Chapter 11 Debtors’ rejection of any executory contract or unexpired lease;**
- (e) entities whose claims otherwise would be subject to the General Bar Date or Governmental Bar Date but who do not need to file proof of claim in the Chapter 11 Cases include, among others, any person or entity holding a claim allowable under sections 503(b) or 507(a)(2) of the U.S. Bankruptcy Code as an expense of administration incurred in the ordinary course (with the exception of claims under section 503(b)(9) of the U.S. Bankruptcy Code (*i.e.*, claims for the value of any goods received by the Chapter 11 Debtors in the ordinary course within 20 days before the Petition Date));
- (f) all known creditors and potential claimants will receive sufficient notice of the claims process, including as follows:
  - (i) within two (2) business days after entry of the Bar Dates Order, the Chapter 11 Debtors will serve, or will cause Stretto to serve, a notice of the Bar Dates (the “**Bar Date Notice**”) and proof of claim form (“**Proof of Claim Form**”, and collectively with the Bar Date Notice, “**Bar Dates Notice Package**”) to:
    - (A) all holders of claims or potential claims;
    - (B) the Office of the United States Trustee for the Northern District of Texas;
    - (C) counsel to the official committee of unsecured creditors, if any;

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- (D) all parties that have requested notice in the Chapter 11 Cases pursuant to U.S. Bankruptcy Rule 2002 as of the date of the entry of the Bar Dates Order;
  - (E) all known creditors and other known holders of potential claims against any of the Chapter 11 Debtors;
  - (F) all counterparties to executory contracts and unexpired leases of the Chapter 11 Debtors listed in the Schedules or their designated representatives;
  - (G) all parties to pending litigation with the Chapter 11 Debtors;
  - (H) all current and former employees of the Chapter 11 Debtors (to the extent that contact information for former employees is available in the Chapter 11 Debtors' records);
  - (I) the Internal Revenue Service and all other taxing authorities for the jurisdictions in which the Chapter 11 Debtors conduct business;
  - (J) all relevant state attorneys general;
  - (K) all identified registered holders of any Interests in any of the Chapter 11 Debtors as of the Petition Date (although copies of the Proof of Claim Form will not be provided to them);
  - (L) all other entities listed on the Chapter 11 Debtors' respective creditor matrices; and
  - (M) counsel to any of the foregoing, if known;
- (ii) the Chapter 11 Debtors will also post the Bar Date Notice and Proof of Claim Form on Stretto's website at <https://www.cases.stretto.com/kidkraft>;
  - (iii) for any proof of claim to be validly and properly filed, a claimant must deliver a completed, signed original of the Proof of Claim Form together with any accompanying documentation required by Bankruptcy Rules 3001(c) and 3001(d), to Stretto at the address identified on the Bar Date Notice, or to the Clerk of the U.S. Court, so as to be received no later than 5:00 p.m., prevailing Central Time on the applicable Bar Date;
  - (iv) consistent with U.S. Bankruptcy Rule 3003(c)(2), any entity that is required to file a proof of claim but otherwise fails to properly file a proof of claim by the applicable Bar Date shall not be treated as a creditor with respect to such claim for purposes of voting and distribution; and
  - (v) two business days after serving the Bar Dates Notice Package or as soon as reasonably practicable thereafter, the Chapter 11 Debtors will publish the

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Bar Date Notice, with any necessary modifications for ease of publication (the “**Publication Notice**”) in *The New York Times* (national edition), the national edition of *The Globe and Mail* in Canada, and certain other publications as the Chapter 11 Debtors deem appropriate in their discretion as a means to provide notice of the Bar Dates to such unknown potential claimants.

31. On June 11, 2024, Stretto sent copies of the Bar Dates Notice Package by first-class mail to the entities set out in paragraph 31(f)(i), including to the known creditors of the Chapter 11 Debtors in Canada, the Canada Revenue Agency, the Ontario Ministry of Finance and the Alberta Ministry of Finance. Stretto also published the Bar Date Notice and Proof of Claim Form on its website.

32. The Foreign Representative’s filings and the Ontario Court’s order in these CCAA Part IV proceedings are available on the Information Officer’s website. The Information Officer has confirmed that it intends to post a copy of the Bar Dates Order and the proposed Third Recognition Order (or other order of the Ontario Court recognizing the Bar Dates Order) on its website. The Foreign Representative intends to provide information regarding these proceedings to its stakeholders as inquiries arise.

33. I have been advised that the Information Officer has made arrangements to publish the Publication Notice in the national edition of *The Globe and Mail* within two business days of the granting of an order recognizing the Bar Dates Order.

34. I have been advised that the Information Officer is supportive of the relief requested in respect of the Bar Dates Order and will outline its support in the First Report, to be filed.

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**(c) Final Customer Programs Order**

35. The Final Customer Programs Order, among other things, authorizes the Chapter 11 Debtors to: (a) maintain and administer certain of their customer programs, promotions, and practices (the “**Customer Programs**”); and (b) honour certain prepetition obligations related thereto.

36. As set out in more detail in the Second Affidavit, the Customer Programs consist of various discounts, rebates, returns, and markdowns, all of which are considered when determining the transaction price. The Customer Programs offered are unique to each customer and may be contractual or discretionary depending on the customer and the circumstances. In general, the Chapter 11 Debtors offer (i) discounts that range from 0.5 percent to 10 percent of sales; (ii) rebates that range from 1 percent to 6 percent of sales; (iii) allowances to cover returns that range from 1 percent to 5 percent of sales; and (iv) markdowns that range from 0.5 percent to 5 percent of sales, in each case to a given customer. The majority of these Customer Programs are booked as deductions from invoices, and the remainder are paid through invoices received from customers.

37. As described in the Second Affidavit, continuation of the Customer Programs is vital to maintaining and maximizing the value of the Chapter 11 Debtors’ estates, since the Chapter 11 Debtors’ business is highly dependent upon the loyalty of the Chapter 11 Debtors’ customers.

38. The Final Customer Programs Order contains substantially the same material terms as the Interim Customer Programs Order.

**D. Proposed Next Hearing**

39. A hearing before the U.S. Court is scheduled for June 21, 2024, to consider confirmation of the *Debtors’ Joint Prepackaged Chapter 11 Plan*, filed on May 10, 2024, as amended by the

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*Notice of Supplement to the Debtors' Joint Prepackaged Chapter 11 Plan*, filed June 12, 2024, and the *Notice of Amended Supplement to the Debtors' Joint Prepackaged Chapter 11 Plan*, filed June 14, 2024, and as may be further amended (collectively, the “**Plan**”), and motions seeking the following orders (the “**Second Day Orders**”):

- (a) *Final Order (I) Authorizing the Debtors to Pay (A) Critical Vendors, (B) Lien Claimants, and (C) 503(B)(9) Claimants; (II) Confirming Administrative Expense Priority of Outstanding Orders; and (III) Granting Related Relief;*
- (b) *Final Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System and Maintain Existing Bank Accounts, (B) Continue Using Existing Checks and Business Forms, (C) Maintain Their Corporate Card Program, and (D) Continue Intercompany Transactions, and (II) Granting Related Relief;*
- (c) *Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507 and Fed. R. Bankr. P. 2002, 4001, and 9014 (I) Authorizing Debtors and Debtors in Possession to Obtain Postpetition Senior Secured Superpriority Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief (the “**Final DIP Order**”); and*
- (d) *Order (I) Approving Certain Bidder Protections, (II) Approving Contract Assumption and Assignment Procedures, and (III) Granting Related Relief.*

40. In anticipation of obtaining an order from the U.S. Court confirming the Plan, the Foreign Representative has scheduled a hearing before the Ontario Court on June 28, 2024, at which it intends to seek recognition of the confirmation of the Plan and the Second Day Orders, approval of the fees of the Information Officer and its counsel, and provisions for the termination of these CCAA Part IV Proceedings upon the filing of a certificate by the Information Officer.

**SWORN BEFORE ME** over  
videoconference in accordance with the  
*Administering Oath or Declaration Remotely  
Regulation*, O. Reg 431/20, on June 17, 2024,  
while I was located in the City of Toronto, in  
the Province of Ontario, and the affiant was  
located in the City of Dallas in the State of  
Texas.



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Emma Smith (LSO# 87407T)  
Commissioner for Taking Affidavits  
(or as may be)



---

**GEOFFREY WALKER**

THIS IS **EXHIBIT “K”** REFERRED TO IN THE AFFIDAVIT OF  
GEOFFREY WALKER SWORN BEFORE ME over video  
teleconference this 11<sup>th</sup> day of July, 2024 pursuant to O. Reg 431/20,  
Administering Oath or Declaration Remotely. The affiant was located in  
the City of Dallas, in the State of Texas, while the Commissioner was  
located in the City of Toronto, in the Province of Ontario.



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Commissioner for Taking Affidavits  
EMILIE DILLON (LSO # 85199L)



Court File No. CV-24-00720035-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF KIDKRAFT, INC., SOLOWAVE DESIGN  
HOLDINGS LIMITED, SOLOWAVE DESIGN INC., SOLOWAVE  
INTERNATIONAL INC. AND SOLOWAVE DESIGN LP

APPLICATION OF KIDKRAFT, INC. UNDER SECTION 46 OF THE  
*COMPANIES CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED

Applicant

**FOURTH AFFIDAVIT OF GEOFFREY WALKER**

**(Recognition Order (Plan Confirmation Order, Sale Order and  
Termination of CCAA Proceedings, and Related Relief))  
(Sworn June 26, 2024)**

I, Geoffrey Walker, of the City of Dallas, in the State of Texas, MAKE OATH AND SAY:

1. I am the Chief Executive Officer and President of KidKraft, Inc. (“**KidKraft**”), and together with its debtor and non-debtor affiliates, the “**Company**”). I joined the Company in 2019 and have served in my current role since that time.
2. As Chief Executive Officer and President of KidKraft, I am familiar with, and have personal knowledge regarding, the Chapter 11 Debtors’ (defined below) businesses, day-to-day operations, financial affairs, and books and records, including those of Solowave Design Holdings Limited, Solowave International Inc. and Solowave Design Inc. (collectively, the “**Canadian Corporate Debtors**”), and Solowave Design LP (together with the Canadian Corporate Debtors, the “**Canadian Debtors**”). As such, I have personal knowledge of the matters deposed herein. Where I have relied on other sources of information, I have so stated and believe them to be true.

In preparing this affidavit (the “**Fourth Affidavit**”), I have also consulted with the Company’s senior management team, and financial and legal advisors. The Company does not waive or intend to waive any applicable privilege by any statement in this Fourth Affidavit.

3. KidKraft, the Canadian Debtors, and six other debtors and debtors in possession (collectively, the “**Chapter 11 Debtors**”) recently filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code with the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “**U.S. Court**”). The cases commenced by the Chapter 11 Debtors in the U.S. Court are referred to herein as the “**Chapter 11 Cases**”.

4. I swear this Fourth Affidavit in support of a motion by KidKraft in its capacity as the foreign representative of the Chapter 11 Debtors (in such capacity, the “**Foreign Representative**”), for an order, among other things:

- (a) recognizing and enforcing the At-Issue Orders (defined below) entered by the U.S. Court, pursuant to section 49 of the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCAA**”);
- (b) amending the Supplemental Order to account for the Final DIP Order (each as defined below);
- (c) approving the sale of the Canadian Transferred Assets (as defined below) of the Chapter 11 Debtors over which the Court has jurisdiction to the Purchaser (as defined below), vesting the Canadian Transferred Assets in and to the Purchaser free and clear of all claims and encumbrances, and authorizing the Chapter 11 Debtors to take such steps and execute such additional documents as may be

necessary or desirable for the completion of the sale of the Canadian Transferred Assets to the Purchaser;

- (d) providing a mechanism for the termination of these CCAA recognition proceedings, including the discharge of the Information Officer (as defined below);
- (e) approving the pre-filing report of KSV Restructuring Inc., dated May 16, 2024, the first report of the Information Officer, dated June 18, 2024, the Second Report (as defined below), and the activities of the Information Officer described therein;
- (f) approving the fees and disbursements of the Information Officer and its legal counsel; and
- (g) granting such further and other relief as counsel may request and this Honourable Court may provide.

5. I previously swore an initial affidavit on May 10, 2024 (the “**Initial Affidavit**”), a second affidavit on May 15, 2024 (the “**Second Affidavit**”), and a third affidavit on June 17, 2024 (the “**Third Affidavit**”) in support of the Foreign Representative’s application for the Interim Stay Order, Initial Recognition Order, Supplemental Order, Bar Dates Order, Second Interim DIP Order, and Final Customer Programs Order (all defined below). Copies of the Initial Affidavit, the Second Affidavit, and the Third Affidavit, without exhibits, are attached hereto as **Exhibits “A”**, **“B”**, and **“C”**, respectively. Capitalized terms used and not otherwise defined in this Fourth Affidavit have the meanings given to them in the Initial Affidavit, Second Affidavit, and Third Affidavit.

6. Unless otherwise indicated, dollar amounts referenced in this Fourth Affidavit are references to United States Dollar. Background and Update on Chapter 11 Cases.

7. On May 10, 2024 (the “**Petition Date**”), each of the Chapter 11 Debtors filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code with the U.S. Court. The Chapter 11 Cases have been assigned to the Honourable Judge Michelle V. Larson.
8. By order dated May 10, 2024, the Ontario Superior Court of Justice (Commercial List) (the “**Ontario Court**”) granted an interim stay of proceeding in respect of KidKraft and the Canadian Debtors, and their respective directors and officers (the “**Interim Stay Order**”).
9. On May 10, 2024, the Chapter 11 Debtors filed several motions and applications with the U.S. Court seeking certain interim and/or final orders, including interim and/or final versions of the First Day Orders (as defined below).
10. Also on May 10, 2024, the Chapter 11 Debtors filed the *Debtors’ Joint Prepacked Chapter 11 Plan* (as subsequently amended and supplemented, the “**Plan**”) and a disclosure statement in respect of the Plan (the “**Disclosure Statement**”).
11. On May 13, 2024, the Chapter 11 Debtors filed a motion (the “**Bidder Protections Motion**”) seeking the Bidder Protections Order (as defined below). A copy of the Bidder Protections Motion is attached hereto as **Exhibit “D”**.
12. On May 13 and 14, 2024, the U.S. Court entered certain orders, including the following interim and/or final orders (the “**First Day Orders**”):
  - (a) *Order (I) Authorizing KidKraft, Inc. to Act as Foreign Representative and (II) Granting Related Relief;*
  - (b) *Order Directing Joint Administration of the Debtors’ Chapter 11 Cases;*
  - (c) *Order Authorizing the Employment and Retention of Stretto, Inc. as Claims, Noticing, and Solicitation Agent* (the “**Claims Agent Retention Order**”);

- (d) *Interim Order (I) Authorizing the Debtors to (A) Maintain and Administer Their Customer Programs; (B) Renew, Replace, Implement, or Modify Their Customer Programs; and (C) Honor Their Obligations Related to the Customer Programs, and (II) Granting Related Relief;*
- (e) *Order (I) Authorizing the Debtors to (A) Continue Their Prepetition Insurance Coverage and Satisfy Prepetition Obligations Related Thereto; (B) Renew, Amend, Supplement, Extend, or Purchase Insurance Coverage on a Postpetition Basis in the Ordinary Course; and (C) Continue Their Prepetition Customs Bond Program and Satisfy Prepetition Obligations Related Thereto; (II) Modifying the Automatic Stay Solely With Respect to Workers' Compensation Claims; and (III) Granting Related Relief;*
- (f) *Order (I) Approving the Debtors' Proposed Adequate Assurance Payments for Future Utility Services; (II) Prohibiting Utility Companies From Altering, Discontinuing, or Refusing Services; (III) Approving the Debtors' Proposed Procedures for Resolving Additional Adequate Assurance Requests; and (IV) Granting Related Relief;*
- (g) *Order (I) Authorizing the Debtors to Pay Certain Taxes and Fees and (II) Granting Related Relief;*
- (h) *Interim Order (I) Authorizing the Debtors to Pay (A) Critical Vendors, (B) Lien Claimants, and (C) 503(B)(9) Claimants; (II) Confirming Administrative Expense Priority of Outstanding Orders; and (III) Granting Related Relief (the “**Interim Critical Vendors Order**”);*
- (i) *Interim Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System and Maintain Existing Bank Accounts, (B) Continue Using Existing Checks and Business Forms, (C) Maintain Their Corporate Card Program, and (D) Continue Intercompany Transactions, and (II) Granting Related Relief (the “**Interim Cash Management Order**”);*
- (j) *Order (I) Authorizing the Debtors to (A) Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief; and*
- (k) *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Senior Secured Superpriority Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens And Providing Superpriority Administrative Expense Status, (IV), Granting Adequate Protection to the Prepetition Secured Lenders, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief (the “**First Interim DIP Order**”).*

13. Also on May 14, 2024, the U.S. Court granted an order, among other things, scheduling a combined hearing at which the U.S. Court would consider, among other things, the adequacy of

the Disclosure Statement and confirmation of the Plan for June 21, 2024 (the “**Combined Hearing**”).

