



No. 233209
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

– AND –

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF SLP HOLDINGS
LTD., STRUCTURLAM MASS TIMBER CORPORATION, STRUCTURLAM MASS TIMBER U.S.,
INC. AND NATURAL OUTCOMES, LLC

PETITIONERS

SECOND REPORT OF THE INFORMATION OFFICER

ALVAREZ & MARSAL CANADA INC.

May 31, 2023



ALVAREZ & MARSAL

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Appendix A - KERP/KEIP Motion

1.0 INTRODUCTION

- 1.1 On April 21, 2023 (the “**Petition Date**”), SLP Holdings Ltd. (“**SLP**”), Structurlam Mass Timber Corporation (formerly SLP Operations Ltd., “**SMTC**”), Structurlam Mass Timber U.S., Inc. (“**SMTU**”) and Natural Outcomes, LLC (“**NOLLC**”) (together, the “**Petitioners**” or “**Structurlam**”) commenced proceedings by filing voluntary petitions for relief (the “**Chapter 11 Proceedings**”) pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* in the United States Bankruptcy Court for the District of Delaware (the “**U.S. Court**”).
- 1.2 On April 26, 2023, the U.S. Court granted several orders in the Chapter 11 Proceedings (the “**First Day Orders**”), which includes an order that authorized SLP to act as foreign representative (the “**Foreign Representative**”) in these CCAA Proceedings (subsequently defined).

CCAA Recognition Proceedings

- 1.3 On April 26, 2023, the Foreign Representative filed a petition with the Supreme Court of British Columbia (the “**Court**” or this “**Honourable Court**”), pursuant to Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) (the “**CCAA Proceedings**”), and together with the Chapter 11 Proceedings, the “**Restructuring Proceedings**”) for:
- a) an initial recognition order (the “**Initial Recognition Order**”), which *inter alia*:
 - i. recognizes the Foreign Representative in respect of the Chapter 11 Proceedings;
 - ii. recognizes the Chapter 11 Proceedings commenced by SMTU and NOLLC in the US Bankruptcy Court as “foreign main proceedings” under Part IV of the CCAA;
 - iii. recognizes the Chapter 11 Proceedings commenced by SLP and SMTC in the US Bankruptcy Court as “foreign non-main proceedings” under Part IV of the CCAA;
 - iv. grants a stay of proceedings against Structurlam; and
 - v. instructs the Foreign Representative to place a notice of the Restructuring Proceedings once a week for two consecutive weeks in the Vancouver Sun.
 - b) a supplemental recognition order (the “**Supplemental Recognition Order**”), which *inter alia*:
 - i. recognizes and enforces certain First Day Orders;
 - ii. grants additional stays and protections in respect of the Petitioners until June 1, 2023 (the “**Stay Period**”);
 - iii. appoints Alvarez & Marsal Canada Inc. (“**A&M**”) as the information officer in these CCAA Proceedings (the “**Information Officer**”); and

- iv. grants certain priority charges over the Petitioners' Canadian assets, specifically the Administration Charge and the DIP Charge (collectively, the "**CCAA Charges**"), as such terms are defined herein.
- 1.4 On April 26, 2023, A&M, in its capacity as proposed Information Officer, filed a Pre-Filing Report of the Proposed Information Officer (the "**Pre-Filing Report**") to address the Initial Recognition Order and the Supplemental Recognition Order.
- 1.5 On April 27, 2023, this Honourable Court granted the Initial Recognition Order and the Supplemental Recognition Order and A&M was appointed as Information Officer.
- 1.6 On May 8, 2023, the U.S. Court granted an order (the "**Bidding Procedures Order**"), which, *inter alia*:
 - a) approved the Bidding Procedures (subsequently defined);
 - b) approved the Stalking Horse APA and the Stalking Horse Protections (subsequently defined);
 - c) scheduled an auction (the "**Auction**") and other key dates in respect of the Bidding Procedures;
 - d) approved the form and manner of notice of the Auction; and
 - e) approved contract assumption and assignment procedures in respect of the Bidding Procedures Order.
- 1.7 On April 28, 2023, the Foreign Representative filed a notice of application (the "**Bidding Procedures Recognition Application**") with this Honourable Court, for an order, which, *inter alia*:
 - a) recognizes the Bidding Procedures Order;
 - b) sets down a date for this Honourable Court to hear an application to recognize the expected U.S. Court order which approves a sale of Structurlam's assets; and
 - c) extends the Stay Period until June 30, 2023 (the "**Stay Extension**").
- 1.8 On May 12, 2023, the Foreign Representative filed the Affidavit #2 of Shawn Turkington sworn on May 11, 2023 and the Affidavit of Kevin Haggard sworn on May 11, 2023, in support of the Bidding Procedures Recognition Application, with this Honourable Court. The Information Officer filed the First Report of the Information Officer (the "**First Report**") with this Honourable Court on the same day.
- 1.9 On May 16, 2023, this Honourable Court granted the order, which, among other things, recognized the Bidding Procedure Order and extended the Stay Period until June 30, 2023.

1.10 On May 30, 2023, the Foreign Representative filed a notice of application with this Honourable Court (the “**May 30 Application**”) to seek, among other things, the following relief:

- a) an order recognizing and giving full force and effect in Canada (the “**Canadian Sale Order**”) to the Order (i) *authorizing (A) sale of assets free and clear of all liens, claims, encumbrances and interest, and (B) the Debtors’ assumption and assignment of certain executory contracts and unexpired leases; and (ii) granting related relief*, granted by the U.S. Court on May 30, 2023 in the Chapter 11 Proceedings (the “**U.S. Sale Order**”), and further, among other things, approving the sale transaction described in the amended asset purchase agreement (the “**Purchase Agreement**”) dated April 21, 2023 between the Petitioners and Mercer International Inc. (“**Mercer**”) and (iii) vesting right, title and interest in and to the Transferred Assets (as defined in the Purchase Agreement) in Mercer free and clear of any charges, security, liens, encumbrances, claims or liabilities other than certain permitted encumbrances assumed as set out in the Purchase Agreement; and
- b) an order recognizing and giving full force and effect in Canada to the Additional Orders (subsequently defined) granted by the U.S. Court in the Chapter 11 Proceedings.

1.11 On May 30, 2023, the Foreign Representative filed the Affidavit #3 of Michèle Hay sworn on May 30, 2023 (the “**Third Hay Affidavit**”) and on May 31, 2023, the Foreign Representative filed the Affidavit #2 of Kevin Haggard sworn on May 30, 2023 (the “**Second Haggard Affidavit**”), in support of the May 30 Application.

1.12 Copies of the documents filed in the Chapter 11 Proceedings are posted by Kurtzman Carson Consultants LLC (“**KCC**”) at: www.kccllc.net/Structurlam (the “**Chapter 11 Website**”). Copies of the Initial Recognition Order and Supplemental Recognition Order along with other documents filed in these CCAA Proceedings (the “**Filed Materials**”) are posted on the Information Officer’s website at www.alvarezandmarsal.com/structurlam (the “**CCAA Website**”).

1.13 Capitalized terms not defined in this second report (the “**Second Report**”) are as defined in the Filed Materials.

2.0 PURPOSE

2.1 This Second Report has been prepared by the Information Officer to provide information in respect of:

- a) an update of the Chapter 11 Proceedings since the First Report;
- b) the sales process in accordance with the Bidding Procedures;
- c) the Bar Date Order;

- d) the activities of the Information Officer; and
- e) the Information Officer's conclusions and recommendations.

3.0 TERMS OF REFERENCE

- 3.1 In preparing this report, A&M has necessarily relied upon unaudited financial and other information supplied, and representations made to it, by certain senior management of Structurlam ("**Management**") and its Canadian and U.S. legal counsel. Although this information has been subject to review, A&M has not conducted an audit nor otherwise attempted to verify the accuracy or completeness of any of the information prepared by Management or otherwise provided by the Petitioners. Accordingly, A&M expresses no opinion and does not provide any other form of assurance on the accuracy and/or completeness of any information contained in this report, or otherwise used to prepare this report.
- 3.2 Certain of the information referred to in this report consists of financial forecasts and/or projections prepared by Management. An examination or review of financial forecasts and projections and procedures as outlined by the Chartered Professional Accountants of Canada has not been performed. Readers are cautioned that since financial forecasts and/or projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from those forecasts and/or projected and the variations could be significant.
- 3.3 All monetary amounts contained in this Second Report are expressed in Canadian dollars unless otherwise noted.

4.0 STATUS OF THE CHAPTER 11 PROCEEDINGS

- 4.1 Since the First Report, the U.S. Court issued the following orders (collectively, the "**Additional Orders**"):
 - a) the Final Tax Order;
 - b) the Final Wages Order;
 - c) the Final Cash Management Order;
 - d) the Final Insurance Order;
 - e) the Final Utility Order;
 - f) the Final Critical Vendor Order;
 - g) the Final DIP Financing Order;
 - h) the order authorizing and approving procedures to reject executory contracts and unexpired leases;

- i) the order authorizing the Petitioners to reject the Amended and Restated Walmart Realty Supplier Agreement – Goods not for resale, effective as of the Petition Date;
 - j) the Bar Date Order (subsequently defined and discussed);
 - k) the order authorizing the implementation of a key employee incentive and retention plan (the “**KERP/KEIP Order**”, subsequently discussed); and
 - l) the order approving the retention of KCC as Administrative Advisor.
- 4.2 Apart from the Additional Orders, the following orders were also issued by the U.S. Court:
- a) the order establishing procedures for interim compensation and reimbursement of expenses of professionals; and
 - b) various retention orders, including Chipman Brown Cicero & Cole LLP as counsel to the Petitioners, Gowling WLG (Canada) LLP and Paul Hastings LLP as special counsel to the Petitioners, Alvarez & Marsal Canada ULC as Financial Advisors to the Petitioners and Miller Buckfire & Co., LLC (Sales Agent, defined as “**Sales Advisor**” below) as Investment Banker.
- 4.3 The meeting of creditors (Section 341 Meeting) was held and adjourned generally by the U.S. Trustee on May 23, 2023.
- 4.4 On May 30, 2023, the U.S. Court granted the U.S. Sale Order to approve the results of the Petitioners’ sales process and Auction (subsequently defined and discussed).
- 4.5 Information in respect of the Additional Orders is available in the May 30 Application and the Third Hay Affidavit. The Information Officer and its counsel reviewed the Additional Orders, and notes that the Additional Orders are similar to orders that would be issued pursuant to a CCAA proceeding and appear necessary for the Petitioners to execute on their restructuring plans.

