

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

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In re:	:	Chapter 11
	:	
EYP Group Holdings, Inc., <i>et al.</i> , <sup>1</sup>	:	Case No. 22-10367 (MFW)
	:	
Debtors.	:	(Jointly Administered)
	:	
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**SECOND AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION OF  
EYP GROUP HOLDINGS, INC., AND ITS DEBTOR-AFFILIATES  
(CONFORMED AND WITH FURTHER TECHNICAL MODIFICATIONS)**

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R. Craig Martin (DE 5032)  
Aaron S. Applebaum (DE 5587)  
**DLA PIPER LLP (US)**  
1201 N. Market Street, Suite 2100  
Wilmington, Delaware 19801  
Telephone: (302) 468-5700  
Facsimile: (302) 394-2341  
Email: Craig.Martin@us.dlapiper.com  
Aaron.Applebaum@us.dlapiper.com

Richard A. Chesley (admitted *pro hac vice*)  
Oksana Koltko Rosaluk (admitted *pro hac vice*)  
**DLA PIPER LLP (US)**  
444 West Lake Street, Suite 900  
Chicago, Illinois 60606  
Telephone: (312) 368-3974  
Fax: (312) 251-5874  
Email: Richard.Chesley@us.dlapiper.com  
Oksana.KoltkoRosaluk@us.dlapiper.com

*Counsel to Debtors and Debtors in Possession*

September 19, 2022  
Wilmington, Delaware

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: EYP Group Holdings, Inc. (1041); EYP Holdings, Inc. (0792); EYP, Inc. (0504); EYP Architecture & Engineering, P.C. (7234); EYP Architecture & Engineering of CT, Inc. (1181); EYP Architecture & Engineering of NJ, Inc. (7534); EYP AE, Inc. (7191); WHR Architecture, P.C. (5236); and WHR Design, P.C. (1535). The corporate headquarters and the mailing address for the Debtors is 201 Fuller Road, 5<sup>th</sup> Floor, Albany, NY 12203, Attn: Matthew Kahn.

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## INTRODUCTION<sup>2</sup>

Each of the Debtors proposes the following second amended joint plan of liquidation (as modified and as it may be further amended, modified, or supplemented from time to time, together with any and all exhibits, schedules, and supplements attached hereto or referenced herein, the “**Plan**”)<sup>3</sup> pursuant to chapter 11 of the Bankruptcy Code for the resolution and satisfaction of all Claims against and Equity Interests in the Debtors. Reference is made to the *Disclosure Statement for the Second Amended Joint Chapter 11 Plan of Liquidation of EYP Group Holdings, Inc. and Its Debtor-Affiliates (with Technical Modifications)* for a discussion of the Debtors’ history, as well as a summary and analysis of the Plan and other related matters, including Distributions to be made under the Plan. The Debtors are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

The Plan contemplates a fair and efficient distribution of the sale proceeds generated by the going concern sale of substantially all of the Debtors’ assets and is premised on a comprehensive settlement with and among numerous stakeholders (the “**Global Settlement**”), which the Debtors seek to approve under Bankruptcy Rule 9019 through the terms of this Plan. Key components of the Global Settlement include settlements by and among the LPC Parties, the Debtors and their Estates, the Creditors’ Committee, the Group I and Group II Noteholders (including SBS Noteholders in their capacities as such and in their capacities as SBS Equity Owners), and the Redemption Noteholders of the Claims (the “**LPC Settlement**”) and with Tom and Karen Birdsey (the “**Birdsey Settlement**”), each arising out of or related to the 2016 ESOP Transaction (including the issuance of the LPC Note) as well as the Debtors’ indemnification obligations that stem from the litigation commenced by certain Noteholder Parties and pending against the various indemnified parties, including the LPC Parties.

Specifically, by its terms, the LPC Settlement increases distributable proceeds to the fulcrum creditors (namely, the Group I and Group II Noteholders) by close to \$6.5 million in the aggregate (as compared to the distributions set out in the Initial Plan). The increased distributable proceeds are the result of the LPC Parties’ reduction of their Claims that were asserted in a liquidated amount of at least \$7.95 million in exchange for the dismissal of pending litigation and releases of related claims and causes of action. The LPC Parties’ agreement to the terms of the LPC Settlement is, thus, conditioned upon approval of the releases granted to the LPC Parties under Sections 6.4 and 6.5 of the Plan and the receipt by the LPC Parties of executed general releases in favor of the LPC Parties and their respective Related Parties by certain holders of Claims and Equity Interests as required under Sections 4.6 and 8.2 of the Plan.

Further, the Birdsey Settlement<sup>4</sup> likewise increases the distributable proceeds to other Group I Noteholders and to Group II Noteholders as Tom and Karen Birdsey (the “**Birdseys**”) agreed to reallocate their total recovery under the Plan on account of \$4.0 million of their Group I Notes to other Group I Noteholders and to Group II Noteholders, in exchange for, among other things, a

<sup>2</sup> Capitalized but not defined terms in this introductory section will have the meanings as set out in Section 1.2 of the Plan.