14. Subsequently, by order dated May 17, 2024, the Ontario Court recognized the Chapter 11 Cases as “foreign main proceedings”, recognized the appointment of the Foreign Representative, and granted related stays of proceeding in favour of the Chapter 11 Debtors (the “**Initial Recognition Order**”). By further order dated May 17, 2024, the Ontario Court recognized the First Day Orders (the “**Supplemental Order**”). In addition, the Supplemental Order appointed KSV Restructuring Inc. as the information officer in these CCAA Part IV proceedings (in such capacity, the “**Information Officer**”), granted an Administration Charge in the amount of CAD \$750,000.00 in favour of Canadian counsel to the Chapter 11 Debtors, the Information Officer and counsel for the Information Officer, a Directors’ Charge in the amount of CAD\$100,000, and a DIP Charge (each as defined in the Supplemental Order) for advances under the DIP Facility (defined below). Copies of the Initial Recognition Order, the Supplemental Order and Justice Cavanagh’s endorsement in respect of same are attached as **Exhibits “E”, “F” and “G”**, respectively.

15. On May 23, 2024, the Office of the United States Trustee for the Northern District of Texas (the “**U.S. Trustee**”) appointed an official unsecured creditors’ committee (the “**Committee**”), consisting of:

- (a) Fiona Yao of Dongguan Shing Fai Furniture Co. Ltd. (a Chinese supplier to the Chapter 11 Debtors and an unsecured creditor of the Canadian Debtors); and
- (b) Anna Liu of Kong Richs Furniture Vietnam Co. Ltd (a Vietnamese supplier to the Chapter 11 Debtors).

16. On May 30, 2024, the U.S. Trustee filed its objection to the motion seeking the proposed Final DIP Order, in which, among other things, it objected to the Limited Roll-Up (as defined below).
17. On June 7, 2024, the U.S. Trustee filed its objection to the motion seeking the proposed Bidder Protections Order, in which it objected to the quantum of the Bidder Protections (as defined below).
18. On June 10, 2024, the Chapter 11 Debtors filed their (a) schedules of assets and liabilities, (b) statements of financial affairs, (c) schedules of current income and expenditures, and (d) statements of executory contracts and unexpired leases.
19. Also on June 10, 2024, the U.S. Court entered the following final orders, as no objections had been filed in respect thereof:
- (a) *Final Order (I) Authorizing the Debtors to (A) Maintain and Administer Their Customer Programs; (B) Renew, Replace, Implement, or Modify Their Customer Programs; and (C) Honor Their Obligations Related to the Customer Programs, and (II) Granting Related Relief* (the “**Final Customer Programs Order**”); and
  - (b) *Order (I) Establishing Bar Dates and Procedures and (II) Approving the Form and Manner of Notice Thereof* (the “**Bar Dates Order**”).
20. On June 11, 2024, the U.S. Court entered the following interim order:
- (a) *Second Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507 and Fed. R. Bankr. P. 2002, 4001, and 9014 (I) Authorizing Debtors and Debtors in Possession to Obtain Postpetition Senior Secured Superpriority Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the “**Second Interim DIP Order**”).

21. On June 12, 2024, the Chapter 11 Debtors filed the *Notice of Supplement to the Debtors' Joint Prepackaged Chapter 11 Plan* (the "**First Plan Supplement**"). A copy of the First Plan Supplement is attached hereto as **Exhibit "H"**. The First Plan Supplement includes the following materials in connection with confirmation:

- (a) a copy of the Purchase Agreement (as defined below);
- (b) a copy of the Chapter 11 Debtors' *Schedule of Assumed Executory Contracts and Unexpired Leases*; and
- (c) a copy of the Chapter 11 Debtors' *Schedule of Retained Causes of Action*.

22. On June 14, 2024, the Chapter 11 Debtors filed the *Notice of Amended Supplement to the Debtors' Joint Prepackaged Chapter 11 Plan* (the "**Second Plan Supplement**"). A copy of the Second Plan Supplement is attached hereto as **Exhibit "I"**. The Second Plan Supplement includes the Chapter 11 Debtors' *Liquidation Analysis*.

23. On June 17, 2024, in connection with discussions seeking a potential global resolution, the Chapter 11 Debtors adjourned the hearing of the following motions to the Combined Hearing on June 21:

- (a) *Final Order (I) Authorizing the Debtors to Pay (A) Critical Vendors, (B) Lien Claimants, and (C) 503(B)(9) Claimants; (II) Confirming Administrative Expense Priority of Outstanding Orders; and (III) Granting Related Relief* (the "**Final Critical Vendors Order**");
- (b) *Final Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System and Maintain Existing Bank Accounts, (B) Continue Using Existing Checks and Business Forms, (C) Maintain Their Corporate Card Program, and (D) Continue Intercompany Transactions, and (II) Granting Related Relief* (the "**Final Cash Management Order**");



- (c) *Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507 and Fed. R. Bankr. P. 2002, 4001, and 9014 (I) Authorizing Debtors and Debtors in Possession to Obtain Postpetition Senior Secured Superpriority Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief (the “**Final DIP Order**”); and*
- (d) *Order (I) Approving Certain Bidder Protections, (II) Approving Contract Assumption and Assignment Procedures, and (III) Granting Related Relief (the “**Bidder Protections Order**”).*

24. On June 17, 2024, the Chapter 11 Debtors, the Committee, the Purchaser and MidOcean entered into a global settlement term sheet (the “**Global Settlement Term Sheet**”), notice of which was filed with the U.S. Court that day.

25. Also on June 17, 2024, the U.S. Trustee filed its objection to confirmation of the Plan, in which it objected to the proposed releases in favour of professionals engaged by certain stakeholders and the proposed discharge of the Chapter 11 Debtors.

26. On June 18, 2024, the U.S. Court entered the Final Critical Vendors Order, as no objections had been filed in respect thereof. A copy of the Final Critical Vendors Order is attached as **Exhibit “J”**.

27. On June 19, 2024, the Ontario Court granted an order (the “**Recognition Order (Bar Dates Order, etc.)**”) recognizing the Final Customer Programs Order, the Second Interim DIP Order, and the Bar Dates Order, and amending paragraph 24 of the Supplemental Order to include references to the Second Interim DIP Order. Copies of the Recognition Order (Bar Dates Order, etc.) and Justice Cavanagh’s endorsement in respect of same are attached as **Exhibits “K”** and **“L”**.

28. On June 20, 2024, the Chapter 11 Debtors filed the *Debtors' Amended Joint Prepackaged Chapter 11 Plan*, a copy of which is included as Exhibit "A" to the Plan Confirmation Order.

29. On June 21, 2024, the Chapter 11 Debtors filed the *Notice of Amended Supplement to the Debtors' Joint Prepackaged Chapter 11 Plan* (the "**Third Plan Supplement**"). A copy of the Third Plan Supplement is attached hereto as **Exhibit "M"**. The Third Plan Supplement includes, among other things, a copy of the Global Settlement Term Sheet.

30. Following the Combined Hearing, on June 24, 2024, the U.S. Court entered the following orders:

- (a) the Final Cash Management Order (a copy of which is attached as **Exhibit "N"**);
- (b) the Final DIP Order (a copy of which is attached as **Exhibit "O"**);
- (c) the Bidder Protections Order (a copy of which is attached as **Exhibit "P"**);
- (d) *Findings of Fact, Conclusions of Law, and Order (I) Approving the Disclosure Statement; and (II) Confirming the Debtors' Amended Joint Prepackaged Chapter 11 Plan* (the "**Plan Confirmation Order**", a copy of which is attached as **Exhibit "Q"**); and
- (e) *Order (I) Authorizing the Sale of the Debtors' Assets Free and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. §§ 105 and 363, (II) Approving the Purchase Agreement, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief.*

31. On June 25, 2024, the U.S. Court entered the following order, which added the Exhibit 1 thereto:

- (a) *Amended Order (I) Authorizing the Sale of the Debtors' Assets Free and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. §§ 105 and 363, (II) Approving the Purchase Agreement, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* (the “**Sale Order**”, and together with the Final Critical Vendors Order, the Final Cash Management Order, the Bidder Protections Order, and the Plan Confirmation Order, the “**At-Issue Orders**”, a copy of which is attached as **Exhibit “R”**).

32. Background information with respect to the Chapter 11 Debtors, including KidKraft and the Canadian Debtors, and the reasons for the commencement of the Chapter 11 Cases, are set out in the Initial Affidavit, the Second Affidavit, the Third Affidavit and the declaration I submitted on May 10, 2024 to the U.S. Court in support of the First Day Orders (the “**First Day Declaration**”) and the declaration I executed on June 19, 2024 (the “**Confirmation Declaration**”) and I understand was filed with the U.S. Court on June 20, 2024 in support of confirmation of the Plan. Copies of these First Day Declaration and Confirmation Declaration are attached hereto as **Exhibit “S”** and “**T**”, respectively.

**A. Recognition of Foreign Orders**

33. The Foreign Representative seeks recognition by the Ontario Court of the At-Issue Orders.

**(a) The Final Critical Vendors Order**

34. The proposed Final Critical Vendors Order, among other things, authorizes the Chapter 11 Debtors to pay in the ordinary course of business, based on their sound business judgment, prepetition amounts owed to: (a) critical vendors; (b) lien claimants, and (c) vendors from whom the Chapter 11 Debtors received goods within 20 days before the Petition Date in the ordinary course of business (collectively, the “**Vendors**,” and the Vendors’ prepetition claims, collectively, the “**Vendor Claims**”). The Final Critical Vendors Order also confirms the administrative expense priority status and treatment of the Chapter 11 Debtors’ outstanding orders.

35. As described in the Second Affidavit, it is critical to the Chapter 11 Debtors' ongoing business operations that the Chapter 11 Debtors, including the Canadian Debtors, pay certain of the Vendor Claims so that the Chapter 11 Debtors, including the Canadian Debtors, can maintain the going concern value of the Chapter 11 Debtors' business as they work to effect a comprehensive reorganization of their business under Chapter 11 of the U.S. Bankruptcy Code.

36. The Final Critical Vendors Order includes substantially the same material terms as the Interim Critical Vendors Order, except that the authorized limit for payment of Vendor Claims as they become due in the ordinary course of business is increased from \$525,000 on an interim basis to \$950,000 on a final basis.

37. As noted above, the Final Critical Vendors Order was entered by the U.S. Court on June 18, 2024.

**(b) The Final Cash Management Order**

38. The proposed Final Cash Management Order, among other things, authorizes the Chapter 11 Debtors to: (a) continue to operate their Cash Management System and maintain existing Bank Accounts (each as defined in the Final Cash Management Order); (b) continue using their existing business forms and cheques; (c) maintain their corporate card program; and (d) continue to engage in intercompany transactions.

39. As described in the Second Affidavit, the Canadian Debtors are dependent on the continued operation of the Chapter 11 Debtors' centralized Cash Management System to collect, transfer, and disburse funds and to facilitate cash monitoring, forecasting, and reporting. The Canadian Debtors' continued access to the Cash Management System is important to collect accounts

receivable and meet immediate-term obligations, thereby ensuring continuity of their operations and ultimately preserving the value of the business in Canada.

40. The proposed Final Cash Management Order contains the same material terms as the Interim Cash Management Order, but adds certain provisions to further facilitate the ordinary course activities of the business, including a provision stating that, for the avoidance of doubt, nothing in the Final Cash Management Order shall restrict or otherwise impair the KidKraft Receivables Sale Agreement and the Solowave Receivables Sale Agreement (each as defined in the Initial Affidavit).

**(c) The Final Dip Order**

41. As described in the Initial Affidavit, Second Affidavit, and Third Affidavit, the Chapter 11 Debtors' post-petition operations in the near-term will not generate sufficient cash to continue operations in the ordinary course while funding the expenses associated with the Chapter 11 Cases and these CCAA Part IV proceedings. Accordingly, pursuant to the restructuring support agreement (the "**RSA**") entered into by the Chapter 11 Debtors, 1903 Partners, LLC (the lender under the Prepetition Credit Agreement, the "**Prepetition and DIP Lender**"), GB Funding, LLC (the administrative agent under the Prepetition Credit Agreement, the "**Prepetition and DIP Agent**"), and together with the Prepetition and DIP Lender, "**Gordon Brothers**"), MidOcean and Backyard Products, LLC (the "**Purchaser**"), Gordon Brothers agreed to provide a multi-draw debtor-in-possession term loan facility (the "**DIP Facility**") to meet the Chapter 11 Debtors' liquidity needs. Access to cash is essential to ensure the viability of the Company as a going concern, ensure the consummation of the Sale Transaction to the Purchaser, and to preserve the value of the Chapter 11 Debtors' estates. Because the Chapter 11 Debtors will continue their pre-

filing Cash Management System, funds available under the DIP Facility will indirectly flow to the Canadian Debtors to enable their continued operation during these CCAA Part IV proceedings.

42. The First Interim DIP Order, the Second Interim DIP Order and the proposed Final DIP Order, among other things, authorize: (a) KidKraft as borrower to receive senior secured super-priority priming debtor-in-possession loans (each, a “**DIP Loan**” and in the aggregate, the “**DIP Loans**”) from the Prepetition and DIP Lender on the terms set forth in the DIP Term Sheet and in accordance with an approved budget (included as Exhibit “B” to the First Interim DIP Order); and (b) the Chapter 11 Debtors to use, on a consensual basis, the Cash Collateral of Gordon Brothers under the Prepetition Credit Agreement.