5.0 STALKING HORSE SALES PROCESS

- 5.1 As discussed in the First Report, on April 21, 2023, Structurlam (SLP, SMTC, SMTU, and NOLLC) executed an Asset Purchase Agreements (the “**Stalking Horse APA**”) with Mercer International Inc. (“**Mercer**”), where Mercer is obligated to purchase and acquire from Structurlam the entirety of its rights, title and interest in and to substantially all of its assets, properties and rights of every kind and nature, whether real, personal or mixed, tangible or intangible (including goodwill), wherever located, in the physical possession of Structurlam or another Person (as defined in the Stalking Horse APA).

- 5.2 The Stalking Horse APA and the Bidding Procedures were approved by the U.S. Court on May 8, 2023. Under the Stalking Horse APA, the purchase price is USD \$60 million (the “**Purchase Price**”) and Mercer would act as the Stalking Horse under the Bidding Procedures.
- 5.3 Also noted in the First Report, upon the commencement of the Chapter 11 Proceedings, the Sales Advisor contacted previously contacted and new potential parties to further advance the sales process. As a result of the Sales Advisor’s efforts, as of the Bid Deadline (pursuant to the Bid Procedures Order, May 23, 2023 at 4:00pm EST), the Sales Advisors received two (2) additional bids against the Petitioners’ assets:
- a) a bid from the Weyerhaeuser Company (“**Weyerhaeuser**”) in the amount of USD \$70 million to acquire substantially all assets of the Petitioners’ United States operations (the “**Weyerhaeuser Bid**”); and
 - b) a bid from All-Fab Building Components in the amount of USD \$200,000 for some of the Petitioners’ equipment located in Canada (the “**All-Fab Bid**”).
- 5.4 Upon Structurlam’s review, the Weyerhaeuser Bid was considered a Qualified Bid under the Bid Procedures Order, while the All-Fab Bid was considered a non-Qualified Bid. Given the receipt of a Qualified Bid, on May 24, 2023, the Petitioners conducted an auction (the “**Auction**”) pursuant to the Bidding Procedures between Mercer and Weyerhaeuser.
- 5.5 The Petitioners, in consultation with the Consultation Parties (BMO and the UCC), determined that the Weyerhaeuser Bid was the highest and best bid at the outset of the Auction.
- 5.6 Upon several rounds of bidding between Mercer and Weyerhaeuser, the Petitioners, in consultation with the Consultation Parties, determined that: (i) Mercer’s bid of USD \$83.5 million for Structurlam’s U.S. and Canadian assets with terms essentially identical to the Stalking Horse APA (hereafter defined as the Purchase Agreement) was the highest or otherwise best offer; (ii) Mercer was the Winning Bidder and its bid was the Winning Bid at the Auction; (iii) Weyerhaeuser’s bid in the amount of USD \$80 million USD to acquire substantially all assets of the Debtors related to their United States operations was designated as the Back-Up Bid; and (iv) Weyerhaeuser was designated the Back-Up Bidder pursuant to the Bidding Procedures Order.
- 5.7 Mercer’s Winning Bid in the amount of USD \$83.5 million is comprised of a cash component of USD \$81.1 million plus credit for the Break-Up Fee and Expense Reimbursement Amount totaling USD \$2.4 million. Other than price, the terms of Mercer’s winning bid are unchanged from the terms of the Stalking Horse APA.

- 5.8 Based on Mercer's Winning Bid which produces USD \$81.1 million of cash to the Structurlam estate, Structurlam is expected to be able to generate sufficient funds to repay its interim financing of CAD\$7.5 million, closing costs payable to the Sale Advisor, Administrative Claims pursuant to section 503 (b) of the U.S. Bankruptcy Code, other priority claims (including wages and taxes) and the Petitioners' outstanding secured debt owing to BMO in full.
- 5.9 Under the Purchase Agreement, the Closing Date is scheduled to be three (3) business days following the date the last of the conditions set forth in the Stalking Horse APA has been satisfied or waived. The primary substantive conditions to closing are (i) the issuance of the U.S. Sale Order and the Canadian Sale Order by the respective courts, and (ii) the Bond issued in respect of the Conway Facility be redeemed or cancelled as contemplated by Section 6.3(b) of the Purchase Agreement.
- 5.10 The Petitioners and Mercer currently expects the closing of the Purchase Agreement to occur in early June 2023.

Impact on Canadian creditors

- 5.11 The Information Officer understands that creditors of Structurlam, including SLP and SMTC, were provided with notice of the Chapter 11 Proceedings on May 1, 2023.
- 5.12 The Canadian real estate and equipment leases and certain other contracts (collectively, the "**Canadian Contracts**") currently appear on the schedule of Assigned Contracts in the Purchase Agreement. The Information Officer understands that each contractual counterparty to the Canadian Contracts was directly given notice of the potential assignment or assumption of its contract on May 9, 2023.
- 5.13 Pursuant to the Purchase Agreement, Mercer may, not later than five (5) days prior to the expected Closing Date, designate additional contracts it wishes to assume or notify the Petitioners in writing of any contracts it no longer wishes to assume. Any un-assumed Canadian Contracts will be deemed rejected upon closing of the transaction.
- 5.14 In addition, Mercer has agreed to assume the Collective Agreement between SMTC and United Steelworkers (USW), Local 1-423, January 1, 2019 to December 31, 2023 (the "**Collective Agreement**") and the unionized employees, and may offer employment in writing to any current Structurlam employees who are not unionized employees (together with the unionized employees, the "**Target Employees**"). Mercer shall provide Structurlam with the list of Target Employees at least 10 business days prior to the expected Closing Date.

- 5.15 In the event not all non-unionized employees are designated as Target Employees, the Information Officer will consider making an application to this Honourable Court to declare that SMTC meets the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-22, such that former employees are entitled to receive payments under the *Wage Earner Protection Program Act*, SC 2005, c 47.

Information Officer's observations and comments

- 5.16 The Information Officer's comments on the Canadian Sale Order are as follows:
- a) The Canadian Sale Order provides the opportunity for assumption of Canadian Contracts and the continuation of certain operations of Structurlam's Canadian business;
 - b) To the extent liabilities of Canadian creditors are not assumed by Mercer, as all administrative claims, priority claims and secured debt are expected to be paid out in full, it is currently expected that funds will be made available for distribution to general unsecured creditors (including the Canadian creditors); and
 - c) The ultimate allocation of sale proceeds will be determined pursuant to the Purchase Agreement which provides for Mercer to present its allocation up to 45 days after the Closing Date.

6.0 RECOGNITION OF THE BAR DATE ORDER

- 6.1 On May 25, 2023, the U.S. Court issued an *Order Pursuant to Bankruptcy Rule 3003(C)(3) and Local Rule 2002-1(E) Establishing Bar Dates and Related Procedures for Filing Proofs of Claim (including for Administrative Expense Claims Arising under Section 503(B)(9) of the Bankruptcy Code) and Approving the Form and Manner of Notice thereof* (the "**Bar Date Order**"), establishing various claims bar dates for the filing of claims against the Petitioners and approving related forms, noticing procedures and a claims bar date notice.
- 6.2 The Bar Date Order establishes the following deadlines ("**Bar Dates**"), among others, for filing of proofs of claim against the Petitioners. Key dates in respect of the Bar Date Order are summarized below:

Bar Date Group	Description	Bar Date (in prevailing Eastern Time)
General Bar Date	Deadline for each person or entity, other than a governmental unit, to file a proof of claim in respect of any prepetition claim against any of the Petitioners, including, without limitation, any secured claim, unsecured claim, priority claim, or claim asserted under	July 10, 2023 at 5:00pm

Bar Date Group	Description	Bar Date (in prevailing Eastern Time)
	section 503(b)(9) of the U.S. Bankruptcy Code for goods delivered and received by any of the Petitioners within twenty (20) days of the Petition Date.	
Governmental Bar Date	Deadline by which a governmental unit must file a proof of claim in respect of a prepetition claim against any of the Petitioners.	October 18, 2023 at 5:00pm
Rejection Bar Date	Deadline by which an entity asserting a claim for damages against any of the Petitioners arising from rejection of an executory contract or unexpired lease must file a proof of claim on account of such damages.	The later of: (a) the General Bar Date; or (b) 5:00 p.m. on the date that is twenty-one (21) days following service of an order approving rejection of any executory contract or unexpired lease.
Amended Schedule Bar Date	Deadline for an entity whose claim is affected by amendment to the Petitioners' schedules of assets and liabilities (collectively, the " Schedules ") to file, amend, or supplement a proof of claim with respect to such claim.	The later of: (a) the applicable Bar Date; or (b) 5:00 p.m. on the date that is twenty-one (21) days from the date that the Petitioners provide written notice to the affected creditor that the Schedules have been amended.

