

**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 KNOTEL, INC. AND KNOTEL CANADA, INC.**

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

**THIRD REPORT OF THE INFORMATION OFFICER**

**ALVAREZ & MARSAL CANADA INC.**

**June 24, 2021**

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## 1.0 INTRODUCTION

1.1 On January 31, 2021 (the “**Initial Petition Date**”), Knotel, Inc. (“**Knotel Parent**”), a Delaware corporation that is the corporate parent of the Knotel group of companies (the “**Knotel Group**”), and more than 200 of its subsidiaries in the United States (collectively, the “**Initial Chapter 11 Debtors**”), commenced voluntary cases (the “**Initial Chapter 11 Cases**”) pursuant to Chapter 11 (“**Chapter 11**”) of the U.S. Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the “**U.S. Court**”). Knotel Canada, Inc. (“**Knotel Canada**”, together with the Initial Chapter 11 Debtors, the “**Chapter 11 Debtors**”), a direct subsidiary of Knotel Parent, did not file a petition on the Initial Petition Date.

1.2 Since the commencement of the Initial Chapter 11 Cases, the U.S. Court has granted a number of orders to permit the Initial Chapter 11 Debtors to continue to operate their business and advance the Initial Chapter 11 Cases, including the granting of an order (the “**Bidding Procedure Order**”) which, among other things: (i) authorized the Initial Chapter 11 Debtors to enter into and perform their obligations under an asset purchase agreement (the “**Stalking Horse Agreement**”) with Digiotech, LLC (the “**Stalking Horse Bidder**”), for the sale of substantially all of the assets of the Initial Chapter 11 Debtors, including the common shares of Knotel Parent’s international subsidiaries (including Knotel Canada); and (ii) established the bidding procedures in connection with the sale of all, or substantially all, of the assets of the Initial Chapter 11 Debtors.

- 1.3 During the restructuring process, the Stalking Horse Bidder determined that it would prefer to purchase certain assets of Knotel Canada rather than its shares<sup>1</sup> and in order to facilitate such a sale, on March 8, 2021 (the “**Knotel Canada Filing Date**”), Knotel Canada filed a voluntary petition with the U.S. Court pursuant to Chapter 11 (the “**Knotel Canada Chapter 11 Case**”). On March 11, 2021, the U.S. Court entered an order directing joint administration of the Initial Chapter 11 Cases and the Knotel Canada Chapter 11 Case (collectively the “**Chapter 11 Cases**”).
- 1.4 The official committee of unsecured creditors (the “**UCC**”) initially objected to the Stalking Horse Agreement. To address the concerns raised by the UCC, a settlement term sheet (the “**Term Sheet**”) was entered into which, among other things: (i) increased the purchase price to ensure that \$6.2 million would be available to establish a fund (the “**GUC Fund**”) for distributions to general unsecured creditors including the creditors of Knotel Canada; (ii) increased the wind-down budget to \$500,000; and (iii) confirmed the Stalking Horse Bidder’s commitment to assume certain Canadian tax obligations, including harmonized sales tax remittances.
- 1.5 On March 9, 2021, the Chapter 11 Debtors filed a motion (the “**Omnibus Order Motion**”) seeking to apply certain previously granted orders in the Initial Chapter 11 Cases to Knotel Canada *nunc pro tunc* to the Knotel Canada Filing Date. On March 11, 2021, the U.S. Court entered an order (the “**Omnibus Order**”), granting the relief sought in the Omnibus Order Motion on an interim basis. The interim Omnibus Order provided that any parties wishing to respond or object to the Omnibus Order Motion must do so by March 23, 2021.

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<sup>1</sup> The Stalking Horse agreement provided a mechanism for such a change in deal structure.

No parties responded or objected to the Omnibus Order Motion and on March 26, 2021, the U.S. Court entered the Omnibus Order on a final basis without the need for a hearing.

- 1.6 On March 9, 2021, Knotel Canada in its capacity as the proposed foreign representative of itself and the Knotel Parent (the “**Canadian Filing Entities**”), obtained an order (the “**Interim Order**”) of the Ontario Superior Court of Justice (the “**Court**”) among other things, granting a stay of proceedings in respect of the Canadian Filing Entities and their property and business, and in respect of their directors and officers, pending hearing of the application under Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“**CCAA**”) to the Court to recognize the Chapter 11 Cases commenced by the Canadian Filing Entities in the U.S. Court (the “**CCAA Recognition Proceedings**”) and together with the Chapter 11 Cases, the “**Restructuring Proceedings**”).
- 1.7 On March 11, 2021, the U.S. Court entered an order authorizing Knotel Canada to act as foreign representative (in such capacity, the “**Foreign Representative**”) on behalf of the estates of the Canadian Filing Entities.
- 1.8 On March 12, 2021, the Court entered an order (the “**Initial Recognition Order**”), that among other things:
  - (a) declared that Knotel Canada is a foreign representative as defined in section 45 of the CCAA;
  - (b) declared that the centre of main interest in respect of the Canadian Filing Entities is the United States and that the Chapter 11 Cases of the Canadian Filing Entities are recognized as “foreign main proceedings” under the CCAA;
  - (c) granted a stay of proceedings in favour of the Canadian Filing Entities; and

(d) prohibited Knotel Canada from selling or otherwise disposing of any property in Canada without leave of the Court.

1.9 Additionally, on March 12, 2021, the Court issued an order (the “**Supplemental Order**”), that, among other things:

- (a) recognized and enforced certain foreign orders made by the U.S. Court in respect of the Chapter 11 Cases in Canada, including the interim Omnibus Order;
- (b) appointed Alvarez & Marsal Canada Inc. as the information officer in respect of the Canadian Filing Entities (in such capacity, the “**Information Officer**”); and
- (c) granted a super-priority charge up to a maximum of CDN\$200,000 (the “**Administration Charge**”) over the Canadian Filing Entities’ property in Canada in favour of counsel to the Canadian Filing Entities, the Information Officer and counsel to the Information Officer, Blake, Cassels & Graydon LLP (“**Blakes**”) as security for payment of their professional fees and disbursements in respect of these CCAA Recognition Proceedings.

1.10 On March 19, 2021, the U.S. Court entered an order (the “**Sale Order**”), authorizing and approving: (i) the sale of substantially all of the Chapter 11 Debtors’ assets free and clear of all liens, claims and encumbrances (including the sale of the assets of Knotel Canada); and (ii) the assumption and assignment of certain executory contracts and unexpired leases in connection therewith pursuant to the terms and conditions set out in the Stalking Horse Agreement and Term Sheet.<sup>2</sup>

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<sup>2</sup> No Qualified Bids were received by the Bid Deadline established by the Bidding Procedure Order, deeming the Stalking Horse Bidder the successful bidder.

1.11 On March 23, 2021, the Court issued an order which, among other things, recognized the Sale Order and gave full force and effect to the Sale Order in all provinces and territories of Canada pursuant to section 49 of the CCAA.

### **The Claims Process<sup>3</sup>**

1.12 On April 1, 2021, the U.S. Court issued an order (the “**Bar Date Order**”), establishing various claims bar dates for the filing of claims against the Chapter 11 Debtors and approving related forms, noticing procedures and a claims bar date notice.

1.13 The Bar Date Order established the following deadlines (“**Bar Dates**”), among others, for the filing of proofs of claim against the Chapter 11 Debtors, including Knotel Canada. Key dates in respect of the Bar Date Order are summarized below:

- (a) **General Bar Date** – Persons or entities (other than Governmental Units (as defined in the U.S. Bankruptcy Code)) holding prepetition claims (including any secured claim, unsecured claim, unsecured priority claim, or unsecured non-priority claims) against the Chapter 11 Debtors were required to file proofs of claim by 5:00 p.m. (Eastern Time) on May 5, 2021.
- (b) **Administrative Claim Bar Date** – Persons or entities to file a request to allow unpaid administrative expense claim against any of the Chapter 11 Debtors arising on or after the Initial Petition Date and through and including the date of the service of the Bar Date Notice, unless otherwise provided in the Bar Date Order were required to file proofs of claim by 5:00 p.m. (Eastern Time) on May 5, 2021.

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<sup>3</sup> Capitalized terms not otherwise defined in this section have the meanings ascribed to them in the Bar Date Order.

(c) **Government Bar Date** – Governmental Units holding prepetition claims against the Chapter 11 Debtors are required to file proofs of claim by 5:00 p.m. (Eastern Time) on July 30, 2021.

(d) **Rejection Bar Date** – Claimants asserting claims resulting from the Chapter 11 Debtors rejection of an executory contract or unexpired lease are required to file proofs of claim for damages arising from that rejection by the later of:

- i. the General Bar Date or the Government Bar Date, as applicable; or
- ii. 5:00 p.m. (Eastern Time) on the date that is 30 days following the service of an order approving rejection of an executory contract or unexpired lease of the Chapter 11 Debtors.

(e) **Amended Schedules Bar Date** – Claimants holding claims affected by the filing of a previously unfiled, or an amendment or supplement to a schedule of assets and liabilities of the Chapter 11 Debtors are required to file proofs of claim by the later of:

- i. the General Bar Date or the Government Bar Date, as applicable; or
- ii. 5:00 p.m. (Eastern Time) on the date that is 30 days following the service of a notice of an amendment to the Chapter 11 Debtors’ schedules.

1.14 On April 14, 2021, the Court issued an order (the “**Recognition of U.S. Claims Order and Omnibus Order**”), giving full force and effect to: (i) the Bar Date Order and (ii) the Omnibus Order on a final basis.

1.15 On April 26, 2021, Knotel Canada filed an amended schedule of assets and liabilities (the “**Amended Schedules**”). Consistent with the Bar Date Order, May 27, 2021 at 5:00pm



(Eastern Time) was established as the bar date for creditors holding claims against Knotel Canada identified in the Amended Schedules and September 7, 2021 as the bar date for Governmental Units holding claims against Knotel Canada.

- 1.16 Further information regarding these CCAA Recognition Proceedings can be found on the Information Officer's website at <https://alvarezandmarsal.com/knotel> (the "**Case Website**") and copies of all orders issued in the Chapter 11 Cases are available on the case website maintained by Omni Agent Solutions at <https://cases.omniagentsolutions.com/knotel> (the "**Chapter 11 Website**").

## **2.0 TERMS OF REFERENCE AND DISCLAIMER**

- 2.1 In preparing this report of the Information Officer (the "**Third Report**"), the Information Officer has relied solely on information and documents provided by the Foreign Representative, the other Chapter 11 Debtors, and their Canadian legal counsel (collectively, the "**Information**").
- 2.2 Except as otherwise described in this Third Report, the Information Officer has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Information Officer has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CASs**") pursuant to the *Chartered Professional Accountants Canada Handbook* and accordingly, the Information Officer expresses no opinion or other form of assurance contemplated under CASs in respect of the Information.

2.3 Unless otherwise stated, all monetary amounts contained herein are expressed in United States dollars.

2.4 Terms not otherwise defined herein have the meanings ascribed to them in the Second Report of the Information Officer dated April 9, 2021 (the “**Second Report**”).

### **3.0 PURPOSE OF THIS REPORT**

3.1 The purpose of this Third Report is to:

- (a) describe the Foreign Representative’s motion for an order (the “**Confirmation Recognition Order**”):
  - i. recognizing and giving effect in Canada to the Confirmation Order (further described below) pursuant to section 49 of the CCAA;
  - ii. providing a mechanism for the termination of these CCAA Recognition Proceedings and the release of the Information Officer, its counsel and counsel to the Canadian Filing Entities;
  - iii. authorizing the dissolution of Knotel Canada on the Effective Date and permitting the Liquidation Trust to take any additional steps, as may be necessary or desirable, to dissolve Knotel Canada;
  - iv. approving the activities of the Information Officer as described in the First Report of the Information Officer dated March 19, 2021 (the “**First Report**”), the Second Report and this Third Report; and
  - v. approving the fees and disbursements of the Information Officer and its legal counsel Blakes;

- (b) provide an update on matters related to the CCAA Recognition Proceeding;
- (c) provide the Court with a summary of the activities of the Information Officer since the date of the Second Report (April 9, 2021);
- (d) make a recommendation to the Court in respect of the Confirmation Recognition Order.

#### **4.0 PLAN AND DISCLOSURE STATEMENT<sup>4</sup>**

##### **Proposed Restructuring**

- 4.1 The Chapter 11 Debtors previously obtained approval to sell certain assets to a purchaser pursuant to the Sale Order. The Sale Order was recognized by this Court on March 23, 2021. As described in greater detail in the First Report, the sale of the assets of the Chapter 11 Debtors was by way of a credit bid and, accordingly, there are no proceeds of sale to distribute.
- 4.2 On April 21, 2021, the Chapter 11 Debtors filed with the U.S. Court a joint Chapter 11 plan of liquidation for Knotel Group, which was subsequently amended on May 12, 2021 (such plan, as may be amended from time to time, the “**Plan**”) and related disclosure statement, which disclosure statement was subsequently amended on the same date (such disclosure statement, as amended, the “**DS**” and combined with the Plan, the “**Combined Plan and DS**”). A copy of the Combined Plan and DS is attached as Appendix A.
- 4.3 Following a motion filed by the Chapter 11 Debtors and the UCC (collectively the “**Plan Proponents**”), on May 12, 2021, the U.S. Court, issued an order (the “**Interim Approval**”

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<sup>4</sup> Terms not otherwise defined in this section have the meanings ascribed to them in the Combined Plan and DS.

**Order**”) which provided, among other things: (i) interim approval of the disclosures set out in the Combined Plan and DS; (ii) approval of procedures for the solicitation and tabulation of votes to accept or reject the Combined Plan and DS; (iii) scheduling the hearing (the “**Confirmation Hearing**”) for final approval of the adequacy of the DS and confirmation of the Plan; (iv) approval of the form of ballot and solicitation package; (v) approval of the notice provisions; and (vi) other related relief. The Interim Approval Order required solicitation materials to be mailed or otherwise distributed to creditors (including creditors of the Canadian Filing Entities) by May 15, 2021.

4.4 As noted above, at the Confirmation Hearing, which is scheduled for June 29, 2021, the Plan Proponents will seek an order of the U.S. Court, among other things, confirming the Combined Plan and DS (the “**Confirmation Order**”).

4.5 Following entry of the Interim Approval Order, the Canadian Filing Entities Serviced notice of their motion to seek recognition of the Confirmation Order, if granted by the U.S. Court.

4.6 The Combined Plan and DS is a liquidating plan which will provide for an efficient means to liquidate the remaining assets of the Chapter 11 Debtors, maximize value of the Chapter 11 Debtors’ estates and make distributions to creditors.

4.7 The Combined Plan and DS includes a request to dismiss the Chapter 11 Cases of certain Chapter 11 Debtors (the “**Dismissed Debtors**”) on the date the Combined Plan and DS becomes effective (such date being the “**Effective Date**”). The Dismissed Debtors have no meaningful assets to administer and dismissal of the Dismissed Debtors from the Chapter 11 Cases will preserve the Chapter 11 Debtors’ limited resources to enable them to wind-

down the estates of Knotel Parent, Knotel Canada and 42Floors LLC (the “**Liquidating Debtors**”).

- 4.8 In the event that the Chapter 11 Debtors determine to sell any remaining Assets of a Liquidating Debtor prior to the Effective Date, the Plan Proponents may determine that any such Liquidating Debtor should be treated as a Dismissed Debtor for the purposes of the Combined Plan and DS.
- 4.9 On the Effective Date, the assets of the Liquidating Debtors (the “**Liquidating Trust Assets**”) will be transferred to the Liquidating Trust<sup>5</sup>. The Liquidating Trust Assets are comprised of any funds remaining in the wind-down account, the GUC Fund (\$6.2 million), and proceeds of certain causes of action belonging to the Estates of the Liquidating Debtors (the “**Estate Causes of Action**”), if any.
- 4.10 The Liquidating Trust will be responsible for: (i) implementing the Combined Plan and DS; (ii) prosecuting the Estate Causes of Action; (iii) administering, monetizing and/or liquidating the trust assets; (v) resolving all disputed claims; and (vi) making all distributions to holders of Allowed Claims.

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<sup>5</sup> The proposed Liquidating Trust Agreement is included as part of the Plan Supplement filed with the U.S. Court on June 11, 2021 and attached as Appendix B.

4.11 The following chart summarizes the classification and treatment of creditors under the Plan:

<b>Class</b>	<b>Estimated Allowed Claims</b>	<b>Treatment</b>	<b>Entitled to Vote</b>	<b>Estimated Recovery to Holders of Allowed Claims</b>
<b>Class 1:</b> First Lien Claims	\$18,550,000	Unimpaired	No	100%
<b>Class 2:</b> Second Lien Claims	\$51,169,161	Unimpaired	No	100%
<b>Class 3:</b> Other Secured Claims	\$8,891,290.80	Unimpaired	No	100%
<b>Class 4:</b> Other Priority Claims	\$1,412,000 - \$4,487,000	Unimpaired	No	100%
<b>Class 5:</b> General Unsecured Claims	\$300 million - \$450 million	Impaired	Yes	0.3% - 2.4%
<b>Class 6:</b> Equity Interests	N/A	Deemed Impaired	No	0%

4.12 Class 1 Lien Claims and Class 2 Second Lien Claims were satisfied in full through the credit bid as part of the Stalking Horse Agreement. Except to the extent that a holder of an Allowed Class 3 Other Secured Claim agrees to less favourable treatment, on the Effective Date, or as soon as practicable thereafter, in full and final satisfaction of such claim, each holder of an Allowed Class 3 Other Secured Claim shall receive, at the option of the applicable Liquidating Debtor or Liquidating Trustee: (i) a transfer of the Chapter 11 Debtors' right title and interest in and to the collateral securing such Claim; or (ii) such other treatment that would render such Claim unimpaired.

- 4.13 Class 4 Other Priority Claims shall be satisfied from the Liquidating Trust Assets prior to any distribution to Class 5 General Unsecured Claims. Other Priority Claims are comprised of Claims entitled in priority pursuant to section 507(a) of the U.S. Bankruptcy Code. Pursuant to the Stalking Horse Agreement, certain Other Priority Claims were assumed by the Purchaser and are, accordingly, the sole obligation of the Purchaser.
- 4.14 Holders of Class 5 General Unsecured Claims shall receive, in full and final satisfaction of their Allowed General Unsecured Claim, a pro rata share of cash to be distributed from the Liquidating Trust, if any, after payment of (or establishment of a sufficient reserve for) all Liquidating Trust Expenses and senior Claims comprised of Class 3 and Class 4 Claims.
- 4.15 The Liquidating Trust Expenses include the fees of the Liquidating Trustee and fees for the Liquidating Trustee's professionals. There is no assurance that the Liquidating Trust Assets will be sufficient to fund the Liquidating Trust Expenses to enable any distributions to General Unsecured Creditors. Additionally, there is no assurance that the Liquidating Trust will be successful in prosecuting any Estate Cause of Action or generate sufficient proceeds from the Estate Causes of Action for distribution.
- 4.16 The Combined Plan and DS contemplates deemed substantive consolidation of the Liquidating Debtors for voting and distribution purposes. As a result, unsecured creditors of the Liquidating Debtors will share in a common pool, irrespective of which specific Knotel Group entity the creditor's claim was against.

## Conditions to Effectiveness

### Creditor Vote

- 4.17 As described earlier in this Third Report, on May 12, 2021, the U.S. Court granted the Interim Approval Order which, among other things, approved the procedures for the solicitation and tabulation of votes to accept or reject the Combined Plan and DS.
- 4.18 The Combined Plan and DS contemplates that only Class 5 General Unsecured Creditors will vote on the Plan as all other classes are either unimpaired or deemed impaired. For the Combined Plan and DS to be approved, at least two-thirds in value of voting claims and a majority in number of voting creditors in Class 5 must vote in favour of the Combined Plan and DS. The Interim Approval Order establishes June 21, 2021 at 4:00 p.m. (Eastern Time) as the voting deadline for the Combined Plan and DS and June 25, 2021 as the deadline for the results of the vote to be filed with the U.S. Court. The Information Officer understands that creditors entitled to vote on the Combined Plan and DS have received a Solicitation Package, including instructions on how to submit a vote. The Information Officer understands that the Foreign Representative will file a supplementary affidavit with this Court detailing the results of the vote in advance of the motion for recognition of the anticipated Confirmation Order on June 30, 2021.

### Other Conditions for Effectiveness

- 4.19 In order for the Plan to become effective, in addition to the Combined Plan and DS being approved by the requisite majority of creditors, the following conditions must be satisfied or waived by each of the Plan Proponents:



- (a) the U.S. Court shall have entered the Confirmation Order acceptable to the Plan Proponents and the Confirmation Order shall be a final order;
- (b) the Canadian Court shall have entered the Confirmation Recognition Order;
- (c) no stay of the Confirmation Order shall then be in effect;
- (d) the Liquidating Trust Agreement shall be executed by the Liquidating Trustee who shall have been appointed and accepted such appointment;
- (e) the Combined Plan and DS shall not have been materially amended, altered, or modified from the plan as confirmed by the Confirmation Order, unless such material amendment is made in accordance with Article XIII of the Combined Plan and DS; and
- (f) the Plan Proponents shall have filed the Notice of the Effective Date.

### **Summary of Next Steps**

4.20 A summary of next steps required to implement the Combined Plan and DS are outlined below:

- (g) Creditor Vote: As noted previously in this Report, the Voting Deadline has been established as June 21, 2021 at 4:00 p.m (Eastern Time).
- (h) Voting Tabulation Affidavit: The Interim Order establishes June 25, 2021 at 5:00 p.m. (Eastern Time) as the deadline by which an affidavit must be filed with the U.S. Court setting out the results of the creditor vote.
- (i) Confirmation Hearing: The Confirmation Hearing is scheduled before the U.S. Court on June 29, 2021 at 10:00 a.m. (Eastern Time).

- (j) Canadian Recognition of the Confirmation Order: Recognition of the Confirmation Order by this Court is a condition precedent to implementation of the Combined Plan and DS.

### **Information Officer's Analysis of Plan**

- 4.21 If the Combined Plan and DS is not accepted by the requisite majority of creditors or if the other conditions to effectiveness are not satisfied or waived, the Chapter 11 Debtors may be required to commence a chapter 7 liquidation on or about June 30, 2021. Attached as Appendix B hereto is a copy of the Liquidation Analysis filed by the Chapter 11 Debtors as part of a Plan Supplement dated June 11, 2021.
- 4.22 As set out in the Liquidation Analysis, a chapter 7 liquidation will result in greater fees, wind-down expenses and Other Priority Claims. In the event of a chapter 7 liquidation, there is no recovery expected for General Unsecured Creditors.

## **5.0 ACTIVITIES OF THE INFORMATION OFFICER**

- 5.1 The activities of the Information Officer since the date of the Second Report (April 9, 2021) have included:
  - (a) making non-confidential materials filed with the Canadian Court and with the U.S. Court available on the Case Website;
  - (b) responding to enquiries regarding the CCAA Recognition Proceedings and the Chapter 11 Cases;
  - (c) monitoring the Chapter 11 Website for activity in the Chapter 11 Cases;

- (d) communicating with Blakes and the Chapter 11 Debtors' Canadian legal counsel regarding matters relevant to the CCAA Recognition Proceedings and Chapter 11 Cases;
- (e) attending the court hearing on April 14, 2021 in respect of a motion of the Foreign Representative for the Recognition of U.S. Claims Order and Omnibus Order; and
- (f) preparing this Third Report and reviewing draft materials of the Foreign Representative in connection with the CCAA Recognition Proceedings.

## **6.0 APPROVAL OF FEES DISBURSEMENTS OF INFORMATION OFFICER AND ITS LEGAL COUNSEL**

- 6.1 Pursuant to Paragraphs 17 and 18 of the Supplemental Order: (i) the Information Officer and its legal counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to the date of the Initial Recognition Order; and (ii) the Information Officer and its legal counsel shall pass their accounts from time to time before the Court.
- 6.2 Attached hereto as Appendix C is the Affidavit of Stephen Ferguson sworn June 23, 2021 (the "**Ferguson Affidavit**"), attesting to the fees and disbursements of the Information Officer for the period March 12, 2021 to April 24, 2021 in the aggregate amount of \$81,591.66, comprised of fees of \$72,205.00 and HST of \$9,386.66.
- 6.3 Attached hereto as Appendix D is the Affidavit of Linc Rogers, a partner with Blakes, sworn June 23, 2021 (the "**Rogers Affidavit**"), for the period March 12, 2021 to May 31, 2021 in the aggregate amount of \$74,987.60, comprised of fees of \$66,499.00, disbursements of \$1,632.60 and HST of \$8,856.00. The Information Officer confirms that

the fees and disbursements set out in Blakes' invoices relate to advice sought by the Information Officer and assistance provided in respect of the CCAA Restructuring Proceedings, and that, in the Information Officer's view, Blakes' fees and disbursements are properly chargeable, reasonable and appropriate.

6.4 In addition to the amounts set forth in the Ferguson Affidavit and the Rogers Affidavit (together, the "**Fee Affidavits**"), the Information Officer requests that the Court authorize and approve the fees of the Information Officer and Blakes, respectively, that are not set out in the Fee Affidavits but have been or will be incurred in the performance of the duties of the Information Officer up to a maximum amount of \$30,000 (the "**Maximum Remaining Amount**"), plus disbursements and applicable HST. The Maximum Remaining Amount is an estimate determined by the Information Officer in consultation with Blakes on the assumption that the Plan will be implemented on a timely basis and the CCAA Recognition Proceedings will be discharged shortly thereafter.

## **7.0 DISCHARGE AND TERMININATION OF RESTRUCTURING PROCEEDINGS**

7.1 As discussed above, the Combined Plan and DS provides for the distribution of the Chapter 11 Debtors' estates into the Liquidation Trust and an end to the Chapter 11 Cases.

7.2 The Foreign Representative has also requested that the Information Officer be discharged upon the filing of a certificate (the "**Information Officer's Termination Certificate**") indicating it has been advised by the Canadian Filing Entities or their counsel that the condition to the Effective Date have been satisfied or waived and that, to the knowledge of the Information Officer, all matters to be attended to in connection with these CCAA Recognition Proceedings have been completed. It is contemplated that on termination of

the CCAA Recognition Proceedings, the Information Officer, its counsel and counsel to the Canadian Filing Entities will receive a standard court-ordered release. Prior to filing the Information Officer's Termination Certificate, the Information Officer anticipates its remaining activities will consist primarily of updating the Case Website of the Information Officer as necessary, ongoing review of the materials posted on the Chapter 11 Website, responding to any enquiries regarding the Chapter 11 Cases and/or the CCAA Recognition Proceedings and ancillary matters related to the Plan. Should the information Officer need to engage in any materially different activities, it would report back to this Court before seeking its discharge and related release.

- 7.3 The Foreign Representative has also requested the termination of the CCAA Recognition Proceedings and the discharge of the Administration Charge upon the Information Officer's Termination Certificate being filed.
- 7.4 The Plan contemplates that all Liquidating Debtors other than Knotel Parent shall be deemed dissolved on the Effective Date of the Combined Plan and DS without the need for further notice or action. Consistent with the terms of the Liquidating Trust, the Foreign Representative is requesting that the Liquidation Trust be permitted to take any steps necessary to dissolve Knotel Canada, if necessary. The terms of the Liquidating Trust also authorize the Liquidation Trust to dissolve Knotel Parent at the appropriate time.
- 7.5 The Information Officer is of the view that the foregoing mechanisms will enable the CCAA Recognition Proceedings to be efficiently concluded following implementation of the Plan without incurring the cost or time of a further court attendance.

## **8.0 RECOMMENDATIONS**

- 8.1 Together with Blakes, the Information Officer has reviewed the proposed Confirmation Order and the Confirmation Recognition Order. The Information Officer understands that the recognition by the Canadian Court of the Confirmation Order, as well as the balance of the relief sought by the Foreign Representative, is necessary for the Combined Plan and DS to be implemented. The Information Officer is satisfied that the proposed Confirmation Order and the Confirmation Recognition Order adequately reflect the terms of the Combined Plan and DS.
- 8.2 In the Information Officer's view, the DS provided creditors (including creditors of Knotel Canada and/or creditors situated in Canada) with the appropriate information that could be used by them to determine whether to vote to accept or reject the Plan, and contained the level of disclosure that is typically provided to creditors in similar cases. Further, the related noticing procedures and solicitation procedures provided creditors with appropriate notice and opportunity to vote on the Plan, and were typical of the procedures used in similar cases.
- 8.3 Given that the most likely alternative is a chapter 7 proceeding where General Unsecured Creditors will receive no distribution, the Information Officer is of the view that the Combined Plan and DS is not inconsistent with public policy.
- 8.4 Accordingly, the Information Officer is of the view that recognizing and giving effect in Canada to the Confirmation Order in the form reviewed by the Information Officer and granting the other relief requested by the Foreign Representative in the Confirmation Recognition Order is reasonable and appropriate in the circumstances. Based on the

foregoing, the Information Officer respectfully recommends that the Canadian Court grant the Confirmation Recognition Order.

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All of which is respectfully submitted,

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



---

Per: Stephen Ferguson,  
Senior Vice-President

**Appendix "A"**

**Combined Plan and DS**



**THIS IS NOT A SOLICITATION OF AN ACCEPTANCE OR REJECTION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS COMBINED PLAN AND DISCLOSURE STATEMENT IS NOT AN OFFER TO SELL ANY SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY ANY SECURITIES.**

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

In re:

KNOTEL, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 21-10146 (MFW)

Jointly Administered

**JOINT COMBINED FIRST AMENDED CHAPTER 11 PLAN OF LIQUIDATION  
AND DISCLOSURE STATEMENT FOR KNOTEL, INC.  
AND CERTAIN AFFILIATE DEBTORS**

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<sup>1</sup> A complete list of each of the Debtors in these Chapter 11 Cases may be obtained on the website of the Debtors' claims and noticing agent at <https://www.omniagentsolutions.com/knotel> or, alternatively, via the Bankruptcy Court at <https://ecf.deb.uscourts.gov/cgi-bin/login.pl> with a Public Access to Court Electronic Records ("PACER") account, which may be obtained at <https://pacer.uscourts.gov>. The Debtors' service address in these Chapter 11 Cases is 9 East 8th Street, Box 113, New York, NY 10003.

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**Plan Exhibits**

- Exhibit A: Dismissed Debtors
- Exhibit B: Liquidating Debtors
- Exhibit C: Estate Causes of Action
- Exhibit D: Liquidation Analysis
- Exhibit E: Liquidating Trust Agreement

**NOTICE**

THERE HAS BEEN NO INDEPENDENT AUDIT OF THE FINANCIAL INFORMATION CONTAINED IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT EXCEPT AS EXPRESSLY INDICATED HEREIN. THE COMBINED PLAN AND DISCLOSURE STATEMENT WAS COMPILED FROM INFORMATION OBTAINED FROM NUMEROUS SOURCES BELIEVED TO BE ACCURATE TO THE BEST OF THE PLAN PROPONENTS' KNOWLEDGE, INFORMATION, AND BELIEF. NO GOVERNMENTAL AUTHORITY HAS PASSED ON, CONFIRMED, OR DETERMINED THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED HEREIN.

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

PLEASE NOTE THAT MUCH OF THE INFORMATION CONTAINED HEREIN HAS BEEN TAKEN, IN WHOLE OR IN PART, FROM INFORMATION CONTAINED IN THE DEBTORS' BOOKS AND RECORDS AND CERTAIN PLEADINGS FILED BY THE DEBTORS WITH THE BANKRUPTCY COURT. ALTHOUGH THE PLAN PROPONENTS HAVE ATTEMPTED TO BE ACCURATE IN ALL MATERIAL RESPECTS, THE PLAN PROPONENTS ARE UNABLE TO REPRESENT OR WARRANT THAT ALL OF THE INFORMATION CONTAINED IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT IS WITHOUT ERROR. THE STATEMENTS CONTAINED IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF, AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER THE DATE HEREOF.

THIS COMBINED PLAN AND DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH BANKRUPTCY CODE SECTIONS 1125 AND 1126 AND BANKRUPTCY RULES 3016, 3017 AND 3018 AND NOT NECESSARILY IN COMPLIANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER RULES GOVERNING DISCLOSURE OUTSIDE THE CONTEXT OF CHAPTER 11.



NO REPRESENTATION CONCERNING THE LIQUIDATING DEBTORS OR THE VALUE OF THE LIQUIDATING DEBTORS' ASSETS HAS BEEN AUTHORIZED BY THE BANKRUPTCY COURT OR THE CANADIAN COURT OTHER THAN AS SET FORTH IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT. THE PLAN PROPONENTS ARE NOT RESPONSIBLE FOR ANY INFORMATION, REPRESENTATION OR INDUCEMENT MADE TO OBTAIN YOUR ACCEPTANCE, WHICH IS OTHER THAN, OR INCONSISTENT WITH, INFORMATION CONTAINED IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT.

YOU ARE STRONGLY URGED TO CONSULT WITH YOUR FINANCIAL, LEGAL AND TAX ADVISORS TO UNDERSTAND FULLY THE COMBINED PLAN AND DISCLOSURE STATEMENT. THE FINANCIAL INFORMATION CONTAINED IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT IS GIVEN AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFIED. THE DELIVERY OF THIS COMBINED PLAN AND DISCLOSURE STATEMENT DOES NOT, UNDER ANY CIRCUMSTANCE, IMPLY THAT THERE HAS BEEN NO CHANGE IN THE FACTS SET FORTH HEREIN AFTER SUCH DATE. THIS COMBINED PLAN AND DISCLOSURE STATEMENT MUST BE READ IN CONJUNCTION WITH ANY EXHIBITS.

IF A HOLDER OF A CLAIM WISHES TO CHALLENGE THE ALLOWANCE OR DISALLOWANCE OF A CLAIM FOR VOTING PURPOSES UNDER THE TABULATION RULES SET FORTH IN THE PLAN PROCEDURES ORDER, SUCH ENTITY MUST FILE A MOTION, PURSUANT TO BANKRUPTCY RULE 3018(A), FOR AN ORDER TEMPORARILY ALLOWING SUCH CLAIM IN A DIFFERENT AMOUNT OR CLASSIFICATION FOR PURPOSES OF VOTING TO ACCEPT OR REJECT THE PLAN AND SERVE SUCH MOTION ON THE UNDERSIGNED COUNSEL TO THE PLAN PROPONENTS SO THAT IT IS RECEIVED NO LATER THAN **4:00 P.M., PREVAILING EASTERN TIME, ON JUNE 14, 2021**. THE PLAN PROPONENTS AND OTHER PARTIES IN INTEREST SHALL HAVE UNTIL **4:00 P.M., PREVAILING EASTERN TIME, ON JUNE 21, 2021** TO FILE AND SERVE ANY RESPONSES TO SUCH MOTIONS. UNLESS THE BANKRUPTCY COURT ORDERS OTHERWISE, SUCH CLAIM WILL NOT BE COUNTED FOR VOTING PURPOSES IN EXCESS OF THE AMOUNT DETERMINED IN ACCORDANCE WITH THE TABULATION RULES.

## **I. Introduction and Executive Summary<sup>2</sup>**

The Liquidating Debtors (who are only certain of the Debtors in these Chapter 11 Cases) and the Committee jointly propose the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code sections 1125 and 1129, and Local Rule 3017-2. The Liquidating Debtors and the Committee are the "proponents" of the Combined Plan and Disclosure Statement within the meaning of Bankruptcy Code section 1129.

The Combined Plan and Disclosure Statement reflects the result of substantial negotiations among the Liquidating Debtors, the Committee and the Purchaser regarding these Chapter 11

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<sup>2</sup> All capitalized terms used but not defined in the introduction shall have the meanings ascribed to them in Article III of the Combined Plan and Disclosure Statement.

Cases, and the Plan Proponents encourage creditors to vote to accept this Combined Plan and Disclosure Statement.

Copies of the Combined Plan and Disclosure Statement and all other documents related to the Chapter 11 Cases are available for review without charge on the bankruptcy case website at: <https://cases.omniagentsolutions.com/knotel>.

The Combined Plan and Disclosure Statement is a liquidating chapter 11 plan for the remaining Liquidating Debtors. The Purchased Assets have been transferred from the Debtors to the Purchaser as part of the Sale Closing. The Combined Plan and Disclosure Statement provides that, upon the Effective Date, the Liquidating Trust Assets will be transferred to the Liquidating Trust and the Liquidating Debtors will be dissolved. The Liquidating Trust Assets will be administered and distributed as soon as practicable pursuant to the terms of the Combined Plan and Disclosure Statement and Liquidating Trust Agreement.

Each Holder of a Claim against the Liquidating Debtors who is entitled to vote to accept or reject the Combined Plan and Disclosure Statement is encouraged to read the Combined Plan and Disclosure Statement in its entirety before voting.

Holders of First Lien Claims (classified in Class 1) and Second Lien Claims (classified in Class 2) are not Impaired as said claims were included as part of the Credit Bid and satisfied through the Sale in full and final satisfaction, settlement, and release of each claim. As such, Holders of First Lien Claims and Second Lien Claims are not entitled to receive and will not receive any Distribution under the Combined Plan and Disclosure Statement.

Holders of Claims in Class 3, which consist of Holders of Other Secured Claims against the Liquidating Debtors, are not Impaired and on the Effective Date, or as soon as practical thereafter, will be entitled to receive at the option of the applicable Liquidating Debtor or the Liquidating Trustee, (a) a transfer by conveyance, assignment or otherwise of the Debtors' right and title and interest in and to the collateral securing such Claim or (b) such other treatment rendering such Holder's Allowed Other Secured Claim Unimpaired.

Holders of Claims in Class 4, which consist of Holders of Other Priority Claims against the Liquidating Debtors, are not Impaired and will be paid in full on or as soon as reasonably practicable after the later of (a) the Effective Date; (b) the date the Other Priority Claim becomes an Allowed Claim; or (c) the date for payment provided by any agreement or arrangement between the Liquidating Debtors or Liquidating Trustee, as the case may be, and the Holder of the Allowed Other Priority Claim.

Holders of Claims in Class 5, which consist of Holders of General Unsecured Claims against the Liquidating Debtors, are Impaired and will be paid Pro Rata from the remaining Liquidating Trust Assets. As to other Estate Causes of Action, given the uncertainty of recovery and the fact that the Liquidating Debtors are not aware of any such actions, no value has been assigned.

Holders of Interests in Class 6 are Impaired and are not entitled to receive any Distribution on account of their equity interests.

The Liquidating Trust Expenses, including the fees of the Liquidating Trustee and fees for the Liquidating Trustee’s professionals, will be paid out of the Liquidating Trust Assets prior to any Distribution being made to creditors.

Subject to the restrictions on modifications as set forth in Bankruptcy Code section 1127, Bankruptcy Rule 3019, and in the Combined Plan and Disclosure Statement, the Plan Proponents expressly reserve the right to alter, amend or modify the Combined Plan and Disclosure Statement one or more times before the Confirmation Hearing and/or its substantial consummation.

## II. Important Dates

Voting Record Date	May 12, 2021
Deadline to Mail Solicitation Packages and all Notices	May 15, 2021
Deadline to Object to Claims for Voting Purposes Only	May 28, 2021 at 4:00 p.m. (prevailing Eastern time)
Deadline to File Plan Supplement	June 11, 2021 at 4:00 p.m. (prevailing Eastern time)
Deadline for Creditors to File Rule 3018 Motions	June 14, 2021 at 4:00 p.m. (prevailing Eastern time)
Deadline to Respond to Rule 3018 Motions	June 21, 2021 at 4:00 p.m. (prevailing Eastern time)
Voting Deadline for the Combined Plan and Disclosure Statement	June 21, 2021 at 4:00 p.m. (prevailing Eastern time)
Combined Plan and Disclosure Statement Objection Deadline	June 21, 2021 at 4:00 p.m. (prevailing Eastern time)
Deadline to File Confirmation Brief and Other Evidence Supporting the Combined Plan and Disclosure Statement, and form of Confirmation Order	June 25, 2021 at 5:00 p.m. (prevailing Eastern time)
Deadline to File Voting Tabulation Affidavit	June 25, 2021 at 5:00 p.m. (prevailing Eastern time)
Combined Hearing	June 29, 2021 at 10:00 a.m. (prevailing Eastern time)

## III. Definitions and Construction of Terms

### A. Definitions

“**Administrative Agent**” means Omni Agent Solutions.

“**Administrative Claim Bar Date**” means, for any unpaid Administrative Expense Claim arising on or between April 6, 2021 and the Effective Date, the date that is 30 calendar days after service of the notice of Effective Date with such date to be provided in the notice of Effective Date *provided, however*, Professional Fee Claims shall cover the period beginning from each Professional’s retention date pursuant to an Order of the Bankruptcy Court and the Effective Date. Administrative Expense Claims arising from the Petition Date through and including April 5, 2021 are governed by the Bar Date Order and subject to the General Bar Date.

**“Administrative Expense Claim”** means any right to payment constituting actual and necessary costs and expenses of preserving the Estates under Bankruptcy Code sections 503(b) and 507(a)(2) including, without limitation any fees or charges assessed against the Estates under section 1930 of title 28 of the United States Code and Professional Fee Claims.

**“Affiliate”** means an “affiliate” as defined in Bankruptcy Code section 101(2).

**“Allowed”** means, with reference to any Claim, proof of which was properly Filed or, if no Proof of Claim was Filed, that has been or hereafter is listed by a Debtor on its Schedules as liquidated in amount and not disputed or contingent and, in each case, as to which: (a) no objection to allowance has been interposed within the applicable period fixed by the Combined Plan and Disclosure Statement, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or the Bankruptcy Court; or (b) an objection has been interposed and such Claim has been allowed by the Bankruptcy Court, in whole or in part, by a Final Order.

**“APA”** or **“Asset Purchase Agreement”** means the *Stalking Horse Agreement by and Among Knotel, Inc. each of the Subsidiaries of Knotel, Inc. Listed on Schedule A, Digiotech, LLC, and Newmark Partners, L.P.* dated as of January 31, 2021, as subsequently amended, supplemented or modified [D.I. 16-2, 418-2, 946-1].