43. Following the entry of the Final DIP Order, the DIP Facility consists of an aggregate principal amount of:

- (a) \$10.5 million, consisting of the Interim DIP Commitment and the Final DIP Commitment (collectively, the “**New Money DIP Loans**”);
- (b) \$23.3 million of Prepetition Obligations (the “**Limited Roll-Up Amount**”), which will be deemed to have been advanced and shall convert into DIP Loans on a dollar-for-dollar cashless basis (the “**Limited Roll-Up**”); and
- (c) use of the Cash Collateral from the time of the entry of the First Interim DIP Order until the Carve-Out Termination Date (as such term is defined in the Final DIP Order).

44. As noted in the Second Affidavit, in exchange for this essential liquidity provided by the New Money DIP Loans and the Cash Collateral, the Chapter 11 Debtors agreed to certain reasonable and customary protections for Gordon Brothers, including superpriority liens on

collateral, payment of interest and fees on amounts borrowed, and the Limited Roll-Up Amount of prepetition financing under the Prepetition Credit Agreement which provided the Chapter 11 Debtors with a liquidity runway to file the Chapter 11 Cases and maximize the value of their estates. The proposed Limited Roll-Up Amount is limited to the new capital that the prepetition secured parties, Gordon Brothers, provided the Chapter 11 Debtors after the Debt Sale (as defined below) closed on January 31, 2024, following which the Canadian Debtors became guarantors of the Chapter 11 Debtors' obligations to Gordon Brothers. Importantly, this liquidity provided a runway for the Chapter 11 Debtors to commence the sale process, which in turn led to the Purchaser's offer and the proposed Sale Transaction and has allowed the Chapter 11 Debtors to maintain their operations and preserve the value of their estates leading up to the Chapter 11 Cases. The Limited Roll-Up is a material component of the structure of the DIP Facility and was required by the Prepetition and DIP Lender as a condition to its commitment to provide postpetition financing and its consent to the Chapter 11 Debtors' use of Cash Collateral. Additionally, the proposed Limited Roll-Up is reasonable in light of the ratio of new money provided by the Prepetition and DIP Lender to the Limited Roll-Up Amount. Moreover, the relief granted under the Final DIP Order will not materially prejudice Coface<sup>1</sup> as there is no dispute as to the priority of its liens on its separate collateral, as such receivables are the property of Coface and not the Chapter 11 Debtors.

45. Also as described in the Second Affidavit, the DIP Facility is the product of arm's-length negotiations and represents the best available option for the Chapter 11 Debtors and will benefit

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<sup>1</sup> As set out in the Second Affidavit, KidKraft and Solowave Design LP are parties to Receivables Sales Agreements with Coface, pursuant to which Coface purchased accounts receivable from each of them. The Chapter 11 Debtors do not dispute that such sales of accounts receivable to Coface were "true sales".

all parties in interest. Prior to the Petition Date, the Chapter 11 Debtors and their advisors contacted other parties to seek proposals for third-party postpetition financing. No potential lenders were willing to provide financing on an unsecured or junior lien basis. Financing on a postpetition basis is not otherwise available and is not available on terms more favourable than the terms contained in the DIP Facility. The Chapter 11 Debtors believe that, given the limited size of the Limited Roll-Up Amount in comparison to the substantial benefits the Chapter 11 Debtors will receive from the liquidity under the DIP Facility and the substantial benefits provided by the prepetition financing provided by the Prepetition and DIP Lender under the Prepetition Credit Agreement, agreeing to the Limited Roll-Up in the Second Interim DIP Order and the Final DIP Order is a reasonable exercise of their business judgment. As it relates to the Canadian Debtors, the DIP Facility does not increase the existing liability of the Canadian Debtors pursuant to the Prepetition Credit Facility or grant security over assets in Canada in favour of the Prepetition and DIP Lender that were previously unencumbered.

**(d) The Bidder Protections Order**

46. The Bidder Protections Order, among other things, approves certain bidder protections in favour of the Purchaser (the “**Bidder Protections**”), including:

- (a) a break-up fee of \$884,754.90, being 2.25% of the purchase price (the “**Break-Up Fee**”),
- (b) expense reimbursement of up to \$1,000,000 (the “**Expense Reimbursement**”), and
- (c) requiring any alternative transaction to the Sale Transaction have an overbid of \$2,000,000 (the “**Overbid**”).



47. The Bidder Protections Order also approves procedures (the “**Assumption and Assignment Procedures**”) for the assumption and assignment of certain executory contracts and the form of notice.

48. As described in the Initial Affidavit, Second Affidavit, and further below, following a sale process in the spring of 2024, the Purchaser emerged with a bid to purchase a substantial majority of the Company’s assets (including the Canadian Debtors’ assets) with such sale to be effectuated in Chapter 11 (the “**Sale Transaction**”). The RSA documented the parties’ commitment, among other things, the Sale Transaction.

49. In connection with the RSA, and after extensive arm’s length negotiations, certain of the Chapter 11 Debtors (including KidKraft, Solowave Design LP and Solowave Design Inc.) and the Purchaser entered into an asset purchase agreement (the “**Purchase Agreement**”) to effectuate the Sale Transaction in conjunction with the Plan. The Purchase Agreement contemplates the sale of certain of the Chapter 11 Debtors’ assets to the Purchaser through the Chapter 11 Cases. This sale includes the assumption of certain of the Chapter 11 Debtors’ liabilities, a commitment to offer employment to nearly all of the Chapter 11 Debtors’ employees, and payment of contract cure costs incurred in connection with the Chapter 11 Cases.

50. The parties agreed to the original terms of the Bidder Protections in the Purchase Agreement to address the Purchaser’s concerns that the Sale Transaction may not be consummated. The Bidder Protections are a material component of the Purchase Agreement, which the Purchaser required as a condition to enter into the Purchase Agreement. Although the Chapter 11 Debtors are confident the Sale Transaction is the best and only offer available to the Chapter 11 Debtors, the Bidder Protections will balance the Purchaser’s desire for certainty

regarding closing the Sale Transaction with the Chapter 11 Debtors' ability to exercise their fiduciary duties to maximize the value of their estates in accordance with the terms of the Purchase Agreement. Specifically, the Purchase Agreement only contemplates the payment of the Bidder Protections (i.e. both the Break-Up Fee and Expense Reimbursement, or only the Expense Reimbursement) if the Purchase Agreement is terminated under narrow, prescribed circumstances.

51. As noted above, the U.S. Trustee filed an objection to the Bidder Protections Motion, which had originally sought a Break-Up Fee of \$1,179,673.20 and an Overbid of \$4,000,000. Those amounts were reduced, and the U.S. Trustee's objections were withdrawn prior to the entry of the Bidder Protections Order.

52. The Chapter 11 Debtors believe that granting the Bidder Protections through the Purchase Agreement (and later reduced) was a valid exercise of their business judgment, having conducted a robust marketing process prior to the Petition Date and being confident that the Sale Transaction presents their best (and only) opportunity to maximize the value of their estates. I understand the Information Officer will be filing a report to the Court (the "**Second Report**") that will, among other things, include its conclusion that the Bidder Protections are customary provisions in insolvency transactions of this nature and the quantum of the Break-Up Fee relative to the value of the proposed transaction in these Chapter 11 Cases (*i.e.*, 2.25%) is within the range that is commonly accepted and approved by Canadian courts in the context of insolvency proceedings.

**(e) The Plan Confirmation Order**

**(i) Background and Summary of the Plan**

53. As set out in greater detail in the First Day Declaration, the Company is currently facing significant balance sheet and liquidity challenges, caused by a range of factors that ultimately

resulted in the Company's operating margins being squeezed. In addition, the Company was unable to refinance or replace its funded debt that originally matured in June 2023 (now June 2024). The Company proactively worked to address their balance sheet and liquidity challenges, including through a balance sheet restructuring in 2023 and by running multiple robust out-of-court sale processes prior to the Petition Date.

54. In connection with these actions, the Company engaged advisors to explore strategic alternatives, including a potential sale of all or substantially all of the assets or equity of the Company. After a sale process undertaken in the fall of 2023 failed to result in a sale, the Company continued to face significant liquidity challenges and worked with its advisors to begin contingency planning for a potential in-court restructuring process in December 2023 and January 2024. Subsequently, an agreement was reached pursuant to which the Prepetition and DIP Lender purchased the existing debt under the Prepetition Credit Agreement (the "**Debt Sale**"). In connection therewith, the Prepetition and DIP Lender provided additional financing in the form of revolving priority loans to the Company to maintain its operations and prevent further degradation of its business while the Company and the Prepetition and DIP Lender worked collaboratively to explore value-maximizing strategic alternatives.

55. Following a second sale process in the spring of 2024, and the emergence of the Purchaser's bid, the parties entered the RSA, which documents the parties' commitment to the restructuring transactions, including the Sale Transaction. The RSA is an essential part of the Chapter 11 Debtors' restructuring efforts and provides the Chapter 11 Debtors with significant assurances regarding the ultimate success of the Chapter 11 Cases. In particular, by signing the RSA, Gordon Brothers, MidOcean, and the Purchaser have agreed to take steps and actions that are reasonably necessary to implement the Restructuring Transactions (as defined in the RSA), including, in the

case of Gordon Brothers, providing critical funding to achieve consummation of the Plan and Sale Transaction, voting in favor of the Plan on terms consistent with the RSA, and not objecting to relief sought by the Chapter 11 Debtors. Notably, the RSA also preserves the Chapter 11 Debtors' flexibility to consider alternative transactions that may be in the best interests of their estates and stakeholders consistent with their fiduciary duties.

56. The Purchase Agreement provides for an estimated purchase price of at least \$39.0 million, and the Purchaser will also pay additional amounts for potential contract cure claims for any Transferred Contracts (as defined in the Purchase Agreement) and reimbursement to the Chapter 11 Debtors for certain ordinary course payments related to the operation of the Chapter 11 Debtors' businesses made during the Chapter 11 Cases.

57. Following the signing of the RSA and Purchase Agreement, the Company and its advisors began preparations to commence the Chapter 11 Cases. Both the preparation and case timelines have been on an expedited timeline given the Chapter 11 Debtors' limited liquidity and importance of closing the Sale Transaction within the milestones and budget set by the RSA and case financing.

58. In summary, the Plan effectuates the sale of substantially all of KidKraft's inventory, intellectual property, and accounts receivable, among other things, to the Purchaser pursuant to the terms of the Purchase Agreement. The Purchaser has also agreed to assume certain of the Chapter 11 Debtors' liabilities including any liabilities and identified cure costs (if any) arising under the assumption and assignment of the Transferred Contracts and certain transfer taxes and non-income taxes, subject to the terms and conditions of the Purchase Agreement. The Purchaser has also committed, under the terms of the Purchase Agreement, to offer employment to nearly all of the

domestic employees of the Chapter 11 Debtors that are party to the Purchase Agreement who are employed by the same at the closing of the Sale Transaction.

59. As described in the Plan and below, the Chapter 11 Debtors will utilize the proceeds of the Sale Transaction to fund distributions to satisfy claims and wind down their operations in an orderly manner.

60. The Plan will become effective (the “**Effective Date**”) on the date on which: (a) no stay of the Plan Confirmation Order, the Sale Order and the proposed order of the Ontario Court recognizing same is in effect; (b) all conditions precedent specified in Article IX have been satisfied or waived (in accordance with Article IX.C); and (c) the Plan becomes effective; provided, however, that if such date does not occur on a business day, the Effective Date shall be deemed to occur on the first business day after such date.

61. The Plan, which was amended in accordance with the Global Settlement Term Sheet, preserves the Sale Transactions, allows them to be implemented on a consensual basis with the Committee, and is the result of the extensive, arm’s-length, and good-faith negotiations between parties thereto, all of whom I observed to be acting in good faith at all times. I believe that the Plan (as amended) is the best compromise available considering the realities of the Chapter 11 Debtors’ capital structure and lack of any superior actionable bids resulting from the prior sale processes and the absence of any superior bids during these Chapter 11 Cases.

**(ii) The Global Settlement Term Sheet**

62. Following the appointment of the Committee, the Chapter 11 Debtors and their advisors worked to quickly initiate dialogue with the Committee’s professionals and respond to diligence requests so that the Committee could get up to speed on the facts underlying the Chapter 11 Cases.

After these initial discussions, the Committee served the Chapter 11 Debtors with formal discovery requests and the Chapter 11 Debtors and the Committee, as well as other parties in interest, continued to engage in informal discovery and parallel settlement negotiations. Advisors to the Committee also received a summary of the investigation conducted by Jill Frizzley, an independent director of KidKraft (the “**Independent Director**”), for the purpose of determining whether the Chapter 11 Debtors hold colorable causes of action worth pursuing.

63. Although contentious at times, these negotiations were productive and culminated in a global settlement (the “**Global Settlement**”) of all issues among the Chapter 11 Debtors, Gordon Brothers, the Purchaser, MidOcean, and the Committee (the “**Global Settlement Parties**”), memorialized in the Global Settlement Term Sheet.

64. In accordance with the Global Settlement Term Sheet, the Chapter 11 Debtors filed an amendment to the Plan that will, among other things, created a general unsecured claims trust (the “**GUC Trust**”) and provide a mechanism for certain holders of general unsecured claims to affirmatively opt-in to receiving their *pro rata* share of beneficial interests in the GUC Trust. Under the Plan, the Chapter 11 Debtors and their key stakeholders agreed to fund the GUC Trust with specific assets, including cash and certain claims and causes of action. In exchange, the Committee agreed to, among other things, support the Plan and the Chapter 11 Debtors’ proposed DIP financing.

65. I believe that each component of the Global Settlement (as ultimately incorporated into the Plan) is reasonable and appropriate and in the best interests of the Chapter 11 Debtors because:

- (a) holders of general unsecured claims may receive a recovery through the GUC Settlement Opt-In Election, which is an improvement to their treatment in the original version of the Plan;
- (b) absent these changes to the Plan, the Chapter 11 Debtors and some or all of the other Global Settlement Parties faced the prospect of expensive and time-consuming litigation with uncertain outcomes for all, which would have invariably been a distraction jeopardizing the Sale Transaction in these Chapter 11 Cases;
- (c) resolving these disputes through the Global Settlement enhanced the Chapter 11 Debtors' ability to achieve a value-maximizing sale of substantially all of the Chapter 11 Debtors' assets; and
- (d) the Global Settlement provided a clear path towards the Chapter 11 Debtors' expeditious emergence from chapter 11.

66. The Global Settlement was negotiated, proposed, and entered into by the Global Settlement Parties at arm's length, after significant negotiations. For all of the above reasons, I believe the Global Settlement represents a fair and reasonable compromise that is in the best interests of the Chapter 11 Debtors, their estates, and all of the Chapter 11 Debtors' stakeholders. The Global Settlement resolves legal issues that are subject to potentially expensive and time-consuming litigation with uncertain outcomes and makes possible a recovery to general unsecured creditors that otherwise likely would not have occurred. All of this will directly benefit the Chapter 11 Debtors' Estates and all parties in interest. Therefore, based on my business judgment, I believe that the Global Settlement is reasonable and appropriate given the facts and circumstances of these Chapter 11 Cases.