6.3 Pursuant to the Bar Date Order, holders of the following claims against the Petitioners are not required to file a Proof of Claim on or before the applicable Bar Date solely with respect to such claim:

- a) a claim against the Petitioners for which a signed proof of claim has already been properly filed with the Clerk of the Bankruptcy Court for the District of Delaware or KCC in a form substantially similar to Official Bankruptcy Form No. 410;
- b) a claim that is listed on the Petitioners' Schedules if and only if (i) such claim is not scheduled as "disputed," "contingent," or "unliquidated," (ii) the holder of such claim agrees with the amount, nature and priority of the claim as set forth in the Schedules and (iii) the holder of such claim agrees that the claim is an obligation of the specific Petitioner that listed the claim in its Schedules;
- c) an administrative expense claim allowable under sections 503(b) and 507(a)(2) of the Bankruptcy Code as an expense of administration (other than any claim allowable under section 503(b)(9) of the Bankruptcy Code);

- d) an administrative expense claim for post-petition fees and expenses incurred by any professional allowable under sections 330, 331, and 503(b) of the Bankruptcy Code;
- e) a claim that has been paid in full by the Petitioners in accordance with the Bankruptcy Code or an order of the U.S. Court;
- f) a claim that has been allowed by an order of the U.S. Court entered on or before the applicable Bar Date;
- g) a claim of any Petitioner against another Petitioner;
- h) any bankruptcy fees payable to the U.S. Trustee; and
- i) a claim for which specific deadlines have been fixed by an order of the U.S. Court entered on or before the applicable Bar Date.

- 6.4 Pursuant to the Bar Date Order, in order for a proof of claim form to be considered properly and timely submitted, creditors should, among other things, have an original, written proof of claim that substantially conforms to the Proof of Claim Form (attached to the Bar Date Order as Exhibit 1) be actually received by KCC.
- 6.5 Proof of Claim Forms can be submitted to KCC by (i) overnight mail, (ii) courier service, (iii) hand delivery, (iv) regular mail, or (v) in person at Structurlam Mass Timber Claims Processing Center c/o KCC 222 N. Pacific Coast Highway, Suite 300 El Segundo, CA 90245. Alternatively, proof of claim forms can also be submitted electronically through the online Proof of Claim Form available at <https://www.kccllc.net/structurlam>.
- 6.6 The Information Officer understands that all Canadian creditors of the Petitioners have been sent a notice of the Bar Date Order by KCC. The Information Officer understands that the Foreign Representative does not intend to publish a notice of the Bar Dates in Canada given the notice program undertaken by KCC and the Foreign Representative.
- 6.7 Although pre-populated schedules setting out claims is not typical in plenary CCAA proceedings, similar approaches have been used from time to time and endorsed by Canadian courts.
- 6.8 Generally speaking, the methodology for valuation of the claims, bar dates, forms, notices and noticing procedures provided for in the Bar Date Order are largely consistent in substance with what would typically be used in plenary proceedings under the CCAA. The Information Officer is of the view that recognition of the Bar Date Order is reasonable and appropriate in these circumstances.

7.0 RECOGNITION OF THE KERP/KEIP ORDER

7.1 On May 19, 2023, Structurlam filed a motion (the “**KERP/KEIP Motion**”) with the U.S. Court seeking entry of the *Order (I) Authorizing the Debtors to Implement Key Employee Incentive and Retention Plans and (II) Granting Related Relief*. A copy of the KERP/KEIP Motion was attached to this Second Report as Appendix “A”.

7.2 On May 30, 2023, the U.S. Court granted the KERP/KEIP Order in the Chapter 11 Proceedings, which provides for a Key Employee Retention Plan (the “**KERP**”) and a Key Employee Incentive Plan (the “**KEIP**”).

Key Employee Retention Plan

7.3 The KERP is open to 13 employees of SMTC and SMTU (the “**KERP Participants**”), comprised of managers, manufacturing supervisors, project managers, technology services, plant managers, human resources and quality control personnel and other key personnel.

7.4 The maximum total cost of the KERP is approximately USD \$420,000, with individual amounts equivalent to three (3) months of annual salary for each of the KERP Participant. Each retention bonus ranges from USD \$19,000 to USD \$48,000.

7.5 Amounts under the KERP for each KERP Participant will be payable within 15 days flowing from the earliest to occur of: (i) the closing of a Sale transaction; (ii) the involuntary termination of the employee without cause; (iii) the consummation of a chapter 11 plan; or (iv) the dismissal of the Chapter 11 Proceedings.

Key Employee Incentive Plan

7.6 The KEIP is open to two individuals: (i) Matthew Karmel, Interim Chief Executive Officer and (ii) Shawn Turkington, Interim Chief Financial Officer (collectively, the “**KEIP Participants**”).

7.7 Under the KERP/KEIP Motion, the proposed KEIP consisted of a threshold bonus, payable upon closing of the Stalking Horse APA (the “**KEIP Threshold Amount**”) and a sales target bonus, payable in the event the purchase price of Structurlam’s assets exceeds USD \$60 million (the “**KEIP Target Amount**”).

7.8 The proposed KEIP Threshold Amount was set at USD \$400,000, and the KEIP Participants would have the ability to earn an additional amount equivalent to 3.0% to 5.0% of the incremental value the purchase price exceeded the KEIP Target Amount.

7.9 Amounts under the KEIP for each KEIP Participants will be payable:

- a) 50% upon closing of the Stalking Horse Agreement or any other asset purchase agreement that contemplates a purchase price of equivalent or greater value;
 - b) the remainder 50% upon confirmation that there are sufficient funds to pay all section 503(b) administrative claims. Such confirmation shall be made within three (3) days from the Bar Date; and
 - c) in the event such confirmation cannot be made upon the Bar Date, the remainder 50% of the KEIP shall rank *pari-passu* with all section 503(b) administrative claims.
- 7.10 As a result of the Auction and Mercer's Winning Bid of USD\$ 83.5 million, based on the proposed KEIP as stipulated in the KERP/KEIP Motion, the KEIP Participants were expected to receive an aggregate bonus of USD \$1.45 million.
- 7.11 On May 26, 2023, the U.S. Trustee and Walmart Inc. ("**Walmart**") filed a limited objection and an objection to the KERP/KEIP Motion, particularly against the proposed KEIP.
- 7.12 Upon negotiations with the U.S. Trustee and Walmart, and consultation with the UCC, the Petitioners, the U.S. Trustee and Walmart reached an agreement on the terms of the KEIP, and the revised terms were approved by the U.S. Court as part of the KERP/KEIP Order on May 30, 2023.
- 7.13 According to the negotiated KERP/KEIP Order:
- a) the KEIP as described in the KERP/KEIP Motion and modified herein is hereby approved, and the Petitioners are authorized to implement the KEIP in their discretion;
 - b) the total amount of payments due to the KEIP Participants shall be capped at USD \$950,000; and
 - c) the Petitioners have released any avoidance action against Matthew Karmel for the USD \$175,000 bonus he received prior to the Petition Date, as partial consideration for the agreed upon reduction in of the KEIP.
- 7.14 The Information Officer supports the recognition of the KERP/KEIP Order as:
- a) the order will provide stability to the business by encouraging key employees to remain with Structurlam to assist in a successful closing of the Purchase Agreement;
 - b) the terms of the KERP and KEIP and the quantum of the payouts appear reasonable to the Information Officer, both in the circumstances and when compared to other key employee retention and incentive plans approved in Chapter 11 proceedings; and
 - c) the KERP and KEIP are supported by BMO and more importantly, by the UCC, who is expected to bear its economic cost.

8.0 ACTIVITIES OF THE INFORMATION OFFICER

8.1 Since the First Report and up to and including the date of this Second Report, the Information Officer's activities have included the following:


- a) reviewed relevant materials and orders filed in the Chapter 11 Proceedings;
- b) maintained the CCAA Website to make available copies of the orders granted in the CCAA Proceedings and other court-filed materials;
- c) monitored the Chapter 11 Website for activities in the Chapter 11 Proceedings;
- d) communicated with counsel to Structurlam and Management regarding matters relevant to the CCAA Proceedings and the Chapter 11 Proceedings;
- e) responded to inquiries from creditors; and
- f) prepared this Second Report.


9.0 RECOMMENDATIONS

9.1 The Information Officer, based on the foregoing, recommends that this Honourable Court grant the Canadian Sale Order and recognize the Additional Orders.

All of which is respectfully submitted to this Honourable Court this 31st day of May, 2023.

**Alvarez & Marsal Canada Inc.,
in its capacity as Information Officer of
Structurlam and not in its personal or corporate capacity**


Per: Anthony Tillman
Senior Vice President


Per: Pinky Law
Vice President

Appendix A - KERP/KEIP Motion

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

STRUCTURLAM MASS TIMBER U.S., INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 23-10497 (CTG)
)
) (Jointly Administered)
)
) **Hearing Date: May 30, 2023 at 2:00 p.m. (ET)**
) **(REQUESTED)**
) **Objection Deadline: May 26, 2023 at 4:00 p.m.**
) **(ET) (REQUESTED)**

**DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE
DEBTORS TO IMPLEMENT KEY EMPLOYEE INCENTIVE AND RETENTION
PLANS AND (II) GRANTING RELATED RELIEF**

Structurlam Mass Timber U.S., Inc. and its affiliates, the debtors and debtors-in-possession (the “**Debtors**”), hereby submit this Debtors’ Motion for Entry of an Order (i) Authorizing Debtors to Implement Key Employee Incentive Plan and Key Employee Retention Plan and (ii) Granting Related Relief (the “**Motion**”) seeking entry of an order substantially in the form attached hereto as Exhibit A (the “**Proposed Order**”). In support of this Motion, the Debtors rely upon and incorporate by reference the statements contained in the *Declaration of Matthew Karmel, Interim Chief Executive Officer of the Debtors in Support of Debtors’ Chapter 11 Petitions and First Day Motions* [Docket No. 9] (the “**First Day Declaration**”); the *Declaration of Brian L. Cumberland in Support of Debtors’ Motion for Entry of Order (I) Authorizing the Debtors to Implement Key Employee Incentive and Retention Plans and (II) Granting Related Relief* (the “**Cumberland Declaration**”); and the *Supplemental Declaration of Anthony Tillman in Support of Debtors’*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number or Canadian business number, as applicable, include: Structurlam Mass Timber U.S., Inc. (6287); Natural Outcomes, LLC (n/a); Structurlam Mass Timber Corporation (5050); and SLP Holdings Ltd. (3114). The location of the Debtors’ headquarters is: 2176 Government Street, Penticton, British Columbia, Canada V2A 8B5. The address of the registered agent for Structurlam Mass Timber U.S., Inc. is: 8 The Green, Suite A, Dover, Delaware 19901.