**“Assets”** means any and all right, title, and interest of the Liquidating Debtors in and to property of whatever type or nature, real or personal, tangible or intangible, including, without limitation, any real estate, buildings, structures, improvements, privileges, rights, easements, leases, subleases, licenses, goods, materials, supplies, furniture, fixtures, equipment, works in progress, accounts, chattel paper, deposit accounts, reserves, deposits, contractual rights, intellectual property rights, Estate Causes of Action, Claims, Causes of Action and any general intangibles, but specifically excludes the Purchased Assets.

**“Avoidance Actions”** means any and all Causes of Action and rights to recover or avoid transfers or to avoid any lien under chapter 5 of the Bankruptcy Code or applicable state law or otherwise, but specifically excludes Insider Avoidance Actions.

**“Ballot”** means the voting form distributed to each Holder of an Impaired Claim entitled to vote on the Combined Plan and Disclosure Statement, on which the Holder is to indicate acceptance or rejection of the Combined Plan and Disclosure Statement in accordance with the voting instructions and make any other elections or representations required pursuant to the Combined Plan and Disclosure Statement.

**“Bankruptcy Code”** means title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

**“Bankruptcy Court”** means the United States Bankruptcy Court for the District of Delaware, having jurisdiction over the Chapter 11 Cases or, if such Court ceases to exercise jurisdiction over the Chapter 11 Cases, such court or adjunct thereof that exercises jurisdiction over the Chapter 11 Cases in lieu of the United States Bankruptcy Court for the District of Delaware.

“**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure, as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended from time to time.

“**Bar Date Motion**” means the *Motion of Debtors for Entry of an Order (I) Establishing Bar Dates for Filing Proofs of Claim, Including Section 503(b)(9) Claims and (II) Approving Form and Manner of Notice Thereof* filed on March 20, 2021 [D.I. 949].

“**Bar Date Order**” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim, Including Section 503(b)(9) Claims and Administrative Claims; (II) Approving Form and Manner of Notice Thereof* [D.I. 1014].

“**Bidding Procedures Order**” means the *Order Approving (I) The Debtors’ Entry Into the Stalking Horse Agreement and Related Expense Reimbursement, (II) The Bidding Procedures In Connection With the Sale of All or Substantially All of the Debtors’ Assets, (III) The Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (IV) The Form and Manner of Notice of the Sale Hearing, Assumption Procedures, and Auction Results, (V) Dates for an Auction and Sale Hearing, and (VI) Granting Related Relief*, as subsequently modified or amended [D.I. 227, 418].

“**Board**” means the members of the Debtors’ Board of Directors from any time prior to or after the Petition Date.

“**Borrowers**” means Knotel and each of the other Debtors other than Knotel Canada.

“**Bridge Bank Loan**” means the *Amended and Restated Loan and Security Agreement*, dated February 15, 2019, as amended from time to time, with the original lender Western Alliance Bank.

“**Business Day**” means any day other than a Saturday, Sunday, or any other day on which commercial banks in Wilmington, Delaware are required or authorized to close by law or executive order.

“**Canadian Court**” means the Ontario Superior Court of Justice (Commercial List).

“**Canadian Filing Entities**” means Knotel and Knotel Canada.

“**Case Website**” means the website maintained by Omni Agent Solutions where parties are able to view the Combined Plan and Disclosure Statement and other documents related to the Chapter 11 Cases at <https://cases.omniagentsolutions.com/knotel>.

“**Cash**” means legal tender of the United States of America or equivalents thereof, including, without limitation, payment in such tender by check, wire transfer, or any other customary payment method.

“**Causes of Action**” means any Claim, cause of action (including Insider Avoidance Actions and D&O Claims), controversy, right of setoff, cross claim, counterclaim, or recoupment and any claim on contracts or for breaches of duties imposed by law or in equity, demand, right,

action, lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, power, privilege, license, or franchise of any kind or character whatsoever, known, unknown, fixed or 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 or in tort, in law or in equity, or pursuant to any other theory of law, that have not been waived by a prior Order of the Bankruptcy Court.

“**CCAA**” means the *Companies Creditors Arrangement Act* R.S.C., 1985, c. C-36, as amended.

“**CCAA Proceedings**” means the recognition proceedings under Part IV of the CCAA commenced by Knotel and Knotel Canada.

“**Chapter 11 Cases**” means the chapter 11 cases initiated by the Debtors’ filing on the Petition Date of voluntary petitions for relief in the Bankruptcy Court under chapter 11 of the Bankruptcy Code. The Chapter 11 Cases are jointly administered by the Bankruptcy Court under Case No. 21-10146 (MFW).

“**Claim**” shall have the meaning set forth in Bankruptcy Code section 101(5).

“**Claims and Balloting Agent**” means Omni Agent Solutions in its capacity as balloting agent for the Combined Plan and Disclosure Statement.

“**Claims and Noticing Agent**” means Omni Agent Solutions in its capacity as claims and noticing agent to the Debtors.

“**Claims Objection Deadline**” means the date that is one hundred and eighty (180) days after the Effective Date or such later date as may be approved by the Bankruptcy Court upon motion. Upon filing a motion to extend the Claims Objection Deadline, the Claims Objection Deadline shall be automatically extended as provided by the Local Rules.

“**Claims Register**” means the official register of Claims maintained by Omni Agent Solutions.

“**Class**” means any group of substantially similar Claims or Interests classified by the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code sections 1122 and 1123(a)(1).

“**Clerk**” means the Clerk of the Bankruptcy Court.

“**Closing Date**” means March 24, 2021, as provided in the *Notice of Occurrence of Closing Date in Connection with the Sale of Substantially all of the Debtors’ Assets to Digiotech, LLC* [D.I. 991].

“**Combined Plan and Disclosure Statement**” means this combined disclosure statement and chapter 11 plan of liquidation including, without limitation, all exhibits, supplements, appendices, and schedules hereto, either in their present form or as the same may be altered, amended, or modified from time to time.

“**Committee**” means the Official Committee of Unsecured Creditors of Knotel, Inc. and its affiliated Debtors as appointed by the U.S. Trustee on February 8, 2021 [D.I. 122].

“**Committee Sale Objection**” means the Objection to the Sale Motion filed by the Committee on February 15, 2021 [D.I. 162].

“**Committee Settlement**” means that certain settlement by and between the Debtors, the Committee, Digiotech and Newmark and which was approved by the *Order Pursuant to Section 105 of the Bankruptcy Code and Bankruptcy Rule 9019 Approving the Compromise and Settlement Term Sheet Among the Debtors, the Official Committee of Unsecured Creditors, and Digiotech, LLC; (II) Amending Bidding Procedures Order; (III) Authorizing Amendments to the Stalking Horse Agreement; and (IV) Granting Related Relief* entered by the Bankruptcy Court on March 11, 2021 [D.I. 417].

“**Company**” means Knotel along with: (i) its Debtor-Affiliates as identified on the website of the Debtors’ Claims and Noticing Agent at <https://www.omniagentsolutions.com/knotel>; (ii) Debtor Knotel Canada and its subsidiary; and (iii) its non-Debtor Affiliates (a) Knotel Germany GMBH and its subsidiaries; (b) Knotel Ahoy! Berlin GMBH; (c) Knotel Brasil Servicos de Escritorio LTDA; (d) Knotel UK LTD. and its subsidiaries; (e) 42Floors, LLC; (f) Knotel Office Services India Private Limited; (g) Knotel Japan Kabushiki Kaisha; (h) Knotel Netherlands B.V. and its subsidiary; (i) Knotel Ireland Limited and its subsidiary; and (j) Space Management SAS.

“**Confirmation Date**” means the date on which the Confirmation Order is entered on the Docket.

“**Confirmation Hearing**” means the combined hearing to be held by the Bankruptcy Court to consider (a) approval of the Combined Plan and Disclosure Statement as providing adequate information pursuant to Bankruptcy Code section 1125, and (b) confirmation of the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code section 1129, as such hearing may be adjourned or continued from time to time.

“**Confirmation Order**” means the Order of the Bankruptcy Court confirming the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code section 1129.

“**Confirmation**” means confirmation of the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code section 1129.

“**Contingency Counsel**” means any counsel engaged by the Liquidating Trust and/or the Liquidating Trustee on a contingency fee basis to pursue the Estate Causes of Action, Insider Avoidance Actions, and/or any other Claims pursuant to the terms of the Combined Plan and Disclosure Statement and Liquidating Trust Agreement.

“**Credit Bid**” means the consideration provided by Digiotech as part of the Sale of the Debtors’ assets pursuant to the APA, other than any purchase price consideration which was paid to the Debtors in Cash or consideration that was provided through the assumption of liabilities.

“**Creditor**” means any Person that is the Holder of a Claim against the Liquidating Debtors as defined in Bankruptcy Code section 101(10).

“**Critical Vendors**” means certain vendors, suppliers, service providers, and other similar parties that are essential to maintaining the going concern value of the Debtors’ business.

“**D&O Claims**” means any Claims or Causes of Action arising prior to the Petition Date and held by the Debtors or their Estates against current and former members of the Board and current and former officers of the Debtors, except as limited by Article XI.C hereof.

“**D&O Policies**” means the following insurance policies of the Debtors: (i) D&O primary insurance policy with carrier Amtrust Underwriters Inc, on behalf of Associated Industries Insurance Company Inc., Policy Number ANV134311A; (ii) D&O excess insurance policy with carrier XL Specialty Insurance Company, Policy Number ELU171431-20, and any other applicable insurance policies.

“**Debtors**” means the Debtors in the Chapter 11 Cases.

“**Deficiency Claim**” means the General Unsecured Claim of Digiotech for the difference between the (a) Credit Bid and the (b) aggregate amount of the DIP Facility Claims and the Prepetition Secured Debt, which will be fixed in amount for the purpose of voting in Class 5 on the Combined Plan and Disclosure Statement. For the avoidance of doubt, neither Digiotech nor any Affiliate is entitled to receive any Distribution under the Combined Plan and Disclosure Statement on account of the Deficiency Claim.

“**Digiotech**” means Digiotech, LLC in its capacity as Prepetition Secured Lender, DIP Lender and/ or Purchaser, or its designee under the APA.

“**DIP Credit Agreement**” means the *Senior Secured Superpriority Debtor-In-Possession Credit Agreement* among the Knotel, the other Borrowers, and DIP Lender [D.I. 72, Exhibit A], as amended or modified from time to time.

“**DIP Facility**” means the senior secured superpriority loans of up to an aggregate amount of \$40.8 million available on a final basis, including up to \$20.4 million of New Money DIP Loans and \$20.4 million of Roll-Up DIP Loans pursuant to the Final DIP Order.

“**DIP Facility Claims**” means all Claims against the Debtors by the DIP Lender under the DIP Credit Agreement and DIP Order, including, without limitation, principal, accrued and unpaid interest, any reimbursement obligations (contingent or otherwise), all fees, expenses, and disbursements (including, without limitations, attorneys’ fees, financial advisors’ fees, and related expenses and disbursements incurred by, or on behalf of, the DIP Lender), indemnification obligations, all other charges, amounts, and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable in respect thereof.

“**DIP Lender**” means Digiotech, LLC, or it’s designated Affiliates.

“**DIP Liens**” means the senior secured superpriority liens granted to the DIP Lender on all of the Debtors’ assets under the DIP Order (other than Knotel Canada).

“**DIP Motion**” means the *Debtors’ Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, and 507, (I) Authorizing the Debtors to (A)*



*Obtain Post-Petition Financing, (B) Grant Senior Secured Liens and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to the Prepetition Secured Lender; (III) Modifying the Automatic Stay; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief [D.I. 15].*

“**DIP Order**” means the *Final Order (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing, (B) Grant Senior Secured Liens and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to the Prepetition Secured Lender; (III) Modifying the Automatic Stay; and (IV) Granting Related Relief [D.I. 330].*

“**Disallowed**” means any Claim or any portion thereof that (i) has been disallowed by a Final Order, (ii) is not Scheduled and as to which no proof of claim or Administrative Expense Claim has been Filed or submitted, (iii) is Scheduled as zero or as contingent, disputed or unliquidated and as to which no proof of claim or Administrative Expense Claim request has been Filed or submitted, or (iv) has been withdrawn by the Holder of the Claim, or by agreement of the Liquidating Debtors and the Holder thereof.

“**Dismissed Debtors**” means the Chapter 11 Cases of those certain Debtors identified on Exhibit A hereto which will be dismissed from the Chapter 11 Cases on the Effective Date as set forth in the Confirmation Order.

“**Disputed**” means any Claim or Interest, or any portion thereof, that is (a) listed on the Schedules as unliquidated, disputed, and/or contingent for which no Proof of Claim in a liquidated and non-contingent amount has been Filed, or (b) the subject of an objection or request for estimation Filed by the Debtors or the Liquidating Trustee or any other party in interest in accordance with applicable law and which objection has not been withdrawn, resolved, or overruled by a Final Order.

“**Distribution**” means any distribution to the Holders of Allowed Claims against the Liquidating Debtors pursuant to the Combined Plan and Disclosure Statement.

“**Docket**” means the docket in the Chapter 11 Cases maintained by the Clerk.

“**Effective Date**” means the date on which the conditions specified in Article X.B of the Combined Plan and Disclosure Statement have been met or satisfied.

“**Effective Date Distributions**” means all Distributions required to be made on the Effective Date of the Combined Plan and Disclosure Statement to the Holders of Claims against the Liquidating Debtors that are Allowed as of the Effective Date.

“**Eighth Amendment**” means the *Eighth Amendment to Amended and Restated Loan and Security Agreement* between Digiotech and the Debtors (other than Knotel Canada) dated January 19, 2021.

“**Entity**” means an “entity” as defined in Bankruptcy Code section 101(15).

“**Estate Causes of Action**” means (1) the Insider Avoidance Actions; (2) D&O Claims; and (3) all other Retained Causes of Action, rights, Claims or Causes of Action not transferred to

Purchaser pursuant to the APA and not otherwise expressly released hereunder. A non-exclusive schedule of Estate Causes of Action is attached hereto as Exhibit C.

“**Estates**” means the estates of the Debtors created upon the commencement of the Chapter 11 Cases pursuant to Bankruptcy Code section 541.

“**Excluded Assets**” means assets of the Debtors that are not Purchased Assets, which the Debtors retained following the Sale Closing and did not transfer to the Purchaser pursuant to the APA. Any inconsistencies which arise under this definition shall be interpreted in favor of the definition of “Excluded Assets” in the APA, as modified by the Sale Order.

“**Exculpated Parties**” means, with respect to the period beginning from the Petition Date, individually and collectively, in each case solely in their capacity as such, each and all of: (a) the Debtors’ Officers; (b) the Responsible Officer; (c) the Debtors’ Professionals retained in the Chapter 11 Cases by Order of the Bankruptcy Court or the Canadian Court; (d) the Committee and the members of the Committee; (e) the Committee’s Professionals; (f) the Liquidating Trustee; and (g) Omni Agent Solutions (in its capacity as Claims Agent, Noticing Agent and Balloting Agent), including any and all of the foregoing such parties’ Related Persons.

“**Executory Contract**” or “**Unexpired Lease**” means, as the case may dictate, any executory contract or unexpired lease as of the Petition Date between the Debtors and any other Person or Persons, specifically excluding contracts and agreements entered into pursuant to the Combined Plan and Disclosure Statement.

“**File, Filed, or Filing**” means file, filed, or filing with the Bankruptcy Court in the Chapter 11 Cases.

“**Final Decree**” means the order entered pursuant to Bankruptcy Code section 350, Bankruptcy Rule 3022, and Local Rule 5009-1 closing the Chapter 11 Cases.

“**Final Order**” means an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction that has been entered on the docket in the Chapter 11 Cases (or the docket of such other court) that is not subject to a stay and has not been modified, amended, reversed or vacated and as to which (a) the time to appeal, petition for certiorari, motion for leave to appeal, or move for a new trial, reargument or rehearing pursuant to Bankruptcy Rule 9023 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 (b) 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 timely and properly 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.

“**First Day Declaration**” means the *Declaration of John M. Jureller In Support of First Day Relief* [D.I. 5].

“**First Day Motions**” refer collectively to those certain motions filed by the Debtors on or shortly after following the Petition Date, and as more specifically identified in Section VII of the First Day Declaration.

“**First Day Order**” means the Final Orders entered by the Bankruptcy Court approving the First Day Motions and granting the relief set forth in each First Day Motion.

“**First Lien Claims**” means the Claims held by Digiotech on account of the Bridge Bank Loan, excluding the DIP Facility Claims.

“**Foreign Representative Motion**” means the *Debtors’ Motion for Entry of an Order (I) Authorizing Knotel Canada, Inc., to Act as Foreign Representative and (II) Granting Related Relief* [D.I. 384].

“**GAAP**” means generally accepted accounting principles.

“**General Bar Date**” means, with respect to those Claims covered by the Bar Date Order, May 5, 2021 at 5:00 p.m. prevailing Eastern Time, excluding (i) proofs of claim by a Governmental Unit, which must be submitted by the Governmental Bar Date; (ii) Claims subject to the Knotel Canada Amended Schedules Claims Bar Date; and (iii) proofs of claim by a Governmental Unit against Knotel Canada subject to the Knotel Canada Amended Schedules Governmental Bar Date.

“**General Unsecured Claims**” means any unsecured Claim against the Liquidating Debtors which is not an Other Priority Claim, Administrative Expense Claim, Professional Fee Claim, Priority Tax Claim, DIP Facility Claim, First Lien Claim or Second Lien Claim. For the avoidance of doubt, the Deficiency Claim shall constitute a General Unsecured Claim for voting purposes only and shall not receive any distribution from the Liquidating Debtors or the Liquidating Trustee.

“**Governmental Bar Date**” means, pursuant to the Bar Date Order, the date by which Proofs of Claim on behalf of Governmental Units must be submitted: July 30, 2021 at 5:00 p.m. prevailing Eastern Time.

“**Governmental Unit**” means a “governmental unit” as defined in Bankruptcy Code section 101(27).

“**GUC Fund**” means the sum of \$6.2 million funded pursuant to the Committee Settlement.

“**Hilco**” means Hilco Real Estate, LLC.

“**Holder**” means the beneficial holder of any Claim or Interest.

“**Impaired**” means, with respect to any Class, a Class that is impaired within the meaning of Bankruptcy Code sections 1123(a)(4) and 1124.

“**Independent Director**” means Linda Fayne Levinson in her capacity as independent director to Knotel.

“**Information Officer**” means Alvarez and Marsal Canada Inc. in its capacity as Information Officer appointed by the Canadian Court in the CCAA Proceedings.

“**Insider Avoidance Actions**” means any Avoidance Actions against any Insiders of the Debtors which were explicitly excluded from the definition of Purchased Assets pursuant to the Committee Settlement and carved out of the APA and the Sale.

“**Intercompany Claims**” means any Claim held by one Debtor against another Debtor.

“**Interest**” means any “equity security” in a Debtor as defined in Bankruptcy Code section 101(16), including, without limitation, all issued, unissued, authorized or outstanding ownership interests (including common and preferred) or other equity interests and membership units, together with any warrants, options, convertible securities, liquidating preferred securities or contractual rights to purchase or acquire any such equity interests at any time and all rights arising with respect thereto.

“**Interim DIP Order**” means the *Interim Order (I) Authorizing The Debtors To (A) Obtain Postpetition Financing, (B) Grant Senior Secured Liens and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to the Prepetition Secured Lender; (II) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief* [D.I. 72].

“**Knotel**” means Debtor Knotel, Inc.

“**Knotel Canada**” means Debtor Knotel Canada, Inc.

“**Knotel Canada Amended Schedules Claims Bar Date**” means May 27, 2021 at 5:00 p.m. (ET) for those creditors holding Claims against Knotel Canada identified in the *Notice of Filing Schedules of Assets and Liabilities and Statement of Financial Affairs for Knotel Canada, Inc. and Related Bar Date* [D.I. 1079].

“**Knotel Canada Amended Schedules Governmental Bar Date**” means with respect to Governmental Units holding Claims identified in the *Notice of Filing Schedules of Assets and Liabilities and Statement of Financial Affairs for Knotel Canada, Inc. and Related Bar Date* [D.I. 1079] against Knotel Canada, September 7, 2021.

“**Liquidating Debtors**” means the Chapter 11 Cases of those certain Debtors identified on Exhibit B hereto and which are included as Plan Proponents in this Combined Chapter 11 Plan and Disclosure Statement.

“**Liquidating Trust**” means the liquidating trust established on the Effective Date pursuant to the Liquidating Trust Agreement and the Combined Plan and Disclosure Statement for the purpose of administering the Liquidating Trust Assets and to make one or more Distribution(s) to Holders of Allowed Claims against the Liquidating Debtors.

“**Liquidating Trust Agreement**” means the trust agreement that documents and governs the powers, duties, and responsibilities of the Liquidating Trustee, and which agreement will be

materially consistent with and subject to the Combined Plan and Disclosure Statement and otherwise in the substance and form included in the Plan Supplement.

**“Liquidating Trust Assets”** means the (a) Estate Causes of Action, including (i) Insider Avoidance Actions, (ii) D&O Claims, (iii) any other Claims and Causes of Action that are not Purchased Assets under the APA (*i.e.*, Excluded Assets), and (iv) the proceeds of each of the forgoing; (b) the Liquidating Trust Funding, (c) any other remaining Assets of the Estates, including any and all rights under the D&O Policies, and (d) any and all Claims and Causes of Action related to or arising under the APA and Sale Order

**“Liquidating Trust Beneficiaries”** means collectively the Holders of Allowed Claims under the Plan against the Liquidating Debtors, or any successors to such Holders, or their interests in the Liquidating Trust, whether said Claims are Allowed before or after the Effective Date.

**“Liquidating Trust Expense”** means all actual and necessary fees, costs, expenses and obligations incurred or owed by the Liquidating Trustee or his or her agents, employees, attorneys, advisors or other professionals in administering the Combined Plan and Disclosure Statement and the Liquidating Trust (including, without limitation, reasonable compensation for services rendered, and reimbursement for actual and necessary expense incurred by the Liquidating Trustee and his or her agents, employees and professionals) arising after the Effective Date through and including the date upon which the Bankruptcy Court enters a Final Decree closing the Chapter 11 Cases, which shall be solely payable from the Liquidating Trust Assets prior to any Distribution to creditors.

**“Liquidating Trust Funding”** means (i) Cash remaining from the Wind-Down Amount, if any, on the Effective Date and (ii) the GUC Fund, which Liquidating Trust Funding that shall be used and distributed in accordance with the Combined Plan and Disclosure Statement and Liquidating Trust Agreement.

**“Liquidating Trust Interests”** mean the non-certificated beneficial interests of the Liquidating Trust allocable to Holders of Allowed Claims in accordance with the terms of this Combined Plan and Disclosure Statement and the Liquidating Trust Agreement, which may or may not be transferable.

**“Liquidating Trustee”** means the Person selected by the Committee, to administer the Liquidating Trust under the Liquidating Trust Agreement and as identified in the Plan Supplement and the Liquidating Trust Agreement.

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

**“Moelis”** means Moelis & Company, LLC, the Debtors’ financial advisor and investment banker in these Chapter 11 Cases.

**“Newmark”** means Newmark Partners, L.P.

**“New Money DIP Loans”** has the meaning afforded to it in the DIP Facility and DIP Order.

“**Officers**” means the following officers of Knotel as of the Petition Date: Amol Sarva, Chief Executive Officer; Jonathan Goldberg, Chief Investment Officer; Eugene Lee, Chief Operating Officer; John M. Jureller, Chief Financial Officer; Jason Freedman, Chief Technology Officer; Rich Vincent, Head of People; and Amit Khanna, General Counsel unless the context otherwise indicates.

“**Omnibus Rejection Motions**” means collectively, the *Debtors’ First Omnibus Motion for Entry of an Order (I) Authorizing the Debtors to Reject Certain Executory Contracts and Unexpired Leases Nunc Pro Tunc to the Petition Date, (II) Abandon any Personal Property that Remains at the Lease Premises, and (III) Granting Related Relief* [D.I. 12], the *Debtors’ Second Omnibus Motion for Entry of an Order (I) Authorizing the Debtors to Reject Certain Executory Contracts and Unexpired Leases Nunc Pro Tunc to the Petition Date, (II) Abandon any Personal Property that Remains at the Lease Premises, and (III) Granting Related Relief* [D.I. 13], and the *Debtors’ Third Omnibus Motion for Entry of an Order (I) Authorizing the Debtors to Reject Certain Executory Contracts and Unexpired Leases Nunc Pro Tunc to the Petition Date, (II) Abandon any Personal Property that Remains at the Lease Premises, and (III) Granting Related Relief* [D.I. 14].

“**Other Priority Claims**” means any Claim entitled to priority pursuant to Bankruptcy Code section 507(a) other than Administrative Expense Claims, Professional Fee Claims, and Priority Tax Claims.

“**Other Secured Claim**” means any Secured Claim that (i) is not a DIP Facility Claim, a First Lien Claim, a Second Lien Claim and (ii) is senior in priority to the First Lien Claim or the Second Lien Claim with respect to the Collateral securing such Secured Claim.

“**Person**” means a “person” as defined in Bankruptcy Code section 101(41).

“**Petition Date**” means January 31, 2021, the date on which the Debtors Filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code, and March 8, 2021 for Knotel Canada.

“**Plan Procedures Order**” means the Order entered at Docket No. [\*\*] granting preliminary approval of the Combined Plan and Disclosure Statement for solicitation and scheduling the Confirmation Hearing.

“**Plan Proponents**” mean the Liquidating Debtors and the Committee, jointly.

“**Plan Supplement**” means the appendix of schedules and exhibits to be Filed with the Bankruptcy Court at least seven (7) days before the Voting Deadline. The Plan Supplement will contain, among other things: (a) a liquidation analysis; (b) the Liquidating Trust Agreement; (c) identification of the Liquidating Trustee; and (d) any other disclosures as required by the Bankruptcy Code.

“**PPP Loan**” means the Debtors’ indebtedness to JPMorgan Chase Bank, N.A. in connection with an unsecured, forgivable Paycheck Protection Program loan provided by the U.S. Small Business Administration and the Coronavirus Aid, Relief, and Economic Security Act, pursuant to that certain note dated April 10, 2020.

**“Prepetition First Lien”** means the first priority lien on substantially all personal property of the Debtors (other than Knotel Canada) securing the Bridge Bank Loan.

**“Prepetition Second Lien”** means the second priority lien on substantially all personal property of the Debtors (other than Knotel Canada) securing the TPC Loan.

**“Prepetition Secured Debt”** means the underlying debt obligations of the Bridge Bank Loan, together with the TPC Loan held by the Prepetition Secured Lender.

**“Prepetition Secured Lender”** means Digiotech in its capacity as Prepetition Secured Lender to the Debtors.

**“Previously Entered Orders Motion”** means the *Motion of the Debtors to have Previously Entered Orders as Supplemented Govern Knotel, Canada, Inc., Prospectively* [D.I. 383], which was granted by the Bankruptcy Court by entry of an Interim Order on March 11, 2021 [D.I. 405]. The Previously Entered Orders Motion was approved on a final basis by the Bankruptcy Court on March 26, 2021 [D.I. 994].

**“Priority Tax Claims”** means Claims of a Governmental Unit against any Debtor entitled to priority pursuant to Bankruptcy Code section 507(a)(8) or as specified in Bankruptcy Code section 502(i).

**“Pro Rata”** means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in the same Class.

**“Professional”** means any professional Person employed in the Chapter 11 Cases pursuant to Bankruptcy Code sections 327, 328, 363, or 1103 pursuant to an Order of the Bankruptcy Court and who is to be compensated for services rendered pursuant to Bankruptcy Code sections 327, 328, 329, 330, 331, or 363.

**“Professional Fee Claims”** means all Claims for compensation and reimbursement of expenses by Professionals, for the period starting with each Professional’s retention date pursuant to an Order of the Bankruptcy Court and ending with the Effective Date, to the extent Allowed by the Bankruptcy Court.

**“Professional Fee Escrow”** means the escrow account containing \$2,810,750 that was funded in accordance with the DIP Credit Agreement and DIP Order and held by the Debtors.

**“Proof of Claim”** means a proof of Claim Filed against any Liquidating Debtor in accordance with the Bar Date Order, the *Notice of Filing Schedules of Assets and Liabilities and Statement of Financial Affairs for Knotel Canada, Inc. and Related Bar Date* [D.I. 1079], or any other Order of the Bankruptcy Court requiring or setting forth a time period for the fixing of Claims.

**“Purchased Assets”** means the assets that the Debtors sold, conveyed, assigned, transferred, and delivered to Purchaser, and that Purchaser purchased from Debtors in accordance with the terms of the Sale Order and APA. For the avoidance of doubt, the Purchased Assets include the Assumed Liabilities, Assigned Contracts and Avoidance Actions. Any inconsistencies

that arise under this definition shall be interpreted in favor of the definition of Purchased Assets in the APA, as modified by the Sale Order.

“**Purchaser**” means Digiotech.

“**Rejection Claims**” means any Claim arising from, or relating to, the rejection of an Executory Contract or Unexpired Lease pursuant to Bankruptcy Code section 365(a) by any of the Liquidating Debtors, as limited, in the case of a rejected Unexpired Lease, by Bankruptcy Code section 502(b)(6).

“**Related Person**” means with respect to any Person, such Person’s current and former officers, directors, principals, partners, members, managers, shareholders, attorneys, accountants, financial advisors, investment bankers, and their respective successors and assigns all in their capacities as such.

“**Responsible Officer**” means Harvey L. Tepner, who was engaged as responsible officer for each of the Debtors effective as of the close of business on March 24, 2021.

“**Retained Causes of Action**” has the meaning set forth in the APA.

“**Roll-Up DIP Loans**” has the meaning afforded to it in the DIP Facility and DIP Order.

“**Sale Closing**” means the closing of the Sale between the Debtors and Purchaser that occurred on the Closing Date.

“**Sale Motion**” means the *Debtors’ Motion for Entry of an Order Approving (I)(A) The Debtors’ Entry Into Stalking Horse Agreement and Related Bid Protections; (B) The Bidding Procedures in Connection with the Sale of Substantially All of the Debtors’ Assets, (C) The Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (D) The Form and Manner of Notice of the Sale Hearing, Assumption Procedures, and Auction Results, and (E) Dates for an Auction and Sale Hearing; (II)(A) The Sale of Substantially All of the Debtors’ Assets Free and Clear of All Claims, Liens, Liabilities, Rights, Interests, and Encumbrances and (B) The Debtors’ Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granted Related Relief [D.I. 16].*

“**Sale Order**” means the *Order (I) Authorizing and Approving (A) The Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, and Encumbrances and (B) The Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith, and (II) Granting Related Relief [D.I. 946].*

“**Sale**” means the sale of the Purchased Assets pursuant to the APA from the Debtors to Purchaser as approved by the Sale Order.

“**Schedules**” means collectively the schedules of assets and liabilities, the list of Holders of Interests, and the statements of financial affairs Filed by each of the Debtors under Bankruptcy Code section 521 and Bankruptcy Rule 1007, and all amendments and modifications thereto.

“**Scheduled**” refers to any Claim included in the Liquidating Debtors’ Schedules.



“**Second Lien Claim**” means the Claims held by Digiatech on account of the TPC Loan, excluding the DIP Facility Claims.

“**Secured Claims**” means Claims which are: (a) secured by a valid and perfected lien in collateral which is enforceable pursuant to applicable law, the amount of which is equal to or less than the value of such collateral (i) as set forth in the Combined Plan and Disclosure Statement, (ii) as agreed to by the Holder of such Claim and the Liquidating Debtors, or (iii) as determined by a Final Order in accordance with Bankruptcy Code section 506(a); or (b) subject to a valid right of setoff under Bankruptcy Code section 553.

“**Seventh Amendment**” means the *Seventh Amendment to Amended and Restated Loan and Security Agreement* between Digiatech and the Debtors (other than Knotel Canada) dated January 11, 2021.

“**Solicitation Package**” means the package to be distributed to certain creditors for solicitation of votes on the Combined Plan and Disclosure Statement.

“**Stalking Horse Bidder**” means Digiatech under the terms of the APA.

“**Statutory Fees**” means all fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930, and any interest thereupon.

“**Tax Code**” means the Internal Revenue Code, as amended.

“**TPC Loan**” means the *Plain English Growth Capital Loan and Security Agreement*, dated February 27, 2019, as amended from time to time, with the original lenders TriplePoint Venture Growth BDC Corp. and lender TriplePoint Capital LLC.

“**Transition Services Agreement**” means that certain agreement by and between Knotel and Digiatech dated as of March 24, 2021 that sets forth certain post-Closing Date transition services to be provided by the Purchaser for the benefit of the Company and the Estates [D.I. 948-1].

“**Treasury Regulations**” means the regulations, including temporary regulations or any successor regulations, promulgated under the United States Internal Revenue Code, as amended from time to time.

“**U.S. Trustee**” means the Office of the United States Trustee for the District of Delaware.

“**Unclaimed Distribution**” means a Distribution that is not claimed by a Holder of an Allowed Claim on or prior to the Unclaimed Distribution Deadline.

“**Unclaimed Distribution Deadline**” means three (3) months from the date the Liquidating Debtors or Liquidating Trustee, as the case may be, make a Distribution pursuant to the Plan.

“**Voting Class**” means Class 5.

“**Voting Deadline**” means [June 21, 2021 at 4:00 p.m. prevailing Eastern Time].

“**Voting Record Date**” means [May 12, 2021].

“**Wind-Down Amount**” means the amount of \$500,000.00 of Cash funded by the Purchaser and/or Newmark pursuant to the Committee Settlement and which is excluded from the Purchased Assets. The Wind-Down Amount shall remain with the Liquidating Debtors to fund the wind down of the Liquidating Debtors following the Sale Closing and any funds remaining in the Wind-Down Amount shall be transferred to the Liquidating Trust on the Effective Date.

**B. Interpretation; Application of Definitions and Rules of Construction**

The following rules of construction, interpretation, and application shall apply:

- (1) Wherever from the context it appears appropriate, each term stated in either 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 neuter genders.
- (2) Unless otherwise specified, each section, article, schedule, or exhibit reference in the Combined Plan and Disclosure Statement is to the respective section in, article of, schedule to, or exhibit to the Combined Plan and Disclosure Statement.
- (3) The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Combined Plan and Disclosure Statement as a whole and not to any particular section, subsection, or clause contained in the Combined Plan and Disclosure Statement.
- (4) The rules of construction contained in Bankruptcy Code section 102 shall apply to the construction and interpretation of the Combined Plan and Disclosure Statement.
- (5) A term used herein that is not defined herein but that is used in the Bankruptcy Code shall have the meaning ascribed to that term in the Bankruptcy Code.
- (6) The headings in the Combined Plan and Disclosure Statement are for convenience of reference only and shall not limit or otherwise affect the provisions of the Combined Plan and Disclosure Statement.
- (7) Unless otherwise provided, any reference in the Combined Plan and Disclosure Statement to an existing document, exhibit, or schedule means such document, exhibit, or schedule as may be amended, restated, revised, supplemented, or otherwise modified.
- (8) In computing any period of time prescribed or allowed by the Combined Plan and Disclosure Statement, the provisions of Bankruptcy Rule 9006(a) shall apply.

## IV. Disclosures

### A. General Background

#### 1. The Company and Their Businesses

Founded in 2015, the Company was a market leader in the dedicated flexible workspace industry and focused on enterprise customers. Knotel was a New-York City-based flexible workspace provider in 20 global markets. Prior to the Petition Date, the Debtors employed approximately 110 people. The Company's customer base included Fortune 500 and Global 200 companies.

The Company's workspaces were strategically designed to empower teams and enhance productivity. The Company's three-step "Match, Tailor, Manage" process transformed the workspace from a fixed asset to a competitive advantage: (1) the Company used its global portfolio to match businesses with prestigious owners around the world, meeting their unique and complex workspace needs in a timely fashion; (2) the Company tailored holistic workspace offerings at the intersection of workflows and brand identity to design spaces that meet and respond to their customer's needs; and (3) the Company offered dedicated space management services that evolve as and when their customers' needs change.

At the beginning of 2020, the Company had over 4.0 million square feet of leased workspace under management, over 300 customers contracted for workspace, and expanded operations in various major business centers in the U.S., U.K., E.U., Asia, and South America, including New York City, San Francisco, Paris, London, Berlin, Amsterdam, and Dublin.

Lead Debtor in these Chapter 11 Cases, Knotel, is a Delaware corporation that is the parent of the remaining Debtors, which are divided into three groups: the Knotel New York subsidiaries are single-member, member-managed New York limited liability companies that are direct wholly-owned subsidiaries of Knotel, the Knotel non-New York subsidiaries are single-member, member-managed Delaware limited liability companies that are direct wholly-owned subsidiaries of Knotel, and Knotel Canada, which is a British Columbia corporation. The Company also includes certain non-Debtor foreign Affiliates which provide flexible workspace outside the United States.

#### 2. Financial Overview of the Company

##### a. The Prepetition Secured Debt

###### First Lien and Second Lien Debt

The Debtors (other than Knotel Canada) are borrowers (the "**Borrowers**") under the Bridge Bank Loan, dated February 15, 2019, with Western Alliance Bank. The Bridge Bank Loan is secured by a first priority lien on substantially all personal property of the Borrowers. The Borrowers are also borrowers under the TPC Loan, dated February 27, 2019, with TriplePoint Venture Growth BDC Corp. and lender TriplePoint Capital LLC. The TPC Loan is the junior revolving credit facility with a second priority lien on the Debtors' personal property. Together, the Bridge Bank Loan and the TPC Loan comprise the Prepetition Secured Debt.

As of November 17, 2020, Western Alliance Bank declared the Borrowers to be in default under the Bridge Bank Loan. Pursuant to a forbearance agreement dated as of December 4, 2020, Western Alliance Bank agreed to forbear from the exercise of certain rights and remedies as a result of such default through December 31, 2020.

On December 30, 2020, Western Alliance Bank sold and assigned its rights and interests in the Bridge Bank Loan to Digiotech. On January 10, 2021, Digiotech purchased the TPC Loan. On January 11, 2021, Digiotech advanced \$9 million to the Debtors under the Seventh Amendment to the Bridge Bank Loan and on January 19, 2021, Digiotech advanced an additional \$3.2 million to the Debtors under the Eighth Amendment to the Bridge Bank Loan.

### Letters of Credit/Surety Bonds

Bridge Bank, Argonaut and J.P. Morgan issued letters of credit or other surety bonds on behalf of the Debtors.

Specifically, Bridge Bank issued several irrevocable standby letters of credit at the request of Knotel and various of its subsidiaries (together, “**Applicant**”), pursuant to multiple agreements, including but not limited to: (i) that certain Standby Letter of Credit Agreement, dated as of February 15, 2019, by and between Applicant and Bridge Bank, as subsequently modified by that certain Letter of Credit Modification Agreement, dated as of April 17, 2019 (the “**Master Letter of Credit Agreement**”); and (ii) those certain Standby Letter of Credit Agreements, dated as of October 12, 2018 and January 24, 2019, as they pertain to standby letters of credit nos. LC4706200022-611, LC4706200022-612, and LC4706200022-614, as subsequently deemed issued under the Master Letter of Credit Agreement (together with the Master Letter of Credit Agreement, the “**Cash Secured L/C Agreements**”).

JP Morgan Chase Bank, N.A. (“**JPM**”) and Knotel entered into twelve (12) applications and agreements for JPM’s issuance of twelve (12) corresponding Letters of Credit, in various amounts, to assure the beneficiaries thereunder of the applicable Debtor’s payment of its monetary obligations to such beneficiary as such Debtor’s landlord under such Debtor’s lease of commercial real property with such beneficiary. JPM subsequently issued twelve (12) letters of credit which were secured by that certain Assignment of Deposit Account dated January 2, 2018 between Knotel and JPM.

On October 31, 2019, Knotel entered into a General Indemnity Agreement with Argonaut Insurance Company as surety for the purpose of indemnifying the surety for any bonds from any and all losses pursuant to the agreement. In consideration of the surety’s execution and procurement of the bonds, Knotel, among other things, agreed to: pay all initial and renewal premiums for each bond as they fall due; and indemnify, hold harmless, and exonerate the surety from and against any and all losses.

### b. **Unsecured Debt**

Pursuant to that certain “Note Purchase Agreement” dated November 15, 2019, Knotel issued \$9,559,424 of unsecured notes with a per annum interest rate equal to 4%. All such outstanding principal and accrued interest remains outstanding and shall be subject to conversion

on demand made to Knotel on or after June 30, 2021. All such outstanding notes are subordinate to the Bridge Bank Loan and the TPC Loan.

Pursuant to that certain “Note Purchase Agreement” dated July 29, 2020, Knotel issued \$20,461,714 in unsecured notes with a per annum interest rate equal to 4%. All principal and accrued interest remains outstanding and shall be due and payable on demand made to Knotel by the lender at any time, as the maturity date applicable thereto was December 31, 2020. All such outstanding notes are subordinate to the Bridge Bank Loan and the TPC Loan.

The Debtors also incurred indebtedness in connection with the PPP Loan in the principal amount of \$7,157,612.00, which was provided by the U.S. Small Business Administration and the Coronavirus Aid, Relief, and Economic Security Act. The PPP Loan has a per annum interest rate equal to 0.98%. As of the Petition Date, the Debtors owed approximately \$7.2 million under the PPP Loan.

### **3. Events Precipitating the Chapter 11 Filing**

The Debtors operated a growth-stage business that significantly expanded its operations in 2019. The Debtors incurred operating and net losses and experienced negative operating cash flows for the past several years and, accordingly, previously took a number of actions to continue to support their operations and meet their obligations. During 2019, the Debtors completed various financing transactions including the closing of the Series C preferred stock financing round for approximately \$130 million in September of 2019 along with an additional \$50 million in December of 2019 and the execution of loan agreements of approximately \$80 million in borrowings and letters of credit. These transactions allowed the Debtors to significantly build out their infrastructure during 2019, increasing their leased properties by over 150%, customer contracts by over 200%, revenue by 275% and expanding operations into Ireland, the Netherlands, France, Brazil, Japan and India.