<sup>3</sup> The Plan supersedes the *Amended Joint Chapter 11 Plan of Liquidation of EYP Group Holdings, Inc. and Its Debtor-Affiliates* filed on September 2, 2022 [D.I. 415] (the “**Initial Plan**”).

<sup>4</sup> The terms of the Birdsey Settlement are set forth in detail in the Plan Supplement filed on October 18, 2022 [D.I. 522, Ex. F] and incorporated herein by reference.

general release granted by each of the plaintiffs in the New York Litigation, LPC and each of the Creditors' Committee Members.

The Global Settlement is also premised on the waiver of accrued interest by the Redemption Noteholders (a structurally senior Class), allowing reallocation of close to \$1 million in proceeds to Group I and Group II Noteholders, as well as the compromise and reallocation of distributions between Group I Noteholders and Group II Noteholders (including the SBS Noteholders). Additional settlement discussions with certain parties are ongoing, and, to the extent further settlements are reached with such additional parties, certain Carved-Out Parties (as defined below) may become Released Parties under the Plan, and the Debtors intend to seek the Bankruptcy Court's approval of such additional and further settlements at the Confirmation Hearing or thereafter.

The Debtors believe the Plan represents the most favorable recoveries attainable under the circumstances and provides for the quick, fair and efficient allocation of proceeds, which would be significantly decreased absent the Global Settlement embodied in the Plan.

**ALL CREDITORS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY AND CONSULT WITH COUNSEL AND OTHER APPLICABLE PROFESSIONALS BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. WITHOUT LIMITING THE FOREGOING, ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS ARE URGED TO CAREFULLY READ THE RELEASE, EXCULPATION AND INJUNCTION PROVISIONS SET FORTH IN Article VI BECAUSE SUCH PROVISIONS AFFECT NOT ONLY SUCH HOLDERS' RIGHTS AND CLAIMS AGAINST THE DEBTORS, BUT ALSO SUCH HOLDERS' RIGHTS AND CLAIMS AGAINST CERTAIN NON-DEBTOR PERSONS IDENTIFIED IN SUCH ARTICLE. SUBJECT TO CERTAIN RESTRICTIONS AND REQUIREMENTS SET FORTH IN SECTION 1127 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3019, THE DEBTORS, WITH THE CONSENT OF THE CREDITORS' COMMITTEE, RESERVE THE RIGHT TO ALTER, AMEND, MODIFY, REVOKE OR WITHDRAW THE PLAN PRIOR TO ITS SUBSTANTIAL CONSUMMATION.**

## **ARTICLE I DEFINITIONS, RULES OF INTERPRETATION, AND CONSTRUCTION**

**Section 1.1 Defined Terms.** For purposes of the Plan, the following terms set forth in this Article I shall have the respective meanings set forth below.

1.1.1 **"9019 Order"** means the Order Granting Motion of the Debtors to Approve Settlement Between the Debtors and GreatBanc Trust Company [D.I. 328].

1.1.2 **"9019 Settlement Agreement"** means that certain *Settlement Agreement Resolving Indemnification Claims*, attached as Exhibit A to the 9019 Order.

1.1.3 **"Administrative Claim"** means any Claim under sections 503(b) and 507(a)(2) of the Bankruptcy Code, including (a) any actual, necessary costs and expenses incurred by any of

the Debtors after the Petition Date of preserving the Estates or operating the Debtors' business; (b) a Professional Fee Claim; (c) any U.S. Trustee Fees; and (d) any Allowed Claims that are entitled to be treated as Administrative Claims pursuant to a Final Order of the Bankruptcy Court.

1.1.4 “**Administrative Claim Bar Date**” means the deadline for filing proofs of claim for payment of Administrative Claims from July 1, 2022, through and including the Effective Date, as specified in Article II of the Plan.

1.1.5 “**Administrative Claims Fund**” means a fund to be established by the Debtors within five (5) Business Days after the Confirmation Date in an amount agreeable to the Creditors' Committee sufficient to pay Allowed Administrative Claims and Allowed Priority Tax Claims, which Administrative Claims Fund shall be administered by Debtors (with the consent of the Creditors' Committee), and upon the Effective Date, by the Litigation Trustee.

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

1.1.7 “**Allowed**”, with respect to a Claim, means the extent to which a Claim: (a) is not Disallowed or expunged by stipulation or Final Order of the Bankruptcy Court; (b) is not objected to within the period fixed by the Plan or established by the Bankruptcy Court, if the Claim (i) was scheduled by a Debtor pursuant to the Bankruptcy Code and the Bankruptcy Rules in a liquidated amount and not listed as contingent, unliquidated or disputed, or (ii) was timely filed (or deemed timely filed) pursuant to the Bankruptcy Code, the Bankruptcy Rules or any applicable orders of the Bankruptcy Court; (c) for which an objection has been filed, but such objection has been withdrawn or determined by a Final Order (but only to the extent such Claim has been allowed); (d) is determined to be valid by the Litigation Trustee; or (e) is otherwise allowed, in whole or in part, by Final Order, including, without limitation, the Confirmation Order, after notice and a hearing. A Proof of Claim that is not timely filed (or not deemed timely filed) shall not be Allowed for purposes of distribution under the Plan.