Motion for Entry of Order (I) Authorizing the Debtors to Implement Key Employee Incentive and Retention Plans and (II) Granting Related Relief (the “**Tillman Declaration**”) filed concurrently herewith, and respectfully state as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these Chapter 11 Cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. The statutory bases for relief requested in this Motion are sections 105(a), 363(b) and 503(c) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 6004(h) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

BACKGROUND

A. GENERAL BACKGROUND.

4. On April 21, 2023 (the “**Petition Date**”), the Debtors commenced with the Court voluntary cases (the “**Chapter 11 Cases**”) under chapter 11 of the Bankruptcy Code. The Chapter 11 Cases are jointly administered for procedural purposes only.

5. The Debtors are authorized to continue operating their business and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases. On May 3, 2023, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) appointed the Official Committee of Unsecured Creditors (the “**Committee**”) pursuant to section 1102(a) of the Bankruptcy Code in the Chapter 11 Cases [Docket Nos. 65 and 73].

6. As set forth in the *Debtors’ Motion Seeking Entry of an Order (A)(I) Approving Bidding Procedures, (II) Approving Stalking Horse Protections and Debtors’ Entry into Stalking Horse Purchase Agreement (III) Scheduling the Bid Deadline and the Auction, (IV) Scheduling Hearings and Objection Deadlines with Respect to the Sale, (V) Approving the Form and Manner of the Notice Thereof, (VI) Approving Contract Assumption and Assignment Procedures, and (VII) Granting Related Relief and (B)(I) Approving the Sale of the Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances, (II) Approving Assumption and Assignment of Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* [Docket No. 16] (the “**Bidding Procedures Motion**”), the Debtors are pursuing a sale (the “**Sale**”) of all or substantially all of the Debtors’ assets (collectively, the “**Assets**”).

7. The Bankruptcy Court approved proposed bidding and auction procedures for the Sale on May 8, 2023 (the “**Bidding Procedures**”).

8. Since February 10, 2023, the Debtors, with the assistance of Miller Buckfire & Co. LLC, a wholly owned subsidiary of Stifel, Nicolaus & Co., Inc., a U.S. broker-dealer and investment banking subsidiary of Stifel Financial Corp. (“**Miller Buckfire**”) have implemented a robust marketing process to garner interest in the sale of their Assets and have received and considered bids from multiple interested parties. These efforts have resulted in the Debtors’ entry

into that certain Asset Purchase Agreement (the “**Stalking Horse Agreement**”) with Mercer International Inc. (the “**Stalking Horse Bidder**”), for the sale of substantially all the Debtors’ Assets (the “**Stalking Horse Bid**”). Pursuant to the Bidding Procedures Motion, the Debtors are seeking to establish a competitive bidding process for the Assets, with competing bids due on or about May 23, 2023 and an Auction scheduled for May 24, 2023. The Debtors are requesting that the Sale Hearing be held on or about May 30, 2023, and anticipate closing the Sale to the Successful Bidder shortly thereafter.

RELIEF REQUESTED

9. By this Motion, the Debtors seek entry of the Proposed Order, pursuant to sections 363 and 503(c)(3) of the Bankruptcy Code, (i) approving and authorizing the implementation of the KEIP and KERP; (ii) authorizing (but not directing) the Debtors to make payments under the KEIP and KERP to the Participants under the terms contained therein; (iii) granting administrative expense priority status to all payments to be made by the Debtors thereunder; and (iv) granting related relief.

KEY EMPLOYEE INCENTIVE PLAN

A. THE KEIP PARTICIPANTS

10. The key employee incentive plan (the “**KEIP**”) will be open to Matthew Karmel, the Debtors’ Interim Chief Executive Officer and Shawn Turkington, the Debtors’ Interim Chief Financial Officer (each a “**KEIP Participant**” or the “**KEIP Participants**”).

11. The Interim Chief Executive Officer is responsible for determining and executing on the strategic goals of the Debtors under the direction and oversight of the Debtors’ board of directors. The Interim Chief Executive Officer also oversees all strategic partner and key customer relationships, all functional areas of development, and all regulatory, finance, legal, commercial,

and human resources segments. The Interim Chief Executive Officer has played, and will continue to play, a crucial role in the Sale process. Specifically, the Interim Chief Executive Officer is responsible for liaising with all potential purchasers of the Assets and marketing the existing and future commercial opportunities for the Assets. The Interim Chief Executive Officer is also essential to ensuring the Debtors' ability to satisfy all the closing conditions in the Stalking Horse Agreement and/or any other asset purchase agreement. Moreover, aside from the Sale process, the Interim Chief Executive Officer is responsible for overseeing all other aspects of the Debtors' bankruptcy process.

12. The Interim Chief Financial Officer is the senior officer responsible for all key areas of the Debtors' finance and accounting functions, including financial planning and analysis and financial reporting. The Interim Chief Financial Officer also oversees the Debtors' business operating plan, financial forecasts and compliance with the DIP financing budget. Additionally, the Interim Chief Financial Officer is responsible for overseeing the Debtors' inventory for ongoing projects. Ensuring that the Debtors' ongoing projects continue in the ordinary course is essential to preserving the value of the Assets and the Debtors' ability to consummate a value maximizing Sale. The Interim Chief Financial Officer is critical for a successful and efficient execution of the Stalking Horse Agreement and/or any other asset purchase agreement, as the Interim Chief Financial Officer must effectively address finance-related diligence requests from prospective buyers.

13. The KEIP Participants were hired prior to the Petition Date to assist the Debtors in their restructuring efforts and have been and will continue to be integral to the Debtors' efforts to maximize value through the Sale process. As discussed in detail below, the KEIP Participants possess valuable institutional knowledge regarding, among other things, the Debtors and their

operations, assets, and liabilities. Prior to the Petition Date, the KEIP Participants were entitled to or eligible to earn semi-annual bonuses as part of their total compensation. Due to these anticipated semi-annual bonuses, the Interim Chief Executive Officer's monthly compensation was set at an amount that was approximately fifty percent of market for comparable positions, and the Interim Chief Financial Officer's pay was set at a rate that was approximately seventy-five percent of market for comparable positions.. Given this monthly compensation and understanding that the Debtors were going to go through a restructuring and sale process, the KEIP Participants were promised a form of KEIP based upon a Canadian insolvency proceeding. Operating on this understanding, the KEIP Participants worked tirelessly with the Debtors' advisors in the pre-petition sale process to obtain the Stalking Horse Bid. More specifically, they were crucial in increasing the Stalking Horse Bid from \$50 million to \$60 million, just before the Petition Date. The KEIP Participants have been heavily involved in meeting with prospective purchasers and assisting with all due diligence associated with the Sale process, including, without limitation, preparing cash flow models, budgets, and conducting site visits, both pre and post-petition. In addition to the new responsibilities that they have taken on in connection with the Sale process, the KEIP Participants are also charged with managing the day-to-day operation of the Debtors' business while dealing with the many distractions that accompany a Chapter 11 filing.

14. The Debtors believe that approval of the KEIP will appropriately motivate the KEIP Participants — the employees who are most directly involved in the Debtors' Sale process — to maximize the value of the Debtors' Assets by rewarding them if their efforts result in the closing of the Stalking Horse Agreement or a higher and better purchase price for the Assets as a result of the competitive bidding process and the Auction.

B. SELECTING THE KEIP PARTICIPANTS.

15. In determining which employees to include in the KEIP, the Debtors, in consultation with their financial advisor Alvarez & Marsal, conducted significant diligence to limit the KEIP to those employees that the Debtors believe will play the most significant role in maximizing the value received for the Debtors' Assets in connection with the Sale process. As set forth above, the KEIP Participants have performed and will continue to perform a variety of critical managerial, operational, financial, and sales functions for the Debtors. In addition to their significant day-to-day operations, these individuals' workloads have substantially increased due to these Chapter 11 Cases and the Sale Process. The specific skills and areas of expertise of the KEIP Participants, along with the familiarity and understanding of the Debtors' operations, financial situation, business relationships, employees, and infrastructure, are vital not only to the day-to-day operations of the Debtors' business, but also to the Debtors' ability to close the Sale and otherwise maximize the value of their Assets and estates for the benefit of all stakeholders.

16. Prior to the Petition Date, the KEIP Participants worked tirelessly to help negotiate the Stalking Horse Agreement and assist with the due diligence efforts that were essential to such negotiations. As these Chapter 11 Cases continue and the Auction approaches, the KEIP Participants will continue to provide critical support to the Debtors in their highly complex, multi-party negotiations with potential buyers and DIP Lender. Therefore, the talents and corporate knowledge of the KEIP Participants will be essential to the Sale process.

C. SUMMARY OF THE KEIP.

17. To provide maximum incentive to the KEIP Participants, all potential payments under the KEIP are subject to the consummation of a Sale of all or substantially all the Debtors' Assets in accordance with the Bidding Procedures, with the amount of such bonuses calculated

based upon the aggregate gross consideration provided for thereunder. More specifically, there shall be no bonus amounts awarded under the KEIP unless the Debtors are able to consummate a transaction with the Stalking Horse Bidder or such higher and better bidder as determined in accordance with the Bidding Procedures.