Due in large part to the Debtors’ expansion and high volume of capital expenditures required to prepare new leased properties for customer use, the Debtors invested a significant amount of their funding during 2019 into properties with future revenue-generating potential. Moreover, given their expansion outside of the United States, the foreign non-Debtor Affiliates were critical to the value of the Debtors’ operations, but also required significant funding to support operations and meet cash needs. The damper placed on the revenue-generating potential of these properties by the COVID-19 pandemic and the widespread adoption of work-from-home policies (either voluntary or government mandated) severely disrupted the Debtors’ business plans and operations, and imposed a significant liquidity crisis.

To address these financial difficulties, prior to the Petition Date, the Debtors undertook various actions to improve sales and operating performance, and to reduce expenses. Due primarily to COVID-19, revenues in the fourth quarter of 2020 were approximately 20 percent lower than in the first quarter of 2020. Throughout 2020, the Company undertook significant efforts to raise additional debt and equity capital to support its business. During this time, the Debtors also began to review various restructuring options, including potential filings under either chapter 7 or chapter 11 of the Bankruptcy Code. As discussed above, the Debtors were able to negotiate a brief forbearance from Western Alliance Bank, and Digiotech subsequently came forth

as an investor who was willing to buy the Debtors' core assets and preserve the Debtors' business with additional funds advanced pursuant to the Seventh Amendment and the Eighth Amendment to the Bridge Bank Loan. The Debtors entered bankruptcy with a scaled-down workforce as they prepared to market and sell their assets to potential bidders.

The Debtors commenced the Chapter 11 Cases to sell, on an expedited basis, their core business to better position themselves in the post-pandemic market for flexible work space. The Debtors believed that conducting an open and competitive marketing process in the context of these Chapter 11 Cases would represent the best strategy to maximize the value of the Debtors' business for stakeholders and to capitalize on anticipated post-pandemic opportunities including, if companies bring their employees back to the office and seek more flexible and efficient office arrangements with a greater focus on safety and sanitation.

## **B. The Chapter 11 Cases**

### **1. First Day Orders**

On the Petition Date, each of the Debtors (other than Knotel Canada) filed voluntary petitions for relief. Also on the Petition Date, the Debtors filed a number of First Day Motions and applications seeking customary relief intended to facilitate a smooth transition for the Debtors into the Chapter 11 Cases and to minimize disruptions to the Debtors' business operations.

The First Day Motions requested relief from the Bankruptcy Court to, among other things: (a) jointly administer the Chapter 11 Cases; (b) appoint Omni Agent Solutions as Claims and Noticing Agent; (c) pay employee wages; (d) maintain the Debtors' cash management system; (e) pay taxes; (f) pay insurance obligations; (g) maintain utilities; (h) pay shippers/warehousemen; (i) obtain postpetition financing; and (j) pay Critical Vendors. In support of the First Day Motions, the Debtors relied upon the First Day Declaration.

The Bankruptcy Court held hearings and granted the relief sought at hearings on February 2, 2021, February 18, 2021 and February 26, 2021.

### **2. DIP Financing**

Pursuant to the DIP Motion, the Debtors (other than Knotel Canada) sought authorization to obtain the DIP Facility pursuant to the DIP Credit Agreement: a \$40.8 million senior secured superpriority multi-draw term loan facility provided by DIP Lender, consisting of \$20.4 million in New Money DIP Loans and a dollar-for-dollar "roll-up" of \$20.4 million of the Prepetition Secured Debt or the Roll-Up DIP Loans due under the Prepetition First Lien and Prepetition Second Lien to Digiotech.

The Debtors further sought authorization, through the DIP Motion, to use the Prepetition Collateral, including Cash Collateral, of Digiotech under the Prepetition Secured Debt Documents (each as defined in the DIP Order), and providing adequate protection to Digiotech for, among other things, reimbursement of its professional fees and expenses, interest at the rate provided in the Prepetition Secured Debt Documents—including at the default rate, and a security interest in and lien on all prepetition and postpetition assets of the Debtors, only junior to the Carve-Out (as defined in the DIP Order) and other limited items constituting permitted encumbrances.

On February 3, 2021, the Court entered the Interim DIP Order. Pursuant to the Interim DIP Order, the Debtors were authorized to borrow \$15 million in New Money DIP Loans under the DIP Facility and to roll up \$15 million in Prepetition Secured Debt on an interim basis. The Court subsequently entered the DIP Order on a final basis on March 2, 2021, which authorized the Debtors to borrow the full remaining amount of the New Money DIP Loans in the principal amount of up to an additional \$5.4 million, and to roll-up the outstanding principal balance of any interest and fees accrued on the Prepetition Secured Debt in an additional amount equal to \$5.4 million to be allocated between the Prepetition First Lien debt and the Prepetition Second Lien debt.

### **3. Retention of Professionals**

The Debtors, through various applications which were subsequently approved by the Bankruptcy Court, employed certain Professionals including: Milbank LLP as counsel [D.I. 253]; Morris, Nichols, Arsht, & Tunnell LLP as Delaware counsel [D.I. 263]; Moelis as financial advisor and investment banker [D.I. 435]; Fenwick & West, LLP as special counsel [D.I. 299]; and Omni Agent Solutions as Claims and Noticing Agent and Administrative Agent [D.I. 59, 266]. In addition, on February 19, 2021, the Debtors' sought to retain Hilco as a real estate consultant to assist the Debtors with evaluation of their real estate portfolio during the Chapter 11 Cases. Hilco's retention was subsequently approved by the Bankruptcy Court on March 12, 2021 [D.I. 439].

On February 5, 2021, the Debtors filed the *Debtors' Motion for an Order Authorizing the Debtors to Employ and Compensate Professionals Utilized in the Ordinary Course of Business* [D.I. 104] (the "**OCP Motion**"). Following the resolution of the United States Trustee's objection filed at Docket No. 256, the Court entered an order granting the OCP Motion authorizing the Debtors' retention of certain Professionals in the ordinary course of business [D.I. 414].

### **4. Appointment of the Committee and Retention of Committee Professionals**

On February 8, 2021, the Office of the U.S. Trustee appointed the Committee pursuant to section 1102(a)(1) of the Bankruptcy Code [D.I. 122]. The Committee is comprised of seven members: Neustar, Inc., 11 East 44th Street LLC, United Group LLC, ARC NYC570Seventh, LLC, DoorDash, Inc., One Workspace L Ferrari, LLC, and Eden Technologies Inc.

The Committee, through various applications which were subsequently approved by the Bankruptcy Court, employed and retained the following Professionals: Lowenstein Sandler LLP as its counsel [D.I. 406], Potter Anderson & Corroon LLP as its Delaware counsel [D.I. 408], and FTI Consulting, Inc. as its financial advisor [D.I. 407, 1015].

### **5. Lease Rejection Motions**

In order to downsize its footprint and streamline its operations to better position itself in a post-pandemic world, on the Petition Date, the Debtors filed the Omnibus Rejection Motions seeking to reject various Executory Contracts and Unexpired Leases *nunc pro tunc* to the Petition Date. Various landlords filed objections to the Omnibus Rejection Motions arguing, among other things, that: the underlying sublease was expired and therefore could not be rejected; the Debtors' abandonment of property on the premises should be conditioned on abandonment free and clear of all liens, claims, encumbrances, and interests; and the Debtors are not entitled to *nunc pro tunc*

relief before they resolve occupancy rights of the Debtors' subtenants and licensees. One customer objected on the grounds that its customer retainer is not property of the Debtors' Estates pursuant to New York law.

The Court held a hearing on February 26, 2021 and entered Orders granting the Omnibus Rejection Motions, but carried the various issues in the objections to March 11, 2021—solely granting interim relief related to the objecting landlords [Docket Nos. 331, 332, 346]. On March 28, 2021, the Court entered a Final Order authorizing the Debtors' rejection of certain leases effective February 26, 2021 [D.I. 999]. This Final Order includes the full and final satisfaction of allowed amounts of the objecting landlords' Administrative Expense Claims on account of post-petition rent and related charges incurred prior to the effective date of rejection.

Subsequently, on February 27, 2021 the Debtors filed the *Debtors' Fourth Omnibus Motion for Entry of an Order (I) Authorizing the Debtors to Reject Certain Executory Contracts and Unexpired Leases Nunc Pro Tunc to the Rejection Date, (II) Abandon any Personal Property that Remains at the Lease Premises, and (III) Granting Related Relief* [D.I. 318] (the “**Fourth Omnibus Rejection Motion**”) seeking the rejection of nineteen additional Unexpired Leases and specified Executory Contracts effective *nunc pro tunc* to February 27, 2021, the rejection date. By order dated March 18, 2021, the Court approved the relief sought in the Fourth Omnibus Rejection Motion [D.I. 818].

## 6. Customer Retainers

Various parties have raised objections to both the Omnibus Lease Rejection Motions and the Sale related to their customer retainers, asserting, in part, that such retainers do not constitute property of the Debtors' Estates. It is the Debtors' position that any such customer retainers constitute General Unsecured Claims because (1) the refundable services retainers were commingled with other funds in the Debtors' operating account, which was swept almost in its entirety by Digiotech in January 2021, and (2) the terms of the underlying agreements with the Debtors did not require the Debtors to separate or otherwise hold them in escrow. *See* D.I. 762 and 856.

Subsequently, the Bankruptcy Court ruled that if a creditor asserted that Digiotech's prepetition lien(s) on the Debtors' account and the funds swept by Digiotech in January 2021 were defective because it included (1) customer retainers or (2) funds that were trust funds under applicable state law, such aggrieved creditor would have been required to raise such lien challenge against Digiotech under the time period provided in the Final DIP Order.<sup>3</sup> At the time of this ruling, the challenge period under the Final DIP Order had expired.

For the avoidance of doubt, nothing contained in this section is intended to reclassify any Claim unless such Claim has been or is reclassified or otherwise Disallowed by Order of the Bankruptcy Court. All parties in interest reserve all rights as it relates to such Claims.

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<sup>3</sup> Hr'g Tr. at 21: 3-21, *In re Knotel, Inc.*, Case No. 21-10146 (MFW) (Bankr. D. Del., Mar. 8, 2021).



## **7. Knotel Canada Filing**

Knotel Canada, a wholly owned subsidiary of Knotel, commenced a voluntary Chapter 11 case on March 8, 2021. As of March 8, 2021, Knotel Canada had borrowed an aggregate of approximately CDN\$281,000 from Knotel under a promissory note issued on March 2, 2021 in favor of Knotel, in addition to substantial unsecured amounts. Knotel Canada's leases were in respect of real property in Toronto, Ontario. The Debtors believe that certain of these leases add value to the Debtors' Estates. Knotel Canada was party to six leases of real property in Toronto, and prior to the bankruptcy Filing, three landlords delivered termination notices and two other landlords delivered notices of default. At the time of the Filing, the Debtors believed that Digiotech or another bidder may be interested in buying Knotel Canada's interest in certain of those leases.

Knotel Canada filed the following first day motions: joint administration motion, the Previously Entered Orders Motion, and the Foreign Representative Motion. The Previously Entered Orders Motion requested that orders entered previously in the Debtors' Chapter 11 Cases govern Knotel Canada *nunc pro tunc* to March 8, 2021. Through the Foreign Representative Motion, the Debtors sought authority for Knotel Canada to act as foreign representative on behalf of the Debtors, including in the CCAA Proceeding that was filed with the Canadian Court and to pay the costs related to such proceedings through Knotel Canada as permitted under the DIP Facility budget. At the hearing on March 11, 2021, the Court approved the joint administration motion and the Foreign Representative Motion, but only granted the Previously Entered Orders Motion on an interim basis [D.I. 405]. Subsequently, on March 26, 2021, the Court granted the Previously Entered Orders Motion on a final basis [D.I. 994].

On March 9, 2021, Knotel Canada sought an order of the Canadian Court confirming the stay of proceedings resulting from the Chapter 11 Cases pending entry of the order on the Foreign Representative Motion. On March 12, 2021, the Canadian Court granted an initial recognition order, formally recognizing the Chapter 11 Cases of Knotel and Knotel Canada as foreign main proceedings, confirming the stay of proceedings in Canada, and, consistent with the CCAA, requiring Canadian Court approval of any sale of assets of the Canadian Filing Entities in Canada. The Canadian Court also granted a supplemental recognition order, recognizing certain of the orders made by the Bankruptcy Court, appointing the Information Officer, and granting a charge on the Canadian assets in respect of the costs of the administration of the CCAA Proceeding, and granting related relief.

## **8. Bridge Bank Stay Relief**

On March 5, 2021, the Debtors, Digiotech, and Bridge Bank entered into a Stipulation granting Bridge Bank relief pursuant to section 362 of the Bankruptcy Code with respect to the Cash Secured L/C Agreements authorizing Bridge Bank to exercise certain rights as against the Collateral securing the Cash Secured L/C Agreement [D.I. 361].

## **9. Committee Settlement**

On March 11, 2021, the Court approved a comprehensive settlement between the Debtors, the Committee, Digiotech and Newmark which resolved a number outstanding issues between the parties (including the Committee Sale Objection) and paved the way for the consensual Sale of the

Debtors' Assets to Digiatech and provided for the GUC Fund and preservation of certain Causes of Action for the benefit of General Unsecured Creditors [D.I. 417]. The Committee Settlement was achieved after extensive negotiations among the parties and ended potentially costly discovery and potential litigation between the Committee, the Debtors, Digiatech and Newmark. The specific terms of the Committee Settlement included: (i) the \$6.2 million GUC Fund; (ii) a covenant by Digiatech not to pursue the Avoidance Actions, plus modification of the APA to make clear that the Estate Causes of Action are not Purchased Assets and will be contributed to the Liquidating Trust; (iii) waiver of the Committee Challenge rights and withdrawal of objections by the Committee to various pending matters, including the Hilco retention; (iv) the Wind-Down Amount was increased from \$100,000 to \$500,000; and (v) Digiatech's waiver of the right to receive a Distribution on account of the Deficiency Claim.

#### **10. Sale of Substantially All of the Debtors' Assets**

Prior to the Petition Date, the Debtors' entered into the Asset Purchase Agreement with Digiatech, the Prepetition Secured Lender and DIP Lender, (in such capacity, the "**Purchaser**"), as the Stalking Horse Bidder for the sale of substantially all of their assets. The APA contemplated a purchase price for the Purchased Assets of a \$70,000,000.00 credit bid, the assumption of certain liabilities, plus \$100,000.00 in cash to fund the conversion of these Chapter 11 Cases to chapter 7. Moelis commenced its marketing efforts after the Petition Date.

The day after the Petition Date, the Debtors filed the Sale Motion. The Debtors, pursuant to the Sale Motion, sought to sell substantially all of their assets to Digiatech as the Stalking Horse Bidder, subject to any higher or better offers and in accordance with the Bidding Procedures Order. The Bidding Procedures Order fixed March 12, 2021 at 10:00 a.m. (prevailing Eastern Time) as the deadline for the submission of bids for the Debtors' assets and scheduled an auction for 2:00 p.m. (prevailing Eastern Time) on March 12, 2021.

Notwithstanding the marketing efforts of Moelis, the Debtors received no other bids for their assets and, on March 18, 2021, the Bankruptcy Court held a hearing on the Sale to Digiatech. On March 19, 2021, the Bankruptcy Court entered the Sale Order, approving, *inter alia*, the Sale of substantially all of Debtors' assets to Digiatech pursuant to the terms of a modified APA [D.I. 946-1]. As part of the Sale to Digiatech, the Debtors and Digiatech entered into the Transition Services Agreement. On March 23, 2021, the Canadian Court granted an order recognizing the Sale Order and granting related relief, including the establishment of a reserve with the Information Officer for the costs in connection with the CCAA Proceedings.

#### **11. Claims Process and General Bar Date**

The Debtors filed the Bar Date Motion on March 20, 2021 [D.I. 949]. On April 1, 2021, the Bankruptcy Court entered the Bar Date Order [D.I. 1014]. The Debtors filed the *Notice of Bar Dates for Filing Prepetition Claims and Administrative Claims* on April 5, 2021 [D.I. 1023], which establishes the General Bar Date and the Governmental Bar Date. On April 14, 2021, the Canadian Court granted an order recognizing the Bar Date Order.

Pursuant to the Bar Date Order, all creditors holding or wishing to assert a Claim against the Debtors or the Debtors' Estates, accruing prior to the Petition Date, and which remain unpaid,

including claims arising under Bankruptcy Code section 503(b)(9), are required to file such Claims by the General Bar Date. The General Bar Date is May 5, 2021 at 5:00 p.m. prevailing Eastern Time.

In addition, pursuant to the Bar Date Order, all creditors holding or wishing to assert Administrative Expense Claims against the Debtors or their Estates, accruing from the Petition Date through and including April 5, 2021, are required to file such Claims by the General Bar Date. The General Bar Date is May 5, 2021 at 5:00 p.m. prevailing Eastern Time. Administrative Expense Claims arising from April 6, 2021 through the Effective Date of the Combined Plan and Disclosure Statement are governed by the Administrative Claim Bar Date set forth herein.

Further, pursuant to the Bar Date Order, Governmental Units, with claims against the Debtors or the Debtors' Estates, accruing prior to the Petition Date, are required to file Proofs of Claim by the Governmental Bar Date, July 30, 2021 at 5:00 p.m. prevailing Eastern Time.

Finally, as set forth in the *Notice of Filing Schedules of Assets and Liabilities and Statement of Financial Affairs for Knotel Canada, Inc. and Related Bar Date* [D.I. 1079], the Knotel Canada Amended Schedules Bar Date is May 25, 2021 at 5:00 p.m. (ET) and the Knotel Canada Amended Schedules Governmental Bar Date is September 7, 2021.

## **12. Dismissal of Certain of the Chapter 11 Cases**

The Combined Plan and Disclosure Statement includes a request, pursuant to sections 1112 and 305 of the Bankruptcy Code, to dismiss the Chapter 11 Cases of the Dismissed Debtors effective on the Effective Date. The special purpose entities (also referred to as "SPEs") constituting the Dismissed Debtors, as listed on Exhibit A, have no meaningful assets to administer and dismissal of the Dismissed Debtors from these Chapter 11 Cases upon the Effective Date will preserve the Debtors' already limited resources and enable them to wind down the Liquidating Debtors. The Liquidating Debtors and/or the Liquidating Trustee intend to either sell or abandon the Liquidating Debtors' Interests in the Dismissed Debtors on or about the Effective Date. Further, to the extent that the Debtors determine after entry of the Confirmation Order and prior to the occurrence of the Effective Date to sell or otherwise liquidate any of the remaining *de minimus* assets or Causes of Action of the Debtors such sale would become effective on the Effective Date and would be deemed approved pursuant to the Confirmation Order; provided however, that any such *de minimus* asset sale would be no more than \$250,000.

Each of these Dismissed Debtors have either (i) sold substantially all of their assets pursuant to the Sale, or (ii) rejected any remaining lease or contract obligations and are no longer conducting business operations. Notably, the Dismissed Debtors do not have any unencumbered funds available to formulate or confirm a plan of reorganization or liquidation, for distribution to unsecured creditors or funds available to pay the ongoing costs and expenses, including any Statutory Fees, which may become due and payable in the Chapter 11 Cases of the Dismissed Debtors. Accordingly, the Plan Proponents believe that cause exists under section 1112(b) of the Bankruptcy Code to dismiss the SPEs effective as of the Effective Date of the Combined Plan and Disclosure Statement. Additionally, pursuant to section 305(a)(1) of the Bankruptcy Case, cause exists to dismiss the Dismissed Debtors because these estates have no remaining meaningful assets to be distributed to creditors and no remaining bankruptcy purpose exists because either a chapter

11 or chapter 7 will not yield results that provide a distribution to creditors and would only serve to create administrative liabilities of the estates that will go unsatisfied.

In the event the Debtors determine to sell any remaining Assets of a Liquidating Debtor prior to the Effective Date, the Plan Proponents may determine that any such Liquidating Debtor should be treated as a Dismissed Debtor for purposes of this Combined Plan and Disclosure Statement. Any party wishing to object to the dismissal of the Dismissed Debtors as set forth herein must file an objection on or before the Combined Plan and Disclosure Statement Objection Deadline.

### **13. Resignation of Directors**

On or about the Closing Date, all of the Officers and directors on the Board of the Debtors resigned. Effective as of the close of business on March 24, 2021, the Debtors engaged the Responsible Officer.

### **14. Satisfaction of Claims Prior to the Effective Date**

- a. **DIP Facility Claims** – The DIP Facility Claims were partially satisfied through the Sale and Credit Bid for the Purchased Assets. The Holder of the DIP Facility Claims will not receive any Distribution on account of the DIP Facility Claims or any Deficiency Claim, as that has been waived as part of the Committee Settlement, provided, however, that Holder of the Deficiency Claim retains the right to vote with respect to this Combined Plan and Disclosure Statement.
- b. **Prepetition First Lien Claims** – The Prepetition First Lien Claims were included as part of the Roll Up DIP Loans and any remaining amounts owed to Digiatech as part of the Prepetition First Lien Claims were fully satisfied through the Sale and Credit Bid for the Purchased Assets. The Holder of the Prepetition First Lien Claims will not receive any Distribution on account of the Prepetition First Lien Claims.
- c. **Prepetition Second Lien Claims** – The Prepetition Second Lien Claims were partially included in the Roll Up DIP Loans and were fully satisfied through the Sale and Credit Bid for the Purchased Assets. The Holder of the Prepetition Second Lien Claims will not receive any Distribution on account of the Prepetition Second Lien Claims or any Deficiency Claim.
- d. **Other Secured Claims** – Bridge Bank has been granted relief from the automatic stay to exercise its rights against certain Cash Collateral [D.I. 361]. In addition, JPM has exercised or may exercise its rights against certain Cash Collateral related to certain letters of credit. JPM's recovery against the Debtors is limited to any Cash Collateral securing the letters of credit and it is not entitled

to receive a distribution from the Debtors or the Liquidating Trust. The intercompany promissory note in favor of Knotel has been satisfied through a credit bid for the Knotel Canada assets in connection with the Sale to Digiotech and the promissory note has been cancelled.

- e. **Administrative Expense Claims** – Pursuant to the terms of the APA, Administrative Expense Claims incurred prior to the Closing Date are the responsibility of the Purchaser and, as such, will not receive a Distribution from the Debtors or the Liquidating Trust.
- f. **Priority Tax Claims** – Pursuant to the terms of the APA, the Purchaser is responsible for payment of certain taxes as such, Holders of claims related to those taxes will not receive a Distribution from the Debtors or the Liquidating Trust.

## **15. Purchaser Responsibility for Claims**

For the avoidance of doubt, no Holder of a Claim or Claims against any Liquidating Debtor shall receive a Distribution from the Liquidating Debtors or the Liquidating Trust under the Combined Plan and Disclosure Statement if such obligation was assumed by the Purchaser under the APA and related documents, which obligation shall be solely the responsibility of the Purchaser. Similarly, the dismissal of the Dismissed Debtors from the Chapter 11 Cases shall not relieve the Purchaser from any obligations assumed by the Purchaser under the APA and related documents as they relate to the Dismissed Debtors.

### **C. Summary of Assets**

Following the Sale Closing, the Debtors have limited Assets remaining in the Estates. The primary Assets include the Liquidating Trust Assets and assets specifically identified as “Excluded Assets” in section 2.02 of the APA.

### **D. Summary of Treatment of Claims and Interests under the Plan**

The following chart summarizes the classification and treatment of the Classes:

<b>Class</b>	<b>Estimated Allowed Claims<sup>4</sup></b>	<b>Treatment</b>	<b>Entitled to Vote</b>	<b>Estimated Recovery to Holders of Allowed Claims<sup>5</sup></b>
Class 1 – First Lien Claims	\$18,550,000.00	Unimpaired	No	100%
Class 2 – Second Lien Claims	\$51,169,161.00	Unimpaired	No	100%
Class 3 - Other Secured Claims	\$8,891,290.80	Unimpaired	No	100%
Class 4 – Other Priority Claims	\$1,412,000.00 - \$4,487,000.00 <sup>6</sup>	Unimpaired	No	100%
Class 5 – General Unsecured Claims	\$300 million - \$450 million	Impaired	Yes	.3-2.4%
Class 6 – Interests	N/A	Deemed Impaired	No	0%

#### **E. Certain U.S. Federal Income Tax Consequences to this Combined Plan and Disclosure Statement**

Substantial uncertainty exists with respect to many of the tax issues discussed below. Therefore, each holder of a Claim is urged to consult its own tax advisor regarding the federal, state, and other tax consequences of this Combined Plan and Disclosure Statement. No rulings have been or are expected to be requested from the Internal Revenue Service (“IRS”) with respect to any tax aspects of this Combined Plan and Disclosure Statement.

A summary description of certain United States (“U.S.”) federal income tax consequences of this Combined Plan and Disclosure Statement is provided below. The description of tax

<sup>4</sup> These amounts represent estimated Allowed Claims against the Liquidating Debtors and do not represent amounts actually asserted by creditors in Proofs of Claim or otherwise. The Debtors have not completed their analysis of Claims in the Chapter 11 Cases, and objections to such Claims have not been Filed and/or fully litigated and may continue following the Effective Date. Therefore, there can be no assurances of the exact amount of the Allowed Claims at this time. Rather, the actual amount of the Allowed Claims may be greater or lower than estimated.

<sup>5</sup> The estimated percentage recovery is based upon, among other things, an estimate of the Allowed Claims against the Liquidating Debtors in the Chapter 11 Cases. As set forth above, the actual amount of the Allowed Claims may be greater or lower than estimated. Thus, the actual recoveries may be higher or lower than projected depending upon, among other things, the amounts and priorities of Claims that are actually Allowed by the Bankruptcy Court and the actual amount of Cash available for Distribution.

<sup>6</sup> These amounts reflect estimated claims against all of the Debtors, which constitute, in part, assumed liabilities and obligations by Digiotech under the APA and related documents. Further, these claims remain subject to review and potential challenge.

consequences below is for informational purposes only and, due to lack of definitive judicial or administrative authority or interpretation, substantial uncertainties exist with respect to various U.S. federal income tax consequences of this Combined Plan and Disclosure Statement as discussed herein. Only the potential material U.S. federal income tax consequences to the Debtor and to a hypothetical holder of Claims who are entitled to vote to accept or reject this Combined Plan and Disclosure Statement are described below. No opinion of counsel has been sought or obtained with respect to any tax consequences of this Combined Plan and Disclosure Statement, and no tax opinion is being given in this Combined Plan Disclosure Statement. No rulings or determinations of the IRS or any other tax authorities have been obtained or sought with respect to any tax consequences of this Combined Plan and Disclosure Statement, and the discussion below is not binding upon the IRS or such other authorities. No representations are being made regarding the particular tax consequences of the confirmation and consummation of this Combined Plan and Disclosure Statement. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position from any discussed herein.

The discussion of the U.S. federal income tax consequences below is based on the Tax Code, Treasury Regulations promulgated and proposed thereunder, judicial decisions, and administrative rulings and pronouncements of the IRS and other applicable authorities, all as in effect on the date hereof. Legislative, judicial or administrative changes or interpretations enacted or promulgated in the future could alter or modify the analyses and conclusions set forth below. It cannot be predicted at this time whether any tax legislation will be enacted or, if enacted, whether any tax law changes contained therein would affect the tax consequences to the Holders of Claims. Any such changes or interpretations may be retroactive and could significantly affect the U.S. federal income tax consequences discussed below.

**THIS DISCUSSION DOES NOT ADDRESS FOREIGN (INCLUDING CANADIAN), STATE OR LOCAL TAX CONSEQUENCES OF THIS COMBINED PLAN AND DISCLOSURE STATEMENT, NOR DOES IT PURPORT TO ADDRESS THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THIS COMBINED PLAN AND DISCLOSURE STATEMENT TO SPECIAL CLASSES OF TAXPAYERS (SUCH AS FOREIGN ENTITIES, NONRESIDENT ALIEN INDIVIDUALS, PASS-THROUGH ENTITIES SUCH AS PARTNERSHIPS AND HOLDERS THROUGH SUCH PASS-THROUGH ENTITIES, S CORPORATIONS, MUTUAL FUNDS, INSURANCE COMPANIES, FINANCIAL INSTITUTIONS, SMALL BUSINESS INVESTMENT COMPANIES, REGULATED INVESTMENT COMPANIES, CERTAIN SECURITIES TRADERS, BROKER-DEALERS AND TAX-EXEMPT ORGANIZATIONS). FURTHERMORE, ESTATE AND GIFT TAX ISSUES ARE NOT ADDRESSED HEREIN AND TAX CONSEQUENCES RELATING TO THE ALTERNATIVE MINIMUM TAX ARE NOT DISCUSSED HEREIN.**

**NO REPRESENTATIONS ARE MADE REGARDING THE PARTICULAR TAX CONSEQUENCES OF THIS COMBINED PLAN AND DISCLOSURE STATEMENT TO ANY SPECIFIC HOLDER OF A CLAIM. EACH HOLDER OF A CLAIM IS STRONGLY URGED TO CONSULT ITS OWN TAX ADVISOR REGARDING THE U.S. FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE TRANSACTIONS DESCRIBED HEREIN AND IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT.**

## 1. Consequences to the Debtors

Under the Tax Code, a U.S. taxpayer generally must include in gross income the amount of any cancellation of indebtedness (“COD”) income recognized during the taxable year. COD income generally equals the excess of the adjusted issue price of the indebtedness discharged over the sum of (i) the amount of cash, (ii) the issue price of any new debt, and (iii) the fair market value of any other property (including stock) transferred by the Debtors in satisfaction of such discharged indebtedness. COD income also includes any interest that has been previously accrued and deducted but remains unpaid at the time the indebtedness is discharged.

Section 108(a)(1)(A) of the Tax Code provides an exception to this rule, however, where a taxpayer is in bankruptcy and where the discharge is granted, or is effected pursuant to a plan approved, by the bankruptcy court. In such a case, instead of recognizing income, the taxpayer is required, under Section 108(b) of the Tax Code, to reduce certain of its tax attributes by the amount of COD income. The attributes of the taxpayer are to be reduced in the following order: current year Net Operating Losses (“NOLs”) and NOL carryovers, general business and minimum tax credit carryforwards, capital loss carryforwards, the basis of the taxpayer’s assets, and finally, foreign tax credit carryforwards. The reduction in the foregoing tax attributes generally occurs after the calculation of a debtor’s tax for the year in which the debt is discharged. Section 108(b)(5) of the Tax Code permits a taxpayer to elect to first apply the reduction to the basis of the taxpayer’s depreciable assets, with any remaining balance applied to the taxpayer’s other tax attributes in the order stated above. In addition to the foregoing, Section 108(e)(2) of the Tax Code provides a further exception to the realization of COD income upon the discharge of debt in that a taxpayer will not recognize COD income to the extent that the taxpayer’s satisfaction of the debt would have given rise to a deduction for federal income tax purposes.

The Liquidating Debtors may realize COD income as a result of this Combined Plan and Disclosure Statement. The ultimate amount of any COD income realized by the Liquidating Debtors is uncertain because, among other things, it will depend on the fair market value of all assets transferred to Holders of Claims issued on the Effective Date.

In general, if a debtor sells property to a third party it will recognize taxable income equal to the difference between the amount realized on the sale and its tax basis in such assets sold. In addition, if a debtor conveys appreciated (or depreciated) property (i.e., property having an adjusted tax basis less (or greater) than its fair market value) to a creditor in cancellation of debt, the debtor must recognize taxable gain or loss (which may be ordinary income or loss, capital gain or loss, or a combination of each) equal to the excess or shortfall, respectively, of such fair market value over the debtor’s adjusted tax basis in such property.

On the Effective Date, the Liquidating Debtors and the Liquidating Trustee shall execute the Liquidating Trust Agreement, and shall take all steps necessary to establish the Liquidating Trust in accordance with this Combined Plan and Disclosure Statement, which shall be for the benefit of the Holders of Claims that receive beneficial interests in the Liquidating Trust. Additionally, on the Effective Date the Liquidating Debtors shall transfer and/or assign and shall be deemed to transfer and/or assign to the Liquidating Trust all of their rights, title and interest in and to all of the Liquidating Trust Assets, and in accordance with Bankruptcy Code section 1141, the Liquidating Trust Assets shall automatically vest in the Liquidating Trust free and clear of all



Claims and Liens, subject only to (a) the beneficial interests in the Liquidating Trust, and (b) the expenses of the Liquidating Trust as provided for in the Liquidating Trust Agreement and herein.

The Liquidating Trust shall be governed by the Liquidating Trust Agreement and administered by the Liquidating Trustee. The powers, rights, responsibilities and compensation of Liquidating Trustee shall be specified in the Liquidating Trust Agreement. The Liquidating Trustee shall hold and distribute the Liquidating Trust Assets in accordance with this Combined Plan and Disclosure Statement and the Liquidating Trust Agreement. Other rights and duties of the Liquidating Trustee and the Holders of Claims that receive beneficial interests in Liquidating Trust shall be as set forth in the Liquidating Trust Agreement.

After the Effective Date, the Liquidating Debtors shall have no interest in the Liquidating Trust Assets. To the extent that any Liquidating Trust Assets cannot be transferred to the Liquidating Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by Bankruptcy Code section 1123 or any other provision of the Bankruptcy Code, such Liquidating Trust Assets shall be deemed to have been retained by the Liquidating Debtors and the Liquidating Trust shall be deemed to have been designated as a representative of the Liquidating Debtors pursuant to Bankruptcy Code section 1123(b)(3)(B) to enforce and pursue such Liquidating Trust Assets on behalf of the Liquidating Debtors for the benefit of the Holders of Claims that receive beneficial interests in Liquidating Trust. Notwithstanding the foregoing, all net proceeds of such Liquidating Trust Assets shall be transferred to the Liquidating Trust to be distributed in accordance with this Combined Plan and Disclosure Statement.

Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, the Liquidating Trust is intended to be treated as a “liquidating trust” for U.S. federal income tax purposes pursuant to Treasury Regulation section 301.7701-4(d), and the Liquidating Trustee will take this position on the Liquidating Trust’s tax return accordingly. The beneficiaries of the Liquidating Trust shall be treated as the grantors of the Liquidating Trust and as the deemed owners of the Liquidating Trust Assets. For U.S. federal income tax purposes, the transfer of assets to the Liquidating Trust will be deemed to occur as (a) a first-step transfer of the Liquidating Trust Assets to the Holders of Allowed Claims, and (b) a second-step transfer by such Holders to the Liquidating Trust. As a result, the transfer of the Liquidating Trust Assets to the Liquidating Trust should be a taxable transaction, and the Debtors should recognize gain or loss equal to the difference between the tax basis and fair value of such assets. In addition, as detailed above, if the total fair value of the Liquidating Trust Assets is less than the total of the Allowed Claims (that have been deducted for federal income tax purposes) the Debtors will recognize COD income equal to such difference. As soon as possible after the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Liquidating Trustee shall make a good faith valuation of the Liquidating Trust Assets. This valuation will be made available from time to time, as relevant for tax reporting purposes. Each of the Liquidating Debtors, Liquidating Trustee, and the Holders of Claims receiving beneficial interests in the Liquidating Trust shall take consistent positions with respect to the valuation of the Liquidating Trust Assets, and such valuations shall be utilized for all U.S. federal income tax purposes. The Liquidating Trust shall in no event be dissolved later than 5 years from the creation of such Liquidating Trust unless the Bankruptcy Court, upon motion within the 6-month period prior to the 5<sup>th</sup> anniversary (or within the 6-month period prior to the end of an extension period), determines that a fixed period extension (not to exceed 5 years with a private

letter ruling from the IRS or an opinion of counsel satisfactory to the Liquidating Trustee that any further extension would not adversely affect the status of the trust as a liquidating trust for U.S. federal income tax purposes) is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets.

If the Liquidating Trust were not to qualify as a “liquidating trust”, as described above, the Liquidating Trustee will take the position that it is a partnership for U.S. federal income tax purposes. In either case, each Liquidating Trust Beneficiary will include its distributive share of income, as reported to it by the Liquidating Trustee, and may not receive sufficient cash to satisfy its tax liability. The Internal Revenue Service may take the position that the Liquidating Trust should be taxed as a corporation for U.S. federal income tax purposes. If the Internal Revenue Service were to prevail in that position, the Liquidating Trust would be subject to U.S. federal income tax which would reduce the return to a Liquidating Trust Beneficiary. Each Liquidating Trust Beneficiary is urged to consult with its own tax advisor.

As detailed above, the Debtors will have several transactions that could give rise to taxable income or loss being generated due to implementation of the Combined Plan and Disclosure Statement. First, when the Debtors consummated the Sale of substantially all of their operating assets to Digiatech for the Credit Bid plus certain additional cash payments and the assumption of the Assumed Liabilities as set forth in the APA. Second, as detailed above, the transfer of the Liquidating Trust Assets to the Liquidating Trust could give rise to taxable income or loss equal to the difference between the tax basis and fair value of the Liquidating Trust Assets.

With respect to any COD income recognized due the transfer of the Liquidating Trust Assets to the Liquidating Trust, Section 108(a)(1)(A) of the Tax Code should apply and thus any COD income should be excluded. However, any NOLs (or other tax attributes) remaining after the use of said NOLs to offset taxable income generated by the asset transfers will be reduced by the amount of such COD income excluded above.

## **2. Consequences to Holders of Class 5 General Unsecured Claims**

Pursuant to this Combined Plan and Disclosure Statement, each Holder of an Allowed General Unsecured (Class 5) Claim against the Liquidating Debtors will receive in satisfaction of its Claim a *pro rata* beneficial interest in the Liquidating Trust which includes all of the Liquidating Trust Assets remaining after satisfaction of all Liquidating Trust Expenses and senior Claims. The U.S. federal income tax treatment to Holders of Allowed General Unsecured Claims may depend in part on the tax basis a Holder has in its Claim and, in some circumstances, what gave rise to or the nature of the Holder’s Claim.

As set forth above, for federal income tax purposes, the Class 5 General Unsecured Claims will be satisfied by the deemed transfer to them of the Liquidating Trust Assets followed by a deemed contribution of said assets to the Liquidating Trust in exchange for their *pro rata* beneficial interest in said Liquidating Trust. It is intended that the Liquidating Trust be treated as a liquidating trust for federal income tax purposes and, if it does not so qualify, as a partnership for federal income tax purposes.

Because of the nature of the Liquidating Trust Assets, the deemed transfer by the Liquidating Debtors of the Liquidating Trust Assets could cause a Holder to recognize gain, or loss, due to said transfer. The Liquidating Trust Assets that will be deemed transferred to Holders of Class 5 General Unsecured Claims consist of various assets including the Estate Causes of Action (and proceeds thereof) and the Liquidating Trust Funding after satisfaction of all senior Claims. To the extent that the (i) fair market value of the *pro rata* beneficial interest in the Liquidating Trust Assets that a Holder of a Class 5 General Unsecured Claim receives, exceeds (or is less than) (ii) the Holder's tax basis in such Claim, the Holder should recognize gain (or loss) on such deemed transfer equal to such excess. Such gain (or loss) could be capital or ordinary in nature depending on the genesis and nature of the Claim being satisfied.

#### **F. Certain Risk Factors to Be Considered**

Holders of Claims who are entitled to vote on the Combined Plan and Disclosure Statement should read and carefully consider the following factors, before deciding whether to vote to accept or reject the Combined Plan and Disclosure Statement.

Effect of Failure to Confirm the Combined Plan and Disclosure Statement. If the Combined Plan and Disclosure Statement is not confirmed by the requisite majorities in number and amount as required by Bankruptcy Code section 1126, or if any of the other confirmation requirements imposed by the Bankruptcy Code are not met, the Chapter 11 Cases may not have sufficient funding to proceed, which may result in conversion to a case under chapter 7 of the Bankruptcy Code or dismissal of the Chapter 11 Cases.

"Cramdown." While the Plan Proponents believe that the requirements of Bankruptcy Code section 1129 have been met, the Bankruptcy Court is afforded discretion to determine whether dissenting Holders of Claims would receive more if the Liquidating Debtors were liquidated under chapter 7 of the Bankruptcy Code.

Claims Estimation. While the Plan Proponents have undertaken their best efforts to estimate the amount of Claims in each Class is correct, the actual amount of allowed Claims may differ from the estimates and thus the potential Distributions to Creditors may be different.

Estate Causes of Action. Pursuant to the Combined Plan and Disclosure Statement, the Liquidating Trust Assets, including the Estate Causes of Action and the Insider Avoidance Actions will be transferred to the Liquidating Trust upon the establishment of the Liquidating Trust upon the Effective Date. The Estate Causes of Action and Insider Avoidance Actions include Causes of Action which are not released, waived, or transferred pursuant to the APA, the Combined Plan and Disclosure Statement, or otherwise. There is no assurance that the Liquidating Trust will be successful in prosecuting any Estate Cause of Action or generate sufficient proceeds from the Estate Causes of Action for Distribution. To the extent distributions are possible from the Estate Causes of Action, Insider Avoidance Actions or other Causes of Action, the timing of any such Distribution is uncertain.

Delays. Any delay in Confirmation of the Combined Plan and Disclosure Statement or delay to the Effective Date could result in additional Statutory Fees, Administrative Expense Claims and/or other expenses. This may endanger ultimate approval of the effectiveness of the

Combined Plan and Disclosure Statement or result in a decreased recovery for Holders of Claims entitled to a Distribution.

Sufficient Cash to Pay Claims. The Combined Plan and Disclosure Statement and the process for confirming the same is subject to the Debtors' and Estates' performance under and use of the Wind-Down Amount and other remaining Assets. To the extent that the Liquidating Debtors or the Estates incur costs beyond the Wind-Down Amount or other Cash held by the Debtors, the Holders of Administrative Expense Claims, Professional Fee Claims, Priority Tax Claims, Secured Tax Claims and Other Priority Claims may not be paid in full.