**(iii) The Treatment of Claims and Interests, Voting Entitlement, and  
Voting Results**

67. The restructuring contemplated by the Plan presents the best opportunity for the Chapter 11 Debtors to maximize the value of their estates. Without the proposed Sale Transaction, the only alternative path for the Chapter 11 Debtors is likely a value-destructive liquidation.

68. The Plan separately classifies claims and interests against each Chapter 11 Debtor (as applicable) as follows:

| <b>Class</b> | <b>Claim or Interest</b>                      | <b>Status</b>       | <b>Voting Rights</b>                |
|--------------|---|---------------------|-------------------------------------|
| 1            | Other Priority Claims                         | Unimpaired          | Presumed to Accept                  |
| 2            | Other Secured Claims                          | Unimpaired          | Presumed to Accept                  |
| 3            | Prepetition Secured Party Claims              | Impaired            | Entitled to Vote                    |
| 4            | General Unsecured Claims                      | Impaired            | Deemed to Reject                    |
| 5            | Intercompany Claims                           | Unimpaired/Impaired | Presumed to Accept/Deemed to Reject |
| 6            | Intercompany Interests                        | Unimpaired/Impaired | Presumed to Accept/Deemed to Reject |
| 7            | KidKraft Intermediate Holdings, LLC Interests | Impaired            | Deemed to Reject                    |

69. I believe that (a) the claims and interests in each particular Class for each Chapter 11 Debtor are substantially similar to all other claims and interests in the same Class for such Chapter 11 Debtor, and (b) the claims and interests in each Class for each Chapter 11 Debtor receive the same treatment under the Plan, unless the holder of a particular claim or interest has agreed to less



favorable treatment, and (c) as to all claims and interests, similarly situated claims are treated the same or there is a reasonable basis for any disparate treatment.

70. Classes 1 (Other Priority Claims) and 2 (Other Secured Claims) are unimpaired under the Plan, and I understand they are presumed to accept the Plan. I further understand that holders of claims in Class 3 (Prepetition Secured Party Claims) voted to accept the Plan. Holders of claims and interests in the unimpaired or impaired classes—Classes 5 (Intercompany Claims) and 6 (Intercompany Interests)—will either be unimpaired, and presumed to accept the Plan, or impaired, and deemed to reject the Plan. Holders of interests in Class 7 are impaired and deemed to reject the Plan.

71. As to all Classes that are deemed to reject the Plan, including without limitation Classes 4 (General Unsecured Claims) and 7 (KidKraft Intermediate Holdings, LLC Interests), no holder of any claim or interest that is junior to the claims or interests of such Classes will receive or retain under the Plan on account of its junior claim or interest any property. Moreover, as to all Classes that are deemed to reject the Plan, no holder of any claims in a senior Class will receive more than 100% on account of his, her, or its allowed claims.

72. Although treatment of Class 5 (Intercompany Claims) is different than Class 4 (General Unsecured Claims), I believe this is reasonable because the intercompany claims are owed among the Chapter 11 Debtors and the Chapter 11 Debtors are being dissolved under the Plan.

73. Although the holders of allowed general unsecured claims (Class 4) who elect to opt-in to the Global Settlement will receive a recovery pursuant to Bankruptcy Rule 9019, they will not receive a recovery on account of their claims against the Chapter 11 Debtors.

74. Only record holders of claims in Class 3 (Prepetition Secured Party Claims) as of May 9, 2024 (such class, the “**Voting Class**” and such date the “**Voting Record Date**”) were entitled to vote on the Plan. Prior to filing these Chapter 11 Cases, on May 9, 2024 (the “**Solicitation Date**”), the Chapter 11 Debtors commenced solicitation of votes on the Plan from the holder of claims in the Voting Class. The deadline to submit votes was May 9, 2024, at 11:59 p.m. (Prevailing Central Time). Gordon Brothers, as the sole holder of claims in the Voting Class, voted to accept the Plan. Accordingly, 100% in dollar amount and 100% in number of the Class 3 claims voted to accept the Plan.

**(iv) Releases, Settlements, Exculpations and Injunctions**

75. As set out in more detail in the Confirmation Declaration, the Plan includes certain settlements, releases, exculpations, and injunctions. I have reviewed the provisions of the Plan related thereto, and I have further reviewed the conclusions of the independent investigation commissioned by the Independent Director, who concluded and reported to the Board, among other things, that the Chapter 11 Debtors do not hold any colorable claims or causes of action worth pursuing against any Released Parties.

76. I believe that the releases and exculpation provisions are in the best interests of the Chapter 11 Debtors and are fair and equitable to all parties.

**(v) Confirmation of the Plan by the U.S. Court**

77. The U.S. Court held its Confirmation Hearing for the Plan on July 21, 2024. Confirmation was supported by all major stakeholders, including Gordon Brothers and the Committee.

78. The U.S. Court confirmed the Plan and entered the Plan Confirmation Order on July 24, 2024.

79. The key elements of the Plan Confirmation Order include the following findings of fact and conclusions of law:

- (a) The Plan and the Chapter 11 Debtors comply with applicable provisions of the Bankruptcy Code. The Chapter 11 Debtors retained competent and capable professionals to ensure this was the case. The separate classification of Claims against and Interests in the Chapter 11 Debtors is based on valid business, factual, and legal reasons.
- (b) The Plan is proposed in good faith. After extensive good-faith and arm's-length negotiations, the Chapter 11 Debtors determined that the Sale Transaction presented the best opportunity to maximize the Chapter 11 Debtors' value for all stakeholders.
- (c) The Plan is feasible. Confirmation of the Plan is unlikely to be followed by the liquidation or further financial reorganization of the Chapter 11 Debtors (other than as contemplated in the Plan).
- (d) The releases, settlements, exculpations and injunctions in the Plan are appropriate.

80. The Foreign Representative is seeking an order from the Ontario Court recognizing and enforcing the Plan Confirmation Order. The Foreign Representative is of the view that it is appropriate for the Ontario Court to recognize the Plan Confirmation Order and such recognition is necessary to affect the Plan and to protect the interests of the Chapter 11 Debtors and their creditors.

81. The Chapter 11 Debtors believe that the Plan best maximizes stakeholder recoveries and provides the best available alternative for their estates and creditor recoveries.

82. I have been advised that the Information Officer is supportive of the recognition of the Plan Confirmation Order by the Ontario Court and explaining such support in the Second Report.

**(f) The Sale Order**

83. The Chapter 11 Debtors have acted in good faith in the exercise of their business judgment to maximize the value of the Transferred Assets (as defined in the Purchase Agreement) through the pre-filing sale processes. As found by the U.S. Court, the Purchase Agreement represents the highest and best offer for the Transferred Assets.

84. Given their relative size, and the integration of the Chapter 11 Debtors' Canadian business with the U.S. operations, the Chapter 11 Debtors determined, in their reasonable business judgment, that a separate sale process for the limited Canadian Transferred Assets would not have been appropriate.

85. The U.S. Court found in the Sale Order and the Plan Confirmation Order that the Chapter 11 Debtors undertook robust and extensive efforts to secure the Sale Transaction. I do not believe that marketing the Canadian Transferred Assets separately from the Transferred Assets would have resulted in a greater return to Canadian creditors or the Estates of the Chapter 11 Debtors.

86. The Sale Transaction is the only opportunity to potentially preserve the Chapter 11 Debtors' Canadian business and maximize the value of the Canadian Transferred Assets.

87. Obtaining an order from the Ontario Court vesting the Canadian Transferred assets in and to the Purchaser is a condition precedent to the closing of the Sale Transaction and the Plan

becoming effective. Accordingly, if the requested relief is not obtained, the closing of the Sale Transaction (and the implementation of the Plan) may be imperiled.

88. I have been advised that the Information Officer is supportive of the recognition of the Sale Order by the Ontario Court and will explain such support in the Second Report.

**B. Termination of these CCAA Recognition Proceedings**

89. The Plan provides for the end of the Chapter 11 Cases. After the Plan Confirmation Order is recognized in Canada and the Plan is effective, these ancillary Part IV CCAA recognition proceedings will have achieved their purpose.

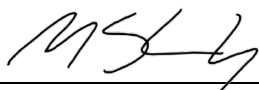
90. Accordingly, the proposed order provides that:

- (a) upon the Plan becoming effective and any remaining matters to be attended to in these CCAA proceedings having been completed, the Information Officer will file a certificate (the “**Information Officer’s Termination Certificate**”) with the Ontario Court confirming same;
- (b) upon the filing of the Information Officer’s Termination Certificate:
  - (i) these CCAA proceedings shall be terminated;
  - (ii) the Administration Charge, the Directors’ Charge and the DIP Charge shall be terminated, released and discharged;
  - (iii) the Information Officer and its counsel, Gowling WLG (Canada) LLP, will be discharged and released.

91. The Foreign Representative believes it is more efficient to seek the Ontario Court’s approval of a mechanism for terminating these CCAA recognition proceedings now, rather than incurring the cost and time of a further motion.

92. The Information Officer is supportive of the proposed mechanism for terminating these CCAA recognition proceedings, as will be set out in the Second Report.

**SWORN BEFORE ME** over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg 431/20, on June 26, 2024, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in Dallas in the State of Texas.



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MARK SHEELÉY

LSO # 664730

Commissioner for Taking Affidavits



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GEOFFREY WALKER

THIS IS **EXHIBIT “L”** REFERRED TO IN THE AFFIDAVIT OF  
GEOFFREY WALKER SWORN BEFORE ME over video  
teleconference this 11<sup>th</sup> day of July, 2024 pursuant to O. Reg 431/20,  
Administering Oath or Declaration Remotely. The affiant was located in  
the City of Dallas, in the State of Texas, while the Commissioner was  
located in the City of Toronto, in the Province of Ontario.



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Commissioner for Taking Affidavits  
EMILIE DILLON (LSO # 85199L)

William L. Wallander (Texas Bar No. 20780750)  
Matthew D. Struble (Texas Bar No. 24102544)  
Kiran Vakamudi (Texas Bar No. 24106540)  
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David S. Meyer (*pro hac vice* pending)  
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**PROPOSED ATTORNEYS FOR THE DEBTORS  
AND DEBTORS IN POSSESSION**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:** § **Case No. 24-80045-11**  
§  
**KIDKRAFT, INC., et al.,** § **(Chapter 11)**  
§  
**Debtors.<sup>1</sup>** § **(Joint Administration Requested)**  
§ **(Emergency Hearing Requested)**

**DECLARATION OF GEOFFREY WALKER IN SUPPORT  
OF CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS**

I, Geoffrey Walker, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that:

1. I am the Chief Executive Officer and President of KidKraft, Inc., a corporation organized under Delaware law (“*KidKraft*,” and together with its debtor and non-debtor affiliates, the “*Company*”).

2. I joined the Company in 2019 and have served in my current role since that time. As a result, I am familiar with the Company’s day-to-day operations, business and financial affairs, books and records, and employees. I hold a Bachelor of Science degree in Accounting from the

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<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft International IP Holdings, LLC (1841), KidKraft Partners, LLC (3268), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc. (4302). The location of the Debtors’ U.S. corporate headquarters and the Debtors’ service address is: 4630 Olin Road, Dallas, TX 75244.



University of Southern California and a Masters of Business Administration from Vanderbilt University. I have over twenty-eight years of experience in the toy industry, and I served in multiple leadership roles at Mattel, Inc. prior to joining the Company. Prior to my work at Mattel, I worked as a consultant and auditor with KPMG.

3. On the date hereof (the “*Petition Date*”), each of the above-captioned debtors and debtors in possession (collectively, the “*Debtors*”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “*Court*”).

4. I am authorized to submit this Declaration on behalf of the Debtors. I am over 21 years of age, and, if called upon to testify, I would testify competently to the facts and opinions set forth herein. All facts and opinions set forth in this declaration (the “*Declaration*”) are based upon: (i) my knowledge of the Debtors’ day-to-day operations, business and financial affairs, books and records, and employees; (ii) information I learned from my review of relevant documents, including unaudited financial documents; (iii) information supplied to me or verified by other members of the Company’s management and its third-party advisors; and/or (iv) my experience and knowledge concerning the toy industry generally. Unless otherwise indicated, any financial information contained in this Declaration is subject to change but is true and correct as of the date of this Declaration. Such financial information is presented on a consolidated basis for the Debtors, except where specifically noted.

5. The Debtors have filed contemporaneously with this Declaration certain motions seeking “first day” relief (collectively, the “*First Day Motions*”) to minimize possible adverse effects of the chapter 11 filings on the Debtors’ businesses. I have reviewed the First Day Motions, and I believe the relief requested therein is necessary to avoid immediate and irreparable harm to

the Debtors' businesses, estates, and stakeholders resulting from the filing of these chapter 11 cases (the "*Chapter 11 Cases*"). As set forth below and described in greater detail in the First Day Motions, I also believe that without immediate access to cash collateral, debtor-in-possession financing ("*DIP Financing*"), and authority to make certain essential payments on account of prepetition claims and otherwise continue conducting ordinary-course business operations, the Debtors would suffer immediate and irreparable harm to the detriment of their businesses, estates, and stakeholders.

6. This Declaration is organized into four parts. Part I provides background information on the Company and its operations. Part II provides an overview of the Debtors' prepetition capital structure. Part III describes the challenges the Company has faced and strategies the Company has implemented in response to such challenges. Part IV and **Exhibit A** attached to this Declaration summarize the relief requested in and the factual bases supporting the First Day Motions.

## **I. THE COMPANY'S BUSINESSES**

### **A. The Company's History**

7. Founded in Dallas in 1968, KidKraft is a privately held company that is a leader in branded, sustainable, wood-based active and imaginative play products such as swing sets, dollhouses, playhouses, and more. Originally focused on made-from-wood children's furniture, the Company later expanded its product offerings, focusing on imaginative play including dollhouses and role-play kitchens, and in 2008 and 2009 expanded its global footprint by opening offices in the Netherlands to serve the European, Middle Eastern, African, and Asian markets and China to facilitate the production and distribution of the Company's products. The Company further expanded its product offerings to include outdoor playhouses and swing sets and, in 2016, acquired Solowave Design – a leading maker of outdoor wood play sets in Canada.

**B. The Company’s Operations**

*1. The Company’s Product Lines*

8. The Company’s various product lines are generally divided between products sold for use outdoors (the “**Outdoor Business**”) and products sold for use indoors (the “**Indoor Business**”). Approximately 59% of the Company’s sales were attributable to the Outdoor Business with the remaining 41% attributable to the Indoor Business during the 2024 fiscal year.<sup>2</sup>

9. The Outdoor Business has several product lines, including swing sets, playhouses, outdoor furniture, and climbers, with swing sets and playhouses making up the majority of the Company’s sales in the Outdoor Business.