18. The KEIP is designed to incentivize the KEIP Participants to close the Sale transaction and maximize proceeds realized through the Sale process in these Chapter 11 Cases. It achieves this result by providing to each KEIP Participant an incentive bonus (the “**Incentive Bonus**”) that is based upon a percentage of the purchase price for substantially all the Debtors’ assets². The Incentive Bonus is only payable upon consummation of a sale transaction. Importantly, the Incentive Bonus was negotiated as part of each KEIP Participant’s overall compensation package to compensate them for amounts that will not likely be paid under their respective contracts and assist the Debtors in their restructuring efforts. The Debtors believe the Incentive Bonus is necessary and appropriate to drive business performance during these Chapter 11 Cases to maximize the value of the Debtors’ assets in the Sale process.

19. A summary of the key terms of the KEIP is set forth below:³

(a) *KEIP Participants*: The KEIP will be open to Matthew Karmel, the Debtors’ Interim Chief Executive Officer and Shawn Turkington, the Debtors’ Interim Chief Financial Officer

(b) *Sale Transaction Payout*: The amount of the Incentive Bonus will be calculated as follows:

KEIP Threshold Amount: the KEIP Participants have the ability to earn their respective share of USD \$400,000 (the “**KEIP Threshold Amount**”) upon the closing of the Stalking Horse Agreement or any other asset purchase agreement that contemplates a purchase price of equivalent or greater value. The KEIP Threshold Amount shall

² A comparable KEIP program under Canadian law was negotiated and agreed to early in the sale process, prior to the Debtors obtaining the current Stalking Horse Bid.

³ In the event of a discrepancy between this summary and the KEIP, the KEIP shall control.

be funded with proceeds from the Debtors' debtor-in-possession financing facility and shall be allocated as follows.

Title	KEIP Threshold Amount
Interim Chief Executive Officer	USD \$300,000
Interim Chief Financial Officer	USD \$100,000

KEIP Target Amount: in the event the purchase price of the Assets exceeds USD \$60 million, the KEIP Participants have the ability to earn an additional amount equivalent to 3.0% to 5.0% of the incremental value in excess of USD \$60 million (the "**KEIP Target Amount**"). The KEIP Target Amount shall be funded with cash on hand.

Successful bid	KEIP Target Amount
\$60 million - \$65 million	3.0%
\$65 million - \$70 million	4.0%
Over \$70 million	5.0%;

- (c) Timing of the payment of the Incentive Bonus:
- i. 50% upon closing of the Stalking Horse Agreement or any other asset purchase agreement that contemplates a purchase price of equivalent or greater value;
 - ii. the remainder 50% payable upon confirmation that there are sufficient funds to pay all section 503(b) administrative claims. Such confirmation shall be made within 3 days from the Bar Date (currently set for July 10, 2023 – subject to Court approval); and
 - iii. in the event such confirmation cannot be made upon the Bar Date, the remainder 50% of the KEIP shall rank pari-passu with all section 503(b) claims.
- (d) The obligations of the Debtors under the KEIP shall be secured by an allowed administrative expense claim against the Debtors' estates.
- (e) *Eligibility to Receive Incentive Bonus:* Each KEIP Participant will be entitled to their Incentive Bonus only if such participant is employed as of the payment date of such Incentive Bonus payment. In the event a KEIP Participant forfeits an Incentive Bonus payment, the Debtors shall not reallocate any forfeited Incentive Bonus Payments to any new or existing KEIP Participant.

If a KEIP Participant is terminated by the Debtors either (i) by reason of death or permanent disability (as determined by the

Debtors), or (ii) by the Debtors, other than for cause, such KEIP Participant will remain eligible to receive any Incentive Bonus payment as if such participant was still employed by the Debtors on the payment date of such Incentive Bonus payment.

- (f) *Effect on Severance and Other Compensation:* To receive the Incentive Bonus, each KEIP Participant has agreed that the KEIP is in lieu of any other cash incentive (whether short-term or long-term), retention or severance payment (whether specified in an employment agreement or otherwise) to be paid, and each KEIP Participant has waived any right to receive any such payments to the extent permissible by law.
- (g) The Debtors shall withhold from the Incentive Bonus all taxes and other governmental withholdings that under applicable law it is required to withhold and remit such amounts to the relevant governmental authority.

D. REASONABLENESS OF THE KEIP

20. Based on the Debtors' understanding of key employee incentive plans approved in comparable Chapter 11 Cases, the Debtors have concluded that the proposed KEIP is reasonable and justified under the facts and circumstances of the Chapter 11 Cases. The Debtors believe that the KEIP Participants must be sufficiently incentivized given that they are tasked with not only navigating the Sale process, but also responsible for their normal day-to-day responsibilities in connection with the management and operation of the Debtors' business during the Chapter 11 Cases. The Debtors believe that the KEIP Participants are indispensable to the attendant goals and are confident that, if properly incentivized, the KEIP Participants will provide immeasurable value to the Debtors' estates in connection with the Sale process.

21. Mindful of the financial constraints under which they operate and the paramount interests of their creditors, the Debtors have carefully tailored the KEIP to encourage the KEIP Participants to maximize the value of the Debtors' Assets and estates and the return to the Debtors' creditors, while avoiding unnecessary or excessive incentive payments.

22. The Debtors have determined that implementation of the KEIP is necessary to (i) incentivize the KEIP Participants to maximize value for the benefit of all stakeholders, (ii) compensate the KEIP Participants at a market level, and (iii) ensure that the Debtors' anticipated business needs would be met during the Chapter 11 Cases, which is critical to the success of the Sale process.

KEY EMPLOYEE RETENTION PLAN

A. SUMMARY OF THE KERP.

23. The purpose of the KERP is to ensure the retention of a small percentage of the Debtors' non-insider, management level employees that the Debtors have identified as critical to the success of the Debtors' Sale process. Maintaining the Debtors' sales volume in Canada, completing customer projects, delivering products on time, maintaining customer relationships and managing the Debtors' remaining workforce is critical to a successful Sale process to maximize value for all parties in interest.

24. The KERP will provide retention payments to ensure the continued efforts of those key employees (each a **"KERP Participant"** or the **"KERP participants"**), payable only if such personnel remain employed through the closing on the Sale. The payment amounts are based on a percentage of each KERP Participants' annual compensation (the **"Retention Bonus"**). The Retention Bonus is in lieu of any other cash incentive (whether short-term or long-term), retention or severance payment (whether specified in an employment agreement or otherwise) to be paid, and each KERP Participant has waived any right to receive any such payments to the extent permissible by law. The KERP employees would receive their payouts only after the consummation of the Sale transaction. In total, the KERP provides for an estimated aggregate

expenditure, including associated payroll taxes, of approximately USD \$420,000 for the KERP Participants.

25. A summary of key terms of the KERP is set forth below:⁴

- (a) *KERP Participants*: The KERP is open to 13 of the Debtors' non-executive employees. These personnel are critical to the Debtors' organizational structure and necessary to carry out the day-to-day operations of the Debtors' business. None of the KERP Participants are officers of the Debtors or otherwise persons that are in control of the Debtors; the KERP Participants instead include, among others, managers, manufacturing supervisors, project managers, technology services, plant managers, human resources and quality control personnel.⁵
- (b) *KERP Payment*: The maximum total cost of the KERP is approximately USD \$420,000, with individual amounts equivalent to three months of annual salary for each of the Key Employees. Each Retention Bonus ranges from USD \$19,000 to USD \$48,000.
- (c) The obligations of the Debtors under the KERP shall be secured by an allowed administrative expense claim against the Debtors' estates.
- (d) *KERP Payout*: The Retention Bonus Amount for each KERP Participant will be payable (the "**Payment Date**") within fifteen (15) days flowing from the earliest to occur of: (i) the closing of a Sale transaction; (ii) the involuntary termination of the employee without cause; (iii) the consummation of a chapter 11 plan; or (iv) the dismissal of the Chapter 11 case.
- (e) A KERP Participant will be entitled to their Retention Bonus only if as of the Payment Date they have fulfilled their employment and/or contractual obligations to the Debtors, and they have not resigned from their employment or engagement with the Debtors or been terminated for cause.
- (f) The Debtors shall pay the Retention Bonus payable to each KERP Participant within fifteen (15) business days of the Payment Date pertaining to such KERP Participant. The Debtors shall withhold from such Retention Bonus all taxes and other governmental

⁴ In the event of a discrepancy between this summary and the KERP, the KERP shall control.

⁵ A chart identifying the KERP Participants and their respective KERP Bonus Amounts has been provided on confidential basis to Committee and the U.S. Trustee, and will be made available to Court upon request for *in camera* review.

withholdings that under applicable law it is required to withhold and remit such amounts to the relevant governmental authority.

B. DEVELOPMENT OF KERP.

26. The Debtors in consultation with their advisors developed the KERP to ensure the continued employment of certain critical, non-insider employees, through the Sale process. The KERP is tied to the current compensation of each KERP Participant. The proposed payments are generally similar to various non-insider retention plans in other cases. The Debtors believe that the KERP is comparable to other approved plans, is within the range of reasonableness, and is reasonable and appropriate under the facts and circumstances of these Chapter 11 Cases. The Bank of Montreal, the Debtors DIP Lender, has approved the Retention Bonuses.

C. SELECTING THE KERP PARTICIPANTS.

27. The Debtors selected the KERP Participants by determining which non-insider employees would play the most critical roles in facilitating the Debtors' Chapter 11 Cases and ensuring the success of the Sale process to maximize value. Some of the KERP Participants have worked with the Debtors for several years and have particularized knowledge such that it would be nearly impossible to find an adequate replacement in a short timeframe. The KERP Participants include managers, manufacturing supervisors, project managers, technology services personnel, plant managers, human resources, quality control personnel and other personnel whose involvement is imperative to oversee and facilitate an orderly, value-maximizing Sale process.