Sufficient Cash for Liquidating Trust Distributions. There is no assurance that the Liquidating Trust Assets will be sufficient to fund the Liquidating Trust's expenses to enable the Liquidating Trust to hold and liquidate the Liquidating Trust Assets as envisioned under the Combined Plan and Disclosure Statement. Accordingly, there is no assurance that the Liquidating Trust will make any Distributions, the amount, if any, or the timing on which such Distributions may be made.

#### **G. Feasibility**

The Bankruptcy Code requires that, in order for a plan to be confirmed, the Bankruptcy Court must find that confirmation of such plan is not likely to be followed by the liquidation or need for further reorganization of the debtors unless contemplated by the plan. 11 U.S.C. § 1129(a)(1).

Here, the Combined Plan and Disclosure Statement provides for the liquidation and distribution of all of the Liquidating Debtors' remaining Assets. Accordingly, the Plan Proponents believe all chapter 11 plan obligations will be satisfied without the need for further reorganization of the Liquidating Debtors.

#### **H. Best Interests Test and Alternatives to the Combined Plan and Disclosure Statement**

Notwithstanding acceptance of a plan by a voting impaired class, if an impaired class does not vote to accept the plan, the Bankruptcy Court must determine that the plan provides to each member of such impaired class a recovery, on account of each member's claim or interest, that has a value, as of the effective date, at least equal to the recovery that such class member would receive if the debtor was liquidated under Chapter 7. 11 U.S.C. § 1129(a)(7). This inquiry is often referred to as the "best interests of creditors test."

In a typical Chapter 7 case, a trustee is elected or appointed to liquidate a debtor's assets for distribution to creditors in accordance with the priorities set forth in the Bankruptcy Code. Generally, secured creditors are paid first from the proceeds of sales of the properties securing their liens. If any assets are remaining in the bankruptcy estate after satisfaction of the secured creditors' claims, administrative expenses are next to receive payment, followed by priority claims such as certain tax claims. Unsecured creditors are paid from any remaining proceeds, according to their respective priorities. Unsecured creditors with the same priority share Pro Rata. Finally, equity interest holders receive the balance that remains, if any, after all creditors are paid in full.

Here, the Plan Proponents believe the Combined Plan and Disclosure Statement satisfies the best interests test as the Liquidation Analysis, attached hereto as Exhibit D, demonstrates that the recoveries expected to be available to Holders of Allowed Claims under the Combined Plan and Disclosure Statement will be greater than the recoveries expected in a liquidation under chapter 7 of the Bankruptcy Code.

The Purchased Assets have already been sold to Purchaser under the Sale Order and the Liquidating Debtors have limited Assets remaining in their Estates. While a liquidation under chapter 7 of the Bankruptcy Code would have the same goal, the Plan Proponents believe that the Combined Plan and Disclosure Statement provides the best source of recovery for several reasons. First, liquidation under chapter 7 of the Bankruptcy Code would not provide for a timely distribution and likely no distribution at all. Second, Distributions would likely be smaller because of the fees and expenses incurred in a liquidation under chapter 7 of the Bankruptcy Code. The Plan Proponents believe that a liquidation under chapter 7 would not provide for a timely distribution and that such distributions would likely be smaller because a chapter 7 trustee and his/her professionals would have to expend significant time and resources familiarizing themselves with the history of the Liquidating Debtors and the Causes of Action prior to pursuing any such claims.

Under the Combined Plan and Disclosure Statement, the Liquidating Trust Expenses, including the fees of the Liquidating Trustee and fees for the Liquidating Trustee's professionals, will be paid out of the Liquidating Trust Assets prior to any Distribution being made to creditors. Additionally, pursuant to the Committee Settlement, Digiotech has agreed to waive any recovery on its Deficiency Claim.

At this time, there are no alternative plans available to the Liquidating Debtors. The Sale Closing has already occurred, and the Liquidating Debtors are no longer a going concern enterprise and have few Assets remaining, if any, to administer. Therefore, the Plan Proponents believe that the Combined Plan and Disclosure Statement provides the greatest possible value to all stakeholders under the circumstances, and has the greatest chance to be confirmed and consummated.

## **V. Unclassified Claims**

### **A. Administrative Expense Claims**

Other than Professional Fee Claims set forth below, Administrative Expense Claims incurred or arising on or prior to April 5, 2021 are governed by the Bar Date Order and the General Bar Date.

Requests for allowance and payment of Administrative Expense Claims arising between April 6, 2021 and the Effective Date must be filed no later than the Administrative Claim Bar Date. Any such Administrative Expense Claim must be filed with the Bankruptcy Court with a copy served on Debtors' counsel, Committee counsel, and the Liquidating Trustee and its counsel by regular mail, overnight courier or hand delivery to the Claims Agent at the following address: Knotel, Inc. Claims Agent, c/o Omni Agent Solutions, 5955 De Soto Ave., Suite 100, Woodland Hills, CA 91367, so as to be received by the Administrative Expense Claim Bar Date.

Holders of Administrative Expense Claims that do not file requests for the allowance and payment thereof on or before the applicable General Bar Date or Administrative Claim Bar Date shall forever be barred from asserting such Administrative Expense Claims against the Liquidating Debtors or the Estates, the Liquidating Trust or the Liquidating Trust Assets.

Except to the extent that a Holder of an Allowed Administrative Expense Claim agrees to a less favorable treatment or has been paid by any applicable Liquidating Debtor or the Purchaser prior to the Effective Date, each Holder of an Allowed Administrative Expense Claim will be paid the full unpaid amount of such Allowed Administrative Expense Claim in Cash (or other available funds in the Estate) from the Wind-Down Amount, or the Liquidating Trust Assets: (a) on the Effective Date or as soon thereafter as is reasonably practicable or, if not then due, when such Allowed Administrative Expense Claim is due or as soon thereafter as is reasonably practicable; (b) if an Administrative Expense Claim is Allowed after the Effective Date, on the date such Administrative Expense Claim is Allowed or as soon thereafter as is reasonably practicable or, if not then due, when such Allowed Administrative Expense Claim is due; or (c) at such time and upon such terms as set forth in an order of the Bankruptcy Court; *provided, however*, that Administrative Expense Claims that have been assumed by the Purchaser pursuant to the APA shall not be an obligation of the Debtors or the Liquidating Trust but solely of the Purchaser.

#### **B. Professional Fee Claims**

All Professionals or other Persons requesting compensation or reimbursement of Professional Fee Claims for services rendered before the Effective Date (including compensation requested by any Professional or other entity for making a substantial contribution in the Chapter 11 Cases) shall File an application for final allowance of compensation and reimbursement of expenses no later than the Administrative Claim Bar Date.

The Final Fee Hearing to determine the allowance of Professional Fee Claims shall be held as soon as practicable after the Administrative Claim Bar Date. The Liquidating Debtors or the Liquidating Trustee shall File a notice of the Final Fee Hearing. Such notice shall be posted on the Case Website, and served upon counsel for the Creditors' Committee, all Professionals, and the U.S. Trustee.

Allowed Professional Fee Claims of the Professionals shall be paid by the Liquidating Debtors/Liquidating Trustee: (a) as soon as is reasonably practicable following the later of (i) the Effective Date and (ii) the date upon which the order relating to any such Allowed Professional Fee Claims is entered by the Bankruptcy Court; or (b) upon such other terms as agreed by the Holder of such an Allowed Professional Fee Claims.

Allowed Professional Fee Claims shall be paid in full in Cash from the Professional Fee Escrow, and if necessary, the Wind-Down Amount or other available Liquidating Trust Assets, and in accordance with the Final Orders entered in the Chapter 11 Cases. Professional fees in respect of the CCAA Proceedings will be addressed by the Canadian Court.

#### **C. DIP Facility Claims**

Except as set forth herein or to the extent that the Holder of an Allowed DIP Facility Claim agrees to less favorable treatment in exchange for full and final satisfaction, settlement, release,

and discharge of all DIP Facility Claims, all amounts outstanding under the DIP Facility as of the Effective Date shall be deemed satisfied as a result of the Sale and Committee Settlement. The Holder of the DIP Facility Claims is not entitled to receive and will not receive any Distribution on account of the DIP Facility Claim or any Deficiency Claim under the Combined Plan and Disclosure Statement, as a result of the Committee Settlement; *provided, however*, that Holder of the Deficiency Claim is entitled to vote in Class 5.

**D. Priority Tax Claims**

Except to the extent the Liquidating Debtors and/or Liquidating Trustee and the Holder of an Allowed Priority Tax Claim agree to a different and less favorable treatment, the Liquidating Debtors, shall pay, in full satisfaction and release of such Claim, to each holder of a Priority Tax Claim, Cash from the Wind-Down Amount or as otherwise provided in the Liquidating Trust Agreement, in an amount equal to such Allowed Priority Tax Claim, on the later of: (a) the Effective Date and (b) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, or as soon thereafter as is reasonably practicable; *provided, however*, that any Allowed Priority Tax Claims assumed by the Purchaser pursuant to the Sale Order and APA shall be the sole responsibility of the Purchaser.

All Allowed Priority Tax Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business as such obligations become due from the Wind-Down Amount or, pursuant to the Sale Order and APA, by the Purchaser. After the Allowed Priority Tax Claim is paid in full, any Liens securing such Allowed Priority Tax Claim shall be deemed released, terminated and extinguished, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or the vote, consent, authorization or approval of any Person.

**E. Statutory Fees**

All Statutory Fees incurred prior to the Effective Date shall be paid by the Debtors by the Effective Date. The Debtors shall file all monthly and quarterly reports, as applicable, due prior to the Effective Date when they become due. After the Effective Date, the Liquidating Trustee shall pay any and all Statutory Fees when due and payable. To the greatest degree possible, such payments shall be made from the Liquidating Trust Assets. After the Effective Date, the Liquidating Trustee shall File with the Bankruptcy Court quarterly reports when they become due, which reports shall include a separate schedule of any disbursements made by the Liquidating Trustee during the applicable period.

**VI. Classification and Treatment of Claims and Interests**

**A. Classification of Claims and Interests**

The below categories of Claims and Interests classify such Claims and Interests for all purposes, including voting, Confirmation, and Distribution pursuant hereto and pursuant to Bankruptcy Code sections 1122 and 1123.

**B. Treatment of Claims and Interests**

**1. Class 1 – First Lien Claims**

- a. *Classification:* Class 1 consists of the First Lien Claims.
- b. *Treatment:* The First Lien Claims were included as part of the Credit Bid and satisfied through the Sale in full and final satisfaction, settlement, and release of each of the First Lien Claims. The Liens securing the Allowed First Lien Claims shall be deemed released, terminated and extinguished, in each case without further notice to or orders of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or the vote, consent, authorization or approval of any Person. Holders of Claims in Class 1 are not entitled to receive and will not receive any Distribution under the Combined Plan and Disclosure Statement.
- c. *Voting:* Class 1 is Unimpaired under the Combined Plan and Disclosure Statement. Holders of First Lien Claims are conclusively presumed to have accepted the Combined Plan and Disclosure Statement pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of an Allowed First Lien Claim are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

**2. Class 2 – Second Lien Claims**

- a. *Classification:* Class 2 consists of the Second Lien Claims.
- b. *Treatment:* The Second Lien Claims were included as part of the Credit Bid and satisfied through the Sale in full and final satisfaction, settlement, and release of each of the Second Lien Claims. The Liens securing the Allowed Second Lien Claims shall be deemed released, terminated and extinguished, in each case without further notice to or orders of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or the vote, consent, authorization or approval of any Person. Holders of Claims in Class 2 are not entitled to receive and will not receive any Distribution under the Combined Plan and Disclosure Statement.
- c. *Voting:* Class 2 is Unimpaired under the Combined Plan and Disclosure Statement. Holders of Second Lien Claims are conclusively presumed to have accepted the Combined Plan and Disclosure Statement pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of an Allowed Second Lien Claim are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement.



**3. Class 3 – Other Secured Claims**

- a. *Classification:* Class 3 consists of Other Secured Claims.
- b. *Treatment:* Except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment, on the Effective Date or as soon as practical thereafter, in full and final satisfaction, compromise, settlement, and release of and exchange for such Allowed Other Secured Claim, each Holder of an Allowed Other Secured Claim shall receive, at the option of the applicable Liquidating Debtor or Liquidating Trustee, as applicable:
  - (i) a transfer by conveyance, assignment or otherwise of the Debtors' right, title and interest in and to the collateral securing such Claim; or
  - (ii) such other treatment rendering such Holder's Allowed Other Secured Claim Unimpaired.
- c. *Voting:* Class 3 is Unimpaired under the Combined Plan and Disclosure Statement. Holders of Allowed Other Secured Claims are conclusively presumed to have accepted the Combined Plan and Disclosure Statement pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of an Allowed Other Secured Claim are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

**4. Class 4 – Other Priority Claims**

- a. *Classification:* Class 4 consists of all Allowed Other Priority Claims against the Liquidating Debtors.
- b. *Treatment:* Except to the extent that a Holder of an Allowed Other Priority Claim agrees to a less favorable treatment of its Allowed Other Priority Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other Priority Claim, each such Holder thereof shall receive payment in full, in Cash by the Liquidating Trustee from the Liquidating Trustee Assets over time on the earlier of the date that is (a) on or as soon as reasonably practicable after the Effective Date if such Other Priority Claim is Allowed as of the Effective Date, or (b) on or as soon as reasonably practicable after the date such Other Priority Claim is Allowed, if such Other Priority Claim is not Allowed as of the Effective Date, *provided, however*, that any Other Priority Claim that is the obligation of the Purchaser under the APA shall be the sole obligation of the Purchaser and shall not receive any distribution from the Liquidating Debtors or the Liquidating Trust.

The Debtors estimate that all such Allowed Other Priority Claims have either been paid in full pursuant to a First Day Order or are the obligation of the Purchaser pursuant to the Sale Order and APA and therefore the Estate will not have any responsibility for such Allowed Other Priority Claims. Class 4 is unimpaired and is deemed to accept the Combined Plan and Disclosure Statement.

- c. *Voting:* Class 4 is Unimpaired under the Plan. Holders of Allowed Other Priority Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such Holders in Class 4 are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

**5. Class 5 – General Unsecured Claims**

- a. *Classification:* Class 5 consists of all Allowed General Unsecured Claims against the Liquidating Debtors.
- b. *Treatment:* Except to the extent that a Holder of a General Unsecured Claim agrees to a less favorable treatment of its Allowed General Unsecured Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed General Unsecured Claim, Allowed Class 5 Claims will be entitled to receive a Pro Rata share of the Cash to be distributed from the Liquidating Trust, if any, after payment of (or the establishment of a sufficient Reserve for) all Liquidating Trust Expenses and all senior Claims, including Allowed Administrative Claims (including Allowed Professional Fee Claims), Allowed Priority Tax Claims, and Allowed Other Priority Claims.

For the avoidance of doubt, and notwithstanding any Filed Proof(s) of Claim to the contrary, as a result of the Committee Settlement, Digiatech has a Deficiency Claim in this Class 5 solely for voting purposes but is not entitled to any Distribution as part of Class 5 on account of its Deficiency Claim.

- c. *Voting:* Class 5 is Impaired under the Plan. Holders of Allowed General Unsecured Claims are entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

**6. Class 6 – Interests**

- a. *Classification:* Class 6 consists of all Interests in the Liquidating Debtors.
- b. *Treatment:* Holders of Interests in the Liquidating Debtors will retain no ownership interests in the Liquidating Debtors under the

Plan, receive no distribution on account thereof, and such Interests shall be cancelled effective as of the Effective Date.

- c. *Voting:* Class 6 is Impaired under the Plan. Holders of Interests or other equity interests are conclusively presumed to have rejected the Plan pursuant to section 1126(d) of the Bankruptcy Code and, therefore, the Holders of Interests or other equity interests are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

### **C. Impaired Claims and Interests**

Under the Combined Plan and Disclosure Statement, Holders of Claims in Classes 5 and 6 are the Impaired Classes pursuant to Bankruptcy Code section 1124 because the Combined Plan and Disclosure Statement alters the legal, equitable or contractual rights of the Holders of such Claims treated in such Class.

### **D. Cramdown and No Unfair Discrimination**

To the extent that any Impaired Class does not vote to accept the Combined Plan and Disclosure Statement, the Plan Proponents will seek Confirmation pursuant to Bankruptcy Code section 1129(b). This provision allows the Bankruptcy Court to confirm a plan accepted by at least one impaired class so long as it does not unfairly discriminate and is fair and equitable with respect to each class of claims and interest that is impaired and has not accepted the plan. Colloquially, this mechanism is known as a “cramdown.”

The Plan Proponents believe the treatment of Claims and Interests described in the Combined Plan and Disclosure Statement are fair and equitable and do not discriminate unfairly. The proposed treatment of Claims and Interests provides that each Holder of such Allowed Claim or Interest will be treated identically within its respective class and that, except when agreed to by such Holder, no Holder of any Claim or Interest junior will receive or retain any property on account of such junior Claim or Interest.

## **VII. Confirmation Procedures**

### **A. Confirmation Procedures**

#### **1. Combined Hearing**

The Confirmation Hearing before the Bankruptcy Court has been scheduled for **June 29, 2021 at 10:00 a.m. (prevailing Eastern time)** at the United States Bankruptcy Court, 824 North Market Street, 5th Floor, Courtroom #4, Wilmington, Delaware 19801 (the Confirmation Hearing will most likely be conducted by Zoom or a similar service), to consider (a) approval of the Combined Plan and Disclosure Statement as providing adequate information pursuant to Bankruptcy Code section 1125, and (b) confirmation of the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code section 1129. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing and Filed with the Court.

## 2. Procedure for Objections

Any objection to approval or confirmation of the Combined Plan and Disclosure Statement must be made in writing and specify in detail the name and address of the objector, all grounds for the objection and the amount of the Claim held by the objector. Any such objection must be Filed by **June 21, 2021 at 4:00 p.m. (prevailing Eastern time)** with the Bankruptcy Court and served on (i) counsel to the Debtors, Milbank LLP, 2029 Century Park East, 33rd Floor, Los Angeles, California 90067, Attn: Mark Shinderman, Esq. (mshinderman@milbank.com) and Daniel Denny, Esq. (ddenny@milbank.com), (ii) counsel to the Official Committee of Unsecured Creditors, Lowenstein Sandler LLP, One Lowenstein Drive, Roseland, New Jersey 07068, Attn: Michael S. Etkin (metkin@lowenstein.com), Wojciech F. Jung (wjung@lowenstein.com), and Jennifer B. Kimble (jkimble@lowenstein.com) and Potter Anderson & Corroon LLP, 1313 N. Market Street, 6th Floor, Wilmington, Delaware 19801, Attn: Christopher M. Samis, Esq. (csamis@potteranderson.com) and L. Katherine Good, Esq. (kgood@potteranderson.com); and (iii) the Office of the United States Trustee for the District of Delaware, Attn: Joseph McMahon (Joseph.McMahon@usdoj.gov). Unless an objection is timely Filed and served, it may not be considered by the Bankruptcy Court.

## 3. Requirements for Confirmation

The Bankruptcy Court will confirm the Combined Plan and Disclosure Statement only if the requirements of Bankruptcy Code section 1129 are met. As set forth in the Combined Plan and Disclosure Statement, the Plan Proponents believe that the Combined Plan and Disclosure Statement: (a) meets the cramdown requirements; (b) meets the feasibility requirements; (c) is in the best interests of creditors; (d) has been proposed in good faith; and (e) meets all other technical requirements imposed by the Bankruptcy Code.

Additionally, pursuant to Bankruptcy Code section 1126, under the Combined Plan and Disclosure Statement, only Holders of Claims in Impaired Classes are entitled to vote.

### B. Solicitation and Voting Procedures

#### 1. Deemed Substantive Consolidation

The Combined Plan and Disclosure Statement is being proposed as a joint plan of liquidation solely for the Liquidating Debtors for administrative purposes only and constitutes a separate chapter 11 plan of liquidation for each Liquidating Debtor. Solely for purposes of voting on, and receiving Distributions under the Combined Plan and Disclosure Statement, the Estates of the Liquidating Debtors are deemed to be substantively consolidated, *i.e.*, (i) all assets and liabilities of the Liquidating Debtors are deemed to be assets and liabilities, respectively, of a single Estate; (ii) all guarantees by one Liquidating Debtor of the obligations of another Liquidating Debtor are deemed eliminated; (iii) any joint and several liability of any of the Liquidating Debtors are deemed to be one Claim against a single Estate; and (iv) Proofs of Claim filed against multiple Liquidating Debtors are deemed to be one Claim against a single Estate. This deemed consolidation will not affect (i) the legal and corporate structures of the Liquidating Debtors; (ii) the rights of the Holders of Allowed Claims to receive Distributions from any insurance policies or proceeds of such policies; (iii) any Liens granted or arising any time prior to the Effective Date

or the priority of those Liens; or (iv) the rights of the Debtors or Liquidating Trustee to contest alleged setoff or recoupment rights on the grounds of lack of mutuality under section 553 of the Bankruptcy Code and other applicable law.

As a result, Claims Filed against multiple Liquidating Debtors seeking recovery of the same debt shall only be entitled to receive a single Distribution from the consolidated Estates in accordance with the Combined Plan and Disclosure Statement to the extent such Claim is an Allowed Claim. Claims of Liquidating Debtors against other Liquidating Debtors, including Intercompany Claims, shall be disregarded for both voting and distribution purposes. This deemed substantive consolidation shall have no effect on any claims or defenses of any Person or Entity or on any right of setoff, offset or recoupment rights. Voting will be tabulated on a substantively consolidated basis.

This deemed substantive consolidation is appropriate and justified under the circumstances of the Liquidating Debtors' Chapter 11 Cases because it (i) causes no harm to the Liquidating Debtors' creditors because (a) the remaining Assets are consolidated at the Liquidating Debtors and (b) the holders of the Prepetition Secured Debt and the DIP Facility Claims have/had Secured Claims against the majority of the Liquidating Debtors, and (ii) avoids the costs of allocating consideration and litigation-related costs among the Liquidating Debtors' Estates, thereby avoiding diluting creditor recoveries as a result of increased professional fees, particularly given there has been no allocation of the Liquidating Trust Assets among the various Liquidating Debtors.

## **2. Eligibility to Vote on the Combined Plan and Disclosure Statement**

Except as otherwise ordered by the Bankruptcy Court, only Holders of Claims in Class 5 against the Liquidating Debtors may vote on the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code section 1126. To vote on the Combined Plan and Disclosure Statement, a Holder must hold a Claim in Class 5 and have timely Filed a Proof of Claim or have a Claim that is identified on the Schedules and is not listed as disputed, unliquidated, or contingent, or be the holder of a Claim that has been temporarily Allowed for voting purposes only under Bankruptcy Rule 3018(a).

**ACCORDINGLY, A BALLOT FOR ACCEPTANCE OR REJECTION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT IS BEING PROVIDED ONLY TO HOLDERS OF CLAIMS IN CLASS 5.**

## **3. Solicitation Package**

The Solicitation Packages will contain: (a) the Combined Plan and Disclosure Statement and Schedules A through C thereto; (b) the Interim Approval and Procedures Order, excluding the exhibits annexed thereto; (c) the Combined Hearing Notice; (d) an appropriate Ballot, including voting instructions and a pre-addressed, postage prepaid return envelope; and (e) such other materials as the Bankruptcy Court may direct or approve or that the Plan Proponents deem appropriate.

Holders of Claims in non-voting classes that are deemed to either accept or reject the Combined Plan and Disclosure Statement will receive packages consisting of: (a) the Combined Hearing Notice; and (b) a notice of such Holder's non-voting status.

Copies of the Combined Plan and Disclosure Statement and all exhibits annexed thereto shall be available on the Claims and Noticing Agent's website at <https://www.omniagentsolutions.com/knotel>. Any creditor or party-in-interest can request a hard copy of the Combined Plan and Disclosure Statement be sent to them by regular mail by calling Omni Agent Solutions at 866-771-0565 (U.S. & Canada) or 818-581-2989 (International) during regular business hours. Canadian creditors may also contact the Information Officer by emailing [rgruneir@alvarezandmarsal.com](mailto:rgruneir@alvarezandmarsal.com) for assistance with obtaining copies of the relevant documents.

#### **4. Voting Procedures and Voting Deadline**

The Voting Record Date for determining which Holders of Claims in Class 5 may vote on the Combined Plan and Disclosure Statement is [May 12, 2021].

The Voting Deadline by which Omni Agent Solutions must *RECEIVE* original Ballots is **June 21, 2021 at 4:00 p.m. (prevailing Eastern time)**. In order to be counted as a vote to accept or reject the Combined Plan and Disclosure Statement, each Ballot must be properly delivered to Omni Agent Solutions by either (i) first class mail, overnight courier, or hand delivery to Omni Agent Solutions at the following address: Ballot Processing, c/o Omni Agent Solutions, 5955 De Soto Ave., Suite 100, Woodland Hills, CA 91367, or (ii) online transmission through Omni Agent Solutions' customized, electronic balloting platform at <https://omniagentsolutions.com/KnotelBallotSubmission> ("**E-Ballot Portal**"). The E-Ballot Portal will be available on the Case Website for these Chapter 11 Cases. Holders of Claims in Class 5 may cast an E-Ballot and electronically sign and submit such electronic ballot via the E-Ballot Portal. Instructions for casting an electronic Ballot will be available on the Case Website.

If you are entitled to vote to accept or reject the Combined Plan and Disclosure Statement, a Ballot is enclosed. Please carefully review the Ballot instructions and complete the Ballot by: (a) indicating your acceptance or rejection of the Combined Plan and Disclosure Statement; and (b) signing and returning the Ballot to Omni Agent Solutions.

If you are a member of a Voting Class and did not receive a Ballot, received a damaged Ballot, or lost your Ballot, contact Omni Agent Solutions at: 866-771-0565 (U.S. & Canada) or 818-581-2989 (International) or at [KnotelBallot@omniagnt.com](mailto:KnotelBallot@omniagnt.com).

The following Ballots will not be counted or considered:

- (1) any Ballot received after the Voting Deadline, unless the Bankruptcy Court grants an extension to the Voting Deadline with respect to such Ballot or the Plan Proponents in their discretion agree to such extension;
- (2) any Ballot that is illegible or contains insufficient information;
- (3) any Ballot cast by a Person or Entity that does not hold a Claim in a Voting Class;

- (4) any Ballot timely received that is cast in a manner that indicates neither acceptance nor rejection of the Combined Plan and Disclosure Statement or that indicates both acceptance and rejection of the Combined Plan and Disclosure Statement;
- (5) simultaneous duplicative Ballots voted inconsistently;
- (6) Ballots partially rejecting and partially accepting the Combined Plan and Disclosure Statement;
- (7) any Ballot received other than the official form sent by Omni Agent Solutions;
- (8) any unsigned Ballot; or
- (9) any Ballot that is submitted by facsimile or e-mail except via the E-Ballot Portal, unless the Plan Proponents in their discretion agree to accept such Ballot by facsimile or e-mail.

#### **5. Deemed Acceptance or Rejection**

Holders of Claims in Classes 1 through 4 are unimpaired, and thus deemed to accept the Combined Plan and Disclosure Statement. Under Bankruptcy Code section 1126(f), Holders of such Claims are conclusively presumed to have accepted the Combined Plan and Disclosure Statement, and the votes of the Holders of such Claims shall not be solicited.

Holders of Class 6 Interests will not receive any distribution under the Combined Plan and Disclosure Statement. Pursuant to Bankruptcy Code section 1126(g), Holders of Class 6 Interests are conclusively deemed to have rejected the Combined Plan and Disclosure Statement and the votes of these Holders therefore shall not be solicited.

#### **6. Acceptance by an Impaired Class**

In order for the Combined Plan and Disclosure Statement to be accepted by an Impaired Class of Claims, a majority in number (i.e., more than half) and two-thirds in dollar amount of the Claims voting (of each Impaired Class of Claims) must vote to accept the Combined Plan and Disclosure Statement. At least one (1) Impaired Class of creditors, excluding the votes of insiders, must actually vote to accept the Combined Plan and Disclosure Statement. The Plan Proponents urge that you vote to accept the Combined Plan and Disclosure Statement.

**YOU ARE URGED TO COMPLETE, DATE, SIGN AND PROMPTLY MAIL THE BALLOT ATTACHED TO THE NOTICE. PLEASE BE SURE TO COMPLETE THE BALLOT PROPERLY AND LEGIBLY IDENTIFY THE EXACT AMOUNT OF YOUR CLAIM AND THE NAME OF THE CREDITOR.**

## **VIII. Implementation and Execution of the Combined Plan and Disclosure Statement**

### **A. Effective Date**

The Effective Date shall not occur until all conditions for the Effective Date are satisfied or otherwise waived in accordance with the terms of the Combined Plan and Disclosure Statement. Upon occurrence of the Effective Date, the Plan Proponents shall File the Notice of Effective Date, which shall also be posted on the Case Website.

### **B. Implementation of the Combined Plan and Disclosure Statement**

#### **1. General**

The Combined Plan and Disclosure Statement shall be implemented as described in detail below; *provided, however*, that the provisions contained in the Combined Plan and Disclosure Statement shall subject in all respects to the provisions of the Sale Order, the APA, the Committee Settlement and Final DIP Order; and nothing in the Combined Plan and Disclosure Statement shall be deemed to modify, negate, abrogate, overrule or supersede the terms and provisions of the aforementioned documents.

#### **2. Corporate Action; Officers and Directors; Effectuating Documents**

On the Effective Date, all matters and actions provided for under the Combined Plan and Disclosure Statement that would otherwise require approval of the officer(s) or director(s) of the Debtors, including the Responsible Officer, shall be deemed to have been authorized and effective in all respects as provided herein and shall be taken without any requirement for further action by the board of the Debtors.

The Responsible Officer shall be authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such other actions as may be necessary or appropriate to effectuate and implement the provisions of the Combined Plan and Disclosure Statement.

### **C. Records**

The Liquidating Trustee shall retain those documents maintained by the Liquidating Debtors in the ordinary course of business and which were not otherwise transferred to the Purchaser pursuant to the APA, subject to the terms of the Transition Services Agreement. After receipt of such documents, the Liquidating Trustee shall be authorized to destroy any documents he or she deems necessary or appropriate in his or her reasonable judgment; *provided, however*, that the Liquidating Trustee shall not destroy any documents, including but not limited to tax documents, that the Liquidating Trust is required to retain under applicable law.



## **D. Liquidating Trust**

### **1. Establishment of the Liquidating Trust**

The Liquidating Trust will be formed on the Effective Date in accordance with the Combined Plan and Disclosure Statement and pursuant to the Liquidating Trust Agreement for the purpose of, among other things, (i) implementing the Combined Plan and Disclosure Statement, (ii) prosecuting the Estate Causes of Actions, (iii) investigating and, if appropriate, pursuing other Causes of Action, (iv) administering, monetizing and/or liquidating the Liquidating Trust Assets, (v) resolving all Disputed Claims, and (v) making all distributions to Holders of Allowed Claims from the Liquidating Trust and as provided for in the Combined Plan and Disclosure Statement and the Liquidating Trust Documents.

The Liquidating Trust shall be established for the purpose of liquidating the Liquidating Trust Assets, prosecuting any Estate Causes of Action transferred to the Liquidating Trust to maximize recoveries for the benefit of the Liquidating Trust Beneficiaries, and making Distributions in accordance with the Plan to the Liquidating Trust Beneficiaries, with no objective to continue or engage in the conduct of a trade or business in accordance with Treas. Reg. § 301.7701-4(d). The Liquidating Trust is intended to qualify as a “grantor trust” for federal income tax purposes and, to the extent permitted by applicable law, for state and local income tax purposes, with the Liquidating Trust’s beneficiaries treated as grantors and owners of the trust.

Upon establishment of the Liquidating Trust, all Liquidating Trust Assets shall be deemed transferred to the Liquidating Trust without any further action of any of the Liquidating Debtors, or any employees, Officers, directors, members, partners, shareholders, agents, advisors, or representatives of the Liquidating Debtors. The Plan Proponents shall have the power and authority to enter into the Liquidating Trust Agreement on the Effective Date.

Prior to the Confirmation Date but in no event later than the filing of the Plan Supplement, the Committee shall designate a Person to serve as the initial Liquidating Trustee, pursuant to the Liquidating Trust Agreement.

The Liquidating Trust Agreement will be filed by no later than the filing of the Plan Supplement and will be considered an integral part of the Combined Plan and Disclosure Statement and is incorporated herein by reference in its entirety.

### **2. Appointment and Duties of Liquidating Trustee**

Appointment of the Liquidating Trustee. The Liquidating Trustee will be a disinterested Person designated by the Committee, in the Plan Supplement, which could be the Responsible Officer. The Liquidating Trustee shall not be required to give any bond or surety or other security for the performance of his or her duties unless otherwise ordered by the Bankruptcy Court. As set forth herein, the material terms of the Liquidating Trustee’s compensation are included in the Liquidating Trust Agreement. Effective as of the Effective Date, the board of directors and/or members/managers of each Liquidating Debtor shall be comprised solely of the Liquidating Trustee. Effective as of the Effective Date, to the extent not previously resigned, each member of the Debtors’ Board, officer, manager or member of each Debtor shall be deemed to have resigned, and shall have no continuing obligations to the Liquidating Debtors or Dismissed Debtors on or

after the Effective Date. Effective as of the Effective Date, the sole officer/director/member/manager of each Liquidating Debtor shall be the Liquidating Trustee.

The Liquidating Trustee shall carry out the duties as set forth in this Section VIII.D and in the Liquidating Trust Agreement. Pursuant to Bankruptcy Code section 1123(b)(3), the Liquidating Trustee shall be deemed the appointed representative to, and may pursue, litigate, and compromise and settle any such rights, claims, and Estate Causes of Action and any other Causes of Action in accordance with the best interests of and for the benefit of the Liquidating Trust Beneficiaries. In the event that the Liquidating Trustee resigns, is removed, terminated or otherwise unable to serve as the Liquidating Trustee, then a successor shall be appointed as set forth in the Liquidating Trust Agreement. Any successor Liquidating Trustee appointed shall be bound by and comply with the terms of the Combined Plan and Disclosure Statement, the Confirmation Order and the Liquidating Trust Agreement.

Responsibilities and Authority of Liquidating Trustee. The responsibilities and authority of the Liquidating Trustee shall include: (a) establishing reserves and investing Cash; (b) liquidating non-Cash Liquidating Trust Assets; (c) retaining and paying professionals as necessary to carry out the purposes of the Liquidating Trust; (d) preparing and filing tax returns for the Liquidating Debtors (and the Debtors through the Effective Date) and the Liquidating Trust as set forth herein; (e) preparing and filing reports and other documents necessary to conclude and close the Chapter 11 Cases; (f) objecting to, reconciling, seeking to subordinate, compromising or settling any or all Claims and Interests, and administering Distributions on account of the Holders of Allowed Claims that are Liquidating Trust Beneficiaries pursuant to the terms of this Combined Plan and Disclosure Statement and the Liquidating Trust Agreement; (g) evaluating, filing, litigating, settling, or otherwise pursuing any Estate Causes of Action and other Claims and Causes of Action; (h) abandoning any property of the Liquidating Trust that cannot be sold or distributed economically; (i) making interim and final distributions of Liquidating Trust Assets; (j) winding up the affairs of the Liquidating Trust and dissolving it under applicable law; (k) destroying records; and (l) such other responsibilities as may be vested in the Liquidating Trustee pursuant to the Combined Plan and Disclosure Statement, the Liquidating Trust Agreement, the Confirmation Order or Bankruptcy Court order or as may be necessary and proper to carry out the provisions of the Combined Plan and Disclosure Statement. For the avoidance of doubt, to the extent any action needs to be taken with respect to or on the behalf of the Dismissed Debtors, the Liquidating Trustee shall be authorized to take such action on behalf of the Dismissed Debtors.

Powers of the Liquidating Trustee. The Liquidating Trustee shall have the power and authority to perform the acts described in the Liquidating Trust Agreement (subject to approval by the Court where applicable), in addition to any powers granted by law or conferred to it by any other provision of the Combined Plan and Disclosure Statement, including without limitation any powers set forth herein, provided however, that enumeration of the following powers shall not be considered in any way to limit or control the power and authority of the Liquidating Trustee to act as specifically authorized by any other provision of the Combined Plan and Disclosure Statement, the Liquidating Trust Agreement, the Confirmation Order and/or any applicable law, and to act in such manner as the Liquidating Trustee may deem necessary or appropriate to take any act deemed appropriate by the Liquidating Trustee, including, without limitation, to discharge all obligations assumed by the Liquidating Trustee or provided herein and to conserve and protect the Liquidating Trust or to confer on the creditors the benefits intended to be conferred upon them by the Combined

Plan and Disclosure Statement. The Liquidating Trustee shall have the power and authority without further approval by the Bankruptcy Court to liquidate the Liquidating Trust Assets, to hire and pay professional fees and expenses of counsel and other advisors, including Contingency Counsel, to prosecute and settle objections to Disputed Claims, to prosecute and settle any Estate Causes of Action, any Insider Avoidance Action, Claims, and other Causes of Action, and otherwise take any action as shall be necessary to administer the Chapter 11 Cases and effect the closing of the Chapter 11 Cases, including, without limitation, as follows: (a) the power to invest funds, in accordance with Bankruptcy Code section 345, and withdraw, make Distributions and pay taxes and other obligations owed by the Liquidating Trust from funds held by the Liquidating Trustee in accordance with the Combined Plan and Disclosure Statement and Liquidating Trust Agreement; (b) the power to engage and compensate, without prior Bankruptcy Court order or approval, employees and professionals, including Contingency Counsel, to assist the Liquidating Trustee with respect to his or her responsibilities; (c) the power to pursue, prosecute, resolve and compromise and settle any Estate Causes of Action on behalf of the Liquidating Trust without prior Bankruptcy Court approval but in accordance with the Liquidating Trust Agreement; (d) the power to object to Claims, including, without limitation, the power to subordinate and recharacterize Claims by objection, motion, or adversary proceeding; and (e) such other powers as may be vested in or assumed by the Liquidating Trustee pursuant to the Combined Plan and Disclosure Statement, the Liquidating Trust Agreement, the Confirmation Order, any other Bankruptcy Court order, or as may be necessary and proper to carry out the provisions of the Combined Plan and Disclosure Statement. Except as expressly set forth in the Combined Plan and Disclosure Statement and in the Liquidating Trust Agreement, the Liquidating Trustee, on behalf of the Liquidating Trust, shall have absolute discretion to pursue or not to pursue any Estate Causes of Action as it determines is in the best interests of the Liquidating Trust Beneficiaries and consistent with the purposes of the Liquidating Trust, and shall have no liability for the outcome of his or her decision, other than those decisions constituting gross negligence or willful misconduct. The Liquidating Trustee may incur any reasonable and necessary expenses in liquidating and converting the Liquidating Trust Assets to Cash. Subject to the other terms and provisions of the Combined Plan and Disclosure Statement, including but not limited to Section VIII.D.7 concerning the Retained Privileges, the Liquidating Trustee shall be granted standing, authority, power and right to assert, prosecute and/or settle the Estate Causes of Action and/or make a claim under any primary director and officer liability, employment practices liability, or fiduciary liability insurance policies based upon its powers as a Court-appointed representative of the Estates with the same or similar abilities possessed by insolvency trustees, receivers, examiners, conservators, liquidators, rehabilitators or similar officials.

Enforcement of Any Insider Avoidance Actions and Other Causes of Action. Pursuant to Bankruptcy Code section 1123(b), the Liquidating Trustee, on behalf of and for the benefit of the Liquidating Trust Beneficiaries, shall be vested with and shall retain and may enforce any Insider Avoidance Actions and D&O Claims (except as limited by Article XI.C hereof) that are not Purchased Assets and other Estate Causes of Action transferred to the Liquidating Trust that were held by, through, or on behalf of the Debtors and/or the Estates against any other Person, arising before the Effective Date that have not been fully resolved or disposed of prior to the Effective Date, whether or not such Insider Avoidance Actions and D&O Claims that are not Purchased Assets and other Estate Causes of Action are specifically identified in the Combined Plan and Disclosure Statement and whether or not litigation with respect to same has been commenced prior to the Effective Date. For the avoidance of doubt, the Combined Plan and Disclosure Statement

preserves and transfers to the Liquidating Trust all Insider Avoidance Actions and the D&O Claims (except as limited by Article XI.C hereof) that are not Purchased Assets that exist as of the Effective Date and that were not transferred to the Purchaser in connection with the Sale. The recoveries from any Insider Avoidance Actions and the D&O Claims that are not Purchased Assets and other Estate Causes of Action transferred to the Liquidating Trust will be deposited into the Liquidating Trust and distributed in accordance with the Liquidating Trust Agreement and the Combined Plan and Disclosure Statement.

Compensation of Liquidating Trustee. The Liquidating Trustee shall be compensated as set forth in the Liquidating Trust Agreement; *provided, however* that such compensation shall only be payable from the Liquidating Trust Assets. The Liquidating Trustee shall fully comply with the terms, conditions and rights set forth in the Combined Plan and Disclosure Statement, the Confirmation Order and the Liquidating Trust Agreement. The Liquidating Trustee shall not be required to file a fee application to receive compensation.

Retention and Payment of Professionals. The Liquidating Trustee shall have the right to retain the services of attorneys, accountants, and other professionals and agents, including Contingency Counsel, to assist and advise the Liquidating Trustee in the performance of his or her duties and compensate such professionals from the Liquidating Trust Assets as set forth in the Liquidating Trust Agreement, including but not limited to, Professionals retained by the Debtors and/or by the Committee, without the need for an order of the Bankruptcy Court.

Limitation of Liability of the Liquidating Trustee. The Liquidating Trust shall indemnify the Liquidating Trustee and his or her professionals against any losses, liabilities, expenses (including attorneys' fees and disbursements), damages, taxes, suits, or claims that the Liquidating Trustee or his or her professionals may incur or sustain by reason of being or having been a Liquidating Trustee or professionals of the Liquidating Trustee for performing any functions incidental to such service; *provided, however*, the foregoing shall not relieve the Liquidating Trustee or his or her professionals from liability for willful misconduct, reckless disregard of duty, breach of fiduciary duty, criminal conduct, gross negligence, fraud, or self-dealing.