10. The Indoor Business similarly has several product lines, including indoor furniture, vehicles and playsets, role play, and doll play. The Indoor Business is well diversified, with each product category making up between 16% to 35% of the Indoor Business sales. The products are designed to be easily assembled in the home, creating imaginative play for children.

<sup>2</sup> The Company’s fiscal year runs from April 1 to March 31.



11. In both the Outdoor Business and Indoor Business, the Company has been committed to expanding and improving its offerings for customers, with multiple new products being launched in each of the last three years and 34% of gross sales being attributable to products launched in the last two years. The Company has also focused on making its products accessible to a wide audience, seeking to release smaller products with accessible price points across its existing categories.

2. *The Company's Sale and Supply Channels*

12. KidKraft distributes its products through several large stores, including Costco, Sam's Club, Target, and Walmart, online retailers, including Amazon and Wayfair, and direct-to-consumer sales from the Company's website. In recent years the Company has scaled its global drop-shipping infrastructure to support continued growth in its online direct to consumer sales and complement its existing warehouse and distribution capabilities. The Company has strong

business relationships across global retailers with more than 3,000 points of distribution in over 90 countries, as well as within the global logistics community.

3. *The Company's Management*

13. The Company is led by an experienced management team comprised of the following members:

| Name            | Years with the Company | Title                                  |
|-----------------|------------------------|--|
| Geoff Walker    | 5                      | Chief Executive Officer and President  |
| Johnnie Goodner | 5                      | Chief Financial Officer                |
| David Barr      | 23                     | Chief Supply Chain and Product Officer |

14. As of the Petition Date, the Debtors employ over 60 individuals on a full-time or part-time basis in the U.S. and Canada.<sup>3</sup> The Company's management team is supported by mid-level executives who are vital to the Company's operations, these Chapter 11 Cases, and the ability to successfully consummate the Sale Transaction (as defined below). Their skills, knowledge, and understanding of the Company's operations are essential to preserving operational stability, safety, and efficiency.

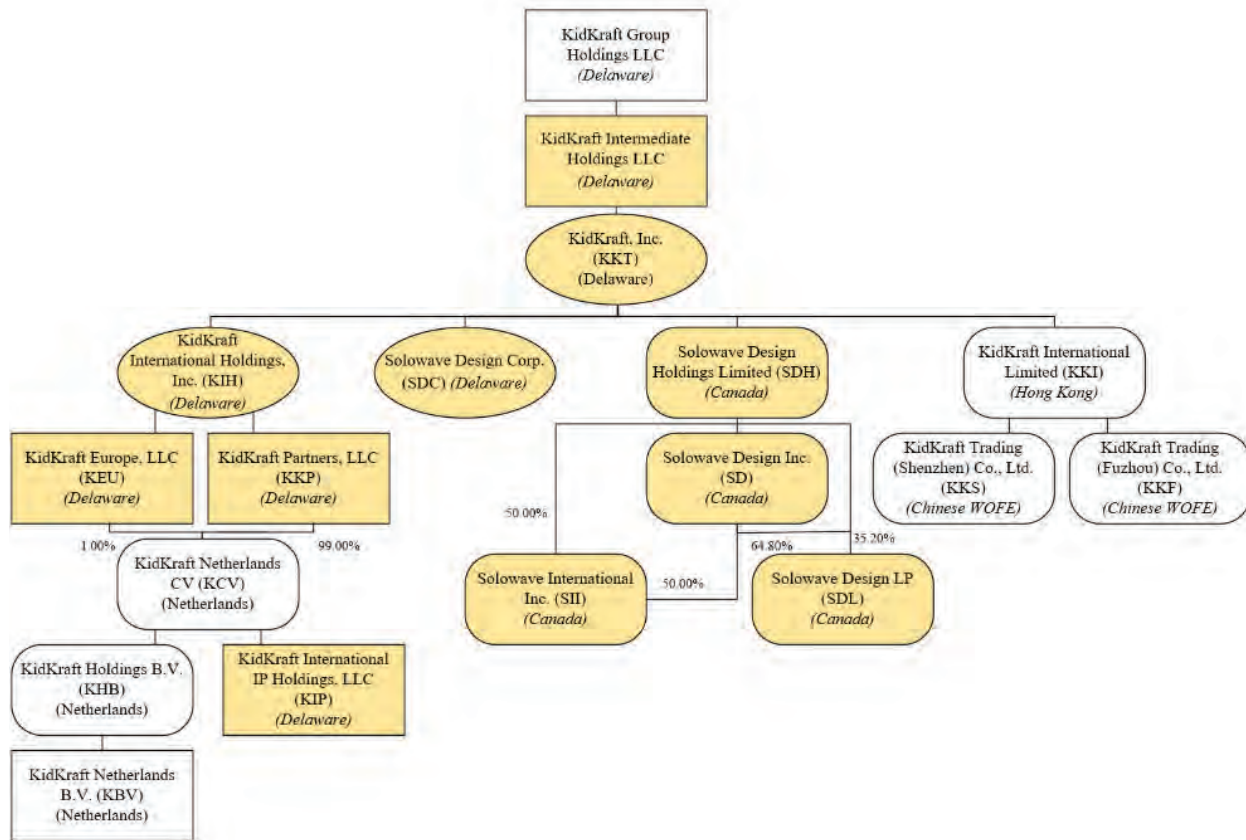
**C. The Company's Organizational Structure**

15. The Company's organizational structure consists of eighteen entities. Eleven of the Company entities are Debtors in these Chapter 11 Cases. The following is a simplified organization chart of the Company, with the Debtor entities highlighted in yellow:

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<sup>3</sup> The Company's non-debtor affiliates in the Netherlands and China employ approximately 17 individuals and 150 individuals, respectively.





16. The non-debtors include KidKraft’s ultimate parent company, KidKraft Group Holdings LLC, which is not a guarantor or borrower on any of the Company’s funded debt, as well as the Company’s subsidiaries in China and the Netherlands. The China subsidiaries oversee production and distribution of the Company’s products in China, and are also not guarantors or borrowers on any of the Company’s funded debt. The Dutch subsidiaries support sales and distribution of the Company’s products in Europe, the Middle East, Africa, and Asia-Pacific. As noted below, KidKraft Netherlands B.V. is a borrower and the other Dutch subsidiaries are guarantors under the Prepetition Credit Agreement, but the obligations of each of the Dutch subsidiaries under the Prepetition Credit Agreement is not to exceed \$10,000,000.

**II. PREPETITION CAPITAL STRUCTURE<sup>4</sup>**

17. As of the Petition Date, the Debtors’ funded debt liabilities total approximately \$151.9 million, including approximately (i) \$149.9 million in outstanding principal and (ii) \$2.0 million in accrued and unpaid interest. The Debtors’ funded debt obligations include:

| Facility                                | Maturity     | Total Approx. Principal Amount Outstanding |
|---|--------------|--|
| Revolving Credit Facility               | June 2024    | \$63.2 million                             |
| Term Loan Credit Facility               | June 2024    | \$81.7 million                             |
| <b><i>Total Funded Secured Debt</i></b> |              | <b>\$144.9 million</b>                     |
| Subordinated Unsecured Note             | January 2025 | \$5.0 million                              |
| <b><i>Total Funded Debt</i></b>         |              | <b>\$149.9 million</b>                     |

**A. Prepetition Credit Agreement**

18. The Debtors’ primary long-term debt consists of that certain *Amended and Restated First Lien Credit Agreement* dated as of April 3, 2020, among KidKraft and KidKraft Netherlands B.V., a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of The Netherlands, as borrowers, KidKraft Intermediate Holdings, LLC and its subsidiaries that are guarantors thereto, the lender party thereto, and the administrative agent (as amended by that certain (a) Forbearance and Amendment No. 1 to Amended and Restated First Lien Credit Agreement, dated as of January 13, 2023 (the “*First Amendment*”), (b) Amendment No. 2 to Amended and Restated First Lien Credit Agreement, dated as of March 22, 2023, (c) Forbearance and Amendment No. 3 to Amended and Restated First Lien Credit Agreement, dated as of September 29, 2023 (the “*Third Amendment*”), (d) Amendment No. 4 to Amended and Restated First Lien Credit Agreement, dated as of October

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<sup>4</sup> The following description of the Debtors’ prepetition capital structure is for informational purposes only and is qualified in its entirety by reference to the Prepetition Credit Agreement (defined below) and other documents setting forth the specific terms of such obligations.

27, 2023, (e) Forbearance, Amendment No. 5 and Joinder to Amended and Restated First Lien Credit Agreement, dated as of January 31, 2024 (the “*Fifth Amendment*”), and (f) Amendment No. 6 to the Amended and Restated First Lien Credit Agreement, dated as of May 9, 2024 (the “*Sixth Amendment*”); and as may be further amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the “*Prepetition Credit Agreement*”). The lender has provided commitments under the Prepetition Credit Agreement consisting of revolving credit commitments (such commitments, collectively, the “*Prepetition First Lien Revolving Facility*”) and term loan commitments (such commitments, collectively, the “*Prepetition First Lien Term Facility*”), each of which are secured by a first priority lien on substantially all of the Debtors’ assets, as well as liens on the Company’s Dutch subsidiaries’ assets.

19. The Fifth Amendment was entered into in connection with the Debt Sale (defined below) and joined KidKraft’s Dutch and Canadian affiliates as guarantors under the Prepetition Credit Agreement, joined KidKraft Netherlands B.V. as a co-borrower, increased the priority revolving commitments under the Prepetition Credit Agreement to approximately \$26.8 million, and extended the maturity of the term loans under the Prepetition Credit Agreement from June 30, 2023, to June 30, 2024 giving the Company crucial liquidity and runway to pursue restructuring alternatives. Additionally, the Sixth Amendment, further increased the priority revolving commitments under the Prepetition Credit Agreement to approximately \$31.5 million.

20. As of the Petition Date, the Debtors’ aggregate principal outstanding funded debt obligations under the Prepetition Credit Agreement total approximately \$144.9 million, comprised of (i) \$81.7 million under the Prepetition First Lien Term Facility and (ii) \$63.2 million under the Prepetition First Lien Revolving Facility. In addition, the Debtors owe accrued and unpaid interest



under both the Prepetition First Lien Term Facility and the Prepetition First Lien Revolving Facility.

**B. Subordinated Note, Trade Vendors, and Other Unsecured Liabilities**

21. In connection with the First Amendment, MidOcean Partners IV, L.P. (“*MidOcean*”), the Company’s equity sponsor, agreed to provide an unsecured subordinated loan to KidKraft in the amount of \$5 million (the “*Subordinated Note*”). The loan is documented in that certain *Note Purchase Agreement*, dated as of January 13, 2023 among KidKraft and MidOcean, and subordinated to the Prepetition Credit Agreement via a Subordination Agreement, dated as of January 13, 2023 among KidKraft, MidOcean, KidKraft Intermediate Holdings, LLC and the administrative agent under the Prepetition Credit Agreement. As of the Petition Date, the Subordinated Note is outstanding; however, MidOcean has agreed under the RSA (as defined below) to a waiver of the Subordinated Note obligations on the effective date of the Plan.

22. In the ordinary course of business, the Debtors rely on numerous trade vendors to operate their businesses. These trade vendors include producers of the Debtors’ products, marketing and advertising services, professional services, and shipping and logistics services that deliver the finished products to the Debtors and to various customers. As a result of the Debtors’ business with these trade vendors, the Debtors have accrued approximately \$33 million in unsecured trade claims as of the Petition Date.

**C. Equity Interests in Intermediate Holdings**

23. Non-Debtor KidKraft Group Holdings LLC owns 100.0% of the equity interests in Intermediate Holdings. KidKraft Group Holdings LLC is majority owned by MidOcean.

### **III. EVENTS LEADING TO THE CHAPTER 11 CASES**

#### **A. Challenges Facing the Company**

24. Despite its long history as a leader in branded, sustainable, wood-based active and imaginative play products, the Company is currently facing significant balance sheet and liquidity challenges, caused by a range of factors, including softening post-COVID demand, supply chain disruption beginning in late 2021, throughout 2022, and into 2023, resulting in product delivery delays and increased cost, and general cost inflation. As a result, the Company's operating margins have been squeezed in recent years. In addition, the Company's funded debt matured in June 2023 and was unable to be refinanced or replaced. The Company proactively worked to address their balance sheet and liquidity challenges, including through a balance-sheet restructuring in 2023 and by running multiple robust, out-of-court sale processes (the "*Sale Processes*") prior to the Petition Date.

#### **B. Liquidity Constraints and Near-Term Financial Obligations**

25. The Company has primarily depended on cash flow from operations and borrowings under its Prepetition Credit Agreement as its sources of cash and liquidity. Beginning in Spring 2022, cash flow from operations began to decline as revenue decreased and costs increased. Revenue declines were driven by a number of factors, including the reduced demand for the Company's products, and supply chain disruptions that impacted the Company's ability to produce sufficient product to meet demand. Cost increases were driven by, among other things, increased cost of supplies, shipping and supply chain disruptions, significant promotional dollars to reduce elevated retailer and KidKraft inventory levels, and other general cost inflation.

26. In the face of these operational and liquidity challenges, the Company also needed to address the Prepetition Credit Agreement maturity in June 2023. Accordingly, the Company began negotiations with its existing lenders under the Prepetition Credit Agreement and was able

to obtain a series of forbearances from the lenders. The Company's liquidity, however, was further constrained by its inability to borrow under the Prepetition Credit Agreement beginning in October 2023. The Company only obtained additional borrowing capacity and access to liquidity under the Prepetition Credit Agreement following the Debt Sale and Fifth Amendment in January 2024. Ultimately, given these constraints, the Company determined, with the support of its lenders, to pursue a sale of the Company, as described below.

**C. Hiring Advisors and the Fall 2023 Sale Process**

27. To further the Company's efforts in addressing its challenges, in August 2023, Jill Frizzley was appointed to KidKraft's board of directors as an independent director. Subsequently, the Company engaged advisors to explore strategic alternatives, including a potential sale of all or substantially all of the assets or equity of the Company. The Company retained Vinson & Elkins LLP ("**V&E**"), as restructuring counsel in August 2023 and Robert W. Baird & Co. ("**Baird**"), as investment banker in September 2023. Shortly thereafter, the Company engaged SierraConstellation Partners ("**Sierra**," and collectively with Baird and V&E, the "**Advisors**"), as financial advisor, to work with the Company on forecasting cash flow, analyzing and preserving liquidity, and exploring the Company's strategic options.

28. Shortly after hiring the Advisors, and in connection with the Third Amendment entered into in September 2023, the Company agreed to pursue a sale and marketing process to sell some or all of the Company's assets or equity interests (the "**Fall 2023 Sale Process**"). As described in further detail in the *Declaration of Ajay Bijoor, Managing Director of Robert W. Baird & Co. in Support of (I) the Debtors' Motion to Obtain Postpetition Debtor in Possession Financing and (II) the Sale Process* (the "**Bijoor Declaration**"), filed contemporaneously herewith, in connection with the Fall 2023 Sale Process, Baird contacted and held conversations with over 100 potential buyers, including strategic and financial parties, while diligently working

to both market the Company's assets and resolve any questions and concerns from potential buyers. The Company and the Advisors facilitated a diligence process that included executing non-disclosure agreements, providing data room access and a confidential information memorandum, and holding buyer "deep dive" conversations with parties that expressed interest in engaging in the Fall 2023 Sale Process. These efforts resulted in the Company receiving multiple indications of interest and three letters of intent in November 2023. The Company and Baird continued discussions with certain of the parties and one emerged as the front runner and only potential buyer with a proposal to purchase the entire Company as a going concern. However, following extensive negotiations in December 2023, the potential buyer informed Baird and the Company that it was unwilling to consummate a transaction and terminated negotiations with the Company and its advisors. Therefore, the Fall 2023 Sale Process did not progress any further.