BASIS FOR RELIEF

28. It is crucial that the Debtors incentivize the KEIP Participants and the KERP Participants to perform at optimal levels while pursuing the Sale. The Debtors submit that the

relief requested herein will incentivize the Debtors' key employees to preserve and maximize the value received for the Debtors' Assets for the benefit of all stakeholders. Without the implementation of the KEIP, the KEIP Participants may not be incentivized to perform optimally or leave the company at a critical time. Accordingly, the Debtors submit that (i) the KEIP and KERP are a reasonable exercise of the Debtors' business judgment and are therefore permissible under Section 363(b) of the Bankruptcy Code; and (ii) the KEIP's incentive-based structure satisfies the requirements under Section 503(c) of the Bankruptcy Code.

I. THE KEIP AND KERP ARE APPROPRIATE UNDER SECTION 363(B)(1) OF THE BANKRUPTCY CODE.

29. Section 363(b)(1) provides that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under section 363, a court may approve a request for relief when the debtor shows a sound business justification for such relief. *See Dai Ilchi Kangyo Bank Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (“In determining whether to authorize the use, sale, or lease of property of the estate under [section 363(b)], courts require the debtor to show that a sound business purpose justifies such actions.”).

30. If a debtor shows a valid business purpose, the court applies the “business judgment rule,” a presumption “that in making a business decision, the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company.” *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985) (internal citations omitted). The business judgment rule applies in chapter 11 cases and shields a debtor's management from judicial second-guessing. *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992). In that regard, courts have found

that a debtor's use of reasonable performance bonuses and other incentives for employees is a valid exercise of a debtor's business judgment. *See, e.g., In re Glob. Home Prod., LLC*, 369 B.R. 778, 787 (Bankr. D. Del. 2007) (approving incentive plan as proper exercise of the debtors' business judgment); *In re Am. W. Airlines, Inc.*, 171 B.R. 674, 678 (Bankr. D. Ariz. 1994) (noting that it is the proper use of a debtor's business judgment to propose bonuses for employees who helped propel the debtor successfully through the bankruptcy process); *In re Interco Inc.*, 128 B.R. 229, 234 (Bankr. E.D. Mo. 1991) (stating that a debtor's business judgment was controlling in the approval of a "performance/retention program").

31. As set forth above, the Debtors have valid and supportable business reasons for implementing the KEIP and KERP. The Debtors determined in their business judgment that implementation of the KEIP and KERP is critical to maximize the value of their estates and ensure the success of the Sale process. As set forth above, the KEIP Participants are members of the Debtors' senior management team, whose performance and assistance during these Chapter 11 Cases will directly impact the going concern value of the Debtors' business and, thus, the proceeds to be realized from the sale of the Debtors' assets. In addition to having to perform their normal functions as Interim CEO and CFO, the KEIP Participants are also being tasked with operating the Debtors business while in Chapter 11 and are critical to the Sale process, including having to meet with prospective purchasers and assist with all due diligence associated with therewith. The KERP Participants are the Debtors' key employees who, due to their knowledge and skill in conducting the Debtors' business, are critical to retain throughout the Sale process in these Chapter 11 Cases.

32. In addition, as set forth in the Cumberland Declaration, the KEIP and KERP are objectively and demonstrably reasonable. The size of the KEIP and KERP are reasonable in light of the size of the Debtors' estates, the nature of the Debtors' industry, and the likely benefit that

the estates will realize from a successful Sale process resulting from these key employees' efforts. Accordingly, the Debtors respectfully submit there is ample business justification for implementation of the KEIP and KERP, and they should be approved.

33. Courts in this District have approved similar employee incentive and retention programs as a valid exercise of the debtor's business judgment. *See, e.g., In re Avenue Stores, LLC, et al.*, Case No. 19-11842 (LSS) (Bankr. D. Del. Oct. 18, 2019), ECF No. 366 (approving key employee incentive plan tied to success of sale process and key employee retention program); *In re Achaogen, Inc.*, Case No. 19-10844 (BLS) (Bankr. D. Del. May. 8, 2019), ECF No. 163 (approving key employee incentive plan tied to sale proceeds and key employee retention program); *In re The Rockport Company, LLC, et al.*, Case No. 18-11145 (LSS) (Bankr. D. Del. Jun. 13, 2018), ECF No. 233 (approving key employee incentive plan tied to gross proceeds and key employee retention program); *In re Orexigen*, Case No. 18-10518 (KG) (Bankr. D. Del. Apr. 23, 2018), ECF No. 230 (approving incentive plan tied to sale proceeds); *In re NJOY, Inc.*, Case No. 16-12076 (CSS) (Bankr. D. Del. Jan. 12, 2017), ECF No. 358 (approving incentive plan tied to sale process milestones).

II. THE KEIP SHOULD BE APPROVED PURSUANT TO SECTION 503(C) OF THE BANKRUPTCY CODE

34. As discussed above, there are two (2) KEIP Participants, consisting of senior officers of the Debtors. The Debtors believe that the KEIP Participants constitute "insiders" of the Debtors, thereby subjecting the proposed KEIP to review under Section 503(c)(3) of the Bankruptcy Code. The Debtors submit that the requirements of Section 503(c)(3) are satisfied and that the KEIP should be approved for the reasons set forth below.

35. As a threshold matter, the KEIP is not subject to the restrictions set forth in Section 503(c)(1) of the Bankruptcy Code because the KEIP is an incentive plan, not a retention

plan. The KEIP incentivizes the KEIP Participants to maximize the value of the Debtors' estates, rather than simply rewarding the KEIP Participants for remaining in the Debtors' employ, by (i) vesting KEIP awards only upon the closing of a Sale and (ii) providing additional bonuses under the KEIP based on increases to the amount of the Sale proceeds.

36. As explained above, the Debtors identified the KEIP Participants for participation in the KEIP based on the conclusion that the KEIP Participants have played and will continue to play crucial roles in ensuring a successful Sale of the Debtors' Assets. In addition to their day-to-day responsibilities, the Debtors have relied upon, and will continue to rely upon, the KEIP Participants to assume additional responsibilities in connection with a Sale. Among other things, these additional responsibilities include assisting in due diligence, meeting with bidders and resolving other finance related issues of potential buyers as the Auction approaches. Moreover, the KEIP Employees are essential to keep the Debtors' business operating throughout the Sale process, thereby avoiding the possibility of violating any covenants or representations under the terms of the Stalking Horse Agreement. As a result, the KEIP incentivizes the KEIP Participants who will play key roles in the Debtors' Sale process to assist the Debtors in completing a timely Sale that maximizes value of the Debtors estates for all stakeholders.

37. Because the KEIP's payments are tied to completion of a value- maximizing Sale, the KEIP is not subject to Section 503(c)(1) of the Bankruptcy Code, even though it could have some retentive effect. *See In re Global Home Prod. LLC*, 369 B.R. 778, 786 (Bankr. D. Del. 2007) (finding that proposed incentive plans were "primarily incentivizing and only coincidentally retentive" and noting, "[t]he fact that . . . all compensation has a retention element d[id] not reduce the Court's conviction" that the debtors' primary goal in approving the incentive plans was "to create value by motivating performance"); *see also In re Dana Corp.*, 358 B.R. 567, 571 (Bankr.

S.D.N.Y. 2006) (“[B]ecause a plan has some retentive effect does not mean that the plan, overall, is retentive rather than incentivizing in nature.”). The KEIP is properly characterized as a performance-based, sale-incentive plan, not a retention plan for insiders subject to the requirements of Section 503(c)(1) of the Bankruptcy Code.

38. The KEIP is directed at providing incentives to the KEIP Participants to meet a performance objective. Even if the KEIP has the indirect effect of keeping the KEIP Participants from leaving the Debtors’ employment, the Debtors submit that the retentive elements of the KEIP do not convert the KEIP to a “retention” plan. All successful incentive - based plans have the byproduct of incentivizing eligible employees to remain with the debtor. Thus, while the Debtors acknowledge that one benefit of the KEIP will be the continued employment of the KEIP Participants, this does not convert the KEIP into a “retention” plan, nor does it detract from the primary purpose of the plan, which is to provide incentives to the KEIP Participants to help the Debtors maximize the value of their estates for the benefit of all stakeholders through the Sale process.

39. The Debtors submit that the KEIP is a critical motivational tool which is necessary to induce the KEIP Participants to continue to put in the additional time and effort needed to sell the Assets and obtain maximum consideration for the Debtors’ estates. Courts within this jurisdiction have approved similar management incentive plans targeted to consummating a sale transaction. *See, e.g., In re Rentech WP U.S. Inc.*, Case No. 17-12958 (CSS) (Bankr. D. Del. Jan. 31, 2018) (approving a key employee incentive plan with compensation based upon the value of successful sale transactions); *In re TerraVia Holdings, Inc.*, Case No. 17-11655 (CSS) (Bankr. D. Del. Aug. 30, 2017) (approving incentive plan with payments tied to the maximization of sale value); *In re RadioShack Corporation*, Case No. 15-10097 (BLS) (Bankr. D. Del. Mar. 4, 2015)

(approving a key employee incentive program where compensation was based upon the successful conclusion of a sale).

40. Moreover, the KEIP does not constitute severance for insiders subject to the provisions of Section 503(c)(2) of the Bankruptcy Code, because it does not provide benefits to the KEIP Participants upon termination of their employment with the Debtors. See 11 U.S.C. § 503(c)(2). Under the terms of the KEIP, the KEIP Participants will receive compensation upon consummation of a Sale and based upon the Sale price. Therefore, the KEIP is a management and sales-incentive plan – not a severance plan for insiders subject to the requirements of Section 503(c)(2) of the Bankruptcy Code.