### **3. Purpose of Liquidating Trust**

The Liquidating Trust shall be established for the purpose of liquidating the Liquidating Trust Assets, prosecuting any Estate Causes of Action and other Claims and Causes of Action transferred to the Liquidating Trust to maximize recoveries for the benefit of the Liquidating Trust Beneficiaries, and making Distributions in accordance with the Combined Plan and Disclosure Statement to the Liquidating Trust Beneficiaries with no objective to continue or engage in the conduct of a trade or business in accordance with Treas. Reg. § 301.7701-4(d).

The Liquidating Trust shall be responsible for filing all required federal, state, and local tax returns and/or informational returns for the Liquidating Trust, and, to the extent not previously filed, for any of the Liquidating Debtors (and the Debtors for a period prior to the Effective Date). The Liquidating Trust shall comply with all withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all distributions made by the Liquidating Trust shall be subject to any such withholding and reporting requirements. The Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such

withholding and reporting requirements including, without limitation, requiring that, as a condition to the receipt of a Distribution, the Holder of an Allowed Claim complete the appropriate IRS Form W-8 or IRS Form W-9, as applicable to each Holder. Notwithstanding any other provision of this Combined Plan and Disclosure Statement, (a) each Holder of an Allowed Claim that is to receive a Distribution from the Liquidating Trust 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 and other tax obligations, on account of such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to this Combined Plan and Disclosure Statement unless and until such Holder has made arrangements satisfactory to the Liquidating Trustee to allow it to comply with its tax withholding and reporting requirements. Any property to be distributed by the Liquidating Trust shall, pending the implementation of such arrangements, be treated as an Unclaimed Distribution to be held by the Liquidating Trustee, as the case may be, until such time as the Liquidating Trustee is satisfied with the Holder's arrangements for any withholding tax obligations.

In connection with the consummation of this Combined Plan and Disclosure Statement, the Liquidating Debtors and the Liquidating Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, or local taxing authority and all Distributions hereunder shall be subject to any such withholding and reporting requirements. All Liquidating Trust Beneficiaries, as a condition to receiving any Distribution, shall provide the Liquidating Trustee with a completed and executed Tax Form W-8 or Tax Form W-9, or similar form within 60 days of a written request by the Liquidating Trustee or be forever barred from receiving a Distribution.

#### **4. Transfer of Liquidating Trust Assets to Liquidating Trust**

Pursuant to Bankruptcy Code sections 1123(a)(5) and 1141, all transfers and contributions made to the Liquidating Trust shall be made free and clear of all Claims, Liens, encumbrances, charges, and other interests. Upon completion of the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Liquidating Debtors will have no further interest in, or with respect to, the Liquidating Trust Assets, or the Liquidating Trust. For all federal income tax purposes, all parties (including, without limitation, the Liquidating Debtors, the Liquidating Trustee and the Liquidating Trust Beneficiaries) will treat the transfer of the Liquidating Trust Assets to the Liquidating Trust in accordance with the terms of the Combined Plan and Disclosure Statement as a transfer to the Liquidating Trust Beneficiaries, followed by a transfer by such Liquidating Trust Beneficiaries to the Liquidating Trust, and the Liquidating Trust Beneficiaries will be treated as the grantors and owners thereof.

#### **5. Preservation of Rights**

Under the Combined Plan and Disclosure Statement, but subject in all respects to the Sale Order and the APA, the Liquidating Trustee retains any and all rights of, and on behalf of, the Debtors, the Estates, and the Liquidating Trust to commence and pursue any and all Estate Causes of Action, including, without limitation, Insider Avoidance Actions, other Causes of Action, setoff, offset and recoupment rights, regardless of whether or not such rights are specifically enumerated in the Combined Plan and Disclosure Statement, the Committee Settlement, the Plan Supplement, or elsewhere or the representative of the Estates pursuant to section 1123 of the Bankruptcy Code

and all other applicable law, and all such rights shall not be deemed modified, waived, released in any manner, nor shall confirmation of the Combined Plan and Disclosure Statement or the Confirmation Order act as *res judicata* or limit any of such rights of Liquidating Trustee to commence and pursue any and all Estate Causes of Action, Insider Avoidance Actions and other Causes of Actions or Claims, including, without limitation, setoff, offset and recoupment rights, to the extent the Liquidating Trustee deems appropriate. Any and all Estate Causes of Action, including, without limitation, Insider Avoidance Actions, other Causes of Action, setoff, offset and recoupment rights, may, but need not, be pursued by the Debtors prior to the Effective Date and by the Liquidating Trustee after the Effective Date, to the extent warranted.

Unless an Estate Cause of Action, Insider Avoidance Action, or other Claim or Cause of Action against a Creditor or other Entity is expressly waived, relinquished, released, compromised or settled in the Combined Plan and Disclosure Statement, or any Final Order, including the Sale Order, the Plan Proponents expressly reserve any and all Estate Causes of Action, including, without limitation, setoff, offset and recoupment rights, for later enforcement and prosecution by the Liquidating Trustee (including, without limitation, any Estate Causes of Actions set forth in the Plan Supplement, or not specifically identified herein, or otherwise, or which the Plan Proponents may presently be unaware of, or which may arise or exist by reason of additional facts or circumstances unknown to the Plan Proponents at this time, or facts or circumstances which may change or be different from those which the Plan Proponents now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such any and all Estate Causes of Action, including, without limitation, setoff, offset and recoupment rights, upon or after the confirmation or consummation of the Combined Plan and Disclosure Statement based on the Combined Plan and Disclosure Statement or the Confirmation Order. In addition, the Liquidating Trust expressly reserves the right to pursue or adopt any and all Causes of Action that are not Purchases Assets, including, without limitation, setoff, offset and recoupment rights, alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, subject to the provisions of the Combined Plan and Disclosure Statement or any Final Order.

The Plan Proponents and the Liquidating Trustee do not intend, and it should not be assumed (nor shall it be deemed) that because any existing or potential Estate Causes of Action, including, without limitation, setoff, offset and recoupment rights, have not yet been pursued by the Debtors or are not set forth herein, or otherwise, that any and all Estate Causes of Action, including, without limitation, setoff, offset and recoupment rights, has been waived or expunged.

## **6. Liquidating Trust Expenses**

The Liquidating Trustee may, in the ordinary course of business and without the necessity for any application to, or approval of, the Bankruptcy Court, pay any accrued but unpaid Liquidating Trust Expenses. All Liquidating Trust Expenses shall be charged against and paid from the Liquidating Trust Funding or the Liquidating Trust Assets as provided in the Liquidating Trust Agreement.

## 7. Privileges

On and subject to the terms of the Combined Plan and Disclosure Statement, all of the Debtors' privileges (the "**Privileges**"), including, but not limited to, corporate privileges, confidential information, work product protections, attorney-client privileges, and other immunities or protections (the "**Transferred Privileges**") shall be transferred, assigned and delivered to the Liquidating Trust, without waiver, limitation or release, and shall vest with the Liquidating Trust on the Effective Date.

The Liquidating Trust shall hold and be the beneficiary of all Transferred Privileges and entitled to assert all Transferred Privileges. No Privilege shall be waived by disclosures to the Liquidating Trustee of the Debtors' documents, information or communications subject to any privilege, protection or immunity or protections from disclosure jointly held by the Debtors and the Liquidating Trust.

The Debtor's Privileges relating to the Liquidating Trust Assets will remain subject to the rights of third parties under applicable law, including any rights arising from the common interest doctrine, the joint defense doctrine, joint attorney-client representation, or any agreement. Nothing contained herein or in the Confirmation Order, nor any Professional's compliance herewith and therewith, shall constitute a breach of any privileges of the Debtor.

To the extent of any conflict between this Section VIII of the Combined Plan and Disclosure Statement and any other provision of the Combined Plan and Disclosure Statement relating to Privileges, this Article VIII shall control.

## 8. Liquidating Trust Interest

Each Liquidating Trust Interest will entitle its Holder to distributions from the Liquidating Trust in accordance with the terms of the Liquidating Trust Agreement. The Liquidating Trust Interests will be uncertificated; thus, distributions from a Liquidating Trust Interest will be accomplished solely by the entry of names of the Holders and their respective Liquidating Trust Interests in the books and records of the Liquidating Trust. Each Holder of a Liquidating Trust Interest shall take and hold its uncertificated beneficial interest subject to all the terms and provisions of the Combined Plan and Disclosure Statement, the Confirmation Order and the Liquidating Trust Agreement.

The Liquidating Trust Interests shall not be registered pursuant to the Securities Act of 1933, as amended, or any state securities law and shall be exempt from registrations thereunder pursuant to section 1145 of the Bankruptcy Code. The Liquidating Trust Interest shall be freely transferrable; *provided, however*, that the transfer of the Liquidating Trust Interest will be prohibited to the extent such transfer would subject the Debtors or the Liquidating Trust to the registration and reporting requirements of the Securities Act and the Security Exchange Act.

## 9. Termination of Liquidating Trust

The Liquidating Trust shall be dissolved upon the earlier of the distribution of all of the Liquidating Assets to the Liquidating Trust Beneficiaries or the fifth anniversary of the creation of the Liquidating Trust, provided that the Liquidating Trustee shall, in his/her sole discretion, be

authorized to seek to extend the dissolution date upon Bankruptcy Court approval by the filing of a motion served on the master service list for cause shown. This motion must be filed with the Bankruptcy Court no earlier than 6 months before the termination date of the Liquidating Trust.

## **10. Exculpation Relating to the Liquidating Trust**

No Holder of a Claim or Interest or any other party in interest will have, or otherwise pursue, any Claim or Cause of Action against the Liquidating Trustee, the Liquidating Trust or the employees or professionals thereof (solely in the performance of their duties), for making payments and Distributions in accordance with the Combined Plan and Disclosure Statement or for fulfilling any functions incidental to implementing the provisions of the Combined Plan and Disclosure Statement or the Liquidating Trust, except for any acts or omissions to act that are the result of willful misconduct, reckless disregard of duty, criminal conduct, gross negligence, fraud, or self-dealing.

### **E. Effective Date and Other Transactions**

#### **1. Transfer of Assets to Purchaser**

Previously, on the Closing Date, all of the Purchased Assets were transferred to Purchaser in accordance with the terms of the APA and the Sale Order.

#### **2. Transfer of Assets to Liquidating Trust**

On the Effective Date, except as otherwise expressly provided in the Combined Plan and Disclosure Statement, title to the Liquidating Trust Assets shall vest in the Liquidating Trust free and clear of all liens, encumbrances, or interests of any kind. Except as otherwise provided in the Sale Order or the Combined Plan and Disclosure Statement, the Liquidating Trust shall succeed to all rights and interests retained by or provided to the Liquidating Debtors and the Estates under the APA to the extent permitted under the APA and the Sale Order.

On the Effective Date, the Liquidating Debtors will transfer to the Liquidating Trust the Liquidating Trust Funding. All Liquidating Debtors other than Knotel shall thereafter be deemed dissolved on the Effective Date without the need for further notice or action.

#### **3. Dismissal of the Dismissed Debtors**

On the Effective Date, each of the Dismissed Debtors shall be dismissed from the Chapter 11 Cases without the need for further notice or action.

#### **4. Approval of *De Minimus* Asset Sales**

To the extent the Debtors, after entry of the Confirmation Order and prior to the Effective Date, or the Liquidating Trustee after the Effective Date, determine to sell or otherwise liquidate any of the remaining *de minimus* assets or Causes of Action of the Debtors or the Liquidating Debtors, respectively, no further notice or order of the Court shall be required; *provided further*, that all such *de minimus* asset sales by the Debtors prior to the Effective Date shall be less than



\$250,000 and subject to the consent of the Committee and on notice to the U.S. Trustee prior to the Effective Date and without further notice, order, or action required by the Debtors.

**F. Provisions Governing Distributions under the Combined Plan and Disclosure Statement**

**1. Method of Payment**

Except as otherwise provided herein, any Distributions and deliveries to be made hereunder with respect to Claims that are Allowed as of the Effective Date shall be made on the Effective Date or as soon thereafter as is reasonably practicable. Except as otherwise provided herein, any Distributions and deliveries to be made hereunder with respect to Claims that are Allowed after the Effective Date shall be made as soon as is reasonably practicable after the date on which such Claim becomes Allowed. Distributions made after the Effective Date to Holders of Allowed Claims shall be deemed to have been made on the Effective Date and, except as otherwise provided in the Combined Plan and Disclosure Statement, no interest shall accrue or be payable with respect to such Claims or any Distribution related thereto. In the event that any payment or act under the Combined Plan and Disclosure Statement 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 or as soon as reasonably practicable after the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

All Distributions hereunder shall be made by the Liquidating Debtors, the Liquidating Trustee, or their named successor or assign, as “**Disbursing Agent**,” on or after the Effective Date or as otherwise provided herein. For the avoidance of doubt, (i) the Liquidating Debtors or such other entity designated by the Liquidating Debtors, shall act as Disbursing Agent with respect to all Effective Date Distributions, and (ii) the Liquidating Trustee, or such other entity designated by the Liquidating Trustee, shall act as Disbursing Agent with respect to all other Distributions to be made pursuant to the Combined Plan and Disclosure Statement or the Liquidating Trust Agreement following the Effective Date. A 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, and, in the event that a Disbursing Agent is so ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Disbursing Agent.

Unless otherwise expressly agreed in writing, all Cash payments to be made pursuant to the Combined Plan and Disclosure Statement shall be made by check drawn on a domestic bank or an electronic wire.

**2. Surrender of Instruments**

Pursuant to Bankruptcy Code section 1143, as a condition precedent to receiving any Distribution under the Combined Plan and Disclosure Statement, each Holder of a certificated instrument or note must surrender such instrument or note held by it to the Disbursing Agent or its designee. Any Holder of such instrument or note that fails to (i) surrender the instrument or note or (ii) execute and deliver an affidavit of loss and/or indemnity reasonably satisfactory to the Disbursing Agent and furnish a bond in form, substance, and amount reasonably satisfactory to

the Disbursing Agent before the third anniversary of the Effective Date shall be deemed to have forfeited all rights and Claims and may not participate in any Distribution hereunder.

### **3. Delivery of Distributions**

Except as otherwise provided herein, Distributions to Holders of Allowed Claims shall be made: (a) at the addresses set forth on the respective Proofs of Claim Filed by such Holders; (b) at the addresses set forth in any written notice of address changes delivered to the Liquidating Trustee after the date of any related Proof of Claim; or (c) at the address reflected in the Schedules or other more recent records of the Debtors if no Proof of Claim is filed and the Liquidating Trustee has not received a written notice of a change of address.

Subject to applicable Bankruptcy Rules, all Distributions to Holders of Allowed Claims shall be made to the Disbursing Agent who shall transmit such Distributions to the applicable Holders of Allowed Claims or their designees. If any Distribution to a Holder of an Allowed Claim is returned as undeliverable, the Disbursing Agent shall have no obligation to determine the correct current address of such Holder, and no Distribution to such Holder shall be made unless and until the Disbursing Agent is notified, in writing, by the Holder of the current address of such Holder within 90 days of such Distribution, at which time a Distribution shall be made to such Holder without interest; provided that such Distributions shall be deemed unclaimed property or an Unclaimed Distribution under Bankruptcy Code section 347(b) at the expiration of 90 days from the Distribution. After such date, all unclaimed property or interest in property shall revert to the Liquidating Trust to be distributed to other Holders of Allowed Claims in accordance with the terms of the Liquidating Trust Agreement and the Combined Plan and Disclosure Statement, and the Claim of any other holder to such property or interest in property shall be discharged and forever barred.

### **4. Objection to and Resolution of Claims**

Except as expressly provided herein, or in any order entered in the Chapter 11 Cases prior to the Effective Date, including the Confirmation Order, no Claim or Interest shall be deemed Allowed unless and until such Claim or Interest is deemed Allowed under the Combined Plan and Disclosure Statement or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order, including the Confirmation Order, in the Chapter 11 Cases allowing such Claim or Interest. On or after the Effective Date, the Liquidating Trust shall be vested with any and all rights and defenses each Debtor had with respect to any Claim or Interest immediately prior to the Effective Date.

Except as provided herein and in Article IX of the Combined Plan and Disclosure Statement, the Liquidating Trustee or other party in interest with standing, to the extent permitted pursuant to section 502(a) of the Bankruptcy Code, shall File and serve any objection to any Claim no later than the Claims Objection Deadline.

### **5. Preservation of Rights to Settle Claims**

Except as otherwise expressly provided herein, including in Article XI of the Combined Plan and Disclosure Statement, nothing contained in the Combined Plan and Disclosure Statement, the Plan Documents, or in the Confirmation Order shall be deemed to be a waiver or the

relinquishment of any rights or Causes of Action that the Debtors or their Estates may have or which the Liquidating Trustee may choose to assert on behalf of the Estates under any provision of the Bankruptcy Code or any applicable nonbankruptcy law or rule, common law, equitable principle or other source of right or obligation, including, without limitation, (a) any and all claims against any Person or Entity, to the extent such Person or Entity asserts a crossclaim, counterclaim, and/or claim for setoff which seeks affirmative relief against the Debtors, their Officers, directors, or representatives, and (b) the turnover of all property of the Estates. This Section shall not apply to any claims sold, released, waived, relinquished, exculpated, compromised, or settled under the Combined Plan and Disclosure Statement or pursuant to a Final Order, expressly including the Sale Order. Except as expressly provided in the Combined Plan and Disclosure Statement, nothing contained in the Combined Plan and Disclosure Statement, the Plan Documents, or in the Confirmation Order shall be deemed to be a waiver or relinquishment of any claim, cause of action, right of setoff, or other legal or equitable defense. No Entity may rely on the absence of a specific reference in the Combined Plan and Disclosure Statement, the Plan Supplement, or any Plan Documents to any cause of action against it as any indication that the Liquidating Debtors or the Liquidating Trustee, as applicable, will not pursue any and all available causes of action against them. The Liquidating Debtors and the Liquidating Trustee expressly reserve all rights to prosecute any and all causes of action against any Person or Entity, except as otherwise expressly provided in the Combined Plan and Disclosure Statement.

## **6. Miscellaneous Distribution Provisions**

Disputed Claims. At such time as a Disputed Claim becomes an Allowed Claim, the Disbursing Agent shall distribute to the Holder of such Claim the Distribution to which such Holder is entitled under the Combined Plan and Disclosure Statement with respect to the Class in which such Claim belongs. To the extent that all or a portion of a Disputed Claim is disallowed, the Holder of such Claim shall not receive any Distribution on account of the portion of such Claim that is disallowed and any property withheld pending the resolution of such Claim shall be reallocated pro rata to the Holders of Allowed Claims in the same Class.

Distributions After Allowance. To the extent that a Disputed Claim becomes an Allowed Claim after the Effective Date, a Distribution shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Combined Plan and Disclosure Statement. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Liquidating Trustee or, as applicable, the Disbursing Agent shall provide to the Holder of such Claim the Distribution to which such Holder is entitled hereunder.

Setoff. The Debtors or Liquidating Trustee, as applicable, retain the right to reduce any Claim by way of setoff in accordance with the Debtors' books and records and in accordance with the Bankruptcy Code. A claimant may challenge any such setoff made by the Debtors or the Liquidating Trustee in the Bankruptcy Court or any other court with jurisdiction.

Post-Petition Interest. Except as may be expressly provided herein, interest shall not accrue on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date. No prepetition Claim shall be Allowed to the extent it is for postpetition interest or other similar charges, except to the extent permitted for Holders of Secured Claims, if any, under section 506(b) of the Bankruptcy Code.

Minimum Distributions. Notwithstanding anything herein to the contrary, (a) the Liquidating Trustee shall not be required to make Distributions or payments of fractions of dollars, and whenever any Distribution of a fraction of a dollar under the Combined Plan and Disclosure Statement would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down; and (b) the Liquidating Trustee shall have no duty to make a Distribution on account of any Allowed Claim (i) if the aggregate amount of all Distributions authorized to be made on such date is less than \$100,000, in which case such Distributions shall be deferred to the next Distribution date, (ii) if the amount to be distributed to a Holder on the particular Distribution date is less than \$100.00, unless such Distribution constitutes the final Distribution to such Holder, or (iii) if the amount of the final Distribution to such Holder is \$50.00 or less, in which case no Distribution will be made to that Holder and such Distribution shall revert to the Liquidating Trust for distribution on account of other Allowed Claims.

Donation of Remaining Liquidating Trust Assets. After final Distributions have been made in accordance with the terms of the Combined Plan and Disclosure Statement and the Liquidating Trust Agreement, if the amount of remaining Cash is less than \$30,000, the Liquidating Trustee shall donate such amount to charity in accordance with the terms of the Liquidating Trust Agreement.

## **IX. Executory Contracts and Unexpired Leases**

### **A. Background**

During the Chapter 11 Cases, the Debtors rejected various Executory Contracts and Unexpired Leases of non-residential real property as further described herein. The Bidding Procedures Order and the Sale Order also provide for certain treatment of Executory Contracts and Unexpired Leases. While nothing in the Combined Plan and Disclosure Statement shall be deemed to supersede the Bidding Procedures Order and Sale Order, Article IX of the Combined Plan and Disclosure Statement is included out of an abundance of caution.

### **B. Executory Contracts and Unexpired Leases**

All Executory Contracts and Unexpired Leases of the Liquidating Debtors which have not been assumed, assigned, and/or rejected prior to the Effective Date (if any) shall be deemed rejected on the Effective Date, but the rejection will be effective as of the entry of the Confirmation Order.

### **C. Rejection Claims**

In the event that the rejection of an Executory Contract or Unexpired Lease by any of the Liquidating Debtors pursuant to the Combined Plan and Disclosure Statement results in a Rejection Claim in favor of a counterparty to such executory contract or unexpired lease, such Rejection Claim, if not heretofore evidenced by a timely and properly filed Proof of Claim, shall be forever barred and shall not be enforceable against the Liquidating Debtors or the Liquidating Trust, or their respective properties or interests in property as agents, successors, or assigns, unless a Proof of Claim is filed with the Bankruptcy Court and served upon counsel for the Plan Proponents and the Liquidating Trustee on or before the date that is 30 days after service of notice

of the Effective Date, which notice shall set forth the bar date for Rejection Claims. All Allowed Rejection Claims shall be treated as General Unsecured Claims in Class 5 pursuant to the terms of the Combined Plan and Disclosure Statement.

**X. Conditions Precedent to Confirmation and the Effective Date**

**A. Conditions Precedent to Confirmation**

The following is the list of conditions precedent to Confirmation:

- (1) the Plan Supplement is Filed;
- (2) the Confirmation Order shall be in form and substance reasonably acceptable to the Liquidating Debtors and the Committee;
- (3) the form of Liquidating Trust Agreement shall be agreed upon by the Liquidating Debtors and the Committee and the proposed Liquidating Trustee identified and disclosed by the Committee; and
- (4) the Combined Plan and Disclosure Statement shall not have been materially amended, altered, or modified from the Combined Plan and Disclosure Statement as Filed unless such material amendment, alteration or modification has been made in accordance with Article XIII herein.

**B. Conditions Precedent to the Effective Date**

The following is the list of conditions precedent to the Effective Date:

- (1) The Bankruptcy Court shall have entered the Confirmation Order acceptable to the Plan Proponents and the Confirmation Order shall be a Final Order;
- (2) the Canadian Court shall have entered an order recognizing the Confirmation Order;
- (3) no stay of the Confirmation Order shall then be in effect;
- (4) the Liquidating Trust Agreement shall be executed and the Liquidating Trustee shall have been appointed and accepted such appointment;
- (5) the Combined Plan and Disclosure Statement shall not have been materially amended, altered, or modified from the Combined Plan and Disclosure Statement as confirmed by the Confirmation Order, unless such material amendment, alteration, or modification has been made in accordance with Article XIII herein; and
- (6) the Plan Proponents shall have Filed the Notice of the Effective Date.

**C. Waiver of Conditions**

The conditions precedent to Confirmation and conditions precedent to the Effective Date may be waived in whole or in part, in writing, by each of the Plan Proponents, without further order of the Bankruptcy Court.

**D. Effect of Nonoccurrence of Conditions**

If the conditions precedent to the Effective Date are not satisfied or waived, the Plan Proponents may, upon motion and notice to parties in interest, seek to vacate the Confirmation Order; *provided, however*, that notwithstanding the filing of such motion, the Confirmation Order may not be vacated if each of the conditions precedent to the Effective Date are satisfied or waived before the Bankruptcy Court enters an order granting such motion.

If the Confirmation Order is vacated: (a) the Combined Plan and Disclosure Statement is null and void in all respects; and (b) nothing contained in the Combined Plan and Disclosure Statement shall (i) constitute a waiver or release of any Claims by or against the Liquidating Debtors, or (ii) prejudice, in any manner, the rights of the Liquidating Debtors or any other party in interest.

**XI. Exculpation, Injunctions and Releases**

**A. Injunction**

**All injunctions or stays provided for in the Chapter 11 Cases under Bankruptcy Code sections 105 or 362, or otherwise, and in existence on the Confirmation Date shall remain in full force and effect until the later of (a) the Effective Date, or (b) the date indicated in the order providing for such injunction or stay. Notwithstanding the foregoing, nothing herein shall be otherwise deemed to modify, limit, amend or supersede any injunctions or stays granted in the Sale Order.**

**Except as otherwise provided in the Combined Plan and Disclosure Statement or to the extent necessary to enforce the terms and conditions of the Combined Plan and Disclosure Statement, the Confirmation Order, or a separate order of the Bankruptcy Court, all entities who have held, hold, or may hold Claims against or Interests in the Liquidating Debtors shall be permanently enjoined from taking any of the following actions against any of the Liquidating Debtors' Assets, including property that is to be distributed under the terms of the Combined Plan and Disclosure Statement (including Liquidating Trust Assets), on account of any such Claims or Interests: (a) commencing or continuing, in any manner or in any place, any action or other proceeding; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (c) creating, perfecting, or enforcing any lien or encumbrance; (d) asserting a right of setoff, other than any rights of setoff that were exercised prior to the Petition Date; and (e) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Combined Plan and Disclosure Statement; *provided, however*, that such entities shall not be precluded from exercising their rights pursuant to and consistent with the terms of the Combined Plan and Disclosure Statement or the Confirmation Order; *provided, further*, that the foregoing shall not apply to any acts, omissions, claims, causes of**

action or other obligations expressly set forth in and preserved by the Combined Plan and Disclosure Statement or any defenses thereto. Notwithstanding the foregoing, nothing herein shall be otherwise deemed to modify, limit, amend or supersede any injunctions or stays granted in the Sale Order.

**B. Exculpation**

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE COMBINED PLAN AND DISCLOSURE STATEMENT, EFFECTIVE AS OF THE EFFECTIVE DATE, THE EXCULPATED PARTIES SHALL NOT HAVE NOR INCUR ANY LIABILITY TO ANY HOLDER OF A CLAIM OR INTEREST OR ANY OF THEIR RELATED PERSONS FOR ANY POST-PETITION ACT OR OMISSION IN CONNECTION WITH, RELATED TO, OR ARISING OUT OF THE CHAPTER 11 CASES, THE COMBINED PLAN AND DISCLOSURE STATEMENT, THE CCAA PROCEEDINGS, THE PURSUIT OF CONFIRMATION, THE SOLICITATION OF VOTES ON THE PLAN, THE CONFIRMATION OF THE PLAN, THE CONSUMMATION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT, THE ADMINISTRATION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT OR THE LIQUIDATING TRUST, THE PROPERTY TO BE LIQUIDATED AND/OR DISTRIBUTED UNDER THE COMBINED PLAN AND DISCLOSURE STATEMENT OR ANY POST-PETITION ACT TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH OR IN CONTEMPLATION OF THE LIQUIDATION OF THE DEBTORS, EXCEPT FOR THEIR WILLFUL OR GROSS NEGLIGENCE AS DETERMINED BY A FINAL ORDER OF A COURT OF COMPETENT JURISDICTION, AND IN ALL RESPECTS SHALL BE ENTITLED TO RELY REASONABLY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES UNDER THE COMBINED PLAN AND DISCLOSURE STATEMENT.

THE FOREGOING PARAGRAPH SHALL APPLY TO ATTORNEYS AND LAWYERS TO THE GREATEST EXTENT PERMISSIBLE UNDER APPLICABLE BAR RULES AND CASE LAW BUT SHALL NOT BE DEEMED TO RELEASE, AFFECT, OR LIMIT ANY OF THE RIGHTS AND OBLIGATIONS OF THE EXCULPATED PARTIES FROM, OR EXCULPATE THE EXCULPATED PARTIES WITH RESPECT TO, ANY OF THE EXCULPATED PARTIES' OBLIGATIONS OR COVENANTS ARISING PURSUANT TO THIS COMBINED PLAN AND DISCLOSURE STATEMENT OR THE CONFIRMATION ORDER.

**C. Releases and Limitation of Liability**

ON THE EFFECTIVE DATE, THE RESPONSIBLE OFFICER AND THE DEBTORS' FORMER INDEPENDENT DIRECTOR LINDA FAYNE LEVINSON SHALL BE FULLY RELEASED AND DISCHARGED FROM ANY AND ALL LIABILITIES OF THE DEBTORS AND ALL CLAIMS OR ESTATE CAUSES OF ACTION WHICH COULD BE PURSUED BY THE LIQUIDATING DEBTORS OR THE LIQUIDATING TRUSTEE PURSUANT TO THIS COMBINED PLAN AND DISCLOSURE STATEMENT.

**In accordance with the terms of the Committee Settlement, any D&O Claims against the following previous Officers and/or directors, as applicable, of the Debtors—Jonathan Goldberg, Chief Investment Officer; Eugene Lee, Chief Operating Officer; John M. Jureller, Chief Financial Officer; and Amit Khanna, General Counsel—shall be limited solely to the amount of available insurance proceeds under the D&O Policies; provided, however that if any of these previous Officers and/or directors, as applicable, knowingly, recklessly, or through gross negligence take or took any action or fail or failed to act which jeopardizes any insurance coverage and the insurance carrier therefore declines coverage, then this limitation shall not apply.**

**Except as expressly stated herein, this Combined Plan and Disclosure Statement does not otherwise limit or release any other current or former member of the Board or officer of the Debtors (the “Potential Defendants”). For the avoidance of doubt, all cross claims, counterclaims, defenses and offsets of the Potential Defendants discussed in this provision remain and are not waived by the Potential Defendants. Notwithstanding the forgoing, and for the avoidance of doubt, the Responsible Officer shall not be a Potential Defendant.**

## **XII. Retention of Jurisdiction**

Following the Confirmation Date and the Effective Date, the Bankruptcy Court shall retain jurisdiction for the following purposes:

- (1) to hear and determine any objections to Claims and to address any issues relating to Disputed Claims;
- (2) to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;
- (3) to issue such orders in aid of execution and consummation of the Combined Plan and Disclosure Statement, to the extent authorized by Bankruptcy Code section 1142;
- (4) to consider any amendments to or modifications of the Combined Plan and Disclosure Statement, to cure any defect or omission, or to reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
- (5) to hear and determine all requests for compensation and reimbursement of expenses to the extent allowed by the Bankruptcy Court under Bankruptcy Code sections 330 or 503;
- (6) to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Combined Plan and Disclosure Statement;
- (7) to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Sale Order;



- (8) to hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code sections 346, 505, and 1146;
- (9) to hear any other matter as to which the Bankruptcy Court has jurisdiction;
- (10) to enter the Final Decree;
- (11) to ensure that Distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Combined Plan and Disclosure Statement;
- (12) to decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters and grant or deny any applications involving the Debtors that may be pending on the Effective Date;
- (13) to issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with the occurrence of the Effective Date or enforcement of the Combined Plan and Disclosure Statement, except as otherwise provided herein;
- (14) to determine any other matters that may arise in connection with or related to the Combined Plan and Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created or implemented in connection with the Combined Plan and Disclosure Statement;
- (15) to determine any other matters that may arise in connection with or related to the Sale Order or any contract, instrument, release, indenture, or other agreement or document created or implemented in connection with the Sale Order;
- (16) to enforce, interpret, and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, exculpations, and rulings entered in connection with the Chapter 11 Cases (whether or not the Chapter 11 Cases have been closed);
- (17) to resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof; and
- (18) to resolve any disputes concerning whether a Person or Entity had sufficient notice of the Chapter 11 Cases, the General Bar Date, the Knotel Canada Amended Schedules Bar Date, or the Confirmation Hearing for the purpose of determining whether a Claim or Interest is discharged hereunder, or for any other purpose.

### **XIII. Miscellaneous Provisions**

#### **A. Amendment or Modification of the Combined Plan and Disclosure Statement**

The Plan Proponents may amend or modify the Combined Plan and Disclosure Statement at any time prior to entry of the Confirmation Order in accordance with the Bankruptcy Code and the Bankruptcy Rules, or after Confirmation and before substantial consummation, provided that

the Combined Plan and Disclosure Statement, as modified, meets the requirements of Bankruptcy Code sections 1122 and 1123 and the circumstances warrant such modifications and any such modifications are in compliance with section 1127(b) of the Bankruptcy Code and Bankruptcy Rule 3019 (b). A Holder of a Claim that has accepted the Combined Plan and Disclosure Statement shall be deemed to have accepted such Combined Plan and Disclosure Statement as modified if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such Holder.

**B. Closing of Certain Debtor Cases upon the Effective Date**

Upon and as of the Effective Date, without the need for further order of the Bankruptcy Court or motion of, or notice from, the Debtors or the Liquidating Trustee, the Chapter 11 Cases of each of the Liquidating Debtors shall be deemed closed without prejudice to the rights of any party in interest to seek to reopen any such Chapter 11 Case under section 350(b) of the Bankruptcy Code; *provided however*, that the case of Knotel shall remain open until the Liquidating Trustee files a motion seeking entry of a final decree closing such case and anything contrary in Local Rule 3022-1 is waived. Furthermore, (i) all motions, contested matters, adversary proceedings and other matters with respect to those closed cases and those Debtors (including Causes of Action, Claims administration, and objections to Claims) shall be administered in the open case of Knotel without prejudice to the rights of any party in interest and (ii) the case caption shall be amended to reflect that the Knotel case is the only remaining open case for each of the Liquidating Debtors. Following the Effective Date, the Liquidating Debtors or Liquidating Trustee may file a motion and submit proposed orders for the entry by the Bankruptcy Court to memorialize the closing of each of the Chapter 11 Cases of the Liquidating Debtors other than the case of Knotel. Following the Effective Date, Knotel Canada shall seek an order of the Canadian Court discharging the Information Officer and terminating the CCAA Proceedings.

**C. Exhibits/Schedules**

All exhibits and schedules to the Combined Plan and Disclosure Statement are incorporated into and are part of the Combined Plan and Disclosure Statement as if set forth in full herein.

**D. Plan Supplement**

The Plan Proponents will File the Plan Supplement no later than seven (7) days prior to the Voting Deadline. The Plan Supplement will contain, among other things: (a) Liquidation Analysis; (b) the Liquidating Trust Agreement; (c) identification of the Liquidating Trustee; and (d) any other disclosures as required by the Bankruptcy Court.

**E. Filing of Additional Documents**

On or before substantial consummation of the Combined Plan and Disclosure Statement, the Liquidating Trustee shall 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 Combined Plan and Disclosure Statement.

**F. Entire Agreement**

Except as otherwise indicated, this Combined Plan and Disclosure Statement supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Combined Plan and Disclosure Statement.

**G. Binding Effect of Plan**

The Combined Plan and Disclosure Statement shall be binding upon and inure to the benefit of the Liquidating Debtors, the Holders of Claims, the Holders of Interests, other parties-in-interest and their respective successors, assigns and heirs. Notwithstanding anything to the contrary herein, nothing in the Combined Plan and Disclosure Statement modifies, alters, or amends the respective rights and obligations of the Debtors or Purchaser under the Sale Order, the APA, or any other document governing the Sale.

**H. Application of Bankruptcy Rule 7068**

The Debtors, before the Effective Date, and the Liquidating Trustee following the Effective Date, are authorized to serve upon a Holder of Disputed Claim an offer to allow judgment to be taken on account of such Disputed Claim, and, pursuant to Bankruptcy Rule 7068 and 9014, Federal Rule of Civil Procedure 68 shall apply to such offer of judgment. To the extent the Holder of a Disputed Claim must pay the costs incurred by the Debtors or the Liquidating Trustee after the making of such offer, the Debtors and the Liquidating Trustee are entitled to set off such amounts against the amount of any Distribution to be paid to such Holder without any further notice to or action, order, or approval of the Bankruptcy Court.

**I. Governing Law**

Except as required by the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules, the rights and obligations arising under the Combined Plan and Disclosure Statement shall be governed by, and construed and enforced in accordance with the laws of the State of New York.

**J. Time**

To the extent that any time for the occurrence or happening of an event as set forth in the Combined Plan and Disclosure Statement falls on a day that is not a Business Day, the time for the next occurrence or happening of said event shall be extended to the next Business Day.

**K. Severability**

Should any provision of the Combined Plan and Disclosure Statement be deemed unenforceable after the Effective Date, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of the Combined Plan and Disclosure Statement.

**L. Revocation**

The Plan Proponents reserve the right to revoke and withdraw the Combined Plan and Disclosure Statement prior to the entry of the Confirmation Order. If the Plan Proponents revoke or withdraw the Combined Plan and Disclosure Statement, the Combined Plan and Disclosure Statement shall be deemed null and void, and nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against the Debtors, the Committee, any other Person, or to prejudice in any manner the rights of such parties in any further proceedings involving the Debtors.

**M. Dissolution of the Committee**

On the Effective Date, the Committee shall be dissolved and its members deemed released of any continuing duties, responsibilities and obligations in connection with the Chapter 11 Cases or the Combined Plan and Disclosure Statement and its implementation, and the retention and employment of the Committee's Professionals shall terminate, except with respect to: (a) any matters concerning Distributions to be made on the Effective Date; (b) prosecuting applications for Professionals' compensation and reimbursement of expenses incurred as a member of the Committee; (c) asserting, disputing and participating in resolution of Professional Fee Claims; or (d) prosecuting or participating in any appeal of the Confirmation Order or any request for consideration thereof. Upon the resolution of (a) through (d), the Committee shall be immediately dissolved, and released.

**N. Claims Agent**

Omni Agent Solutions, in its capacity as Claims and Noticing Agent, shall be relieved of such duties on the date of the entry of the Final Decree or upon written notice by the Liquidating Debtors or Liquidating Trustee, and subject to approval by the Bankruptcy Court.

**O. Inconsistency**

To the extent that the Combined Plan and Disclosure Statement conflicts with or is inconsistent with any agreement related to the Combined Plan and Disclosure Statement, the provisions of the Combined Plan and Disclosure Statement shall control; *provided, however*, that nothing in the Combined Plan and Disclosure Statement shall be deemed to supersede, amend, or modify the provisions of the Sale Order, the Committee Settlement, the APA, or the Final DIP Order. In the event of any inconsistency between any provision of any of the foregoing documents, and any provision of the Confirmation Order, the Confirmation Order shall control and take precedence.

**P. No Admissions**

Notwithstanding anything herein to the contrary, nothing contained in the Combined Plan and Disclosure Statement shall be deemed an admission by any Entity with respect to any matter set forth herein.

Effective Date. All injunctions or stays contained in the Combined Plan and Disclosure Statement or the Confirmation Order shall remain in full force and effect in accordance with their terms.

**X. Notices.**

After the Effective Date, any pleading, notice or other document required by the Combined Plan and Disclosure Statement to be served on or delivered on the parties below shall be served as follows:

If to Knotel/ Liquidating Trustee:

[TBD]

If to the Office of the United States Trustee:

U.S. Department of Justice  
Office of the United States Trustee  
Attn: Joseph J. McMahon, Jr.  
J. Caleb Boggs Federal Building  
844 King Street, Suite 2207, Lockbox 35  
Wilmington, DE 19801  
302-573-6491  
joseph.mcmahon@usdoj.gov

**XIV. Recommendation**

In the opinion of the Plan Proponents, the Combined Plan and Disclosure Statement is superior and preferable to the alternatives described in the Combined Plan and Disclosure Statement. Further, the value being provided to creditors under the Combined Plan and Disclosure Statement was subject to extensive negotiations. Accordingly, the Plan Proponents recommend that Holders of Claims entitled to vote on the Combined Plan and Disclosure Statement vote to accept the Combined Plan and Disclosure Statement and support Confirmation.

Dated: May 12, 2021  
Wilmington, Delaware

**Knotel, Inc., Knotel Canada, Inc., and  
42Floors LLC, the Liquidating Debtors**

/s/ Harvey L. Tepner  
Solely in his capacity as Responsible Officer

**Official Committee of Unsecured Creditors  
of Knotel, Inc., et al.**

By: /s/ Mona C. Hefferman  
Solely in her capacity as Co-Chair of the  
Official Committee of Unsecured Creditors

**Official Committee of Unsecured Creditors  
of Knotel, Inc., et al.**

By: /s/ Roni Mova  
Solely in his capacity as Co-Chair of the  
Official Committee of Unsecured Creditors

**Exhibit A**

Dismissed Debtors

**Schedule of Dismissed Debtors**

This schedule represents the most current list of Dismissed Debtors in connection with the Combined Plan and Disclosure Statement (subject to the terms thereof). The Plan Proponents expressly reserve the right to add or subtract Dismissed Debtors or to otherwise alter, modify, remove, augment or supplement this schedule at any time before the Effective Date in accordance with terms of the Combined Plan and Disclosure Statement.