**D. Debt Sale**

29. After the Fall 2023 Sale Process failed to result in a sale, the Company continued to face significant liquidity challenges and worked with the Advisors to begin contingency planning for a potential in-court restructuring process in December 2023 and January 2024. At the same time, the Company, with the assistance of the Advisors, continued outreach to previously interested potential purchasers of the Company's assets, and also began discussions with 1903 Partners, LLC ("**Gordon Brothers**"), who expressed interest in potentially purchasing the Company's obligations under the Prepetition Credit Agreement with a view towards working with the Company to complete a strategic, value-maximizing transaction. In connection with that outreach, Gordon Brothers submitted an indication of interest laying out a transaction through which Gordon Brothers would purchase the Company's obligations under the Prepetition Credit Agreement, provide liquidity to the Company, and potentially backstop a restructuring. At the time, the offer from Gordon Brothers was the only indication of interest received by the Company

that would maintain the Company as a going concern. As a result, the Company helped facilitate negotiations and an agreement whereby Gordon Brothers acquired the debt under the Prepetition Credit Agreement from the Company's existing first lien lender (the "***Debt Sale***").

30. In connection with the Debt Sale, Gordon Brothers provided additional funding in the form of revolving priority loans to allow the Company to maintain its operations, and prevent further degradation of its business while the Company and Gordon Brothers worked collaboratively to explore value-maximizing strategic alternatives. The Company and the Advisors engaged in conversations with Gordon Brothers regarding potential consensual transactions to address the Company's balance sheet and liquidity challenges, including a potential sale of the Company or an in- or out-of-court restructuring of the Company's funded debt obligations.

**E. Spring 2024 Sale Process**

31. After good faith and arm's-length negotiations, the Company, with the support of Gordon Brothers, determined that pursuing a sale for all or substantially all of the Company's assets or equity interests could create a value-maximizing outcome. Accordingly, the Company, with the assistance of Baird, conducted a second sale process (the "***Spring 2024 Sale Process***"). In connection with the Spring 2024 Sale Process, Baird reached back out to the parties that had expressed interest in the Company during the Fall 2023 Sale Process as well as an additional 35 parties who may have been interested in purchasing some or all of the Company's assets or equity interests. Following the marketing process, the Company received four indications of interest. Ultimately, Backyard Products, LLC (the "***Purchaser***") emerged with a bid to purchase a substantial majority of the Company's assets with such sale to be effectuated in chapter 11 (the "***Sale Transaction***").

**F. The RSA, Plan, and APA**

32. Based on the results of the Fall 2023 Sale Process and the Spring 2024 Sale Process, the Company determined that the proposed Sale Transaction, which was the only option to preserve KidKraft as a going concern, presented the best opportunity to maximize the Company's value for all stakeholders and was the highest and best offer available. Accordingly, the parties engaged in further negotiations to document the terms of the proposed Sale Transaction and accompanying chapter 11 cases. As a result, on April 25, 2024, the Debtors, Gordon Brothers, MidOcean, and the Purchaser entered into a restructuring support agreement, which is attached hereto as **Exhibit B** (together with the term sheets and other exhibits attached thereto, the "**RSA**").

33. The RSA documents the parties' commitment to the restructuring transactions described above, including the Sale Transaction. The RSA is an essential part of the Debtors' restructuring efforts and provides the Debtors with significant assurances regarding the ultimate success of the Chapter 11 Cases. In particular, by signing the RSA, Gordon Brothers, MidOcean, and the Purchaser have agreed to take steps and actions that are reasonably necessary to implement the Restructuring Transactions (as defined in the RSA), including, in the case of Gordon Brothers, providing critical funding to achieve consummation of the Plan and Sale Transaction, voting in favor of a joint prepackaged chapter 11 plan (the "**Plan**") on terms consistent with the RSA, and not objecting to relief sought by the Debtors. Notably, the RSA also preserves the Debtors' flexibility to consider alternative transactions that may be in the best interests of their estates and stakeholders consistent with their fiduciary duties.

34. Certain additional key elements of the RSA include:

- Gordon Brothers' agreement to provide necessary debtor-in-possession financing;
- the filing of the Plan, Disclosure Statement, and motion for approval of the Disclosure Statement on the Petition Date;

- certain restructuring milestones described in the RSA;
- the sale of certain of the Debtors' assets to the Purchaser pursuant to the APA (as defined below); and
- consummation of the transactions contemplated in the Plan and distributions to holders of claims against and interests in the Debtors based on the treatment provided for such holders in the Plan.

35. In connection with the RSA, certain of the Debtors and Backyard, negotiated and entered into an Asset Purchase Agreement, which is attached as **Exhibit B** to the RSA (the "*APA*"). The APA contemplates the sale of certain of the Debtors' assets to Backyard through these Chapter 11 Cases. This sale includes the assumption of certain of the Debtors' liabilities, a commitment to offer employment to nearly all of the Debtors' employees, and payment of contract cure costs incurred in connection with these Chapter 11 Cases.

36. The Company, Gordon Brothers, and the Purchaser moved expeditiously to negotiate and execute the RSA and APA given the significant distress the Company was experiencing and a strong desire to preserve the value of the Company. I believe that continuing to move swiftly to consummate the sale is important to preserving value, including by positioning the go-forward enterprise to have a strong holiday sales season. In the Company's business, a significant portion of annual sales occur at and around the end of year holidays. Importantly, for the Company to have its products completed and available for purchase, either in stores or online, the Company must place its orders between May and July for goods to then be shipped from its oversea vendors in August and September. Further, the Company's retail partners hold designated space on their shelves for the Company's products and if the Company fails to deliver product at the holiday season these retailers are likely to not hold that space for the Company in the future, causing harm to the Company not only in the immediate future but also in future years.

37. I understand that the RSA and APA provide the Debtors a path to implement the Sale Transaction quickly and successfully through these Chapter 11 Cases. Given the extensive marketing efforts described above and in the Bijoor Declaration, I believe that the transactions proposed under the APA and Plan present the best opportunity for the Debtors to maximize the value of their estates. Without the proposed Sale Transaction, the only alternative path for the Debtors is likely a value-destructive liquidation. The RSA and APA contain several important milestones that require the Debtors to progress quickly through these Chapter 11 Cases. As a result of these milestones and those in the DIP Facility (described below), and in order to avoid immediate and irreparable harm to the Debtors and their estates, it is critical that these Chapter 11 Cases progress swiftly and smoothly to ensure that the Sale Transaction is closed and the Debtors are not left without an actionable transaction.

**G. Prepetition Solicitation**

38. In order to move through these Chapter 11 Cases on the timeline described above, on May 9, 2024, the Debtors solicited votes to accept the Plan by distributing the Plan, the Disclosure Statement, and a ballot to Gordon Brothers, the only party entitled to vote on the Plan. The deadline for submitting votes to accept or reject the Plan was May 9, 2024. Gordon Brothers, the only holder of claims in Class 3, voted to accept the Plan.

**H. The Debtors' Need for the DIP Facility to Operate on a Postpetition Basis in the Ordinary Course**

39. As also discussed in the *Declaration of Carl Moore in Support of the Debtors' Motion to Obtain Postpetition Debtor-in-Possession Financing*, filed substantially contemporaneously herewith (the "**Moore Declaration**"), the Debtors' postpetition operations in the near-term will not generate sufficient cash to continue operations in the ordinary course while funding the expenses associated with these Chapter 11 Cases. Access to cash is essential to ensure



the liquidity and viability of the Debtors as a going concern and achieve consummation of the Plan and Sale Transaction. The harm caused by a failure to meet liquidity needs would destabilize the Debtors' business operations, jeopardize the sale to Backyard and the ability of certain employees to transition to Backyard, and result in immediate and irreparable harm to the Debtors and their estates. Accordingly, the Debtors require immediate access to debtor-in-possession financing and authority to use cash collateral to maintain sufficient liquidity to continue to operate and consummate the Sale Transaction to maximize value for their stakeholders. This immediate liquidity is the only way that the Debtors will be able to meet the timelines required to have a strong holiday season and preserve their business as a going concern.

40. I believe that the amount available to draw under the DIP Facility, which consists of \$10.5 million in new money and \$23.3 million rolled-up from the existing Prepetition Credit Agreement, addresses the Debtors' immediate and anticipated liquidity needs pending the Court's approving the DIP Facility on a final basis. As discussed in detail in the Moore Declaration, I believe that without this DIP funding, the Debtors would be unable to meet their liquidity needs, including paying employees and vendors, all of which are essential to the Debtors' ongoing operations and achieve consummation of the Plan and Sale Transaction. Additionally, access to cash collateral for consensual use will allow the Debtors to continue operating their businesses normally, including placing orders for product needed to fulfill holiday orders, which will, in turn, allow the Debtors to consummate the value-maximizing Sale Transaction on an expedited timeframe, which will maximize the value of the Debtors' estates. I believe that the amount of the DIP Facility is sufficient to address the Debtors' liquidity needs for the anticipated duration of these Chapter 11 Cases.

#### **IV. FIRST DAY MOTIONS**

41. Contemporaneously with this Declaration, the Debtors have filed several First Day Motions seeking orders granting various forms of relief intended to stabilize the Debtors' business operations and facilitate a smooth and efficient transition into bankruptcy and administration of these Chapter 11 Cases. I have reviewed each of the First Day Motions, and I believe that the relief requested therein is necessary to allow the Debtors to operate with minimal disruption during the pendency of these Chapter 11 Cases. The Debtors intend to seek entry of Court orders approving each of the First Day Motions as soon as possible in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules for the United States Bankruptcy Court for the Northern District of Texas. For each First Day Motion in which the Debtors have sought relief on an emergency basis, if the Court declines to grant the relief requested therein, I believe that the Debtors will suffer immediate and irreparable harm for the reasons stated in the First Day Motions and in **Exhibit A** attached hereto.

42. A description of the relief requested and the facts and opinions supporting each of the First Day Motions is detailed in **Exhibit A** attached hereto.

*[Remainder of page intentionally left blank.]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 10, 2024

/s/ Geoffry Walker  
Geoffry Walker

THIS IS **EXHIBIT “M”** REFERRED TO IN THE AFFIDAVIT OF  
GEOFFREY WALKER SWORN BEFORE ME over video  
teleconference this 11<sup>th</sup> day of July, 2024 pursuant to O. Reg 431/20,  
Administering Oath or Declaration Remotely. The affiant was located in  
the City of Dallas, in the State of Texas, while the Commissioner was  
located in the City of Toronto, in the Province of Ontario.



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Commissioner for Taking Affidavits  
EMILIE DILLON (LSO # 85199L)

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

|                                |   |                                |
|--------------------------------|---|--------------------------------|
| <b>In re:</b>                  | § | <b>Case No. 24-80045-mvl11</b> |
|                                | § |                                |
| <b>KIDKRAFT, INC., et al.,</b> | § | <b>(Chapter 11)</b>            |
|                                | § |                                |
| <b>Debtors.<sup>1</sup></b>    | § | <b>(Jointly Administered)</b>  |
|                                | § |                                |

**DECLARATION OF GEOFFREY WALKER  
IN SUPPORT OF PLAN CONFIRMATION**

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I, Geoffrey Walker, declare the following under 28 U.S.C. § 1746:

1. I am the Chief Executive Officer and President of KidKraft, Inc., a corporation organized under Delaware law (“*KidKraft*,” and together with its debtor affiliates in the above-captioned chapter 11 cases, the “*Debtors*”). I am authorized to submit this declaration (“*Declaration*”) on behalf of the Debtors. I am over 21 years of age, and, if called upon to testify, I would testify competently to the facts and opinions set forth herein.

2. I joined KidKraft in 2019 and have served in my current role since that time. As a result, I am familiar with the Debtors’ day-to-day operations, business and financial affairs, books and records, and employees. I hold a Bachelor of Science degree in Accounting from the University of Southern California and a Masters of Business Administration from Vanderbilt University. I have over twenty-eight years of experience in the toy industry, and I served in

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<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers or Canadian business numbers, as applicable, are: KidKraft, Inc. (3303), KidKraft Europe, LLC (3174), KidKraft Intermediate Holdings, LLC (8800), KidKraft International Holdings, Inc. (2933), KidKraft International IP Holdings, LLC (1841), KidKraft Partners, LLC (3268), Solowave Design Corp. (9294), Solowave Design Holdings Limited (0206), Solowave Design Inc. (3073), Solowave Design LP (7201), and Solowave International Inc. (4302). The location of the Debtors’ U.S. corporate headquarters and the Debtors’ service address is: 4630 Olin Road, Dallas, TX 75244.

multiple leadership roles at Mattel, Inc. prior to joining KidKraft. Prior to my work at Mattel, I worked as a consultant and auditor with KPMG.

3. On May 10, 2024 (the “*Petition Date*”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “*Court*”) thereby commencing the above-captioned chapter 11 cases (the “*Chapter 11 Cases*”).

4. I submit this declaration in support of confirmation of the *Debtors’ Joint Prepackaged Chapter 11 Plan* [Docket No. 28] (as may be further amended, modified, or supplemented, the “*Plan*”), which Plan is being amended to incorporate the terms of the Global Settlement (as defined below).<sup>2</sup> I have reviewed and am generally familiar with the terms and conditions of the Plan and the Global Settlement, and the other documents comprising the *Notice of Supplement to the Debtors’ Joint Prepackaged Chapter 11 Plan* filed on June 12, 2024 [Docket No. 175] and *Notice of Amended Supplement to the Debtors’ Joint Prepackaged Chapter 11 Plan* filed on June 18, 2024 [Docket No. 187] (collectively, and as may be further amended, modified, or supplemented, the “*Plan Supplement*”).

5. All facts and opinions set forth in this Declaration are based upon: (a) my knowledge of the Debtors’ day-to-day operations, business and financial affairs, books and records, and employees; (b) information I learned from my review of relevant documents; (c) information supplied to me or verified by other members of the Debtors’ management and their third-party advisors; and/or (d) my experience and knowledge concerning the toy industry generally. Unless otherwise indicated, any financial information contained in this Declaration is subject to change but is true and correct as of the date of this Declaration.

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<sup>2</sup> Capitalized terms used but not defined in this Declaration have the meanings given to them in the Plan.

6. I previously submitted the *Declaration of Geoffrey Walker In Support of Chapter 11 Petitions and First Day Motions* [Docket No. 31] (the “*Walker First Day Declaration*”) on May 10, 2024. The Walker First Day Declaration, which I incorporate herein by reference in its entirety, sets forth background information, as of the Petition Date, about the Debtors, their ownership and capital structure, and the events giving rise to these Chapter 11 Cases.