41. Furthermore, KEIPs that contemplate an award tied to the closing of a stalking horse bid — have been approved. Courts in this District have recognized the instrumental role played by senior management in a sale process in closing a stalking horse bid. *See, e.g., In re: Legacy EJV Inc., et al.*, Case No. 22-10580 (JKS) (Bankr. D. Del. Sept. 22, 2022) (Docket No. 454) (approving proposed key employee incentive plan that contemplated an award upon the closing of a stalking horse bid); *In re CST Industries Holdings Inc.*, No. 17-11292 (BLS) (Bankr. D. Del. Oct. 13, 2017) [Docket No. 629] (approving key employee incentive plan that contemplated threshold payment upon the consummation of a stalking horse bid); *In re RadioShack Corp.*, No. 15-10197 (BLS) (Bankr. D. Del. Mar. 4, 2015) [Docket No. 811] (approving key employee incentive plan with payments based on successful consummation of a stalking horse bid negotiated prior to the petition date).

42. In *In re: Legacy EJV Inc.*, the U.S. Trustee objected to a key employee incentive plan that contemplated a payment which was earnable upon the closing of a stalking horse bid that was in place prior to the chapter 11 filing. Case No. 22-10580 (JKS) (Bankr. D. Del. Sept. 22,

2022) (Docket No. 429). The U.S. Trustee argued that this payment was an impermissible retention payment to an insider because “[c]losing a sale for the Debtors’ assets that was in place prior to the filing of the chapter 11 cases . . . does not appear to be a difficult-to-achieve metric.” *Id.* at ¶ 26. This Court overruled the U.S. Trustee’s objection, finding that each component of the proposed incentive plan (including the payment which was earnable upon the closing of the stalking horse bid) was incentivizing, and that the evidence presented established that “the KEIP participant was instrumental in enabling the success of the sale.” *In re: Legacy EJV Inc., et al.*, Case No. 22-10580 (JKS) (Bankr. D. Del.) Sept. 2, 2022 Hr’g Tr. at 70:3-6.

43. The same logic should apply here. With respect to the Stalking Horse Bid, the KEIP Participants are directly responsible for: (a) discussing and negotiating with key contract counterparties whose contracts would be assumed and assigned to the purchaser; (b) negotiating the business terms of the sale and transition period with the purchaser; (c) ensuring the successful knowledge transfer of information necessary for any purchaser to continue ongoing business operations; (d) ensuring the Debtors’ compliance with numerous covenants under the Stalking Horse Agreement, including the requirement to provide the purchaser with access to certain of the Debtors’ records; (e) attending and leading discussions at internal and external sale-related meetings; and (f) overseeing the overall transition of the Assets to the purchaser. These are all outstanding tasks that must be completed for the Debtors to successfully close the Stalking Horse Agreement and transfer the Assets to the purchaser.

44. Accordingly, with respect to the KEIP Participants, the Debtors submit that approval of the KEIP should be analyzed under Section 503(c)(3) of the Bankruptcy Code. The Debtors submit that the KEIP satisfies the applicable standards set forth in Section 503(c)(3) of

the Bankruptcy Code since it is tied to the achievement of a specified goal (consummating the Sale of the Assets), is fair and reasonable, and does not discriminate unfairly.

45. The Debtors' ability to maximize value of the Assets will be substantially jeopardized if the Debtors do not obtain the full cooperation, participation and efforts of the KEIP Participants. The KEIP Participants will be necessary in maintaining the Debtors' daily business operations, facilitating potential purchasers' due diligence and ultimately ensuring the maximum value is obtained through the consummation of a Sale. The fact that the Debtors are now in the business of preserving the value of their Assets makes it virtually impossible to attract any employees, let alone those equal to the caliber of, or possessing the same level of familiarity with the Debtors' business as, the KEIP Participants. Authorization to implement the KEIP will provide the KEIP Participants with a greater sense of financial security, thereby minimizing distractions they may otherwise have from the critical tasks the Debtors need them to perform during the Sale process. Providing incentives to encourage these key employees to focus on the Debtors' objectives, and to motivate them to provide optimal levels of performance, is necessary to successfully maintain the Debtors' going-concern business and maximize the value of the Debtors' estates.

III. THE KERP SHOULD BE APPROVED BECAUSE IT APPLIES ONLY TO NON-INSIDERS AND IS NOT PROHIBITED BY SECTIONS 503(C)(1) OR 503(C)(2).

46. Because the KERP provides retention payments to non-insider employees, it is not subject to the requirements of sections 503(c)(1) or (2) of the Bankruptcy Code, which apply only to insiders. Section 101(31)(B) of the Bankruptcy Code defines an "insider" as any director, officer, person in control of the debtor, partnership where the debtor is a general partner, general partner of the debtor, or relative of a general partner, director, officer, or person in control of the debtor. See 11 U.S.C. § 101(31)(B). Thus, the Bankruptcy Code's distinction between "insiders"

and “non-insiders” draws a line between individuals who exercise control over corporate activities and policy and those who do not. *Id.*

47. Job titles are not dispositive in determining whether an individual is an “insider” under the Bankruptcy Code. *See In re Foothills Texas, Inc.*, 408 B.R. 573, 579 (Bankr. D. Del. 2009) (“[T]he mere title of a person does not end the inquiry.”). None of the KERP Participants meets this definition of “insider.” Instead, when determining insider status, courts consider a variety of factors, which are not rigidly applied. *Id.* at 585 (“[T]he type of evidence that might support finding a person to be an officer may vary from case to case depending on the facts and circumstances surrounding the debtor’s business.”). The focus of the inquiry is whether the individual’s relationship with the debtor is sufficiently close such that his or her conduct should be subjected to closer scrutiny than one dealing with the debtor at arm’s-length. *See* 4 Collier on Bankruptcy ¶ 503.17[1] (16th rev. ed. 2017) (citing S. Rep. No. 95-989, 2d Sess., at 25 (1978)).

48. The KERP Participants do not have a sufficiently close relationship with the Debtors such that they should be considered “insiders.” The KERP Participants are not officers or persons in control of the Debtors; rather, the KERP Participants are managers, manufacturing supervisors, project managers, technology services personnel, plant managers, human resources, quality control personnel, and are under the overall supervision and direction of the Interim CEO. *See In re Global Aviation Holdings Inc.*, 478 B.R. 142, 148 (Bankr. E.D.N.Y. 2012) (finding that employees were not “officers” because none of them were members of board, participated in corporate governance, attended board meetings, or reported to board).

49. In addition, the KERP Participants’ duties are limited by their respective roles. Courts have declined to find insider status where the scope of authority is quite limited. *See In re Borders Group, Inc.*, 453 B.R. 459, 468-69 (Bankr. S.D.N.Y. 2011) (stating that “[a]n individual’s

title, by itself, is insufficient to establish that an individual is a director or officer” and holding employees in KERP plan were not insiders because none of them had authority to implement company policy, did not report to board of directors and were subordinate to actual officers).

50. The KERP Participants’ titles reflect the employees’ individual functions and roles and do not reflect officer or director status. See *In re Longview Aluminum, L.L.C.*, 419 B.R. 351, 355 (Bankr. N.D. Ill 2009) (“[I]t is not simply the title ‘director’ or ‘officer’ that renders an individual an insider; rather it is the set of legal rights that a typical director or officer holds.”); cf. *In re NMI Sys., Inc.*, 179 B.R. 357, 370 (Bankr. D.D.C. 1995) (finding that vice president was not insider because he was conferred title “for purposes of marketing” only and was not “in the inner circle making the company’s critical financial decisions.”).

51. Some of the KERP Participants hold the title of “Manager” as part of their title but they are not officers or “person[s] in control of the debtor”; rather, they are afforded the title as to their respective role in a particular division. None of the KERP Participants take part in the overall management of the Debtors, and none of them direct or implement company policy. The KERP Participants are essential employees who have the knowledge and experience to carry out the decisions of the Interim CEO in an efficient and effective manner, but the KERP Participants do not manage or control the Debtors’ business. Therefore, they are not “insiders” and, accordingly, the prohibitions and restrictions in sections 503(c)(1) and (2) do not apply.

52. The KERP Participants could face—and, upon information and belief, certain employees already have faced—significant pressure to leave their jobs with the Debtors due to perceived uncertainty and concern over their job prospects. The Debtors recognize that the filing of these Chapter 11 Cases unfortunately may have exacerbated these concerns for the very company personnel charged with maximizing the value of the Debtors’ estates. As a result, it is

appropriate to provide benefits to such key employees to assuage their fears. It is critical to the Debtors' bankruptcy process that the Debtors retain the services of the KERP Participants for the duration of the Sale process in these Chapter 11 Cases.

53. Courts in this District have approved similar plans that contemplate retention payments to non-insiders. *See e.g., In re Avenue Stores, LLC, et al.*, Case No. 19-11842 (LSS) (Bankr. D. Del. Oct. 18, 2019), ECF No. 366; *In re Achaogen, Inc.*, Case No. 19-10844 (BLS) (Bankr. D. Del. May. 8, 2019), ECF No. 163; *In re The Rockport Company, LLC, et al.*, Case No. 18-11145 (LSS) (Bankr. D. Del. Jun. 13, 2018), ECF No. 233; *In re Rupari Holding Corp.*, Case No. 17-10793 (KJC) (Bankr. D. Del. May 24, 2017), ECF No. 216; *In re Vertellus Specialties, Inc.*, Case No. 16-11290 (CSS) (Bankr. D. Del. July 11, 2016), ECF No. 222.

IV. THE KERP IS JUSTIFIED BY THE FACTS AND CIRCUMSTANCES OF THESE CHAPTER 11 CASES AND THEREFORE SATISFY SECTION 503(C)(3).