100 Bush St SF LLC	1330 Conn Ave DC LLC
101 Fifth Ave NYC LLC	1407 Broadway NYC LLC
101 Montgomery St SF LLC	142 Berkeley St BOS LLC
10301 Jefferson Blvd LA LLC	1444 Market St SF LLC
110 W 32nd NYC LLC	146 Geary St SF LLC
1100 Glendon LA LLC	152 W 25 NYC LLC
1120 20th St DC LLC	1550 Bryant St SF LLC
116 W 32nd NYC LLC	1556 20th LA LLC
12 E 33 St NYC LLC	16 W 36 St NYC LLC
12121 Bluff Creek LA LLC	1625 Oly Blvd LA LLC
12211 Washington LA LLC	1640 Sepulveda LA LLC
125 Fifth Ave NYC LLC	166 Geary St SF LLC
1250 Eye St DC LLC	1720 Eye St DC LLC
12555 West Jefferson Way LA LLC	1725 Montgomery St SF LLC
126 Post St SF LLC	19 W 44th NYC LLC
129 W 29th NYC LLC	195 Broadway NYC LLC
131 Rodeo 102 LA LLC	2 Liberty Sq BOS LLC
131 Rodeo 250 LA LLC	22 W 21 ST NYC LLC
13160 Mindanao Way LA LLC	2228 Cottner LA LLC



1317 5th St LA LLC	23 W 20th NYC LLC
239 Causeway St Boston LLC	40 Broad St BOS LLC
240 W 35th NYC LLC	400 Sutter St SF LLC
240 W 40 St NYC LLC	405 E 4th Avenue SM LLC
250 Montgomery St LLC	405 Howard Street SF LLC
259 W 30TH NYC LLC	429 Santa Monica Blvd LA LLC
26 W 17th St NYC LLC	44 E 32nd Street NYC LLC
260 W 39th NYC LLC	44 Thomson Pl BOS LLC
275 Battery St SF LLC	447 Broadway NYC LLC
28 W 25 NYC LLC	45 W 45 ST NYC LLC
29 W 35th St NYC LLC	4501 Glencoe Blvd LA LLC
295 Madison NYC LLC	455 Market St SF LLC
30 W 21 St NYC LLC	456 Montgomery St SF LLC
300 Broadway St SF LLC	465 California St SF LLC
300 Montgomery St SF LLC	5 Bryant Park NYC LLC
301 Brannan St SF LLC	50 Osgood Pl SF LLC
303 Second St SF LLC	505 Howard SF St LLC
3137 S La Cienega Blvd LA LLC	545 5th Ave NYC LLC
320 Lincoln LA LLC	555 Montgomery St SF LLC
3309 La Cienega Place LA LLC	565 Commercial St SF LLC
333 Broadway SF Tenant LLC	580 8th Ave NYC LLC
350 Sansome St SF LLC	590 Fifth Ave NYC LLC
3535 Hayden Ave LA LLC	597 Fifth Ave NYC LLC
360 Madison NYC LLC	6 W 28th NYC LLC

369 Lexington Ave NYC LLC	60 Madison NYC LLC
390 Broadway NYC LLC	600 Corporate Pointe LA LLC
649 Mission St SF LLC	Knotel 12 W 27th St LLC
650 Fifth Ave NYC LLC	Knotel 121 2nd Street LLC
71 Stevenson St SF LLC	Knotel 147 W 24th LLC
750 HARRISON ST SF LLC	Knotel 148 Lafayette LLC
818 Mission St SF LLC	Knotel 150 Post LLC
8590 National Blvd LA LLC	Knotel 1500 Broadway LLC
8690 National Blvd LA LLC	Knotel 155 Fifth Ave LLC
875 6th Ave NYC LLC	Knotel 156 Fifth, LLC
88 Kearny St SF LLC	Knotel 16 W 22nd LLC
901 Market St SF LLC	Knotel 160 Pine LLC
909 E Street DC LLC	Knotel 17 W 20th LLC
909 Ocean Front Walk LA LLC	Knotel 180 Howard LLC
91 Fifth Ave NYC LLC	Knotel 200 W 41st LLC
Bush 225 SF LLC	Knotel 2080 Addison LLC
Cortlandt White NYC LLC	Knotel 211 East 43 LLC
Kkoin, LLC	Knotel 213 W 35th St LLC
Knotel 1 Whitehall LLC	Knotel 220 W 19th St LLC
Knotel 102 Madison LLC	Knotel 221 Pine LLC
Knotel 105 Madison LLC	Knotel 224 W 30th LLC
Knotel 109 Stevenson LLC	Knotel 229 W 43 LLC
Knotel 11 E 44th LLC	Knotel 25 W 45th LLC
Knotel 110 Greene LLC	Knotel 250 Hudson LLC

Knotel 110 William LLC	Knotel 250 Hudson ST LLC
Knotel 114 W 26th LLC	Knotel 26 OFarrell LLC
Knotel 12 W 21st St LLC	Knotel 26 W 17 LLC
Knotel 261 Madison LLC	Knotel 475 Park LLC
Knotel 27 W 23rd ST LLC	Knotel 49 Drumm LLC
Knotel 29 W 17th LLC	Knotel 5 Hanover LLC
Knotel 3 E 28th LLC	Knotel 521 Broadway LLC
Knotel 30 Broad LLC	Knotel 530 Broadway LLC
Knotel 30 West 26th LLC	Knotel 530 Seventh Avenue LLC
Knotel 307 Fifth LLC	Knotel 54 W 21st LLC
Knotel 31 W 27th LLC	Knotel 54 W 22nd LLC
Knotel 321 11th LLC	Knotel 55 W 21St LLC
Knotel 340 Brannan LLC	Knotel 550 Montgomery LLC
Knotel 36 W 14th LLC	Knotel 551 Fifth Ave LLC
Knotel 360 Pas LLC	Knotel 560 LEXINGTON LLC
Knotel 37 W 17th LLC	Knotel 575 8th Ave LLC
Knotel 373 Pas LLC	Knotel 580 5th Ave LLC
Knotel 38 E 29th LLC	Knotel 580 Market LLC
Knotel 399 Lafayette LLC	Knotel 584 Broadway LLC
Knotel 40 EX LLC	Knotel 5-9 USW LLC
Knotel 40 Wooster LLC	Knotel 598 Broadway LLC
Knotel 400 Madison LLC	Knotel 6 W 48th St LLC
Knotel 41 USW LLC	Knotel 600 Townsend LLC
Knotel 41 W 25 LLC	Knotel 61 Broadway LLC

Knotel 417 Montgomery LLC	Knotel 611 Mission LLC
Knotel 419 PAS LLC	Knotel 615 Sacramento LLC
Knotel 43 W 24th LLC	Knotel 625 2nd LLC
Knotel 443 PAS LLC	Knotel 655 Madison LLC
Knotel 695 AOA LLC	Knotel Blockchain Services LLC
Knotel 701 Sutter LLC	Knotel Flowerpot LLC
Knotel 72 Madison LLC	Knotel Geometry LLC
Knotel 785 Market LLC	Knotel Platform 2017 LLC
Knotel 80 Eighth Ave LLC	Knotel President LLC
Knotel 814 Mission LLC	Knotel Properties LLC
Knotel 88 Stevenson LLC	Knotel Varick LLC
Knotel 90 John LLC	Knotel William LLC
Knotel 900 Broadway LLC	Paces Ferry Road ATL LLC
Knotel 972 Mission LLC	Pine Street Tenant NY LLC
Knotel Battery LLC	Tenant 660 Mkt St SF LLC

**Exhibit B**

Liquidating Debtors

**Schedule of Liquidating Debtors**

This schedule represents the most current list of Liquidating Debtors in connection with the Combined Plan and Disclosure Statement (subject to the terms thereof). The Plan Proponents expressly reserve the right to add or subtract Liquidating Debtors or to otherwise alter, modify, remove, augment or supplement this schedule at any time before the Effective Date in accordance with terms of the Combined Plan and Disclosure Statement.

KNOTEL, INC.
KNOTEL CANADA, INC.
42Floors LLC

**Exhibit C**

Estate Causes of Action

**Schedule of Estate Causes of Action**

This schedule represents the Estate Causes of Action to be retained in connection with the Combined Plan and Disclosure Statement (subject to the terms thereof). The Plan Proponents expressly reserve the right to alter, modify, remove, augment or supplement this schedule at any time before or after confirmation in accordance with terms of Article XIII (A) of the Combined Plan and Disclosure Statement.

**Certain Categories of Causes of Action**

The categories of Causes of Action listed below are indicative, but are in no way exclusive, of the Causes of Action retained in connection with the Combined Plan and Disclosure Statement.

**Estate Causes of Action**

Causes of Action include, but are not limited to:

1. Causes of Action in connection with any Claims or Causes of Action for indemnification except as otherwise limited by the Combined Plan and Disclosure Statement;
2. Except as otherwise limited by the Combined Plan and Disclosure Statement, Causes of Action in connection with any Claims and Causes of Action against Debtors' current and former directors, officers, members, or managers, which Claims and Causes of Action include, but are not limited to, breaches of fiduciary duties, unjust enrichment, acts and omissions related to the Debtors, their bankruptcy filing, prepetition transactions involving the Debtors and customer retainers;
3. Causes of Action in connection with any Avoidance Actions against Insiders (as defined in 11 U.S.C. §101(31)) ((x), (y), and (z)) except as otherwise limited by the Combined Plan and Disclosure Statement;
4. Causes of Action in connection with any Insider Avoidance Action seeking to recover payments made by or on behalf of the Debtors to Insiders prior to the Petition Date, including, but not limited to payments identified on the Debtors' schedules and statements of financial affairs (and incorporated herein by reference), including any fraudulent transfer claim against any Insider except as otherwise limited by the Combined Plan and Disclosure Statement;
5. Causes of Action in connection with any Claims for refunds, credits, overpayments or other amounts due to the Debtors except as otherwise limited by the Combined Plan and Disclosure Statement;

6. All Claims and Causes of Action in defense to or reduction of any Claim and Cause of Action that may be asserted against the Debtors; and
7. Causes of Action arising under the APA, Sale Order, Committee Settlement, and Transition Services Agreement; provided however, Causes of Action shall not include the Exculpated Parties for any post-Petition Date conduct or omission other than for their willful or gross negligence as determined by a final order of a court of competent jurisdiction, and in all respects the Exculpated Parties shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Combined Plan and Disclosure Statement.

Unless otherwise released under Article XI of the Combined Plan and Disclosure Statement or acquired under the APA, the Debtors, and the Liquidating Trustee, as applicable, expressly reserve all claims and Causes of Action against any Entity listed on Schedule A/B, Schedule D, Schedule E, and Schedule F of each Debtor to the extent such Entities owe or may in the future owe money to the Debtors.

Debtors and the Liquidating Trustee, as applicable expressly reserve all claims and Causes of Action against any Entity listed on (a) with respect to the schedules, Schedule A/B, Schedule D, Schedule E, Schedule F, Schedule G, and Schedule H of each Debtor and (b) the Statement of Financial Affairs of each Debtor to the extent such Entities owe or may in the future owe money to the Debtors.

**Exhibit D**

Liquidation Analysis

[TO BE INCLUDED IN PLAN SUPPLEMENT]



**Exhibit E**

Liquidating Trust Agreement

[TO BE INCLUDED IN PLAN SUPPLEMENT]

**Appendix "B"**

**Plan Supplement dated June 11, 2021**

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

In re

KNOTEL, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 21-10146 (MFW)

Jointly Administered

**Re: Docket Nos. 1138 & 1140**

**NOTICE OF FILING PLAN SUPPLEMENT**

**PLEASE TAKE NOTICE** that on May 12, 2021, Knotel, Inc, and certain affiliate debtors, (the “**Liquidating Debtors**”) and the Official Committee of Unsecured Creditors (the “**Committee**,” and along with the Liquidating Debtors, the “**Plan Proponents**”), filed the *Joint Combined Chapter 11 Plan of Liquidation and Disclosure Statement for Knotel, Inc. and Certain Affiliate Debtors* [D.I. 1138] (as further modified, supplemented, and amended, the “**Combined Plan and Disclosure Statement**”)<sup>2</sup>;

**PLEASE TAKE FURTHER NOTICE** that in connection with the Combined Plan and Disclosure Statement, the Plan Proponents hereby file the Plan Supplement, which is attached hereto as Schedule 1. Included within the Plan Supplement are (i) Exhibit D to the Combined Plan and Disclosure Statement consisting of the Liquidation Analysis, and (ii) Exhibit E to the Combined Plan and Disclosure Statement consisting of the form of Liquidating Trust Agreement, including identification of the proposed Liquidating Trustee, Entity Services (SPV), LLC, a subsidiary of CSC Global Financial Markets;

**PLEASE TAKE FURTHER NOTICE** that the Plan Proponents reserve the right, subject to the terms and conditions set forth in the Combined Plan and Disclosure Statement, to alter, amend, modify or supplement any document in the Combined Plan and Disclosure Statement or in the Plan Supplement at any time; and

**PLEASE TAKE FURTHER NOTICE** that copies of the Combined Plan and Disclosure Statement, this Plan Supplement and other documents filed in the Chapter 11 Cases are available free of charge by visiting <https://www.omniagentsolutions.com/knotel> or by calling Omni Agent Solutions at 866-771-0565 (US & Canada) or 818-581-2989 (International) or by e-mail at

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<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.omniagentsolutions.com/knotel> or, alternatively, via the Bankruptcy Court at <https://ecf.deb.uscourts.gov/cgi-bin/login.pl> with a Public Access to Court Electronic Records (“PACER”) account, which may be obtained at <https://pacer.uscourts.gov>. The location of Debtor Knotel, Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 5-9 Union Square West, New York, NY 10003.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Combined Plan and Disclosure Statement. The rules of interpretation set forth in Article III of the Combined Plan and Disclosure Statement shall apply to the Plan Supplement.

[knotelballot@omniagenet.com](mailto:knotelballot@omniagenet.com). You may also obtain copies of any pleadings by visiting the Bankruptcy Court's website at <https://ecf.deb.uscourts.gov/cgi-bin/login.pl>. A PACER password is needed to access documents on the Bankruptcy Court's website.

Dated: June 11, 2021  
Wilmington, Delaware

**MORRIS, NICHOLS, ARSHT &  
TUNNELL LLP**

*/s/ Matthew O. Talmo*

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*Counsel for the Debtors*

**POTTER ANDERSON & CORROON  
LLP**

*/s/ D. Ryan Slauch*

---

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*Counsel for the Official Committee of  
Unsecured Creditors*

**SCHEDULE 1**  
**PLAN SUPPLEMENT**

## **EXHIBIT D**

### **Liquidation Analysis**

#### **General Assumptions**

Hypothetical recoveries under a chapter 7 scenario set forth in this analysis (the "Liquidation Analysis") were determined through multiple steps, as set forth below. The basis of the Liquidation Analysis is the Committee Settlement and the estimated costs to execute the administration and wind-down of the Debtors' estates in a chapter 7 liquidation. The Liquidation Analysis assumes that the Debtors would commence a chapter 7 liquidation on or about June 30, 2021 (the "Conversion Date") under the supervision of a court-appointed chapter 7 trustee. The Liquidation Analysis reflects the wind-down and liquidation of substantially all of the Debtors' remaining assets and the distribution of available proceeds to Holders of Allowed Claims after the Conversion Date over an 18-month period.

IT SHOULD BE NOTED THAT ANY ANALYSIS OF A HYPOTHETICAL LIQUIDATION IS NECESSARILY SPECULATIVE. THERE ARE A NUMBER OF ESTIMATES AND ASSUMPTIONS UNDERLYING THE LIQUIDATION ANALYSIS THAT ARE INHERENTLY SUBJECT TO SIGNIFICANT UNCERTAINTIES AND CONTINGENCIES BEYOND THE CONTROL OF THE DEBTORS OR A CHAPTER 7 TRUSTEE. NEITHER THE ANALYSIS, NOR THE FINANCIAL INFORMATION ON WHICH IT IS BASED, HAS BEEN EXAMINED OR REVIEWED BY INDEPENDENT ACCOUNTANTS IN ACCORDANCE WITH STANDARDS PROMULGATED BY THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS. THERE CAN BE NO ASSURANCE THAT ACTUAL RESULTS WOULD NOT VARY MATERIALLY FROM THE HYPOTHETICAL RESULTS PRESENTED IN THE LIQUIDATION ANALYSIS.

The Debtors have not completed their analysis of Claims in these Chapter 11 Cases, and objections to such Claims have not been filed and/or fully litigated and will continue following the Effective Date. Therefore, there can be no assurances of the amount of the Allowed Claims at this time, and the actual amount of the Allowed Claims may be greater or lower than estimated.

Capitalized terms which are not defined herein are defined by the Combined Plan and Disclosure Statement of Knotel, Inc. and certain Affiliate Debtors (the "Plan").

**Knotel, Inc. and certain Affiliate Debtors**  
**Liquidation Analysis**

(\$ in thousands)

<b>Summary of Recoveries Under the Proposed Plan and a Chapter 7 Liquidation</b>			
		<u>Chapter 11</u>	<u>Chapter 7</u>
<b>Distributable Value:</b>			
GUC Fund	(A)	\$ 6,200.0	\$ 6,200.0
Wind-Down Budget	(B)	500.0	500.0
Causes of Action	(C)	-	-
<b>Gross Proceeds Available for Distribution</b>		<b>\$ 6,700.0</b>	<b>\$ 6,700.0</b>
<b>Fees and Expenses:</b>			
Trustee Fees	(D)	\$ 250.0	\$ 350.0
Wind-Down Expenses	(E)	650.0	700.0
<b>Total Fees and Expenses</b>		<b>\$ 900.0</b>	<b>\$ 1,050.0</b>
<b>Administrative Claims</b>	(F)	<b>\$ 2,350.0</b>	<b>\$ 2,350.0</b>
<b>Net Distributable Value</b>		<b>\$ 3,450.0</b>	<b>\$ 3,300.0</b>
<b>Class 1 - First Lien Claims</b>			
First Lien Claims Recovery (\$)		\$ 18,550.0	\$ 18,550.0
First Lien Claims Recovery (%)		100.0%	100.0%
<b>Class 2 - Second Lien Claims</b>			
Second Lien Claims Recovery (\$)		\$ 51,169.2	\$ 51,169.2
Second Lien Claims Recovery (%)		100.0%	100.0%
<b>Class 3 - Other Secured Claims</b>			
Other Secured Claims Recovery (\$)		\$ 3,818.5	\$ 3,818.5
Other Secured Claims Recovery (%)		100.0%	100.0%
<b>Class 4 - Other Priority Claims</b>			
Other Priority Claims Recovery (\$)		\$ 1,700.0	\$ 3,950.0
Other Priority Claims Recovery (%)		100.0%	83.5%
<b>Class 5 - GUCS <sup>(1)</sup></b>			
<b>GUCS Recovery (\$)</b>		<b>\$ 1,750.0</b>	<b>\$ -</b>
<b>GUCS Recovery (%)</b>		<b>0.5%</b>	<b>0.0%</b>

<sup>(1)</sup> Includes Other Secured Claims (surety bonds) deficiency claim

**Note: The accompanying notes are an integral part of this Liquidation Analysis.**

## Summary Notes to the Liquidation Analysis

### Distributable Value

#### **(A) GUC Fund**

The sum of \$6.2M funded pursuant to the Committee Settlement.

#### **(B) Wind-Down Budget**

The sum of \$500K funded by Purchaser pursuant to the Committee Settlement for costs associated with the wind-down of the Estates (including related to the Plan process) from the Closing Date through the Effective Date.

#### **(C) Causes of Action**

Liquidating Trust Assets, including Estate Causes of Action listed in Exhibit C of the Plan, remain Assets of the Debtors pursuant to the Committee Settlement. Such Estate Causes of Action will be transferred to and vested in the Liquidating Trust pursuant to the Plan. The Estate Causes of Action include D&O Claims which are subject to D&O Policies that carry a maximum of \$5.0M in available insurance coverage. Although potential Estate Causes of Action exist, due to the uncertainty of recovery, no value has been assigned to them in this analysis. There are no assurances that any Estate Causes of Action would be pursued by the chapter 7 trustee or the Liquidating Trustee.

### Fees and Expenses

#### **(D) Trustee Fees**

Trustee Fees reflect fees for the chapter 7 trustee which are estimated as 3% of gross proceeds available for distribution to creditors. In the chapter 11 scenario, fees for the Liquidating Trustee are based on estimated monthly fees over the duration of the Liquidating Trust, which is assumed to be 18 months. Trustee Fees in either scenario may be higher or lower than the estimate utilized in the Liquidation Analysis.

#### **(E) Wind-Down Expenses**

Wind-Down Expenses include estimated post-Effective Date costs to wind-down the affairs of the Estates for the Liquidating Debtors, and for the chapter 7 trustee to wind-down the affairs of all Debtors. These costs include (i) professionals' fees, (ii) insurance, (iii) tax filing costs, and (iv) a contingency cushion for other potential Wind-Down costs such as maintenance and disposal of books and records.

### Administrative Claims

#### **(F) Administrative Claims**



These fees reflect estimated Professionals' fees, Responsible Officer fees, and US Trustee fees from the Closing Date through the Conversion Date.

Total Professionals' fees and Responsible Officer fees are estimated to be in aggregate \$2.2M, based on preliminary estimates from the Professionals and the Responsible Officer and are subject to change. Responsible Officer fees are based on the contractual fee arrangement with the Debtors. US Trustee Fees are estimated in accordance with The Bankruptcy Administration Improvement Act of 2020 and are estimated to be \$150K. Fees in excess of \$500K will be paid for with proceeds from the GUC Fund or other proceeds available for distribution.

### **Class 1 – First Lien Claims**

#### **(G) First Lien Claims**

The First Lien Claims were included as part of the Credit Bid and satisfied through the Sale. The First Lien Claims in this Liquidation Analysis reflect the satisfaction of the Prepetition Secured Debt in full, based on a fixed amount, without giving effect to any adjustment for Digiatech's Deficiency Claim, which has been waived for distribution purposes as part of the Committee Settlement.

### **Class 2 – Second Lien Claims**

#### **(H) Second Lien Claims**

The Second Lien Claims were included as part of the Credit Bid and satisfied through the Sale. The Second Lien Claims in this Liquidation Analysis reflect the satisfaction of the Prepetition Secured Debt in full, based on a fixed amount, without giving effect to any adjustment for Digiatech's Deficiency Claim, which has been waived for distribution purposes as part of the Committee Settlement.

### **Class 3 – Other Secured Claims**

#### **(I) Other Secured Claims**

Other Secured Claims consist of (i) \$2.8M of amounts outstanding under the JPM and Bridge Bank for letters of credit issued on behalf of the Debtors, (ii) \$1.0M of amounts outstanding under the Argonaut Insurance Company for surety bonds issued on behalf of the Debtors, and (iii) any Other Secured Claims. All outstanding letters of credit are fully cash collateralized, and recoveries are funded with the collateral. The surety bonds are partially cash collateralized by \$1.0M, and the cash collateralized portion is included in Class 3. To the extent that any Other Secured Claims are not fully collateralized, any deficiency claims will be included in the General Unsecured Claims pool and is subject to Class 5 treatment.

### **Class 4 – Other Priority Claims**

#### **(J) Other Priority Claims**

Under a chapter 7 scenario, Other Priority Claims consist of the Debtors' estimate of outstanding amounts for priority taxes. The current estimate for potential Other Priority Claims ranges from \$2.4M to \$5.5M consisting of i) estimated \$3.1M in commercial rent tax (CRT) claims that remain subject to further analysis, ii) \$1.4M for other taxes, including personal property, franchise, and other taxes, and iii) \$1.0M for potential unknown claims. The chapter 7 claims estimate factors in the commercial rent taxes against all Debtor entities, whereas, the chapter 11 scenario is based on potential claims against the three Liquidating Debtors under the Plan. For the purposes of the Liquidation Analysis, a midpoint of \$4.0M is included in the Other Priority Claims class.

Under a chapter 11 scenario, the current estimate for potential Other Priority Claims ranges from \$1.0M to \$2.4M, consisting of i) \$1.4M for other taxes, including personal property, franchise, and other taxes, and ii) \$1.0M for potential unknown claims. For the purposes of the Liquidation Analysis, a midpoint of \$1.7M is included in the Other Priority Claims class.

The Debtors believe there are no additional Other Priority Claims at the Liquidating Debtors under the Plan, however, this could change given the Governmental Bar Date, the Knotel Canada Amended Schedules Bar Date, and the Knotel Canada Amended Schedules Governmental Bar Date have not yet passed. Under a chapter 7 scenario, all of the Debtors would convert to chapter 7, leaving the estate subject to materially higher tax claims.

#### **Class 5 – Unsecured Claims**

##### **(K) General Unsecured Claims**

General Unsecured Claims reflect the midpoint of the estimated ranges of trade/accounts payable claims, lease rejection damage claims, customer retainers, unsecured notes, and deficiency claims. The Purchaser has a Deficiency Claim for voting purposes only, and is not entitled to any Distribution on account of the Deficiency Claim. The Claims against the Debtors have not been fully reconciled, and such process will continue post-Effective Date. As such, the actual Allowed General Unsecured Claim may be materially lower or higher than the estimate utilized in the Liquidation Analysis. Under a chapter 7 scenario, all of the Debtors would convert to chapter 7, leaving the estate subject to materially higher claims, primarily due to higher lease and lease rejection damage claims.

**EXHIBIT E**

**KNOTEL LIQUIDATING TRUST AGREEMENT**

This Knotel Liquidating Trust Agreement (this “Agreement”) dated as of [June 30, 2021], is by and between Knotel, Inc., Knotel Canada, Inc., and 42Floors, LLC (collectively, the “Liquidating Debtors” or “Settlors”), and Entity Services (SPV), LLC as the Liquidating Trustee (the “Trustee”) for the benefit of the Holders of Allowed Claims and certain other Beneficiaries under the terms of the *Joint Combined First Amended Chapter 11 Plan of Liquidation and Disclosure Statement for Knotel, Inc. and Certain Affiliate Debtors* (the “Plan”), confirmed by Order of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) in the Liquidating Debtors’ Chapter 11 Cases, Case No. 21-10146 (MFW), on June [\*\*], 2021 (the “Confirmation Order”) [Docket No. \*\*].

**WITNESSETH**

**WHEREAS**, the Trust is created pursuant to, and to effectuate, the Plan;

**WHEREAS**, the Trust is created on behalf of, and for the sole benefit of, the Beneficiaries pursuant to the terms of this Agreement and the Plan;

**WHEREAS**, the Trust is established for the purpose of collecting, distributing and liquidating the Debtor’s Assets for the benefit of the Beneficiaries in accordance with the terms of this Agreement and the Plan with 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 liquidating purpose of the Trust;

**WHEREAS**, pursuant to the Plan, the Settlor, the Trustee, and the Beneficiaries are required to treat, for all federal income tax purposes, the transfer of the Assets to the Trust as a transfer of the Assets by the Settlers to the Beneficiaries in satisfaction of their Allowed Claims, followed by a transfer of the Assets by the Beneficiaries to the Trust in exchange for the

beneficial interest herein, and to treat the Beneficiaries as the grantors and owners of the Trust in accordance with Treasury Regulation Section 301.7701-4;

**WHEREAS**, the Trust is intended to be treated as a grantor trust for federal income tax purposes;

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained herein and in the Plan, the Settlor and the Trustee agree as follows:

## **ARTICLE I**

### **DEFINITIONS AND INTERPRETATIONS**

#### 1.1 Definitions.

1.1.1 “Assets” shall mean the term Liquidating Trust Assets as defined in the Plan.

1.1.2 “Available Trust Cash” shall mean the aggregate of the amounts remaining in the GUC Fund, Cash on the Effective Date, proceeds of the Causes of Action, including the Estate Causes of Action, plus all other Assets and the proceeds thereof after paying, funding, reserving against, or satisfying: (a) fees due to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6) that are incurred after the Effective Date of the Plan; and (b) operating and administrative expenses of the Trust, including but not limited to all reasonable costs, expenses, and obligations incurred by the Trustee and any professionals who may be employed by the Trustee in administering the Trust pursuant to the Plan and in carrying out the Trustee’s responsibilities under this Agreement, other than the fees and expenses of Contingency Counsel. Available Trust Cash shall exclude any funds deposited or to be deposited in the Professional Fee Escrow pursuant to the terms of the Plan.

1.1.3 “Beneficiaries” or “Liquidating Trust Beneficiaries” shall mean Liquidating Trust Beneficiary as defined in the Plan.

1.1.4 “Contingency Counsel” shall mean any other counsel engaged by the Trust and/or the Liquidating Trustee on a contingency fee basis to pursue any Estate Causes of Action.

1.1.5 “Disputed Claims Reserve” shall mean such reserve fund established by the Liquidating Trustee to hold Cash, which may be necessary to make one or more distributions to a Beneficiary at the time a Disputed Claim becomes and Allowed Claim.

1.1.6 “Estate Causes of Action” shall mean those causes of action and/or claims identified in Exhibit C to the Plan.

1.1.7 “Liquidating Trust Committee” shall mean the oversight committee appointed as of the Effective Date of the Plan and comprised of members of the Official Committee of Unsecured Creditors (the “Committee”) so willing to serve in such capacity. The Liquidating Trust Committee should at all times be made up of at least [three (3) members].

1.1.8 “Liquidating Trustee” or “Trustee” shall mean (a) initially, Entity Services (SPV), LLC, and (b) any successors or replacements duly appointed under the terms of this Agreement.

1.1.9 “Permitted Investments” shall include (a) short-term direct obligations of, or obligations guaranteed by, the United States of America, (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States of America as an agency or instrumentality thereof, (c) money market funds that invest exclusively in short-term direct obligations of, or obligations guaranteed by, the United States of America, (d) such other investments as the Bankruptcy Court may

approve from time to time, if required, or (e) demand deposits or certificates of deposit at any bank or trust company that has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000, provided, however, that the scope of any Permitted Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise.

1.1.10 “Plan” shall mean the *Joint Combined First Amended Chapter 11 Plan of Liquidation and Disclosure Statement for Knotel, Inc. and Certain Affiliate Debtors*, dated as of May 12, 2021 [Docket No. 1138], as may be further amended, modified or supplemented.

1.1.11 “Settlors” shall mean the Liquidating Debtors and their Estates.

1.1.12 “Trust” shall mean this Liquidating Trust established pursuant to the terms of this Agreement and the Plan.

1.2 Use of Plan Definitions. All capitalized terms that are used in this Agreement but not defined herein shall have the meaning set forth for such terms in the Plan.

1.3 Interpretation. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the provisions of this Agreement. Words denoting the singular number shall include the plural number and vice versa, and words denoting one gender shall include the other gender.

1.4 Particular Words. Reference in this Agreement to any Section or Article is, unless otherwise specified, to that such Section or Article under this Agreement. The words “hereof,” “herein,” “hereinafter,” and similar terms shall refer to this Agreement and not to any particular Section or Article of this Agreement.

## ARTICLE II

### DECLARATION OF TRUST

2.1 Creation and Name. There is hereby created the Trust, which shall be known as the “**Knotel Liquidating Trust**,” and is the Trust referred to as the “Liquidating Trust” in the Plan. The Trustee may conduct the affairs of the Trust under the name of the “Knotel Liquidating Trust.”

2.2 Purpose of Trust. The Settlers and the Trustee, pursuant to the Plan and in accordance with this Agreement and the Bankruptcy Code, hereby create the Trust for the purpose of collecting, distributing, and liquidating the Assets for the benefit of, and making distributions to, the Beneficiaries in accordance with the terms of this Agreement and the Plan. The activities of the Trust shall be limited to those activities set forth in this Agreement, as may be amended, and as otherwise contemplated by the Plan.

2.3 Transfer of Assets.

A. The Settlers hereby grant, assign, convey, transfer and deliver, on behalf of the Beneficiaries, all of the Settlers’ right, title and interest in the Assets to the Trustee as of the Effective Date to be held in trust for the benefit of the Beneficiaries, pursuant to §§ 1123(a)(5)(B) and 1123(b)(3)(B) of the Bankruptcy Code and in accordance with the Plan and Confirmation Order. As of the Effective Date, the Assets shall be free and clear of any and all liens, claims, encumbrances, and interests (legal, beneficial, or otherwise) of all other Persons and Governmental Units to the maximum extent contemplated by and permissible under § 1141(c) of the Bankruptcy Code for the uses and purposes as specified in this Agreement and the Plan. The Assets can be used to, among other things, satisfy the following liabilities: (a) all fees payable pursuant to 28 U.S.C. § 1930 that accrue after the Effective Date until such time as

the Bankruptcy Court enters a final decree closing the Settlor's Chapter 11 Cases; (b) any fees and expenses incurred and unpaid, or to be incurred by the Trustee and his/her respective agents and professionals, as further described in Section 3.8 herein, in the performance of their administrative duties in connection with winding up the Settlor's Estates after the Effective Date; and (c) any other obligations as may be specifically set forth in this Agreement, the Plan and/or Confirmation Order, as the case may be. Notwithstanding anything in this Agreement to the contrary, and subject to the Plan, the Trustee, with the consent of the Liquidating Trust Committee, which consent shall not be unreasonably withheld, or, in the absence of such consent, by order of the Bankruptcy Court, may abandon or otherwise not accept any Assets that the Trustee believes, in good faith, or has been advised by agents or professionals, have no value to the Trust. Any Assets that the Trust so abandons or otherwise does not accept shall not vest in the Trust.

B. The Trustee shall automatically, and without need for further notice or approval of the Bankruptcy Court or the Settlor's, be designated as the representative of the Estates pursuant to § 1123 of the Bankruptcy Code to enforce or pursue any Estate Causes of Action transferred to the Trust on or after the Effective Date in accordance with the terms of this Agreement, the Plan and/or the Confirmation Order. Any proceeds of an Estate Cause of Action shall be distributed pursuant to the terms of the Plan and this Agreement.

C. The Trustee shall, without need for further notice or approval of the Bankruptcy Court, be entitled to all rights and services provided to the Settlor's pursuant to the Transition Services Agreement.

2.4 Securities Law. Under § 1145 of the Bankruptcy Code, the issuance of beneficial interests in the Trust to the Beneficiaries under the Plan shall be exempt from registration under



the Securities Act of 1933, as amended, and all applicable state and local laws requiring registration of securities. If the Trustee determines, with the advice of counsel, that the Trust is required to comply with the registration and reporting requirements of the Securities and Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Trustee shall take any and all actions at the expense of the Trust to comply with such reporting requirements and file necessary periodic reports with the Securities and Exchange Commission.

2.5 Appointment and Acceptance of Trustee. The Trustee shall be deemed to be appointed pursuant to § 1123(b)(3)(B) and all other applicable sections of the Bankruptcy Code. The Trustee accepts the Trust created by this Agreement and the grant, assignment, transfer, conveyance, and delivery to the Trustee, on behalf, and for the benefit, of the Beneficiaries, by the Settlers of all of their respective rights, title, and interest in the Assets, upon and subject to the terms and conditions set forth in this Agreement, the Plan, and the Confirmation Order.

2.6 No Reversion to Settlers. In no event shall any part of the Assets be distributed to the Settlers after the Effective Date. Rights to any reversionary interests in the Assets shall be controlled by the Plan.

### **ARTICLE III**

#### **ADMINISTRATION OF THE TRUST**

3.1 Liquidating Trust Committee.

A. On the Effective Date, the Liquidating Trust Committee shall be established to oversee certain aspects of the implementation of the Plan and the Liquidating Trust.

B. The Liquidating Trust Committee shall consist of members of the Committee so willing to serve in such capacity. The initial members of the Liquidating Trust Committee are: ARC NYC 570Seventh LLC, [\*\*].

C. The Liquidating Trust Committee shall have access to the Trustee and the right to consult with and, if and to the extent provided in the Plan and this Agreement, direct the Trustee in writing in connection with the administration and implementation of the Plan on and after the Effective Date as set forth in the Plan and this Agreement. The Trustee shall be fully protected and shall incur no liability for acting or not acting as directed by the Liquidating Trust Committee.

3.2 Rights, Powers, Privileges and Duties. The Trustee shall have only the rights, powers, privileges, and duties expressly provided in this Agreement, the Plan and the Confirmation Order. Subject to the terms of the Plan and this Agreement, including Section 3.11 of this Agreement, and in consultation with or approval (which consent shall not be unreasonably withheld) of the Liquidating Trust Committee, the Trustee shall have the power to take the actions granted in this Section 3.2, and any powers reasonably incidental thereto, which the Trustee reasonably determines to be necessary or appropriate to fulfill the purpose of the Trust, including but not limited to:

A. Prosecuting, settling, assigning, or otherwise compromising or abandoning for the benefit of the Trust any and all Estate Causes of Action transferred, assigned and conveyed to the Trust or arising in favor of the Trust, including, without limitation, taking any action with respect to appeals, counterclaims, and defenses of or with respect to such claims and causes of action, including retaining counsel to pursue the Estate Causes of Action as permitted by the Plan unless otherwise required or modified by this Agreement;

B. Exercising all powers provided to the Trustee or the Trust under the Plan or Confirmation Order, including, without limitation, the right to allow, object to, or reconcile all Claims, including Unsecured Claims, Priority Claims (both tax and non-tax), Administrative Expense Claims, and any other Claims asserted against the Estates;

C. Liquidating, selling or abandoning the Assets or any portion thereof;

D. Determining and satisfying any liabilities created, incurred or assumed by the Trust;

E. Executing any documents and taking any other actions related to, or in connection with, the liquidation of the Assets and the exercise of the Trustee's powers granted in this Agreement, the Plan, and Confirmation Order;

F. Holding legal title to any and all rights of the Beneficiaries in, to, or arising from the Assets;

G. Establishing the Disputed Claims Reserve, as well as any other required reserves, in an amount as may be necessary and appropriate for the proper operation of matters incident to the Trust (in the event the Trustee and/or the Liquidating Trust Committee do not agree on the amount of Cash to be maintained in the Disputed Claims Reserve, the Bankruptcy Court shall determine the appropriate amount of the Disputed Claims Reserve);

H. Protecting and enforcing the rights to the Assets vested in the Trust by this Agreement, the Plan and Confirmation Order by any method reasonably determined to be appropriate, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

I. Making Distributions of the Assets to or on behalf of the Beneficiaries in accordance with this Agreement, the Plan, and the Confirmation Order;

J. Causing to be prepared and filing any and all tax and information returns with respect to the Settlers, the Dismissed Debtors, if necessary, and the Trust; paying any taxes properly payable by the Trust, if any; and filing and issuing any and all necessary information returns; and taking any and all action necessary to obtain payment of any tax refund(s) due to the Settlers, their Estates, the Dismissed Debtors, and/or the Trust;

K. Making all necessary filings on behalf of the Trust in accordance with any applicable law, statute, or regulation;

L. Determining and satisfying from the Assets any and all taxes and ordinary course liabilities, including reasonable professional fees and expenses, incurred by or on behalf of the Trust;

M. Investing the Assets received by the Trust or Trustee or otherwise held by the Trust or Trustee in accordance with Section 3.11 of this Agreement;

N. In the event that the Trustee determines that the Beneficiaries or the Trust may, will or have become subject to different tax consequences than those described herein or in the Plan, taking such actions that will, or are intended to, address such different tax consequences;

O. Creating sub-trusts or title vehicles of which the Trust or the Beneficiaries hold the beneficial or ownership interests, as applicable;

P. Opening and maintaining bank accounts or trust or agency accounts on behalf of or in the name of the Trust or the Liquidating Debtors;

Q. In reliance upon the official Claims Register maintained in the Settlers' Chapter 11 Cases and any applicable court order, maintaining a register on the Trustee's books and records evidencing the beneficial interest in the Trust held by each Beneficiary;

R. Performing such functions and taking such actions as are provided for or permitted in this Agreement, the Plan, the Confirmation Order, or any other agreement executed pursuant to this Agreement, the Plan, or the Confirmation Order;

S. Execute offsets against Claims as provided for in the Plan;

T. Pay all fees and expenses and make all other payments relating to the Trust's Assets;

U. Pay all U.S. Trustee fees incurred after the Effective Date of the Plan until such time as the Bankruptcy Court enters a final decree closing the Settlor's Chapter 11 Cases;

V. Execute any and all documents on behalf of the Liquidating Debtors and, as necessary and appropriate, the Dismissed Debtors;

W. Complete and file any outstanding monthly operating reports of the Settlor's which are not yet due or filed as of the Effective Date; and

X. Collect outstanding receivables of the Settlor's or the Liquidating Trust, including, but not limited to receivables and/or Estate Causes of Action.

3.3 Assets. Subject to the Plan and this Agreement, the Trustee shall be authorized to collect and liquidate all uncollected and unliquidated Assets, including tax refunds.

3.4 Claims Administration. Subject in all respects to the provisions hereof and the Plan, the Trustee, in consultation with the Liquidating Trust Committee as required herein, shall have the authority to allow, reconcile, and file objections to Claims, and to settle, compromise, withdraw, or litigate to judgment objections to any and all Claims, regardless of whether such Claims are in a Class or otherwise.

3.5 Subject to the foregoing and the provisions of this Agreement and the Plan, from and after the Effective Date, the Trustee (a) may settle or compromise any Disputed Claim, and

(b) shall succeed to the Settlor's rights with respect to any objections filed by the Settlor that remain pending as of the Effective Date. From and after the Effective Date, the Trustee shall have the sole authority to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval of the Bankruptcy Court.

3.6 Estimation. Subject to this Agreement and the Plan, the Trustee may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim pursuant to applicable law and (b) any contingent or unliquidated Claim pursuant to applicable law, including Section 502(c) of the Bankruptcy Code, regardless of whether the Settlor or the Trustee have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to the maximum extent permitted by law as determined by the Bankruptcy Court to estimate any Disputed Claim, contingent Claim, or unliquidated Claim, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection.

3.7 Causes of Action. Subject to the Plan, on and after the Effective Date, the Trustee may pursue all Estate Causes of Action even if such action was previously commenced in the name of the Settlor or the Liquidating Debtors.

3.8 Agents and Professionals. Subject to the Plan and this Agreement, the Trustee may, but shall not be required to, consult with and retain attorneys, financial advisors, accountants, tax preparers or other agents (which may be affiliated with the Trustee), professionals and employees as the Trustee deems appropriate in the reasonable exercise of his or her discretion, and whom the Trustee reasonably determines to have qualifications necessary to assist the Trustee in the proper administration of the Trust. Subject to Section 7.8 of this

Agreement, the Trustee may pay the reasonable fees, costs and expenses of such persons (including himself/herself), together with the reasonable and if prudent costs incurred by the members of the Liquidating Trust Committee acting solely in their capacity as such, but excluding any attorney's fees of any individual member of the Liquidating Trust Committee, out of the Assets in the ordinary course of business pursuant to this Agreement, the Plan and/or the Confirmation Order. Subject to the terms and conditions of this Agreement, the Plan and Confirmation Order, the Trustee may retain professionals who previously were employed by the Committee and/or the Liquidating Debtors, including any Contingency Counsel.