### **THE GLOBAL SETTLEMENT**

7. On May 23, 2024, the Office of the United States Trustee for the Northern District of Texas (the “*U.S. Trustee*”) appointed an Official Committee of Unsecured Creditors (the “*Committee*”) in these chapter 11 cases. The Debtors and their advisors worked to quickly initiate dialogue with the Committee’s professionals and respond to diligence requests so that the Committee could get up to speed on the facts underlying these chapter 11 cases. After these initial discussions, the Committee served the Debtors with formal discovery requests and the Debtors and the Committee, as well as other parties in interest, continued to engage in informal discovery and parallel settlement negotiations. Advisors to the Committee also received a summary of the investigation conducted by Jill Frizzley, an independent director of KidKraft, for the purpose of determining whether the Debtors hold colorable causes of action worth pursuing.

8. Although contentious at times, these negotiations were productive and culminated in a global settlement (the “*Global Settlement*”) of all issues among the Debtors, the DIP Lenders, the Prepetition Secured Parties, the Purchaser, MidOcean, and the Committee (collectively, the “*Global Settlement Parties*”).<sup>3</sup>

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<sup>3</sup> The specific terms of the Global Settlement were filed in the Debtors’ *Notice of Filing of Global Settlement Term Sheet* [Docket No. 195] on June 17, 2024 and will be incorporated into the Plan.

9. The Debtors will file an amended Plan consistent with the terms of the Global Settlement, that will, among other things, create a GUC Trust and provide a mechanism for Holders of Allowed Class 4 General Unsecured Claims to affirmatively opt-in to receiving their pro rata share of beneficial interests in the GUC Trust. Under the Global Settlement, the Debtors and their key stakeholders agreed to fund the GUC Trust with specific assets, including cash and certain claims and causes of action. In exchange, the Committee agreed to, among other things, support the Plan and the Debtors' proposed DIP financing.

10. Key terms of the Global Settlement, which are being incorporated into the Plan, include:

- The Committee agreed (a) not object to, delay, or impede, (b) if applicable, withdraw any objections to, (c) not seek any additional discovery with respect to, and (d) affirmatively support the DIP Facility, entry of the Final DIP Order, approval of the "second day" motions, approval of the Sale Transaction, approval of the Disclosure Statement, and confirmation of the Amended Plan on the milestones set forth in the RSA.
- The Global Settlement Parties agreed that the Amended Plan will provide that each holder of an Allowed General Unsecured Claim may elect to "opt in" to receiving its share of the beneficial interests in the GUC Trust within 30 days after the Effective Date.
- The Global Settlement Parties agreed that the GUC Trust Assets, including any proceeds received by the GUC Trust on account of the prosecution or settlement of any commercial tort claims or Avoidance Actions that are GUC Trust Assets, net of any GUC Trust expenses (including professional fees) not covered by the GUC Trust Expense Reserve, will be distributed as follows:
  - (i) Holders of Allowed General Unsecured Claims that are GUC Trust Beneficiaries other than the Prepetition Secured Parties will receive their Pro Rata share of 100% of the GUC Trust Assets up to \$1,000,000; and
  - (ii) thereafter, all Holders of Allowed General Unsecured Claims that are GUC Trust Beneficiaries (including the Prepetition Secured Parties' Deficiency Claims) will receive their Pro Rata share of 100% of the GUC Trust Assets.
- The Prepetition Secured Parties agreed that their deficiency claims will be capped at \$55 million, solely for purposes of distributions to be made from the GUC Trust Assets.
- MidOcean agreed to (i) contribute \$100,000 in Cash to the GUC Trust and (ii) waive any General Unsecured Claims it may have against the Debtors, including any claims under the subordinated note and services agreement.



I believe that each component of the Global Settlement is reasonable and appropriate and in the best interests of the Debtors because:

- the Global Settlement makes it possible for Holders of General Unsecured Claims to receive a recovery through the GUC Settlement Opt-In Election, which is an improvement to their treatment in the original version of the Plan;
- absent the Global Settlement, the Debtors and some or all of the other Global Settlement Parties faced the prospect of expensive and time-consuming litigation with uncertain outcomes for all, which would have invariably been a distraction jeopardizing the sale transaction in these Chapter 11 Cases;
- resolving these disputes through the Global Settlement enhanced the Debtors' ability to achieve a value-maximizing sale of substantially all of the Debtors' assets; and
- the Global Settlement provided a clear path towards the Debtors' expeditious emergence from chapter 11.

11. The Global Settlement was negotiated, proposed, and entered into by the Global Settlement Parties at arm's length, after significant negotiations. From my role and first-hand participation in related discussions, it appeared to me that the parties were operating in good faith, and I have seen no evidence of collusion or fraud. Those negotiations were hard fought over the course of several weeks.

12. For all of the above reasons, I believe the Global Settlement represents a fair and reasonable compromise that is in the best interests of the Debtors, their estates, and all of the Debtors' stakeholders. This settlement resolves legal issues that are subject to potentially expensive and time-consuming litigation with uncertain outcomes, and makes possible a recovery to general unsecured creditors that otherwise likely would not have occurred. All of this will directly benefit the Debtors' Estates and all parties in interest. Therefore, based on my business judgment, I believe that the Global Settlement is reasonable and appropriate given the facts and circumstances of these chapter 11 cases.

**PLAN CONFIRMATION**

**A. The Plan and the Debtors Comply with the Bankruptcy Code (1129(a)(1)-(2)).**

13. I understand that the Bankruptcy Code requires the Plan and the Debtors to comply with applicable provisions of the Bankruptcy Code. The Debtors retained competent and capable professionals to ensure this was the case, and I believe they have done so. Among other things, the Plan designates Claims against and Interests in the Debtors into seven classes, as set forth in Article III of the Plan. The separate classification of Claims against and Interests in the Debtors is based on valid business, factual, and legal reasons. I understand that the Claims and Interests within each class are substantially similar.

**B. The Plan is Proposed in Good Faith (1129(a)(3)).**

14. As described in the Walker First Day Declaration, prior to the Petition Date, the Debtors and their advisors undertook the Fall 2023 Sale Process and the Spring 2024 Sale Process (each as defined therein) in order to find a value-maximizing transaction.

15. In my role as Chief Executive Officer, I was very involved in the Fall 2023 Sale Process, the Spring 2024 Sale Process, and I also have been very involved the Debtors' Chapter 11 Cases. I have attended numerous meetings and calls and have spent countless hours working closely with the other members of the Debtors' management team, the other members of the Board, and the Debtors' legal counsel and financial advisors.

16. After extensive good-faith and arm's-length negotiations, the Debtors determined that the Sale Transaction presented the best opportunity to maximize the Debtors' value for all stakeholders. The Debtors originally filed these Chapter 11 Cases and the Plan with the strong support of the Purchaser, Prepetition Secured Parties, and MidOcean, and consistent with the restructuring support agreement (the "**RSA**"), with the goal of implementing the Sale Transaction with Backyard pursuant to a prepackaged chapter 11 plan to, among other things, preserve jobs,

maximize value of the Debtors' assets, and maintain the Debtors' brand as a going concern. Although never utilized, it is important to note that the RSA contained a robust "fiduciary out" provision which permitted the Debtors, their officers, and their boards of directors (including the independent director) to consider any alternative transaction presented that would maximize recovery for all stakeholders.<sup>4</sup>

17. The Plan, which will be amended in accordance with the Global Settlement, preserves the Sale Transactions, allows them to be implemented on a consensual basis with the Committee, and is the result of the extensive, arm's-length, and good-faith negotiations between the Debtors and the Global Settlement Parties, all of whom I observed to be acting in good faith at all times. I believe that the Plan and Global Settlement are the best compromise available considering the realities of the Debtors' capital structure and lack of any superior actionable bids resulting from the Fall 2023 Sale Process and Spring 2024 Sale Process and the absence of any superior bids during these Chapter 11 Cases.

18. For all of the foregoing reasons, I believe that each Debtor has proposed the Plan in good faith and not by any means forbidden by law.

**C. Required Fee Approvals Will Be Obtained (1129(a)(4)).**

19. All payments made by the Debtors to any professional person for services or for costs and expenses in connection with the Plan or incident to these Chapter 11 Cases have been or will be approved by this Bankruptcy Court. The Debtors do not intend to make any payments to professionals without Bankruptcy Court approval, if such approval is required. Specifically, Article II.B of the Plan requires that requests for payment of Professional Fee Claims for services

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<sup>4</sup> To date, no alternative transactions have been presented to the Debtors.

and reimbursement of expenses be filed with the Bankruptcy Court no later than 45 days after the Effective Date.

**D. Required Governance Disclosures Will Be Made (Section 1129(a)(5)).**

20. The identity of the Wind Down Administrator, to the extent known, will be disclosed prior to the Combined Hearing. The Plan describes, among other things, the Wind Down Administrator's right to administer the Wind Down Estate, including the power to retain professionals, make distributions under the Plan, and pursue litigation on behalf of the Wind Down Estate. The Debtors fully and accurately disclosed in Article IV.A of the Plan the method of selection of the Wind Down Administrator, who will be selected by the Debtors, with the consent of the Prepetition Secured Parties and the DIP Secured Parties.

21. Similarly, the GUC Trustee will be appointed pursuant to Article IV of the Plan. The Plan describes, among other things, the GUC Trustee's right to administer the GUC Trust, including the power to retain professionals and make distributions under the Plan. The GUC Trustee will be selected in accordance with the procedures set forth in Article IV.B.3 of the Plan.

22. I understand that on the Effective Date, any and all remaining officers or directors of the Debtors shall be deemed to have resigned.

**E. No Rate Approvals are Required (Section 1129(a)(6)).**

23. There is no governmental regulatory commission with jurisdiction over the rates of the Debtors and the Plan does not provide for any such rate change.

**F. Carl Moore has Addressed Section 1129(a)(7) by Separate Declaration.**

24. I understand that Carl Moore of SierraConstellation Partners, LLC has addressed section 1129(a)(7)'s requirement concerning plan recoveries in a separate declaration.

**G. Under Section 1129(b), the Plan can be Confirmed Notwithstanding Section 1129(a)(8).**

25. The Plan separately classifies Claims and Interests against each Debtor (as applicable) as follows:

| <b>Class</b> | <b>Claim or Interest</b>                      | <b>Status</b>       | <b>Voting Rights</b>                |
|--------------|---|---------------------|-------------------------------------|
| 1            | Other Priority Claims                         | Unimpaired          | Presumed to Accept                  |
| 2            | Other Secured Claims                          | Unimpaired          | Presumed to Accept                  |
| 3            | Prepetition Secured Party Claims              | Impaired            | Entitled to Vote                    |
| 4            | General Unsecured Claims                      | Impaired            | Deemed to Reject                    |
| 5            | Intercompany Claims                           | Unimpaired/Impaired | Presumed to Accept/Deemed to Reject |
| 6            | Intercompany Interests                        | Unimpaired/Impaired | Presumed to Accept/Deemed to Reject |
| 7            | KidKraft Intermediate Holdings, LLC Interests | Impaired            | Deemed to Reject                    |

26. I believe that (a) the Claims and Interests in each particular Class for each Debtor are substantially similar to all other Claims and Interests in the same Class for such Debtor, and (b) the Claims and Interests in each Class for each Debtor receive the same treatment under the Plan, unless the Holder of a particular Claim or Interest has agreed to less favorable treatment, and (c) as to all Claims and Interests, similarly situated claims are treated the same or there is a reasonable basis for any disparate treatment.

27. Classes 1 (Other Priority Claims) and 2 (Other Secured Claims) are Unimpaired under the Plan, and I understand they are presumed to accept the Plan. I further understand that Holders of Claims in Class 3 (Prepetition Secured Party Claims) voted to accept the Plan. Holders

of Claims and Interests in the Unimpaired or Impaired Classes—Class 5 (Intercompany Claims) and Class 6 (Intercompany Interests)—will either be Unimpaired, and presumed to accept the Plan, or Impaired, and deemed to reject the Plan. Holders of Interests in Class 7 are Impaired and deemed to reject the Plan.

28. As to all Classes that are deemed to reject the Plan, including without limitation Class 4 (General Unsecured Claims) and Class 7 (KidKraft Intermediate Holdings, LLC Interests), no Holder of any Claim or Interest that is junior to the Claims or Interests of such Classes will receive or retain under the plan on account of its junior Claim or Interest any property. Moreover, as to all Classes that are deemed to reject the Plan, no Holder of any Claims in a senior Class will receive more than 100% on account of his, her, or its Allowed Claims.

29. Although treatment of Class 5 (Intercompany Claims) is different than Class 4 (General Unsecured Claims), I believe this is reasonable because the Intercompany Claims are owed among the Debtors and the Debtors are being dissolved under the Plan

30. Although the Holders of Allowed Class 4 General Unsecured Claims who elect to opt-in to the Global Settlement will receive a recovery pursuant to Bankruptcy Rule 9019, they will not receive a recovery on account of their Claims against the Debtors.

**H. Administrative and Priority Claims Will be Satisfied (1129(a)(9)).**

31. I understand that all administrative and priority claims against the Debtors and their Estates will be satisfied under the terms of the Plan, all within the Administrative Expense Claim, Priority Tax Claim, and Other Priority Claim Backstop Amount. *See* Article II of the Plan.

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

32. I understand that Class 3 (Prepetition Secured Party Claims) is Impaired and has voted to accept the Plan.

**J. The Plan is Feasible (1129(a)(11)).**

33. I do not believe that confirmation is likely to be followed by the liquidation or further financial reorganization of the Debtors, other than as proposed in the Plan. Among other things, I believe the Plan is feasible because it contemplates the distribution of the Cash proceeds of the Sale Transaction to the Holders of Allowed Claims in accordance with the priority scheme of the Bankruptcy Code and the terms of the Plan. Any Assets remaining in the Debtors' Estates as of the Effective Date, other than the GUC Trust Assets, will vest in the Wind Down Estate for the benefit of Holders of Allowed Claims in accordance with the Plan. I believe the Wind Down Budget is reasonable and it reflects considerable efforts from the Debtors' advisors, as well as the professional advisors to other case parties. As demonstrated by the Post-Sale Reserve and the various other reserves to be established pursuant to the terms of the Plan, the Debtors will have sufficient Assets to pay Allowed Administrative Expense Claims and Other Priority Claims in accordance with the Plan and to make the other distributions contemplated by the Plan.

**K. U.S. Trustee Fees Are Current (1129(a)(12)).**

34. The Debtors are current on their payments to the United States Trustee. The Debtors intend to pay any and all additional fees payable to the Office of the United States Trustee as and when due and payable. I understand that additional fees payable after the Effective Date will be paid by the Wind Down Estate or the GUC Trust (as applicable) until the closing of the Chapter 11 Cases, and I believe sufficient amounts have been included in the Post-Sale Reserve to pay such amounts.

**L. Remaining Confirmation Requirements are Inapplicable (1129(a)(13)-16).**

35. The Debtors do not currently have any employees that are receiving retirement benefits from the Debtors. The Debtors are not individuals, non-profit entities, or trusts.