54. Section 503(c)(3) of the Bankruptcy Code permits payments to a debtor's employees outside the ordinary course of business if such payments are justified by "the facts and circumstances of the case." 11 U.S.C. § 503(c)(3). Courts have found that the requirement that a transfer or obligation be "justified by the facts and circumstances of the case" is a "reiteration" of the business judgment rule (or sound business judgment test) incorporated into section 363(b). *In re Nobex Corp.*, No. 05-20050 (MFW) (Bankr. D. Del. Jan. 12, 2006), ECF No. 194 ("I find [503(c)(3)] quite frankly nothing more than a reiteration of the standard under 363 . . ."); *cf. Dana*, 358 B.R. at 576-77 (describing six factors that courts may consider when determining whether the structure of a compensation proposal meets the "sound business judgment test" in accordance with section 503(c)(3) of the Bankruptcy Code).

55. In assessing a debtor's business judgment regarding the implementation of key employee payment programs, courts in this District have looked to the "Dana factors" for guidance

to evaluate a proposed incentive or retention program under section 503(c)(3). *See In re Glob. Home Prod., LLC*, 369 B.R. 778, 785 (Bankr. D. Del. 2007) (applying Dana factors). These factors include: (i) whether a reasonable relationship exists between the proposed plan and the desired results; (ii) whether the cost of the plan is reasonable in light of the overall facts of the case; (iii) whether the scope of the plan is fair and reasonable; (iv) whether the plan is consistent with industry standards; (v) whether the debtor has exercised sufficient due diligence in formulating the plan; and (vi) whether the debtor has received sufficient independent counsel in performing any due diligence and formulating the plan. *In re Dana Corp.*, 358 B.R. at 576-77.

A. The KERP is Justified by the Facts and Circumstances of these Chapter 11 Cases.

i. A Reasonable Relationship Exists Between the KERP and Desired Results.

56. The KERP satisfies each of the *Dana* factors. First, the KERP is designed to achieve desired performance through maximizing the Sale proceeds obtained for its assets. Retention of key non-insider employees is critical to this process. As noted above, the KERP Participants include individuals with unique and irreplaceable knowledge of the Debtors' business and essential skills. The retention of the KERP Participants is crucial to the Debtors' goal of achieving the highest possible return to creditors through a section 363 sale.

ii. The Cost of the KERP is Reasonable.

57. Second, the cost of the KERP is reasonable under the circumstances of these Chapter 11 Cases. As discussed in the Cumberland Declaration, the Debtors and their advisors based the design and structure of the KERP on the plan to sell the Debtors' assets, the time and phases of such planned Sale, and their experience in and knowledge of KERP plans in other similar cases. The KERP's costs are objectively reasonable; each of the 13 KERP Participants stand to

earn an additional three months of salary. Accordingly, the Debtors believe that the KERP's costs are justified and appropriate given the size of the Debtors' business and the value likely to be realized by the estates through retention of the KERP Participants.

iii. The Scope of the KERP is Fair and Reasonable.

58. Third, the scope of the KERP is fair and reasonable. The KERP is limited to just 13 non-insider employees whose unique knowledge and skills are essential to the Debtors' operations.

iv. The KERP Is Consistent with Industry Standards and the Debtors Exercised Sufficient Due Diligence in Formulating the KERP.

59. Fourth, the KERP is consistent with industry standards, and the Debtors exercised appropriate diligence in their formulation. As noted above and in the Cumberland Declaration, the Debtors and their advisors analyzed numerous data points and their knowledge of KERP plans in other cases to properly evaluate the KERP.

60. The foregoing demonstrates the KERP's value to the Debtors' estates is more than commensurate with its modest projected cost of approximately USD \$420,000. Accordingly, the Debtors submit that the KERP satisfies section 503(c)(3) of the Bankruptcy Code and should be approved.

V. THE PAYMENTS CONTEMPLATED UNDER THE KEIP AND KERP CONSTITUTE ACTUAL AND NECESSARY COSTS OF PRESERVING THE DEBTORS' ESTATES.

61. Section 503(b) of the Bankruptcy Code grants administrative expense status for "the actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1)(A).

62. The payments contemplated under the KEIP and KERP should be afforded administrative expense priority because they constitute actual and necessary costs and expenses of preserving, and potentially enhancing, the Debtors' estates. The Debtors' ability to maximize value for its estate and creditors is dependent on a successful sale process. The KEIP has been carefully crafted so that the KEIP Participants' potential awards are directly tied to the value

achieved in the Sale process. The KERP is designed to reward those employees whose efforts facilitate and effectuate the Debtors' objectives and preserve and maximize the value of the Debtors' business.

63. Thus, a reasonable relationship exists between the payments contemplated under the KEIP and KERP and the Debtors' chapter 11 goals. Accordingly, the payments contemplated by the KEIP and KERP constitute actual and necessary costs of preserving the Debtors' estates under section 503(b) of the Bankruptcy Code.

WAIVER OF STAY

64. The Debtors request a waiver of a 14-day stay that would otherwise apply to approval of the KEIP and KERP under Bankruptcy Rule 6004(h). In order to successfully implement the KEIP and KERP, the Debtors must be able to provide participants with certainty that they will be compensated for their efforts to maximize the value of the Debtors' estates, despite the uncertainty of the chapter 11 process. Absent immediate approval of the relief sought in the Motion, the Debtors risk additional departures among its workforce. Therefore, the Debtors respectfully submit that waiver of the 14-day stay under Bankruptcy Rule 6004(h) is appropriate.

NOTICE

65. Notice of this Motion will be provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the United States Attorney for the District of Delaware; (iii) proposed counsel for the Committee; (iv) counsel to the DIP Lender; and (v) any parties requesting notice pursuant to Rule 2002. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice of this Motion is required.

66. The Debtors have not previously sought the relief requested herein from this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court (i) enter the Proposed Order granting the relief requested herein, and (ii) grant such other and further relief as this Court may deem just and proper.

Dated: May 19, 2023
Wilmington, Delaware

CHIPMAN BROWN CICERO & COLE, LLP

/s/ William E. Chipman, Jr.

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Proposed Counsel to Debtors and Debtors in Possession

EXHIBIT A

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

In re:)	
)	Chapter 11
STRUCTURLAM MASS TIMBER U.S., INC., <i>et al.</i> , ¹)	
)	Case No. 23-10497 (CTG)
)	
Debtors.)	(Jointly Administered)
)	
)	Related Docket No.
)	

**ORDER (I) AUTHORIZING THE DEBTORS TO IMPLEMENT KEY EMPLOYEE
INCENTIVE AND RETENTION PLANS AND (II) GRANTING RELATED RELIEF**

This matter coming before the Court upon the *Debtors' Motion for Entry of an Order (i) Authorizing the Debtors to Implement Key Employee Incentive and Retention Plans and (ii) Granting Related Relief* (the “**Motion**”) filed by the above-captioned debtors (collectively, the “**Debtors**”) for entry of an order (this “**Order**”) (i) approving and authorizing the implementation of the KEIP and KERP; (ii) authorizing (but not directing) the Debtors to make payments under the KEIP and KERP to the Participants under the terms contained therein; (iii) granting administrative expense priority status to all payments to be made by the Debtors thereunder; and (iv) granting related relief, all as further described in the Motion; and upon consideration of the *Declaration of Brian Cumberland in Support of Debtors' Motion for Entry of Order (I) Authorizing the Debtors to Implement Key Employee Incentive and Retention Plans and (II) Granting Related Relief* (the “**Cumberland Declaration**”); and the *Supplemental Declaration of Anthony Tillman in Support of Debtors' Motion for Entry of Order (I) Authorizing the Debtors to*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtors' federal tax identification number or Canadian business number, as applicable, include: Structurlam Mass Timber U.S., Inc. (6287); Natural Outcomes, LLC (n/a); Structurlam Mass Timber Corporation (5050); and SLP Holdings Ltd. (3114). The location of the Debtors' headquarters is: 2176 Government Street, Penticton, British Columbia, Canada V2A 8B5. The address of the registered agent for Structurlam Mass Timber U.S., Inc. is: 8 The Green, Suite A, Dover, Delaware 19901.

Implement Key Employee Incentive and Retention Plans and (II) Granting Related Relief (the “**Tillman Declaration**”), and the record of these Chapter 11 Cases; and this Court having found that (i) this Court has jurisdiction over the Debtors, their estates, and property of their estates, and to consider the Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C § 157(b)(2)(A), (iv) venue of this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409, and (v) no further or other notice of the Motion is required under the circumstances; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court; and having determined that the legal and factual bases set forth in the Motion and the Cumberland Declaration and the Tillman Declaration establish just cause for the relief granted in this Order; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The KEIP as described in the Motion is hereby approved, and the Debtors are authorized to implement the KEIP in their discretion.
3. The KERP as described in the Motion is hereby approved, and the Debtors are authorized to implement the KERP in their discretion.
4. The Debtors are further authorized, but not directed, to take any and all actions they deem necessary, desirable, or appropriate to effect, implement, and/or consummate the KEIP and

the KERP, including without limitation, making the Incentive Bonus and/or Retention Bonus payments that may become due thereunder, without further application or order of this Court.

5. All amounts earned and payable under the KEIP and the KERP shall be afforded administrative expense priority under sections 503(b) and 507(a)(2) of the Bankruptcy Code for all purposes in these Chapter 11 Cases and in case of conversion or dismissal of these Chapter 11 Cases; provided, however, that notwithstanding the Court's approval of the KEIP and KERP, the KEIP Participants and/or KERP Participants shall not have a claim against the Debtors for such amounts unless and until the Debtors actually determine to award such payments to a particular KEIP Participant and/or KERP Participant.

6. The Debtors are authorized to take all actions necessary or appropriate to implement the relief granted in this Order.

7. This Order shall be binding upon any successors and assigns of the Debtors, including any trustee appointed in these Chapter 11 Cases or in any superseding proceeding under chapter 7 of the Bankruptcy Code.

8. Notwithstanding Bankruptcy Rule 6004(h) or any other Bankruptcy Rule(s) to the contrary, the terms and conditions of this Order shall be immediately effective and enforceable upon entry.

9. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.