3.9 Safekeeping of Assets. All Assets shall, until distributed or paid over as herein provided or as provided in the Plan, be held in trust for the benefit of the Beneficiaries in accordance with the Plan and this Agreement. The Trustee shall not have any liability for interest or producing income on any moneys received by him or her herein and held for distribution or payment to the Beneficiaries, except as such interest or income shall actually be received by the Trustee.

3.10 Limitations on Trustee. The Trustee shall not at any time, on behalf of the Trust or Beneficiaries, enter into or engage in any trade or business, and no part of the Assets or the proceeds, revenue, or income therefrom shall be used or disposed of by the Trust in furtherance of any trade or business. The Trustee shall take such actions consistent with the prompt orderly liquidation of the Trust Assets as required by applicable law, and, except as otherwise set forth in Section 4.2 herein, consistent with the treatment of the Trust as a liquidating trust under Treasury Regulation Section 301.7701-4(d) and Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, to the extent such actions are permitted by this Agreement. The Trustee shall, on behalf of the Trust, hold the Trust out as a trust in the process of liquidation and not as an

investment company. The Trustee shall not become a market-maker for the beneficial interests or otherwise attempt to create a secondary market for the beneficial interests. The Trustee shall be restricted to: (a) liquidating the Trust Assets on behalf of, and for the benefit of, the Holders of Allowed Claims, (b) distributing and applying the Trust Assets for the purposes set forth herein, and (c) conserving and protecting the Trust Assets and the administration thereof in accordance with the provisions of this Agreement, the Plan, and the Confirmation Order. Notwithstanding anything herein to the contrary, the Trustee shall at all times act in furtherance of the purposes of the Trust and, subject to Section 4.2 herein, shall not take any action inconsistent with the treatment of the Trust as a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d). The Trustee shall not serve on the board of directors of any subsidiary of the Trust, unless the subsidiary’s objective is consistent with that of the Trust.

The Trust shall not receive or retain cash in excess of a reasonable amount to meet claims and contingent liabilities. The Trustee shall also not incur indebtedness or commingle the Trust’s funds. The Trust shall not receive transfers of listed stocks or securities, any readily-marketable assets, any operating assets of a going business, any unlisted stock of a single issuer that represents 50 percent or more of the stock of such issuer, or any general or limited partnership interests.

3.11 Investment. The Trustee may only invest funds held in the Trust in Permitted Investments, in a manner consistent with the requirements of the Bankruptcy Code or any order of the Bankruptcy Court modifying such requirements and, provided that the Trustee does so, he or she shall have no liability in the event of insolvency of any institution in which he or she has



invested any of the Assets or any proceeds, revenue, or income therefrom in accordance with this Agreement or the Plan.

3.12 Trustee Action. The Trustee shall hold, collect, conserve, protect, and administer the Trust in accordance with the provisions of this Agreement and the Plan, and pay and distribute amounts as set forth therein for the purposes set forth in the Plan, and this Agreement. Any good faith determination by the Trustee as to what actions are in the best interests of the Trust shall be determinative, subject to approval by the Liquidating Trust Committee which approval shall not be unreasonably withheld.

3.13 Bankruptcy Court Approval of Trustee Actions. Except as provided in the Plan or as otherwise specified in this Agreement, the Trustee need not obtain an order or approval of the Bankruptcy Court in the exercise of any power, rights, or discretion conferred hereunder to the Trustee. Except as provided in the Plan, the Confirmation Order or otherwise specified in this Agreement, the Trustee, in consultation with the Liquidating Trust Committee as set forth herein, shall exercise his or her reasonable business judgment for the benefit of the Beneficiaries in order to maximize the value of the Assets and distributions to the Beneficiaries, giving due regard to the cost, risk, and delay of any course of action. Notwithstanding the foregoing in this Section 3.13, the Trustee may seek Bankruptcy Court approval for authority to take a particular action which the Trustee may desire to have explicit approval of the Bankruptcy Court with respect to the Assets, the Trust, and the Settlers, and as provided in the Plan or this Agreement, including the administration and distribution of the Assets or resolution of any of the Estate Causes of Action. The Bankruptcy Court shall retain jurisdiction for such purposes and shall approve or disapprove any such proposed action upon motion with notice to the Rule 2002 service list (as modified by the Plan) which may be made by e-mail, where available.

3.14 Confidentiality. The Trustee shall, during the period that he or she serves as Trustee under this Agreement and for a period of twelve (12) months following the termination of this Agreement or his or her removal or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the Assets and Estate Causes of Action, relates, or which he or she has become aware of in his or her capacity as Trustee.

3.15 Privileged Documents. Subject to the Plan (specifically, but not limited to, Article VIII.D.7 of the Plan), any disclosure or examination of any privileged documents shall be limited to the Trustee, the members of the Liquidating Trust Committee, and the agents and professionals that the Trustee has retained on behalf of the Trust for the purpose of pursuing Estate Causes of Action and Claims and claim objections, and those attorneys' administrative support personnel, and any consulting, non-testifying experts retained by the Trustee on behalf of the Trust for the purpose of assisting the Trust in pursuing such Estate Causes of Action and/or objecting to Claims. The Trustee may not disclose any of the privileged documents (or the contents of the privileged documents), or otherwise take any actions that may constitute a waiver of the attorney-client privilege, work product privilege, common interest privilege, or any other applicable privileges with respect to the privileged documents, without giving three (3) Business Days' notice to the applicable affected party and an opportunity to object. Nothing in the Plan or this Agreement shall constitute a waiver of any privilege claims over any of the documents, including the privileged documents that are produced to or received by the Trust or Trustee. For the avoidance of doubt, the Trust is a successor-in-interest to the Settlers and, therefore, the transfer of the privileged documents as provided herein does not impair or waive any privilege.

3.16 Reporting to Liquidating Trust Committee. Starting the month following the Effective Date, the Trustee shall provide the Liquidating Trust Committee with a quarterly statement of receipts and disbursements, if any, cash balances and a listing of all accounts payable. If no receipts are received and/or no disbursements are made in a given quarter, the Trustee will have no obligation to provide a quarterly statement to the Liquidating Trust Committee regarding the same. This reporting set forth in section 3.16 is in addition to and does not supersede the fee approval process set forth in section 7.8 of this Agreement.

#### **ARTICLE IV**

##### **DISTRIBUTIONS FROM THE TRUST**

4.1 Distributions. On and after the Effective Date, the Trustee shall make distributions as and when required under the terms of the Plan, and as applicable, solely in accordance with the Plan. However, distributions of net income plus all net proceeds from the sale of assets shall be made no less frequently than once annually, such period to be measured by the Effective Date; provided, that the Trust may retain an amount of net proceeds or net income or other Trust Assets (i) reasonably necessary to maintain the value of its assets or to meet claims and contingent liabilities (including Disputed Claims) and (ii) to meet reasonably incurred or anticipated expenses (including, but not limited to, any taxes imposed on or payable by the Trust or in respect of the Trust Assets), or (iii) to satisfy claims, contingent liabilities or other liabilities incurred or anticipated by the Trust or the Trustee in accordance with the Plan or this Agreement, and retention of such amount may preclude distributions to Holders.

4.2 Disputed Claims Reserve. On the initial distribution date, and in connection with making all distributions required to be made on any such date under the Plan, the Trustee shall establish a separate Disputed Claims Reserve on account of distributions of Cash or other

property as necessary pursuant to the Plan. The Trustee shall not make any distributions of Assets to the Beneficiaries unless the Trustee retains and reserves in the Disputed Claims Reserve such amounts as are reasonably necessary to satisfy amounts that would have been distributed in accordance with this Article IV in respect of Disputed Claims if the Disputed Claims were determined to be Allowed Claims immediately prior to such proposed distribution to the Beneficiaries. All Cash or other property allocable to Disputed Claims hereunder shall be contributed by the Trustee to the relevant Disputed Claims Reserve on the distribution date. Starting six (6) months after the Effective Date and every six (6) months thereafter, the Trustee shall provide the Liquidating Trust Committee with an update on the activity and current balance of the Disputed Claims Reserve (if any).

Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the receipt by the Trustee of a private letter ruling if the Trustee so requests one, or the receipt of an adverse determination by the Internal Revenue Service upon audit if not contested by the Trustee), the Trustee may, in the Trustee's sole discretion, timely elect to treat any Disputed Claims Reserve as a Disputed Ownership Fund ("DOF") within the meaning of Treasury Regulation Section 1.468B-9 for federal income tax purposes rather than to tax such reserve as a part of the Trust. If an election is made to report any reserve for Disputed Claims as a DOF, the Trust shall comply with all federal and state tax reporting and tax compliance requirements of the DOF, including, but not limited to, the filing of a separate federal tax return for the DOF and the payment of federal and/or state income tax due.

4.3 Distributions After Allowance or Disallowance of a Disputed Claim. Within thirty (30) days of a Disputed Claim becoming an Allowed Claim, the Trustee shall distribute to the Holder thereof, from the Disputed Claim Reserve, such amount of Available Trust Cash as

would have been distributed to such Holder if its Claim had been an Allowed Claim on the Initial Distribution date (less any taxes paid or to be paid with respect to the amounts held in the Disputed Claims Reserve). The Trustee shall no longer reserve for and shall distribute to the Beneficiaries, pursuant to this Agreement, their Pro Rata share of the funds held in the Disputed Claim Reserve on account of any Disputed Claim that becomes Disallowed (to the extent that the Holder of the Disputed Claim has not received prior distributions on account of that Claim and less any taxes paid or to be paid by the Disputed Claim Reserve with respect to the amounts held in the Disputed Claim Reserve).

4.4 Termination of Disputed Claims Reserves. Each Disputed Claim Reserve shall be closed and extinguished by the Trustee when all distributions and other dispositions of Cash or other property required to be made therefrom under the Plan and this Agreement have been made. Upon closure of a Disputed Claim Reserve, all Cash and other property held in the Disputed Claim Reserve shall revert in the Trust as a part of the Available Trust Cash and such cash and property shall be used to pay the fees and expenses of the Trust in accordance with this Agreement, and thereafter distributed to Holders of Allowed Claims in accordance with the Plan.

4.5 Undeliverable Property. If any distribution to or on behalf of a Beneficiary is returned to the Trustee or his or her agent as undeliverable, then the procedures set forth in Article VIII of the Plan shall control and govern. The Trustee shall have no obligation to determine the correct current address of such Beneficiary, and no distribution to such Beneficiary shall be made unless and until the Trustee is notified, in writing, by the Beneficiary of the current address of such Beneficiary within 90 days of such distribution, at which time a distribution shall be made to such Beneficiary without interest; provided that such distributions shall be deemed, without further order of the Bankruptcy Court, unclaimed property under Bankruptcy Code §

347(b) at the expiration of ninety (90) days from the date of the distribution. After such date, all unclaimed property or interest in property shall revert to the Trust to be distributed in accordance with the terms of this Agreement and the Plan, and the Claim of any other holder or Beneficiary to such property or interest in property shall be discharged and forever barred

4.6 Payments Limited to Assets. All payments to be made by the Trustee to or for the benefit of any Beneficiary shall be made only from the Assets or proceeds from Estate Causes of Action and in accordance with the Plan.

4.7 United States Trustee Fees and Reports. After the Effective Date, the Trustee shall pay as an expense of the Trust all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Trust's disbursements as required under the Plan and Confirmation Order until the Settlor's Chapter 11 Cases are closed. After the Effective Date, the Trust shall prepare, file and serve on the Office of the U.S. Trustee such quarterly disbursement reports for the Trust as required by the U.S. Trustee for as long as one of the Liquidating Debtors' Cases remain open provided, however, that nothing in this Agreement shall be interpreted to alter the obligations regarding Statutory Fees and reporting requirements set forth in Article V.E of the Plan.

4.8 Insurance. Subject to the Plan, the Trustee may use the Assets in the Trustee's reasonable business judgment to maintain customary insurance coverage, if available, for the protection of the Persons or Entities serving as Trustee or administrator of the Trust on and after the Effective Date.

## **ARTICLE V**

### **BENEFICIARIES**

5.1 Incidents of Ownership. The Beneficiaries shall be the sole beneficiaries of the Trust and the Assets, and the Trustee shall retain only such incidents of ownership as are

necessary to undertake the actions and transactions authorized in this Agreement, the Plan and the Confirmation Order.

5.2 Interest Beneficial Only. The ownership of a beneficial interest in the Trust shall not entitle any Beneficiary or the Settlers to any title in or to the Assets or to any right to call for a partition or division of such Assets or to require an accounting, except as specifically provided in this Agreement or in the Plan.

5.3 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Assets shall not be evidenced by any certificate, security, or receipt, or in any other form or manner whatsoever, except as maintained on the books and records of the Trust by the Trustee. The Trustee may rely on the Claims Register maintained by the Claims and Noticing Agent or its successor.

5.4 Notice of Transfer of Beneficial Interest.

A. Notice(s) of transfer of a beneficial interest will only be recognized by the Trustee if given prior to the initial Distribution of Assets.

B. Any notice of a change of beneficial interest ownership shall be provided in accordance with Section 13.3 of this Agreement. The notice shall be executed by both the transferee and the transferor and as required by Bankruptcy Rule 3001(e). The notice must clearly describe the interest to be transferred. The Trustee may rely upon such signatures and acknowledgments as evidence of such transfer without the requirement of any further investigation.

## **ARTICLE VI**

### **THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY**

6.1 Reliance. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, the Trustee may rely upon and shall be protected in acting upon any resolution, statement, instrument, opinion, report, notice, request, consent, order, advice of professionals or agents or other paper or document reasonably believed to be genuine and to have been signed or presented to the Trustee.

6.2 Parties Dealing With the Trustee. In the absence of actual knowledge to the contrary, any person dealing with the Trust or the Trustee shall be entitled to rely on the authority of the Trustee or any of the Trustee's agents to act in connection with the Assets, the Liquidating Debtors and the Dismissed Debtors (as necessary and appropriate). There is no obligation on any Person dealing with the Trustee to inquire into the validity, expediency, or propriety of any transaction by the Trustee or any agent of the Trustee.

6.3 Limited Recourse. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, Persons (including any agents and professionals retained by the Trustee in accordance with this Agreement) engaged in transactions with the Trust or the Trustee shall look only to the Assets to satisfy any liability incurred in connection with the carrying out of the terms of this Agreement, the Plan, or the Confirmation Order. No provision of this Agreement shall require the Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of its rights or powers hereunder, if the Trustee shall have reasonable grounds for believing that the payment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to it.



6.4 Limitation of Liability. The Trustee, the Liquidating Trust Committee and his, her or its agents, employees, officers, directors, members, managers, professionals, attorneys, accountants, advisors, and representatives shall not be subject to any personal liability whatsoever, in tort, contract, or otherwise, to any Person in connection with the Assets or the affairs of the Trust, except for their own gross negligence, willful misconduct, fraud, bad faith, self-dealing or breach of the duty of loyalty and shall not include indemnification or exculpation for breach of their own contracts with the Trust or Trustee. Other than as set forth in the Plan or Confirmation Order, nothing in this Agreement shall be deemed to release any Beneficiary from any actions or omissions occurring prior to the Effective Date.

6.5 Non-Liability for Acts of Others. Except as expressly set forth in the Plan or the Confirmation Order, nothing herein shall be deemed to be an assumption by the Trustee of any of the liabilities, obligations, or duties of the Settlers or Beneficiaries and shall not be deemed to be or contain a covenant or agreement by the Trustee to assume or accept any such liability, obligation, or duty. Any successor Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Trustee hereunder, and any statement or representation made by a predecessor Trustee or his or her agents as to the assets comprising the Assets or as to any other fact bearing upon the prior administration of the Trust, so long as he or she has a good faith basis to do so. The Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement, or representation if it is later proved to be incomplete, inaccurate, or untrue. The Trustee or successor Trustee shall not be liable for any act or omission of any predecessor Trustee, nor have a duty to enforce any claims against any predecessor Trustee on account of any such act or omission.

**ARTICLE VII**

**SELECTION, REMOVAL AND COMPENSATION OF TRUSTEE**

7.1 Initial Trustee. The initial Trustee shall be Entity Services (SPV), LLC.

7.2 Term of Service. The Trustee shall serve until (a) the completion of all the Trustee's duties, responsibilities and obligations under this Agreement and the Plan; (b) termination of the Trust in accordance with this Agreement and the Plan; or (c) the Trustee's death or dissolution, incapacitation, resignation, or removal, as set forth below or as provided for in the Plan.

7.3 Removal of a Trustee. Subject to the Plan, the Liquidating Trust Committee may remove and replace the Trustee for cause, including, without limitation, incapacity or failure or refusal to perform his/her duties under the Plan, this Agreement and the Confirmation Order or in the event of a conflict of interest. If removal of the Trustee is sought from the Bankruptcy Court by a motion for cause (or similar motion), then the Trustee is entitled to oppose such motion and to be reimbursed his or her reasonable attorneys' fees and expenses in connection with such objection from the Assets of the Trust if the Trustee is successful.

7.4 Resignation of Trustee. The Trustee may resign at any time by giving the Liquidating Trust Committee at least thirty (30) days' written notice of the Trustee's intention to do so. In the event of a resignation, the resigning Trustee shall render to the Liquidating Trust Committee a full and complete accounting of monies and assets received, disbursed, and held during the term of office of that Trustee. The resignation shall be effective on the later of (a) the date specified in the notice; (b) the date that is thirty days (30) after the date the notice is delivered; or (c) the date the accounting described in the preceding sentence is delivered.

7.5 Appointment of Successor Trustee. Subject to the Plan, upon the resignation, death, incapacity, or removal of a Trustee, the Liquidating Trust Committee shall appoint, by majority vote, a successor Trustee to fill the vacancy so created or, in the absence of majority vote, the Bankruptcy Court shall appoint a successor Trustee. Incapacitation for purposes of this Article VII shall mean that the Trustee is unable to perform the duties required of him/her under the Plan and this Agreement for a period of thirty (30) consecutive calendar days. If the Trustee becomes incapacitated, the Liquidating Trust Committee shall promptly appoint a successor Trustee. Any successor Trustee so appointed shall consent to and accept in writing the terms of this Agreement and agree that the provisions of this Agreement shall be binding upon and inure to the benefit of the successor Trustee and all of the successor Trustee's heirs and legal and personal representatives, successors or assigns. Notwithstanding anything in this Agreement, in the event that a successor Trustee is not appointed within sixty (60) days of the occurrence or effectiveness, as applicable, of the prior Trustee's resignation, death, incapacity, or removal, the Liquidating Trust Committee shall be authorized to request the Bankruptcy Court appoint a successor Trustee.

7.6 Powers and Duties of Successor Trustee. A successor Trustee shall have all the rights, privileges, powers, and duties of the predecessor Trustee under this Agreement and the Plan.

7.7 Trust Continuance. The death, incapacity, resignation or removal of the Trustee shall not terminate the Trust or revoke any existing agency created pursuant to this Agreement or invalidate any action theretofore taken by the Trustee.

7.8 Professional Compensation and Costs of Administration/Trust Expenses and Professional Fees. Unless otherwise agreed between the Trustee and the Liquidating Trust

Committee, the Trustee shall be compensated at the monthly rate of \$12,500.00 plus all reasonable and necessary expenses. The Trustee shall also be entitled to an acceptance fee in the amount of \$12,500.00 payable upon execution of this Agreement. In addition, subject to this Agreement and the Plan, the Trustee may retain and compensate professionals and agents (including himself/herself) as provided for in Section 3.8 of this Agreement. The reasonable fees and actual and necessary expenses of such professionals and the Trustee shall be paid by the Trust upon each monthly submission of a fee statement to the Trustee and the Liquidating Trust Committee, as applicable, in accordance with the following procedures. The Trustee shall deliver his or her invoices or fee statements to the Liquidating Trust Committee before payment from the Assets shall be allowed. Any professionals retained by the Trustee pursuant to this Agreement shall deliver their invoices or fee statements to the Trustee which shall further deliver them to the Liquidating Trust Committee before payment from the Trust Assets shall be allowed. The Trustee and Liquidating Trust Committee, as applicable, shall have fifteen (15) calendar days from the delivery of any invoice or fee statement to give notice of an objection to the fee statement to the professional seeking compensation or reimbursement (including the fees requested by the Trustee himself/herself). For an objection to be valid, it shall be in writing and in good faith and set forth in reasonable detail the specific fees objected to and the basis for the objection. The uncontested portion of each invoice shall be paid within twenty-five (25) calendar days after its original delivery to the Trustee and the Liquidating Trust Committee. Any objection that remains unresolved fifteen (15) calendar days after it is made shall be submitted to the Bankruptcy Court for resolution.

7.9 Reporting and Filing Requirements.

A. Within sixty (60) days after the last day of each calendar year in which the Trust shall remain in existence, the Trustee shall file a report with the Bankruptcy Court of all Assets held and received by the Trust, all Available Trust Cash disbursed to Beneficiaries, and all fees, income, and expenses related to the Trust during the preceding calendar year. The Trustee's report shall be provided to the Liquidating Trust Committee upon filing with the Bankruptcy Court, and shall be available to any Beneficiary upon written request.

B. The Trustee shall also timely prepare, file and distribute such additional statements, reports and submissions as may be necessary to cause the Trust and the Trustee to be in compliance with applicable law, such as the filing of tax or informational returns.

C. The Trustee shall provide such additional statements, reports, submissions and information to the Liquidating Trust Committee as may reasonably be requested, including without limitation, periodic updates on the status of the Trust, its Assets (including tax refunds), and the projected timing of future distributions (to the extent known by the Trustee).

**ARTICLE VIII**

**TRUST RIGHTS AND OBLIGATIONS**

8.1 The Trustee shall cause to be prepared and file tax returns for the Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and any other applicable laws or regulations.

8.2 Subject to section 3.2 of this Agreement, to the extent reasonably practicable and unless otherwise ordered by the Bankruptcy Court, the Trustee shall, promptly after the

preparation and filing of the tax returns for each calendar year in which the Trust is in existence, send to each qualifying Beneficiary that received a distribution during the previous calendar year, a statement setting forth the Beneficiary's share of items of income, gain, loss, deduction, or credit and will instruct all such Holders to report such items on their federal income tax returns. Such a statement shall also be sent to each Beneficiary within 120 days of the dissolution of the Trust and the filing of the Trust's final tax return. The Trust's taxable income, gain, loss, deduction, or credit will be allocated (subject to provisions of the Plan and Confirmation Order relating to Disputed Claims) to the Beneficiaries in accordance with their relative beneficial interests in the Trust, as determined pursuant to this Agreement.

8.3 In addition to the Trustee's rights and duties with respect to the Trust, and subject to the Plan, on and after the Effective Date, the Trustee is authorized to implement the Plan and any applicable orders of the Bankruptcy Court.

## **ARTICLE IX**

### **MAINTENANCE OF BOOKS AND RECORDS**

9.1 Subject to the Plan and unless otherwise provided therein, on the Effective Date, the Trust shall: (a) to the extent provided for in the Plan, take possession of all books, records, and files of the Settlers and their Estates, in all forms including electronic and hard copy, other than the documents of the Settlers' professionals; and (b) provide for the retention and storage of such books, records, and files until such time as the Trustee determines, in accordance with the Plan and this Agreement, that retention of same is no longer necessary or required.

9.2 The Trustee shall maintain books and records containing a description of all property from time to time constituting the Assets and an accounting of all receipts and disbursements. The Trustee shall furnish to any Beneficiary upon written request an annual

statement of receipts and disbursements, including a summary of all income and expenses of the Trust.

## **ARTICLE X**

### **DURATION OF TRUST**

10.1 Duration. The Trust shall become effective upon the Effective Date of the Plan, and the Trust and its provisions herein shall remain and continue in full force and effect until the Trust is terminated.

10.2 Termination. Subject to the Plan, the Trustee and members of the Liquidating Trust Committee shall be discharged and the Trust and Liquidating Trust Committee shall be terminated, at such time as (a) all Disputed Claims have been resolved, (b) all of the Assets have been liquidated, (c) all duties and obligations of the Trustee hereunder and the Plan have been fulfilled, (d) all distributions required to be made by the Trust under the Plan a have been made, and (e) the Chapter 11 Cases of the Liquidating Debtors have been closed, but in no event shall the Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion by the Trustee within the six-month period prior to the fifth anniversary, or the end of any extension period approved by the Bankruptcy Court, determines that a fixed period extension not to exceed three (3) years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service, to the extent required under applicable law at that time, that any further extension would not adversely affect the status of the Trust as a liquidating trust for federal income tax purposes, is necessary to facilitate or complete the liquidation, recovery and distribution of the Assets to the Beneficiaries. The Trustee may seek such an extension with the written consent of the Liquidating Trust Committee, which consent shall not be unreasonably withheld.

10.3 Continuance of Trust for Winding Up. After the termination of the Trust and for the purpose of liquidating and winding up the affairs of the Trust, the Trustee shall continue to act as such until the Trustee's duties have been fully performed, including, without limitation, such post-distribution tasks as necessary to windup the affairs of the Trust. The Trustee and Trust shall dispose of the books, records, Beneficiary lists, and certificates and other documents and files which shall have been delivered to or created by the Trustee as set forth in the Plan. Except as otherwise specifically provided herein, upon the discharge of all liabilities of the Trust and after final distributions of the Trust are made, the Trustee shall have no further duties or obligations hereunder. For the avoidance of doubt, the limitations on liability and indemnification rights contained in Article VI hereof shall apply to any actions taken by the Trustee and his professionals during the course of winding up the affairs of the Trust.

## **ARTICLE XI**

### **TAX TREATMENT OF THE TRUST**

11.1 Intention of Parties to Establish Grantor Trust. This Agreement is intended to create a grantor trust for United States federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as a grantor trust. For all federal income tax purposes, the Beneficiaries of the Trust will be treated as grantors and owners thereof and it is intended that the Trust be classified as a liquidating Trust under Treasury Regulation Section 301.7701-4 and that the Trust is owned by the Beneficiaries. Accordingly, for federal income tax purposes, it is intended that the Beneficiaries be treated as if they had received a distribution of an undivided interest in the Assets and then contributed such interests to the Trust. Accordingly, the Trust shall, in an expeditious but orderly manner, and pursuant to the terms of this Agreement, the Plan and the Confirmation Order, liquidate and convert to Cash the Assets,



make timely distributions to the Beneficiaries pursuant to the Plan, and not unduly prolong the Trust's duration unnecessarily. The Trust shall not be deemed a successor in interest of the Settlers for any purpose other than as specifically set forth herein, the Plan and Confirmation Order.

11.2 Tax Returns. In accordance with the Plan and this Agreement, the Trustee shall cause the preparation and filing of tax returns for the Trust, except with respect to any Disputed Claims Reserve (see Section 4.2), as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a). The Trust's taxable income, gain, loss, deduction or credit will be allocated to each one of the Beneficiaries in accordance with their relative beneficial interests in the Trust.

11.3 Valuation of Assets. As soon as practicable after the Effective Date, the Trustee (to the extent that he or she deems it necessary or appropriate in the reasonable exercise of his or her discretion) shall, in good faith and in consultation with an investment advisor or other professional, value the Assets, and shall apprise the Beneficiaries of such valuation (but the Trust is not required to engage an expert to make such a valuation) for tax purposes. The valuation shall be used consistently by all parties (including the Settlers, the Trustee, and the Beneficiaries) for all purposes, including for federal income tax purposes. The Bankruptcy Court shall resolve any dispute regarding the valuation of the Assets.

11.4 Disputed Claims Reserve. In the event there is a Disputed Claim Reserve, the Trustee shall file any required income tax returns with respect to any income attributable to the Disputed Claims Reserve, consistent with its treatment as a DOF (see Section 4.2) and shall pay any federal, state and local income taxes attributable to the Disputed Claims Reserve, based on the items of income, deduction, credit or loss allocable thereto.

11.5 Determination of Taxes. The Trustee may request an expedited determination of any local, state and/or federal taxes of the Liquidating Debtors and/or Dismissed Debtors, the Settlers or of the Trust, including the Disputed Claims Reserve, under Bankruptcy Code § 505(b) for all returns filed for, or on behalf of, the Liquidating Debtors and/or the Dismissed Debtors (to the extent necessary and appropriate), the Settlers and the Trust for all taxable periods through the dissolution of the Trust, and to take any and all action necessary to obtain payment of any tax refund(s) due to the Liquidating Debtors, the Dismissed Debtors (to the extent necessary and appropriate), the Settlers, their Estate and/or the Trust. All earnings of the Trust shall be currently taxable to the Beneficiaries in the year in which such earnings are realized, including earnings retained in any established reserves (except with respect to the Disputed Claims Reserve, to the extent provided otherwise herein), in accordance with their respective rights to such earnings. Subject to Section 4.2 herein, the Trust is intended to qualify as a liquidating trust that is a “grantor trust” for federal and applicable state income tax purposes, and the Trustee shall use his or her best efforts to operate and maintain the Trust in compliance with the Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, Treasury Regulation Sections 1.671-4(a) and 301.7701-4(d) and all subsequent guidelines regarding liquidating trusts issued by the Internal Revenue Service.

11.6 Filing, Reporting, Withholding. The Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority regarding the Trust’s tax obligations, if any, and all distributions made by the Trust shall be subject to any such withholding and reporting requirements. The Trust is also authorized to make tax elections on behalf of the Trust. The Trustee may require any Beneficiary to furnish to the Trustee in writing his/her or its Employer or Taxpayer Identification Number as assigned by the IRS or an

executed IRS Form W-9 or similar tax form, such as IRS Form W-8, and the Trustee may condition any distribution upon receipt of such identification number or document.

Notwithstanding anything herein to the contrary, each holder of an Allowed Claim that has received a Distribution of cash under the Plan will have sole and exclusive responsibility for the satisfaction or payment of any tax obligation imposed by any governmental unit, including income, withholding and other tax obligation, on account of such Distribution. All such amounts withheld and paid to the appropriate tax authority (or placed in escrow pending resolution of the need to withhold) shall be treated as amounts distributed to such holders of Claims for all purposes of this Agreement.

## **ARTICLE XII**

### **WIND-DOWN**

12.1 Wind-Down of Settlor. In addition to the Trustee's rights and duties with respect to the Trust as set forth herein, on and after the Effective Date, the Trustee shall also have the power and authority to take any action necessary to wind down the Liquidating Debtors' and the Settlers' Estates. Notwithstanding the foregoing, the Trustee shall be the authorized signatory on behalf of the Dismissed Debtors and, to the extent necessary and appropriate, execute any documents and take any action as necessary on behalf of the Dismissed Debtors.

## **ARTICLE XIII**

### **MISCELLANEOUS**

13.1 Jurisdiction. The Bankruptcy Court shall have exclusive jurisdiction over (a) the Trust, the Trustee and the Liquidating Trust Committee with respect to the administration of and activities relating to the Trust, as well as (b) any issues or disputes arising out of this Agreement;

provided, however, that notwithstanding the foregoing, the Trustee shall have the power and authority to bring any action in any court of competent jurisdiction to prosecute any Estate Causes of Action assigned to the Trust, subject to the consultation and consent requirements set forth in this Agreement, the Plan and the Confirmation Order.

13.2 Limitation on Transferability. A beneficial interest in the Trust shall be non-assignable and non-transferable except upon death of the interest holder or by operation of law. An assignment or transfer shall not be effective until appropriate notification consistent with this Agreement and proof thereof is submitted to the Trustee, and the Trustee may continue to pay all amounts to or for the benefit of the assigning or transferring Beneficiary until receipt of proper notification and proof of assignment or transfer. The Trustee may rely upon such proof without the requirement of any further investigation.

13.3 Notices. All notices to be given to Beneficiaries may be given by ordinary mail, or may be delivered personally, to the holders at the addresses appearing on the books kept by Trustee or the Claims and Noticing Agent. Any notice or other communication which may be or is required to be given, served, or sent to the Trustee shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery or facsimile or e-mail (if receipt is confirmed) addressed as follows:

If to the Trust/Trustee/Settlors:

Entity Services (SPV), LLC  
c/o Michelle Dreyer  
251 Little Falls Drive  
Wilmington, DE 19808-1674  
Telephone: (302) 636-5806  
E-mail: Michelle.dreyer@cscgm.com

With a copy to:

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If to the Liquidating Trust Committee:

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or to such other address as may from time to time be provided in written notice by the Trustee or the Liquidating Trust Committee.

13.4 No Bond. Notwithstanding any state law to the contrary, the Trustee (including any successor) shall be exempt from giving any bond or other security in any jurisdiction.

13.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to conflicts of law principles, except to the extent that the law of the United States, including the Bankruptcy Code, governs any matter set forth in this Agreement, in which case such federal law shall govern.

13.6 Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

13.7 Headings. The various headings of this Agreement are inserted for convenience only and shall not affect the meaning or understanding of this Agreement or any provision hereof.

13.8 No Execution. All funds in the Trust shall be deemed *in custodia legis* until such times as the funds have actually been paid to or for the benefit of a Beneficiary, and no Beneficiary or any other Person can bind, pledge, encumber, execute upon, garnish, or attach the Assets or the Trustee in any manner or compel payment from the Trust except by final order of the Bankruptcy Court.

13.9 Plan and Confirmation Order. To the extent that the terms of this Agreement are inconsistent with the terms set forth in the Plan, then the terms of the Plan shall govern and control. To the extent that the terms of this Agreement are inconsistent with the terms set forth

in the Confirmation Order, then the terms of the Confirmation Order shall govern and control. For the avoidance of doubt, nothing in this Agreement is intended to expand any rights of any party or limit any obligations arising under the Plan or Confirmation Order.

13.10 Amendment. This Agreement may only be amended with the consent of each member of the Liquidating Trust Committee (which consent shall not be unreasonably withheld) or, in the absence of such agreement, by order of the Bankruptcy Court. This Agreement may not be amended in a way that would make it inconsistent with the Plan or Confirmation Order absent Bankruptcy Court order.

13.11 Severability. If any term, provision, covenant, or restriction contained in this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable, or against its regulatory policy, the remainder of the terms, provisions, covenants, and restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

13.12 Counterparts. This Agreement may be executed in one or more counterparts, including by email, pdf and/or facsimile, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

13.13 Further Assurances. The Settlers and Trustee shall execute and deliver such additional documents and take such additional action as may be necessary or desirable to effectuate the provisions and purposes of this Agreement without the need for further order of the Bankruptcy Court.

13.14 Jurisdiction and Venue. The Settlers and Trustee submit and consent to the jurisdiction (both personal and subject matter) of the Bankruptcy Court to adjudicate any dispute or claim arising from or related to this Agreement. In the event the Bankruptcy Court declines to

or cannot exercise jurisdiction over any such disputes, then the Settlers and Trustee agree to the jurisdiction (both personal and subject matter) of the State or Federal Courts located in Wilmington, Delaware. THE SETTLORS AND TRUSTEE EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT.

13.15 Jointly Drafted. The Settlers and Trustee acknowledge and stipulate that this Agreement has been drafted through a joint effort of the Settlers and Trustee and, therefore, shall not be construed in favor of or against any of the parties. The terms of this Agreement shall be deemed to have been jointly negotiated and drafted by the Settlers and Trustee.

13.16 Effective Date. This Agreement shall become effective on the Effective Date of the Plan.

**IN WITNESS WHEREOF**, the parties have executed this Agreement (or are deemed to have so executed this Agreement) as of the day and year written above.

**Liquidating Trustee**

By: \_\_\_\_\_  
Name: Entity Services (SPV), LLC  
Title: Liquidating Trustee of the  
Knotel Liquidating Trust

**Settlers  
Knotel, Inc.**

By: \_\_\_\_\_  
Name:  
Title:

**Knotel Canada, Inc.**

By: \_\_\_\_\_  
Name:  
Title:

**42Floors, LLC**

By: \_\_\_\_\_  
Name:  
Title:



**Appendix "C"**

**Affidavit of Stephen Ferguson sworn June 23, 2021**

**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 KNOTEL, INC. and KNOTEL CANADA, INC.

APPLICATION OF KNOTEL CANADA, INC., UNDER SECTION 246 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

**AFFIDAVIT OF STEPHEN FERGUSON  
(sworn June 23, 2021)**

I, STEPHEN FERGUSON, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am Senior Vice President of Alvarez & Marsal Canada Inc. ("**A&M**"), the court-appointed Information Officer (in such capacity, the "**Information Officer**") in these proceedings. As such, I have knowledge of the matters hereinafter deposed to, except where stated to be on information and belief and where so stated, I verily believe it to be true.
2. A&M was appointed Information Officer pursuant to the Supplemental Order (Foreign Main Proceeding) of the Honourable Mr. Justice Cavanagh dated March 12, 2021 (the "**Appointment Order**").
3. Attached hereto and marked as **Exhibit "A"** is a summary and copies of the invoices rendered by the Information Officer in respect of the period ended April 24, 2021 (the "**A&M Application Period**"). The invoices contain the fees (including details of the billing rates and total hours of each of the members of A&M who acted on behalf of the Information Officer in these proceedings during the A&M Application Period), disbursements and HST charged by A&M in these proceedings during the A&M Application Period.

4. As shown on the summary chart included at Exhibit "A", the Information Officer expended a total of 99.7 hours in connection with this matter during the A&M Application Period. The total amount being claimed for the work performed by the Information Officer during the A&M Application Period is \$81,591.66, including \$72,205.00 for fees, \$0.00 for disbursements, and \$9,386.66 for HST.

5. Attached hereto and marked as **Exhibit "B"** is a summary of the timekeepers and their total hours and hourly rates, and notes an average hourly rate of \$724.00.

6. This affidavit is sworn in support of the motion for, among other things, approval of the fees and disbursements of the Information Officer and those of its legal representatives and for no other purpose.

Sworn before me by video conference by )  
Stephen Ferguson of the City of Toronto, in the )  
Province of Ontario, before me at the City of )  
Burlington, in the Regional Municipality of )  
Halton, on June 23, 2021, in accordance with )  
O.Reg.431/20, Administering Oath or )  
Declaration Remotely )

  
\_\_\_\_\_  
A Commissioner for Taking Affidavits, etc

Caitlin McIntyre  
LSO #7230GR

  
\_\_\_\_\_  
Stephen Ferguson

This is **Exhibit "A"** referred to in the  
Affidavit of Stephen Ferguson  
sworn before me by video conference  
this 23<sup>rd</sup> day of June, 2021

  
A Commissioner, etc

**EXHIBIT "A"**  
**ALVAREZ & MARSAL CANADA INC. COURT-APPOINTED INFORMATION OFFICER OF**  
**KNOTEL CANADA INC.**  
**(March 7, 2021 to April 24, 2021)**

<b>Invoice No.</b>	<b>Invoice Date</b>	<b>Invoice Period / Description</b>	<b>Total Hours</b>	<b>Disbursements</b>	<b>HST</b>	<b>Invoice Total (\$CAD)</b>	
<b>Inv #1</b>	<b>March 15, 2021</b>	<b>March 7, 2021 to March 13, 2021</b>	<b>44.2</b>	<b>\$30,416.50</b>		<b>\$3,954.15</b>	<b>\$34,370.65</b>
		Ferguson, Stephen	19.1	16,235.00			
		Gruneir, Ryan	25.1	14,181.50			
<b>Inv #2</b>	<b>March 22, 2021</b>	<b>March 14, 2021 to March 20, 2021</b>	<b>24.2</b>	<b>\$17,805.50</b>	<b>-</b>	<b>\$2,314.72</b>	<b>\$20,120.22</b>
		Ferguson, Stephen	14.5	12,325.00			
		Gruneir, Ryan	9.7	5,480.50			
<b>Inv #3</b>	<b>April 27, 2021</b>	<b>March 21, 2021 to April 24, 2021</b>	<b>31.3</b>	<b>\$23,983.00</b>	<b>-</b>	<b>\$3,117.79</b>	<b>\$27,100.79</b>
		Ferguson, Stephen	22.1	18,785.00			
		Gruneir, Ryan	9.2	5,198.00			
<b>TOTAL</b>			<b>99.7</b>	<b>\$72,205.00</b>	<b>\$0.00</b>	<b>\$9,386.66</b>	<b>\$81,591.66</b>



March 15, 2021

Knotel Canada Inc.  
655 Madison Avenue  
12<sup>th</sup> Floor  
New York, NY  
10065 USA

Attention: Mr. Amit Khanna, General Counsel

**RE: KNOTEL CANADA INC.**  
**INVOICE #1 (829815)**

For professional services rendered in our capacity as proposed Information Officer pursuant to our engagement letter dated March 7, 2021, and as Court-appointed Information Officer under the *Companies' Creditors Arrangement Act* pursuant to the Supplemental Order (Foreign Main Proceeding) granted by the Ontario Superior Court of Justice (Commercial List) on March 12, 2021, for the period to March 13, 2021.