**M. The Plan is Not for Tax or Securities Avoidance (1129(d)).**

36. The principal purpose of the Plan is not to avoid taxes or the application of section 5 of the Securities Act.

**N. The Releases, Settlements, Exculpations, and Injunctions in the Plan Are Appropriate and Should Be Approved.**

37. I am aware that the Plan includes certain settlements, releases, exculpations, and injunctions. More specifically:

- a. Article VIII.E of the Plan describes certain releases granted by the Debtors, their Estates, and the Wind Down Estate to each Released Party relating to, among other things, the Debtors (including the management, ownership, or operation thereof), the Prepetition Credit Agreement Documents, the Note Purchase Agreement Documents, the Professional Services Agreement Documents, RSA, the DIP Facility Documents, these Chapter 11 Cases, the Sale Transaction, and the Global Settlement, including any derivative claims (the “*Debtors’ Releases*”);
- b. Article VIII.F of the Plan provides for a consensual release of any and all Claims and Causes of Action of certain non-Debtor Holders of Claims and Interests (collectively, as defined in the Plan, the “*Releasing Parties*”) against the Released Parties relating to, the Debtors (including the management, ownership, or operation thereof), the Prepetition Credit Agreement Documents, the Note Purchase Agreement Documents, the Professional Services Agreement Documents, RSA, the DIP Facility Documents, these Chapter 11 Cases, the Sale Transaction, and the Global Settlement, including any derivative claims (collectively, the “*Releases*”);
- c. Article VIII.G of the Plan contains a release and exculpation for the Exculpated Parties for Claims and Causes of Action arising out of or relating to the chapter 11 cases, and the negotiation and pursuit of, among other things, the Debtors’ in- or out-of-court restructuring efforts, the formulation, preparation, dissemination, negotiation, or filing of the DIP Facility, the Disclosure Statement, the Plan, the RSA, the related agreements, instruments, and other documents (including the Definitive Documentation), the Filing of these chapter 11 cases, the pursuit of Confirmation, the administration and implementation of the Plan, including the issuance of Securities pursuant to the Plan or the distribution of property under the Plan, or any other related agreement (the “*Exculpation*”), which carves out any acts or omissions that are determined in a Final Order to have constituted fraud, willful misconduct, or gross negligence; and
- d. Article VIII.H of the Plan permanently enjoins actions against Released Parties or Exculpated Parties to the extent such actions would be inconsistent with the discharge, release, and injunction provisions of the Plan (the “*Injunction*”).



38. I have reviewed these provisions of the Plan, and I have further reviewed the conclusions of the independent investigation commissioned by the Debtors' independent director, Jill Frizzley (the "*Independent Director*"), who concluded and reported to the Board, among other things, that the Debtors do not hold any colorable claims or causes of action worth pursuing against any Released Parties. In reaching these conclusions, I understand that numerous documents related to noteworthy transactions and events over the past several years were reviewed, certain members of the Debtors' management and the Debtors' private equity sponsor were interviewed, and that the following factors were considered, among other things: (a) the Debtors' probability of success in litigating any released claims, which I understand to be low given the absence of any viable claims that are being released; (b) the complexity and likely duration and expense of litigating any such claims, which I understand would be high, given the nature of litigation and the absence of any obvious claims; and (c) other factors bearing on the wisdom of the settlements, releases, and exculpations, such as the extent to which these provisions were the product of arm's-length bargaining, including as contemplated by the RSA, and the interest of finality following the value-maximizing Sale Transaction through the Plan. As a result, I believe that the releases and exculpation provisions are in the best interests of the Debtors and are fair and equitable to all parties.

39. In my role as Chief Executive Officer of the Debtors, I have interfaced extensively with the Board, and I am confident in the manner in which the Board performed its role and discharged its duties. I understand that the Board is generally entitled to the benefit of the business judgment rule. I understand that the Debtors kept the Board generally informed of all major decisions and transactions leading up to and throughout these Chapter 11 Cases. The Debtors' directors devoted significant time to their roles as members of the Board including, but not limited

to, attending numerous Board meetings and calls during the several months leading up to the filing of these Chapter 11 Cases. In short, I am confident that the Board members, have, throughout their terms, devoted significant time and utilized their diverse range of business and board experience to execute their responsibilities to the Debtors and their estates, and that they acted in the best interests of the Debtors in approving the releases and exculpations in the Plan.

40. I believe that the Debtors' Releases, the Releases, the Exculpation, and the Injunction will allow the Debtors and the Reorganized Debtors to focus on their businesses going forward instead of facing distractions of uncertain and costly litigation. For that reason and others, I believe these provisions will benefit the Debtors and their stakeholders.

**O. Conclusion**

41. It is my belief that there are benefits to the Debtors of quickly consummating the Sale Transaction and the Plan. In particular, I believe that an expeditious exit from bankruptcy is in the best interests of the Debtors and their stakeholders because such emergence will reduce the administrative costs on the Debtors, ensure the transition to Backyard is implemented quickly following confirmation of the Plan, and reduce uncertainty for all stakeholders.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 19, 2024

*/s/ Geoffrey Walker*

\_\_\_\_\_  
Geoffrey Walker  
Chief Executive Officer  
KidKraft, Inc.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED Court File No: CV-24-00720035-00CL  
AND IN THE MATTER OF KIDKRAFT, INC. SOLOWAVE DESIGN HOLDINGS LIMITED., SOLOWAVE DESIGN INC., SOLOWAVE INTERNATIONAL  
INC. AND SOLOWAVE DESIGN LP

APPLICATION OF KIDKRAFT, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED  
Applicant

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
PROCEEDING COMMENCED AT TORONTO

**FIFTH AFFIDAVIT OF GEOFFREY WALKER**  
**(Sworn July 11, 2024)**

**OSLER, HOSKIN & HARCOURT LLP**

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Lawyers for the Applicant

# TAB 3

Court File No. CV-24-00720035-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

|                |   |                                |
|----------------|---|--------------------------------|
| THE HONOURABLE | ) | THURSDAY, THE 11 <sup>TH</sup> |
|                | ) |                                |
| JUSTICE BLACK  | ) | DAY OF JULY, 2024              |

**IN THE MATTER OF THE *COMPANIES' CREDITORS***  
***ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF KIDKRAFT, INC., SOLOWAVE DESIGN HOLDINGS**  
**LIMITED, SOLOWAVE DESIGN INC., SOLOWAVE INTERNATIONAL INC. AND**  
**SOLOWAVE DESIGN LP**

**APPLICATION OF KIDKRAFT, INC. UNDER SECTION 46 OF THE**  
***COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS**  
**AMENDED**

**RECOGNITION ORDER**  
**(Plan Modification Order and Related Relief)**

**THIS MOTION**, made by KidKraft, Inc. ("**KidKraft**"), in its capacity as the foreign representative (in such capacity, the "**Foreign Representative**") of Solowave Design Holdings Limited, Solowave Design Inc. ("**KK Canada GP**"), Solowave Design LP ("**KK Canada LP**") and together with KK Canada GP, the "**Canadian Sellers**") and Solowave International Inc. (collectively, the "**Canadian Debtors**", and collectively with KidKraft, the "**Chapter 11 Debtors**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order, among other things, (i) recognizing and giving effect to the Plan Modification Order (as defined herein) granted by the United States Bankruptcy Court for the Northern District of Texas (the "**U.S. Bankruptcy Court**"), made in the cases commenced by the

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Chapter 11 Debtors pursuant to chapter 11 of the United States Bankruptcy Code (the “**Foreign Proceeding**”), and (ii) making certain amendments to this Court’s Recognition Order (Plan Confirmation Order, Sale Order and Termination of CCAA Proceedings, and Related Relief), issued June 28, 2024 (the “**Plan Confirmation Recognition Order**”), was heard this day by judicial videoconference in Toronto, Ontario.

**ON READING** the Notice of Motion, the Fifth Affidavit of Geoff Walker sworn July 10, 2024, and the Supplement to the Second Report of KSV Restructuring Inc., in its capacity as information officer (the “**Information Officer**”) dated July 10, 2024, each filed.

**AND UPON HEARING** the submissions of counsel for the Foreign Representative, counsel for the Information Officer, and counsel for the other parties appearing on the participant information form, no one appearing for any other party although duly served as appears from the Affidavit of Service of Emilie Dillon sworn July 10, 2024, each filed:

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

#### **DEFINITIONS**

2. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined herein have the meaning given to them in the *Debtors’ Third Amended Joint Prepackaged Chapter 11 Plan* (as amended, supplemented and otherwise modified, the “**Modified Post-Confirmation Plan**”), attached as Exhibit 1 to the Plan Modification Order.

#### **RECOGNITION OF FOREIGN ORDERS**

3. **THIS COURT ORDERS** that the *Findings of Fact, Conclusions of Law, and Order Granting Emergency Joint Motion of the Debtors and Prepetition and DIP Secured Parties for an Order (I) Approving Limited Modifications to the Confirmed Plan Pursuant to 11 U.S.C.*

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§ 1127(b); and (II) Granting Related Relief (the “**Plan Modification Order**”) of the U.S. Bankruptcy Court made in the Foreign Proceeding, a copy of which is attached as Schedule “A” hereto, is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA; provided, however, that in the event of any conflict between the terms of the Plan Modification Order and the Orders of this Court made in the within proceedings, the Orders of this Court made in these proceedings shall govern in Canada with respect to the Property (as defined in the Supplemental Order (Foreign Main Proceeding) of this Court issued May 17, 2024).

#### AMENDMENTS TO THE PLAN CONFIRMATION RECOGNITION ORDER

4. **THIS COURT ORDERS** that paragraphs 2, 5, 6, 7, 8, and 18 of the Plan Confirmation Recognition Order are hereby amended as follows:

2. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined herein have the meaning given to them in the Debtors’ Third Amended Joint Prepackaged Chapter 11 Plan (the “**Modified Post-Confirmation Plan**”), attached as Exhibit 1 to the Findings of Fact, Conclusions of Law, and Order Granting Emergency Joint Motion of the Debtors and Prepetition and DIP Secured Parties for an Order (I) Approving Limited Modifications to the Confirmed Plan Pursuant to 11 U.S.C. § 1127(b); and (II) Granting Related Relief (the “**Plan Modification Order**”) entered by the U.S. Bankruptcy Court in the Foreign Proceeding and recognized by this Court in the Recognition Order (Plan Modification Order and Related Relief) issued July 11, 2024.

5. **THIS COURT ORDERS** that the Foreign Representative and the Chapter 11 Debtors are authorized and directed to take all steps and actions, and to do all things, necessary or appropriate to implement the Modified Post-Confirmation Plan in accordance with its terms, and enter into, implement and consummate all of the steps, transfers, transactions and agreements contemplated pursuant to the Modified Post-Confirmation Plan.

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6. **THIS COURT ORDERS** that, as of the Effective Date, the Modified Post-Confirmation Plan, including (a) the treatment of Claims as provided for in the Modified Post-Confirmation Plan, and (b) all compromises, arrangements, transfers, transactions, releases, discharges and injunctions provided for in the Modified Post-Confirmation Plan and as approved in the Plan Confirmation Order and the Plan Modification Order, as applicable, shall inure to the benefit of and be binding and effective upon the Chapter 11 Debtors, the Canadian creditors of the Chapter 11 Debtors, and all other persons affected thereby, and on their respective heirs, administrators, executors, legal personal representatives, successors and assigns.

7. **THIS COURT ORDERS** that, subject to the terms of the Modified Post-Confirmation Plan and the Plan Confirmation Order and the Plan Modification Order, and effective on the Effective Date, no party to any contract that is (i) listed on the Schedule of Assumed Executory Contracts and Unexpired Leases, and (ii) assigned to the Purchaser in accordance with the Purchase Agreement, may accelerate, terminate, rescind, refuse to perform or otherwise repudiate their obligations under, or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such Executory Contract or Unexpired Lease, by reason of:

- (a) any event that occurred on or prior to the Effective Date that would have entitled any person thereto to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of the Chapter 11 Debtors);
- (b) the fact that the Chapter 11 Debtors have: (i) sought or obtained relief under the CCAA or pursuant to the Chapter 11 Cases, or (ii) commenced or completed these proceedings or the Chapter 11 Cases;
- (c) the implementation of the Modified Post-Confirmation Plan, or the completion of any of the steps, transactions or things contemplated by the Modified Post-Confirmation Plan; or
- (d) any compromises, arrangements, transactions, releases or discharges effected pursuant to the Modified Post-Confirmation Plan.



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8. **THIS COURT ORDERS AND DECLARES** that the compromises, arrangements, releases, discharges and injunctions contained and referenced in the Modified Post-Confirmation Plan and as approved by the Plan Confirmation Order and the Plan Modification Order, are valid and that, effective on the Effective Date, all such releases, discharges and injunctions are hereby sanctioned, approved, recognized and given full force and effect in all provinces and territories of Canada in accordance with and subject to the terms of this Order, the Plan Confirmation Order, the Plan Modification Order and the Modified Post-Confirmation Plan.

18. **THIS COURT ORDERS AND DECLARES** that the fees and disbursements of the Information Officer and Gowling, respectively, as estimated in the Second Report, that have been or will be incurred in the performance of the duties of the Information Officer up to the date (the “**Discharge Date**”) of the filing of the Information Officer’s Termination Certificate (as defined below) and the incidental duties that may be required to complete the administration of these proceedings following the Discharge Date are hereby authorized and approved for the Information Officer and its counsel up to a maximum of **CDN\$50,000** plus any applicable taxes and disbursements in the aggregate. In the event the aggregate fees of the Information Officer and Gowling exceed such amount, the Chapter 11 Debtors may elect to pay such additional amounts, plus any applicable taxes and disbursements, without further application to this Court for approval of such fees.

## GENERAL

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction in Canada, the United States or any other foreign jurisdiction, to give effect to this Order and to assist the Foreign Representative, the Chapter 11 Debtors, the Information Officer, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Foreign Representative, the Chapter 11 Debtors and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Foreign Representative, the

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Chapter 11 Debtors and the Information Officer and their respective agents in carrying out the terms of this Order.

6. **THIS COURT ORDERS** that each of the Foreign Representative, the Chapter 11 Debtors and the Information Officer shall be at liberty and is hereby authorized and empowered to apply to any court, tribunal, or regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

7. **THIS COURT ORDERS** that this Order shall be effective as of 12:01 a.m. on the date of this Order without the need for entry or filing of this Order.

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**SCHEDULE "A"**

**Plan Modification Order**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF KIDKRAFT, INC., SOLOWAVE DESIGN HOLDINGS LIMITED., SOLOWAVE DESIGN INC.,  
SOLOWAVE INTERNATIONAL INC. AND SOLOWAVE DESIGN LP**

**APPLICATION OF KIDKRAFT, INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.  
1985, c. C-36 AS AMENDED**

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*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

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**RECOGNITION ORDER  
(Plan Modification Order and Related Relief)**

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED Court File No: CV-24-00720035-00CL  
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Applicant

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD OF THE FOREIGN  
REPRESENTATIVE**  
**(Recognition Order (Plan Modification Order and Related  
Relief))**  
**(Returnable July 12, 2024)**

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