**BILLING SUMMARY**

	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
S. Ferguson, Managing Director	19.1	\$850	\$16,235.00
R. Gruneir, Director	25.1	\$565	14,181.50
	<u>44.2</u>		\$30,416.50
Add: HST @ 13%			3,954.15
<b>TOTAL INVOICE</b>			<u><b>\$34,370.65</b></u>

**Mailing Instructions:**

Alvarez & Marsal Canada ULC  
Att: Audrey Singels-Ludvik  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900  
P.O. Box 22  
Toronto, ON M5J 2J1

**Wiring Instructions:**

Bank: TD Canada Trust  
Account Name: Alvarez & Marsal Canada ULC  
Swiftcode: TDOMCATTOR  
Bank Address: 55 King Street West  
Toronto, ON  
Bank Transit #: 10202  
Institution #: 0004  
Account #: **5519970**  
Reference #: Knotel Canada Inc. – Inv #1 (829815)  
HST#: 83158 2127 RT0001

***Knotel Canada Inc. – 829815***  
**DETAILED SUMMARY – to March 13, 2021**

<u><i>S. Ferguson</i></u>	<u>Hrs.</u>
Mar 3	0.8
Teleconference with Company counsel, Cassels Brock & Blackwell ("Cassels") and A&M regarding process overview and status and initial considerations regarding Canadian Recognition Proceedings.	
Mar 4	0.5
Initial call with Knotel management and proposed Information Officer's ("IO") counsel, Blake Cassels and Graydon ("Blakes") in respect of Knotel Canada status and Canadian Recognition Proceeding questions.	
Mar 5	1.0
Review of draft materials prepared by Cassels, including proposed Orders and Affidavit; call with Blakes regarding same; review of background materials; call with R. Gruneir.	
Mar 7	1.0
Further review of draft Orders for Canadian Recognition Proceedings; review of draft Affidavit of J. Jureller.	
Mar 8	2.0
Further review of revised Jureller Affidavit and revised draft Orders; group call with Cassels and Blakes regarding latest developments in Chapter 11 proceedings; review of Company trial balance; review of certain Chapter 11 materials including bidding procedures; review of accounts payable balances of Knotel Canada; review of preliminary information requests.	
Mar 9	3.2
Attendance at initial Court hearing in respect for Interim Order; review of Company background information in respect of the Chapter 11 proceedings; call with N. Levine (Cassels); call with L. Rogers (Blakes) regarding draft IO Report; call with Company management; review of preliminary information in respect of Case Website.	
Mar 10	3.0
Review of materials including Sale Process Order and Stalking Horse APA; initial drafting of IO's First Report; teleconference with Blakes; internal calls regarding information required from management and report status.	
Mar 11	2.1
Review of draft materials in respect of March 12th Court hearing; call with Blakes regarding file matters and IO Report; discussion with N. Levine regarding U.S process and preparation for March 12th hearing.	
Mar 12	2.0
Attendance at Court hearing in respect of Initial Recognition Order and Supplemental Order; review of additional affidavit filed by the Company; call with L. Rogers (Blakes).	



***Knotel Canada Inc. – 829815***  
**DETAILED SUMMARY – to March 13, 2021**

Mar 13	Drafting of IO's First Report; call with R. Gruneir regarding same; correspondence with Blakes.	3.5
<b>TOTAL – S. Ferguson</b>		<b>19.1 hrs.</b>
<b><u>R. Gruneir</u></b>		<b><u>Hrs.</u></b>
Mar 3	Teleconference with Cassels re: latest developments on Chapter 11 Proceeding and anticipated timing for Canadian Recognition Proceeding.	0.8
Mar 5	Review emails regarding Draft Orders; discussion with S. Ferguson regarding notice requirements; correspondence with C. McIntyre from Blakes regarding same.	0.5
Mar 8	Draft website set-up document and send to S. Ferguson for review; Review Chapter 11 Bidding Procedures Order and Stalking Horse Agreement and summarize in email for S. Ferguson's review; teleconference with Cassels and Blakes regarding latest developments on Chapter 11 Proceeding and strategy regarding Canadian Recognition Proceeding; review Knotel Canada trial balance and AP aging, summarize and compare against one another; provide comments to S. Ferguson for review; prepare question list for Knotel management.	3.8
Mar 9	Review emails and respond accordingly; review information and send meeting agenda with Knotel management; teleconference with Knotel management and Cassels regarding numerous matters; review Canadian lease data provided and prepare workbook for Knotel management to complete; draft and send follow-up email with additional questions/information requests.	3.4
Mar 10	Revise email questions/information requests as required and send to Knotel Management; draft and send email to D. Tojiera of Cooper and Crow regarding case website set-up; prepare outline First Report of the IO and send to S. Ferguson for review/comment; teleconference with Blakes regarding several matters including the First Report of the IO.	8.2
Mar 11	Teleconference with Blakes regarding First Report of the IO; email correspondence with K. May of Cassels regarding case website; continue with drafting the First Report of the IO.	1.6





***Knotel Canada Inc. – 829815***

**DETAILED SUMMARY – to March 13, 2021**

Mar 12	Review website set-up document based on Cassels comments and send to D. Tojiera of Cooper and Crow; discussion with C. McIntyre regarding the First Report of the IO; numerous calls and emails with D. Tojiera of Cooper and Crow regarding case website set-up; draft and send numerous emails with documents required to be posted on the case website; correspondence with K. May of Cassels regarding service list and additional documents required for case website; review of the case website to ensure information and uploaded documents are correct.	3.5
Mar 13	Correspondence with S. Ferguson regarding First Report of the IO; detailed review and comment of same; review section prepared by Blakes and include in working draft of the First Report of the IO.	3.3
<b>TOTAL – R. Gruneir</b>		<b>25.1 hrs.</b>





March 22, 2021

Knotel Canada Inc.  
655 Madison Avenue  
12<sup>th</sup> Floor  
New York, NY  
10065 USA

Attention: Mr. Amit Khanna, General Counsel

**RE: KNOTEL CANADA INC.**  
**INVOICE #2 (829815)**

For professional services rendered in our capacity as Court-appointed Information Officer under the *Companies' Creditors Arrangement Act* pursuant to the Supplemental Order (Foreign Main Proceeding) granted by the Ontario Superior Court of Justice (Commercial List) on March 12, 2021, for the period from March 14 to 20, 2021.

**BILLING SUMMARY**

	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
S. Ferguson, Managing Director	14.5	\$850	\$12,325.00
R. Gruneir, Director	9.7	\$565	5,480.50
	<u>24.2</u>		<u>\$17,805.50</u>
Add: HST @ 13%			2,314.72
<b>TOTAL INVOICE</b>			<b><u>\$20,120.22</u></b>

**Mailing Instructions:**

Alvarez & Marsal Canada ULC  
Att: Audrey Singels-Ludvik  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900  
P.O. Box 22  
Toronto, ON M5J 2J1

**Wiring Instructions:**

Bank: TD Canada Trust  
Account Name: Alvarez & Marsal Canada ULC  
Swiftcode: TDOMCATTOR  
Bank Address: 55 King Street West  
Toronto, ON  
Bank Transit #: 10202  
Institution #: 0004  
Account #: **5519970**  
Reference #: Knotel Canada Inc. – Inv #2 (829815)  
HST#: 83158 2127 RT0001

***Knotel Canada Inc. – 829815***  
**DETAILED SUMMARY – March 14 to 20, 2021**

<u><i>S. Ferguson</i></u>	<u>Hrs.</u>
Mar 14 Further review of draft IO's First Report (the "First Report"), including review of U.S. Orders recognized in Canada.	1.4
Mar 15 Update call with N. Levine (Cassels).	0.3
Mar 16 Multiple update calls with Cassels regarding case approach and timing of sale approval hearing; discussion with Blakes regarding same; internal discussion with R. Gruneir regarding First Report.	1.4
Mar 17 Review of proposed Order and Notice of Motion in respect of sale approval; multiple update calls with Cassels regarding status of contract assignments and impact on process; call R. Gruneir and Blakes regarding First Report; review of First Report.	4.0
Mar 18 Amendments and updates to First Report; call with Blakes regarding general file matters; call with Cassels, Morris Nichols and Sullivan Law regarding sale status and U.S. Court process; status update from U.S. Court hearing.	4.5
Mar 19 Finalize First Report; correspondence with R. Gruneir; calls with Blakes regarding same; review of promissory note and related balances; review of U.S. Trustee objection to Sale Order; calls with Cassels.	2.9
<b>TOTAL – S. Ferguson</b>	<b>14.5 hrs.</b>

<u><i>R. Gruneir</i></u>	<u>Hrs.</u>
Mar 15 Attending to matters in respect of case website maintenance including review of materials and communication to external service provider; review of email received from creditor re: service list inclusion; correspondence with K. May of Cassels re: same.	0.8
Mar 16 Correspondence with S. Ferguson re: First Report; draft additional sections of the First Report and internal communication regarding same.	1.6
Mar 17 Draft and send email to J. Jureller of Knotel for additional information requests; review received requests provided by Knotel Management; call with S. Ferguson and Blakes re: First Report; review of same and address outstanding issues.	2.5



***Knotel Canada Inc. – 829815***

**DETAILED SUMMARY – March 14 to 20, 2021**

Mar 18	Call with S. Ferguson, Cassels, Morris Nichols and Sullivan Law re: sale process approval status; review supplemental service list prepared by Cassels and reconcile against accounts payable aging; provide comments re: same to Cassels for review; additional correspondence with K. May of Cassels re: same.	2.1
Mar 19	Attending to finalization of First Report including final review and appendices; correspondence with Blakes regarding same; communication regarding additional materials to include on case website.	2.7
<b>TOTAL – R. Gruneir</b>		<b>9.7 hrs.</b>





April 27, 2021

Knotel Canada Inc.  
655 Madison Avenue  
12<sup>th</sup> Floor  
New York, NY  
10065 USA

**RE: KNOTEL CANADA INC.**  
**INVOICE #3 (829815)**

For professional services rendered in our capacity as Court-appointed Information Officer under the *Companies' Creditors Arrangement Act* pursuant to the Supplemental Order (Foreign Main Proceeding) granted by the Ontario Superior Court of Justice (Commercial List) on March 12, 2021, for the period from March 21 to April 24, 2021.

**BILLING SUMMARY**

	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
S. Ferguson, Managing Director	22.1	\$850	\$18,785.00
R. Gruneir, Director	9.2	\$565	5,198.00
	<u>31.3</u>		<u>\$23,983.00</u>
Add: HST @ 13%			3,117.79
<b>TOTAL INVOICE</b>			<b><u>\$27,100.79</u></b>

**Mailing Instructions:**

Alvarez & Marsal Canada ULC  
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200 Bay Street, Suite 2900  
P.O. Box 22  
Toronto, ON M5J 2J1

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Institution #: 0004  
Account #: **5519970**  
Reference #: Knotel Canada Inc. – Inv #3 (829815)  
HST#: 83158 2127 RT0001

***Knotel Canada Inc. – 829815***

**DETAILED SUMMARY – March 21 to April 24, 2021**

<u><i>S. Ferguson</i></u>	<u>Hrs.</u>	
Mar 22	Review of additional draft materials in respect of March 23 Court hearing; review of draft Order; correspondence with Cassels regarding process.	1.2
Mar 23	Review of communication regarding Canadian landlord assignment status; review of communication from creditors; attending to trust bank account set up; call with Cassels regarding Court hearing; call with Blakes regarding hearing preparation; discussion regarding transaction structure; attendance on Court hearing video conference.	2.8
Mar 25	Status update regarding U.S. Process; review of information for case website.	0.6
Mar 30	Call with Cassels regarding U.S. Claims process; follow-up discussion with Blakes regarding same; attend to trust banking matters.	1.1
Apr 1	Call with Cassels regarding upcoming Court attendance; internal call regarding draft Information Officer's Second Report (the "Second Report"); call with Blakes.	0.9
Apr 5	Communication with Cassels regarding upcoming Court attendance; initial review of U.S. Claims Bar Order; review of other material relevant to U.S. proceedings; internal update regarding Second Report.	1.4
Apr 6	Preparation of Second Report; internal communication regarding same; review of materials in respect of U.S. Chapter 11 process.	2.9
Apr 7	Preparation of Second Report; communication with Cassels; communication with Blakes.	3.0
Apr 8	Preparation of Second Report; communication with Blakes regarding same.	1.8
Apr 9	Attending to finalization of Second Report; calls with Blakes regarding same; call with Cassels; review of communication with counsel to the Unsecured Creditors Committee; review of additional affidavit regarding Omnibus Order.	3.1
Apr 12	Communication with Blakes regarding grid note; review of materials for hearing.	0.4
Apr 13	Attending Court video conference hearing in respect of Bar Date Order recognition; correspondence regarding same.	0.5



***Knotel Canada Inc. – 829815***

**DETAILED SUMMARY – March 21 to April 24, 2021**

Apr 19	Review of draft Chapter 11 disclosure statement and comments thereon; communication with Blakes regarding same.	1.6
Apr 20	Further review of draft Chapter 11 disclosure statement.	0.8
<b>TOTAL – S. Ferguson</b>		<b>22.1 hrs.</b>

**R. Gruneir**

**Hrs.**

Mar 22	Correspondence with K. May re: various required case website uploads; attending to updates in respect of case website.	0.2
Mar 25	Correspondence with K. May re: various required case website uploads; attending to updates in respect of case website.	0.2
Apr 5	Discussions with S. Ferguson re: Second Report; drafting of same and provide to S. Ferguson for review.	6.8
Apr 7	Correspondence with K. May re: various required case website uploads; attending to updates in respect of case website.	0.2
Apr 8	Discussion with S. Ferguson re: various updates to the Second Report; detailed review of same; attending to updates in respect of case website	1.0
Apr 9	Final review of Second Report and attending to serving of same (in conjunction with Blakes); attending to updates in respect of case website	0.8
<b>TOTAL – R. Gruneir</b>		<b>9.2 hrs.</b>



This is **Exhibit "B"** referred to in the

Affidavit of Stephen Ferguson

sworn before me by video conference  
this 23<sup>rd</sup> day of June, 2021

A handwritten signature in black ink, appearing to be "C. M. J.", written over a horizontal line. The signature is stylized and cursive.

A Commissioner, etc.



**EXHIBIT "B"**  
**ALVAREZ & MARSAL CANADA INC. COURT-APPOINTED INFORMATION OFFICER OF**  
**KNOTEL CANADA INC.**  
**(March 7, 2021 to April 24, 2021)**

<b>Staff Member</b>	<b>Title</b>	<b>Total Hours</b>	<b>Rate (\$CAD)</b>	<b>Amount Billed (\$CAD)</b>
Ferguson, Stephen	Managing Director	55.7	\$850	\$47,345.00
Gruneir, Ryan	Director	44.0	\$565	24,860.00
			<b>Avg Rate</b>	
<b>Total Fees (excl. Disbursements and HST)</b>		<b>99.7</b>	<b>\$724</b>	<b>\$72,205.00</b>

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

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

Proceeding Commenced at Toronto

**AFFIDAVIT OF STEPHEN FERGUSON  
Sworn June 23, 2021**

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers and Solicitors  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto, Ontario M5L 1A9

**Linc Rogers**, LSO #43562N  
Tel: 416-863-4168  
Email: linc.rogers@blakes.com

**Caitlin McIntyre**, LSO #72306R  
Tel: 416-863-5256  
Fax: 416-863-2653  
Email: caitlin.mcintyre@blakes.com

Lawyers for Alvarez & Marsal Canada Inc.,  
in its capacity as Information Officer

**Appendix "D"**

**Affidavit of Linc Rogers sworn June 23, 2021**

**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 KNOTEL, INC. and KNOTEL CANADA, INC.

APPLICATION OF KNOTEL CANADA, INC., UNDER SECTION 246 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

**AFFIDAVIT OF LINC ROGERS  
(sworn June 23, 2021)**

I, LINC ROGERS, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AND SAY:

1. I am a Partner at the law firm of Blake, Cassels & Graydon LLP ("**Blakes**"), counsel to Alvarez & Marsal Canada Inc. ("**A&M** ") in its capacity as Information Officer of Knotel, Inc. and Knotel Canada, Inc. and as such have knowledge of the matters to which I hereinafter depose.
2. By Supplemental Order (Foreign Main Proceeding) of the Honourable Mr. Justice Cavanagh dated March 12, 2021 (the "**Appointment Order**"), A&M was appointed Information Officer (the "**Information Officer**") of Knotel, Inc. and Knotel Canada, Inc.
3. Pursuant to the terms of the Appointment Order, the Information Officer retained Blakes to advise it with regards to the matters related to its appointment and the performance of its duties and powers.
4. Blakes' fees and disbursements for the period to May 31, 2021 are summarized in the invoices (the "**Invoices**") rendered to the Information Officer, true copies of which are attached hereto and marked as **Exhibit "A"**. The Invoices are a fair and accurate description of the services provided, the disbursements incurred and the amounts charged by Blakes, and are calculated based on Blakes' standard rates and charges.

5. As set out in the summary included at Exhibit "A", Blakes expended a total of 77.9 hours at an average hourly rate of \$829.16.

6. Attached hereto and marked as **Exhibit "B"** is a summary of the lawyers whose services are reflected on the Invoices, including year of call, hourly rate and the total fees and hours billed.

7. The total amount being claimed for the work performed by Blakes for the period ending May 31, 2021 is \$74,987.60, including \$66,499.00 for fees, \$1,632.60 for disbursements and \$8,856.00 for HST.

8. This affidavit is sworn in support of the motion for, among other things, approval of the fees and disbursements of the Information Officer and those of its legal representatives and for no other purpose.

Sworn before me by video conference by )  
Linc Rogers of the City of Toronto, in the )  
Province of Ontario, before me at the City of )  
Brampton, in the Regional Municipality of Peel, )  
on June 23, 2021, in accordance with )  
O.Reg.431/20, Administering Oath or )  
Declaration Remotely )



A Commissioner for Taking Affidavits, etc.



Linc Rogers

Nancy Ann Thompson, a Commissioner, etc.,  
Province of Ontario, for Blake, Cassels & Graydon LLP,  
Barristers and Solicitors.  
Expires July 13, 2021.

This is **Exhibit "A"** referred to in the

Affidavit of Linc Rogers

sworn before me by video conference  
this 23rd day of June, 2021



---

A Commissioner, etc.

Nancy Ann Thompson, a Commissioner, etc.,  
Province of Ontario, for Blake, Cassels & Graydon LLP,  
Barristers and Solicitors.  
Expires July 13, 2021.

**SUMMARY OF INVOICES OF BLAKE, CASSELS & GRAYDON**  
 (Period ended May 31, 2021)

<b>Period Ending</b>	<b>Fees</b>	<b>Disb. Subject to HST</b>	<b>Disb. Not Subject to HST</b>	<b>Subtotal</b>	<b>HST</b>	<b>Total</b>	<b>Hours</b>
March 14, 2021	\$21,503.00	\$0.00	\$0.00	\$21,503.00	\$2,795.39	\$24,298.39	26.4
March 22, 2021	\$19,144.00	\$0.00	\$0.00	\$19,144.00	\$2,488.72	\$21,632.72	22.2
March 31, 2021	\$7,841.00	\$27.01	\$8.50	\$7,876.51	\$1,022.84	\$8,899.35	9.5
April 30, 2021	\$16,015.00	\$1,597.09	\$0.00	\$17,612.09	\$2,289.57	\$19,901.66	19.8
May 31, 2021	\$1,996.00	\$0.00	\$0.00	\$1,996.00	\$259.48	\$2,255.48	2.3
<b>Totals:</b>	<b>\$66,499.00</b>	<b>\$1,624.10</b>	<b>\$8.50</b>	\$68,131.60	<b>\$8,856.00</b>	<b>\$76,987.60</b>	80.2

**Average Hourly Rate: \$829.16**



Blake, Cassels & Graydon LLP  
Barristers & Solicitors  
Patent & Trademark Agents  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto ON M5L 1A9 Canada  
Tel: 416-863-2400 Fax: 416-863-2653

## INVOICE

Please write invoice  
number(s) on cheque

March 15, 2021

Alvarez & Marsal Canada Inc.  
200 Bay Street  
Suite 2900  
Royal Bank Plaza, South Tower  
P.O. Box 22  
Toronto, ON M5J 2J1  
Canada

Attention: Stephen Ferguson

Invoice:  
Billing Lawyer  
HST/GST No.:  
Client:  
Matter:

2235925  
Rogers, Linc  
R119396778  
00099766  
000017

**Re: Knotel Canada Inc.**

FOR PROFESSIONAL SERVICES RENDERED  
during the period ended March 14, 2021, as follows:

<b>Total Fees</b>	\$ 21,503.00
<b>Harmonized Sales Tax (13.0%)</b>	2,795.39
<b>TOTAL DUE IN CANADIAN CURRENCY</b>	<b>\$ 24,298.39 CAD</b> <i>KB</i>





Invoice: 2235925  
Date: March 15, 2021  
Page: 2

Re: **Knotel Canada Inc.** (000017)

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount (\$)
03/04/21	McIntyre, Caitlin	Call with L. Rogers; call with company and its counsel and proposed information officer; reviewing background information on U.S. proceeding.	1.1	670.00	737.00
03/04/21	Rogers, Linc	Call with C. McIntyre; attending status call with debtor, Cassels and A&M.	0.5	1,020.00	510.00
03/05/21	McIntyre, Caitlin	Reviewing and providing comment on draft interim, initial and supplemental orders.	0.7	670.00	469.00
03/05/21	Rogers, Linc	Reviewing draft court documents in connection with recognition proceeding filing.	1.5	1,020.00	1,530.00
03/06/21	McIntyre, Caitlin	Reviewing and providing comment on affidavit and draft orders.	1.5	670.00	1,005.00
03/06/21	Rogers, Linc	Email correspondence regarding draft court material in connection with recognition hearing.	0.4	1,020.00	408.00
03/07/21	McIntyre, Caitlin	Reviewing and providing comment on draft orders, factum and affidavit.	1.1	670.00	737.00
03/07/21	Rogers, Linc	Email correspondence regarding draft court material.	0.5	1,020.00	510.00
03/08/21	McIntyre, Caitlin	Reviewing and providing comment on affidavit and factum; call with company counsel and information officer to discuss next steps.	2.8	670.00	1,876.00
03/08/21	Rogers, Linc	Reviewing and commenting on draft court material; conference call with working group to discuss next steps.	2.4	1,020.00	2,448.00
03/09/21	McIntyre, Caitlin	Attending hearing of application for Interim Order.	0.3	670.00	201.00
03/09/21	Rogers, Linc	Preparing for and attending application for interim stay; related email correspondence and discussions.	1.1	1,020.00	1,122.00
03/10/21	McIntyre, Caitlin	Drafting consent to act; call with S. Ferguson, L. Rogers and R. Grunier; reviewing stalking horse agreement.	1.7	670.00	1,139.00
03/10/21	Rogers, Linc	Discussion with working group regarding next steps; reviewing court material; related email correspondence.	1.6	1,020.00	1,632.00



Invoice: 2235925  
Date: March 15, 2021  
Page: 3

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount (\$)
03/11/21	McIntyre, Caitlin	Call with L. Rogers, S. Ferguson and R. Grunier; reviewing and providing comment on supplementary affidavit.	1.9	670.00	1,273.00
03/11/21	Rogers, Linc	Attending status call with A&M; reviewing and commenting on draft supplemental affidavit; preparing for initial recognition hearing; related email correspondence.	1.6	1,020.00	1,632.00
03/12/21	McIntyre, Caitlin	Attending hearing for an initial recognition order and supplemental recognition order; drafting rider for first report of the Information Officer regarding orders granted in the U.S.	3.1	670.00	2,077.00
03/12/21	Rogers, Linc	Preparing for and attending initial recognition hearing; follow up discussion with S. Ferguson; related email correspondence.	1.3	1,020.00	1,326.00
03/13/21	McIntyre, Caitlin	Drafting rider for first report of the Information Officer regarding orders granted in the U.S.	0.8	670.00	536.00
03/14/21	McIntyre, Caitlin	Reviewing draft first report of the Information Officer.	0.5	670.00	335.00
<b>Total Fees for this Matter</b>					<b>\$ 21,503.00</b>

Matter Timekeeper Summary	ID	Hours	Rate (\$)	Amount (\$)
McIntyre, Caitlin	CAI	15.5	670.00	10,385.00
Rogers, Linc	LCR	10.9	1,020.00	11,118.00
<b>Total</b>		<b>26.4</b>		<b>\$ 21,503.00</b>

**Harmonized Sales Tax (13.0%)** 2,795.39

---

**Total Due for this Matter in Canadian Currency** **\$ 24,298.39 CAD**



Blake, Cassels & Graydon LLP  
Barristers & Solicitors  
Patent & Trademark Agents  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto ON M5L 1A9 Canada  
Tel: 416-863-2400 Fax: 416-863-2653

## INVOICE

Please write invoice  
number(s) on cheque

March 22, 2021

Alvarez & Marsal Canada Inc.  
200 Bay Street  
Suite 2900  
Royal Bank Plaza, South Tower  
P.O. Box 22  
Toronto, ON M5J 2J1  
Canada

Attention: Stephen Ferguson

Invoice: 2236982  
Billing Lawyer Rogers, Linc  
HST/GST No.: R119396778  
Client: 00099766  
Matter: 000017

**Re: Knotel Canada Inc.**

FOR PROFESSIONAL SERVICES RENDERED  
during the period ended March 22, 2021, as follows:

<b>Total Fees</b>	\$ 19,144.00
<b>Harmonized Sales Tax (13.0%)</b>	2,488.72
<b>TOTAL DUE IN CANADIAN CURRENCY</b>	<b>\$ 21,632.72 CAD</b> <i>AC</i>



Invoice: 2236982  
Date: March 22, 2021  
Page: 2

Re: **Knotel Canada Inc.** (000017)

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount (\$)
03/15/21	McIntyre, Caitlin	Providing comments on Information Officer's first report.	0.5	670.00	335.00
03/15/21	Rogers, Linc	Email correspondence and discussions with working group throughout the day; reviewing endorsement and court documents.	1.2	1,020.00	1,224.00
03/16/21	McIntyre, Caitlin	Reviewing and providing comment on draft report.	0.5	670.00	335.00
03/16/21	Rogers, Linc	Reviewing and commenting on draft report; reviewing and commenting on draft notice of motion; related discussions and email correspondence throughout the day.	2.8	1,020.00	2,856.00
03/17/21	McIntyre, Caitlin	Call re First Report with S. Ferguson, R. Grunier and L. Rogers; revising First Report.	1.3	670.00	871.00
03/17/21	Rogers, Linc	Email correspondence throughout the day with working group members in connection with pending sale recognition hearing; various conversations with working group members; review of court documents.	2.5	1,020.00	2,550.00
03/18/21	McIntyre, Caitlin	Revising draft first report; attending U.S. sale hearing.	4.9	670.00	3,283.00
03/18/21	Rogers, Linc	Reviewing and commenting on draft report and other court documents; various conference calls and emails with working group throughout the day.	2.5	1,020.00	2,550.00
03/19/21	McIntyre, Caitlin	Revising and finalizing draft report; calls with S. Ferguson.	2.8	670.00	1,876.00
03/19/21	Rogers, Linc	E-mail correspondence and discussions with working group throughout the day; reviewing and revising draft report.	2.8	1,020.00	2,856.00
03/20/21	Rogers, Linc	E-mail correspondence regarding US sale order and related matters.	0.4	1,020.00	408.00
<b>Total Fees for this Matter</b>					<b>\$ 19,144.00</b>

Matter Timekeeper Summary	ID	Hours	Rate (\$)	Amount (\$)
McIntyre, Caitlin	CAI	10.0	670.00	6,700.00
Rogers, Linc	LCR	12.2	1,020.00	12,444.00



Invoice: 2236982  
Date: March 22, 2021  
Page: 3

Matter Timekeeper Summary	ID	Hours	Rate (\$)	Amount (\$)
<b>Total</b>		<b>22.2</b>		<b>\$ 19,144.00</b>

<b>Harmonized Sales Tax (13.0%)</b>	2,488.72
<b>Total Due for this Matter in Canadian Currency</b>	<b>\$ 21,632.72 CAD</b>



Blake, Cassels & Graydon LLP  
 Barristers & Solicitors  
 Patent & Trademark Agents  
 199 Bay Street  
 Suite 4000, Commerce Court West  
 Toronto ON M5L 1A9 Canada  
 Tel: 416-863-2400 Fax: 416-863-2653

**INVOICE**

Please write invoice number(s) on cheque

April 19, 2021

Alvarez & Marsal Canada Inc.  
 200 Bay Street  
 Suite 2900  
 Royal Bank Plaza, South Tower  
 P.O. Box 22  
 Toronto, ON M5J 2J1  
 Canada

Invoice: 2241553  
 Billing Lawyer Rogers, Linc  
 HST/GST No.: R119396778  
 Client: 00099766  
 Matter: 000017

Attention: Stephen Ferguson

**Re: Knotel Canada Inc.**

FOR PROFESSIONAL SERVICES RENDERED during the period ended March 31, 2021, as follows:

	<b>Total Fees</b>	\$ 7,841.00
<b><u>Taxable Disbursement(s)</u></b>		
Corporate-EP	\$ 27.01	_____
		\$ 27.01
<b><u>Non-taxable Disbursement(s)</u></b>		
Government Fees	\$ 8.50	_____
		\$ 8.50
	<b>Harmonized Sales Tax (13.0%)</b>	1,022.84
	<b>TOTAL DUE IN CANADIAN CURRENCY</b>	<b>\$ 8,899.35 CAD</b> <i>DD</i>



Invoice: 2241553  
Date: April 19, 2021  
Page: 2

Re: **Knotel Canada Inc.** (000017)

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount (\$)
03/19/21	Thompson, Nancy	Email messages from and to C. McIntyre; assisting with finalizing the First Report for service and filing.	0.8	450.00	360.00
03/22/21	McIntyre, Caitlin	Reviewing and providing comment on the third affidavit of J. Jureller; drafting and swearing affidavit of service.	0.7	670.00	469.00
03/22/21	Riviglia, Anna	Filed First Report.			25.00
03/22/21	Rogers, Linc	Preparing for upcoming sale motion; various email correspondence and telephone calls throughout the day; reviewing and commenting on draft order and draft affidavit.	2.0	1,020.00	2,040.00
03/22/21	Thompson, Nancy	Commissioning affidavit of service with C. McIntyre; assembling materials and arranging for First Report and affidavit of service to be filed with the court.	0.5	450.00	225.00
03/23/21	Budgell, Melinda	Ordering and obtaining corporate profile report for Knotel Canada, Inc. and providing same to N. Thompson.	0.2	170.00	34.00
03/23/21	McIntyre, Caitlin	Attending U.S. hearing regarding outstanding objections; attending hearing in Canada regarding recognition of the Sale Approval Order.	1.4	670.00	938.00
03/23/21	Rogers, Linc	Reviewing background material and preparing for sale recognition motion; related email correspondence and calls with working group throughout the day; reviewing and commenting on draft bill of sale.	2.6	1,020.00	2,652.00
03/23/21	Thompson, Nancy	Receiving instructions from C. McIntyre; arranging for corporation profile report of a BC entity; email message to C. McIntyre forwarding same.	0.4	450.00	180.00
03/24/21	Rogers, Linc	Email correspondence regarding outstanding matters in connection with Knotel transaction.	0.3	1,020.00	306.00
03/30/21	Rogers, Linc	Status call with Cassels and S. Ferguson; follow up call with S. Ferguson.	0.6	1,020.00	612.00
<b>Total Fees for this Matter</b>					<b>\$ 7,841.00</b>



Invoice: 2241553  
Date: April 19, 2021  
Page: 3

Matter Timekeeper Summary	ID	Hours	Rate (\$)	Amount (\$)
Budgell, Melinda	MELD	0.2	170.00	34.00
McIntyre, Caitlin	CAI	2.1	670.00	1,407.00
Riviglia, Anna	ANR	0.0	0.00	25.00
Rogers, Linc	LCR	5.5	1,020.00	5,610.00
Thompson, Nancy	NAB	1.7	450.00	765.00
<b>Total</b>		<b>9.5</b>		<b>\$ 7,841.00</b>

**Taxable Disbursement(s)**

Corporate-EP \$ 27.01

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\$ 27.01

**Non-taxable Disbursement(s)**

Government Fees \$ 8.50

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\$ 8.50

**Harmonized Sales Tax (13.0%)** 1,022.84

---

**Total Due for this Matter in Canadian Currency** **\$ 8,899.35 CAD**





Blake, Cassels & Graydon LLP  
 Barristers & Solicitors  
 Patent & Trademark Agents  
 199 Bay Street  
 Suite 4000, Commerce Court West  
 Toronto ON M5L 1A9 Canada  
 Tel: 416-863-2400 Fax: 416-863-2653

**INVOICE**

Please write invoice number(s) on cheque

May 27, 2021

Alvarez & Marsal Canada Inc.  
 200 Bay Street  
 Suite 2900  
 Royal Bank Plaza, South Tower  
 P.O. Box 22  
 Toronto, ON M5J 2J1  
 Canada

Invoice:  
 Billing Lawyer  
 HST/GST No.:  
 Client:  
 Matter:

2248607  
 Rogers, Linc  
 R119396778  
 00099766  
 000017

Attention: Stephen Ferguson

**Re: Knotel Canada Inc.**

FOR PROFESSIONAL SERVICES RENDERED during the period ended April 30, 2021, as follows:

	<b>Total Fees</b>	\$ 16,015.00
<b><u>Taxable Disbursement(s)</u></b>		
Courier	\$ 1,402.34	
Duplicating	194.75	
		\$ 1,597.09
	<b>Harmonized Sales Tax (13.0%)</b>	2,289.57
		<b>\$ 19,901.66 CAD</b> DD
	<b>TOTAL DUE IN CANADIAN CURRENCY</b>	



Invoice: 2248607  
Date: May 27, 2021  
Page: 2

Re: **Knotel Canada Inc.** (000017)

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount (\$)
04/01/21	Rogers, Linc	Discussions with working group regarding recognition of claims process.	0.4	1,020.00	408.00
04/05/21	McIntyre, Caitlin	Reviewing and providing comment on affidavit regarding recognition of the U.S. claims order.	0.5	670.00	335.00
04/05/21	Rogers, Linc	Email correspondence regarding lease rejection matters.	0.2	1,020.00	204.00
04/06/21	McIntyre, Caitlin	Reviewing and providing comment on affidavit regarding recognition of U.S. Claims Order.	0.2	670.00	134.00
04/06/21	Rogers, Linc	Reviewing and commenting on draft affidavit in support of recognizing claims bar order; related email correspondence and discussions.	1.1	1,020.00	1,122.00
04/07/21	McIntyre, Caitlin	Reviewing and providing comment on the Second Report.	0.6	670.00	402.00
04/07/21	Rogers, Linc	Discussions with S. Ferguson; discussion N. Levine; reviewing and commenting on draft report; reviewing background materials.	1.6	1,020.00	1,632.00
04/08/21	McIntyre, Caitlin	Reviewing and providing comment on the second report of the Information Officer.	0.9	670.00	603.00
04/08/21	Rogers, Linc	Reviewing revised court report; email correspondence with working group; discussions with S. Ferguson; discussion with N. Levine.	1.6	1,020.00	1,632.00
04/09/21	McIntyre, Caitlin	Revising second report.	4.1	670.00	2,747.00
04/09/21	Rogers, Linc	Reviewing supplementary affidavit; reviewing revised draft report; related email correspondence and discussions.	1.5	1,020.00	1,530.00
04/09/21	Thompson, Nancy	Email messages from and to C. McIntyre and P. Tanga regarding mailing of report to additional parties; preparing mail-only service list; email messages to and from P. Tanga and assisting with preparations for delivery of report.	0.8	450.00	360.00
04/12/21	McIntyre, Caitlin	Drafting and swearing affidavit of service.	0.4	670.00	268.00
04/12/21	Riviglia, Anna	Filed Second Report of the Information Officer.			25.00



Invoice: 2248607  
Date: May 27, 2021  
Page: 3

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount (\$)
04/12/21	Rogers, Linc	Reviewing cancelled promissory note and related email correspondence.	0.2	1,020.00	204.00
04/12/21	Thompson, Nancy	Video conference with C. McIntyre and commissioning her affidavit of service; assembling materials and arranging for the Second Report to be filed with the court; email message to C. McIntyre confirming same.	0.5	450.00	225.00
04/13/21	Rogers, Linc	Preparing for upcoming recognition hearing.	0.5	1,020.00	510.00
04/14/21	McIntyre, Caitlin	Attending hearing with respect to recognition of Claims Order.	0.4	670.00	268.00
04/14/21	Rogers, Linc	Preparing for and attending motion for approval of claims process.	0.5	1,020.00	510.00
04/18/21	McIntyre, Caitlin	Reviewing plan of arrangement.	1.5	670.00	1,005.00
04/19/21	McIntyre, Caitlin	Reviewing and providing comment on plan of arrangement.	1.3	670.00	871.00
04/19/21	Rogers, Linc	Reviewing draft plan and related email correspondence regarding same.	1.0	1,020.00	1,020.00
<b>Total Fees for this Matter</b>					<b>\$ 16,015.00</b>

Matter Timekeeper Summary	ID	Hours	Rate (\$)	Amount (\$)
McIntyre, Caitlin	CAI	9.9	670.00	6,633.00
Riviglia, Anna	ANR	0.0	0.00	25.00
Rogers, Linc	LCR	8.6	1,020.00	8,772.00
Thompson, Nancy	NAB	1.3	450.00	585.00
<b>Total</b>		<b>19.8</b>		<b>\$ 16,015.00</b>

**Taxable Disbursement(s)**

Courier \$ 1,402.34  
Duplicating 194.75

\$ 1,597.09

**Harmonized Sales Tax (13.0%)**

2,289.57

**Total Due for this Matter in Canadian Currency**

**\$ 19,901.66 CAD**



Blake, Cassels & Graydon LLP  
Barristers & Solicitors  
Patent & Trademark Agents  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto ON M5L 1A9 Canada  
Tel: 416-863-2400 Fax: 416-863-2653

## INVOICE

Please write invoice  
number(s) on cheque

June 15, 2021

Alvarez & Marsal Canada Inc.  
200 Bay Street  
Suite 2900  
Royal Bank Plaza, South Tower  
P.O. Box 22  
Toronto, ON M5J 2J1  
Canada

Attention: Stephen Ferguson

Invoice:  
Billing Lawyer  
HST/GST No.:  
Client:  
Matter:

2252199  
Rogers, Linc  
R119396778  
00099766  
000017

**Re: Knotel Canada Inc.**

FOR PROFESSIONAL SERVICES RENDERED  
during the period ended May 31, 2021, as follows:

<b>Total Fees</b>	\$ 1,996.00
<b>Harmonized Sales Tax (13.0%)</b>	259.48
<b>TOTAL DUE IN CANADIAN CURRENCY</b>	<b>\$ 2,255.48 CAD</b> DD



Invoice: 2252199  
Date: June 15, 2021  
Page: 2

Re: **Knotel Canada Inc.** (000017)

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount (\$)
05/03/21	McIntyre, Caitlin	Email correspondence with L. Rogers regarding bar dates.	0.4	670.00	268.00
05/03/21	Rogers, Linc	Email correspondence regarding creditor claim matters and general file update.	0.3	1,020.00	306.00
05/07/21	Rogers, Linc	Email correspondence regarding revised US plan.	0.3	1,020.00	306.00
05/12/21	McIntyre, Caitlin	Reviewing and providing comment on notice of motion.	0.5	670.00	335.00
05/12/21	Rogers, Linc	Review of motion record and related email correspondence.	0.5	1,020.00	510.00
05/20/21	McIntyre, Caitlin	Reviewing notice received by mail.	0.1	670.00	67.00
05/25/21	Rogers, Linc	Email correspondence with N. Levine.	0.2	1,020.00	204.00
<b>Total Fees for this Matter</b>					<b>\$ 1,996.00</b>

Matter Timekeeper Summary	ID	Hours	Rate (\$)	Amount (\$)
McIntyre, Caitlin	CAI	1.0	670.00	670.00
Rogers, Linc	LCR	1.3	1,020.00	1,326.00
<b>Total</b>		<b>2.3</b>		<b>\$ 1,996.00</b>

**Harmonized Sales Tax (13.0%)**

259.48

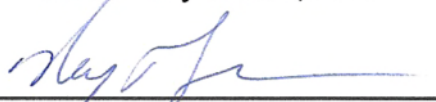
**Total Due for this Matter in Canadian Currency**

**\$ 2,255.48 CAD**

This is **Exhibit "B"** referred to in the

Affidavit of Linc Rogers

sworn before me by video conference  
this 23rd day of June, 2021



---

A Commissioner, etc.

**Nancy Ann Thompson, a Commissioner, etc.,  
Province of Ontario, for Blake, Cassels & Graydon LLP,  
Barristers and Solicitors.  
Expires July 13, 2021.**

**EXHIBIT "B"**

<b>Name of Lawyer</b>	<b>Practice Group</b>	<b>Year of Call</b>	<b>Hourly Rate</b>	<b>Total Hours</b>
Budgell, Melinda	<i>N/A</i>	<i>Search Clerk</i>	\$170	0.2
McIntyre, Caitlin	Restructuring & Insolvency	2017	\$670	38.5
Rogers, Linc	Restructuring & Insolvency	2000	\$1,020	38.5
Nancy Thompson	Restructuring & Insolvency	<i>Law Clerk</i>	\$450	3.0

Total Fees Billed: \$66,499.00  
Total Hours: 80.2  
Average Hourly Rate: \$829.16

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

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

Proceeding Commenced at Toronto

**AFFIDAVIT OF LINC ROGERS  
Sworn June 23, 2021**

**BLAKE, CASSELS & GRAYDON LLP**

Barristers and Solicitors  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto, Ontario M5L 1A9

**Linc Rogers**, LSO #43562N

Tel: 416-863-4168

Email: [linc.rogers@blakes.com](mailto:linc.rogers@blakes.com)

**Caitlin McIntyre**, LSO #72306R

Tel: 416-863-5256

Fax: 416-863-2653

Email: [caitlin.mcintyre@blakes.com](mailto:caitlin.mcintyre@blakes.com)

Lawyers for Alvarez & Marsal Canada Inc.,  
in its capacity as Information Officer



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

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

Proceeding Commenced at Toronto

**THIRD REPORT OF THE INFORMATION  
OFFICER**

**BLAKE, CASSELS & GRAYDON LLP**

Barristers and Solicitors  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto, Ontario M5L 1A9

**Linc Rogers**, LSO #43562N

Tel: 416-863-4168

Email: [linc.rogers@blakes.com](mailto:linc.rogers@blakes.com)

**Caitlin McIntyre**, LSO #72306R

Tel: 416-863-5256

Fax: 416-863-2653

Email: [caitlin.mcintyre@blakes.com](mailto:caitlin.mcintyre@blakes.com)

Lawyers for Alvarez & Marsal Canada Inc.,  
in its capacity as Information Officer