1.1.8 “**Assets**” means all assets of the Debtors of any nature whatsoever, which constitute Excluded Assets under the Purchase Agreement including, without limitation, all property of the Estates pursuant to section 541 of the Bankruptcy Code, Cash (including proceeds from the Sale), Causes of Action, accounts receivable, tax refunds, claims of right, interests and property, real and personal, tangible and intangible, and proceeds from all of the foregoing.

1.1.9 “**Assumption Schedule**” means the schedule of Executory Contracts and Unexpired Leases to be assumed or assumed and assigned by the Debtors pursuant to the Plan, if any, which will be (i) in form and substance reasonably acceptable to the Creditors' Committee and (ii) included in the Plan Supplement, as may be amended modified or supplemented from time to time in accordance with the Confirmation Order.

1.1.10 “**Authorized Officer**” means either Kefalari L. Mason (prior to the closing of the Sale Transaction) or Matthew Kahn (after the closing of the Sale Transaction), as applicable, each in their capacity as authorized officer for and on behalf of the Debtors during these Chapter 11 Cases.

1.1.11 “**Avoidance Action**” means all Causes of Action arising under sections 544, 545, 547, 548, 549 or 550 of the Bankruptcy Code.

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

1.1.13 “**Bankruptcy Code**” means title 11 of the United States Code, as now in effect or as hereafter amended, as applicable to the Chapter 11 Cases.

1.1.14 “**Bankruptcy Court**” means the United States Bankruptcy Court for the District of Delaware, which has jurisdiction over the Chapter 11 Cases.

1.1.15 “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure, as promulgated by the United States Supreme Court pursuant to section 2075 of title 28 of the United States Code, and any applicable rules of the Bankruptcy Court, as amended, from time to time and as applicable to the Chapter 11 Cases.

1.1.16 “**Bar Date**” means such date(s) established by the Bankruptcy Court as the last date for filing proofs of claim or requests for allowance of Administrative Claims, as applicable, against the Debtors.

1.1.17 “**Bar Date Order**” means the order of the Bankruptcy Court granting the motion of the Debtors requesting, among other things, the establishment of applicable Bar Dates [D.I. 358].

1.1.18 “**Birdsey Causes of Action**” means any and all Causes of Action against Tom Birdsey and/or Karen Birdsey.

1.1.19 “**Birdsey Indemnification Claim**” means any Claim now existing or arising in the future for indemnification, reimbursement and/or advancement against any Debtor held or asserted by Tom Birdsey and/or Karen Birdsey.

1.1.20 “**Birdsey Release**” means, collectively, a release executed by each of the Creditors’ Committee Members (excepting Tom Birdsey), each plaintiff in the New York Litigation and LPC in the form included in the Plan Supplement as Annex to Exhibit F, D.I. 522; *provided, for the avoidance of doubt*, that LPC’s deemed release of Birdsey upon Birdsey’s execution of the LPC Release under Section 4.6 of the Plan shall satisfy this condition.

1.1.21 “**Business Day**” means any day except a Saturday, Sunday or “legal holiday” as such term is defined in Bankruptcy Rule 9006(a).

1.1.22 “**Buyer**” means Page Southerland Page, Inc. or its designee as provided in the Sale Order.



1.1.23 “**Carved-Out Parties**” means any Person involved in the authorization, execution, formulation and/or implementation of the ESOP Transaction, excepting (i) the LPC Parties and their Related Parties, (ii) David Watkins and (iii) Tom Birdsey.

1.1.24 “**Cash**” means cash and cash equivalents denominated in U.S. dollars.

1.1.25 “**Causes of Action**” means any and all claims, rights, defenses, offsets, recoupments and causes of action that have been brought, could have been brought or can be brought now by or on behalf of the Debtors or the Estates under the Bankruptcy Code or federal, state, common or other law arising before, on or after the Petition Date, whether they are known or unknown, direct or indirect, reduced or not reduced to judgment, disputed or undisputed, suspected or unsuspected, in contract or in tort, at law or in equity or under any theory of law, including: (a) those referred to in the Disclosure Statement and listed on the schedule, if any, filed with the Plan Supplement; (b) Avoidance Actions; (c) derivative claims; (d) rights of setoff or recoupment; and (e) claims on contracts or breaches of duty imposed by law.

1.1.26 “**Chapter 11 Cases**” means the cases commenced under chapter 11 of the Bankruptcy Code by each of the Debtors on the Petition Date and jointly administered under the case caption of *EYP Group Holdings, Inc., et al.*, Chapter 11 Case No. 22-10367 (MFW), currently pending before the Bankruptcy Court.

1.1.27 “**Claim**” means a “claim,” as defined in section 101(5) of the Bankruptcy Code, against any of the Debtors, whether or not asserted, whether or not the facts or legal bases therefor are known or unknown, and specifically including, without express or implied limitation, any rights under sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, any claim of a derivative nature, any potential or unmatured contract claims and any other contingent claim.

1.1.28 “**Clare Action**” means *Clare, et al. v. GreatBanc Trust Co., et al.*, Case No. 21-00367 (N.D. Ill. 2021), transferred Case No. 21-03393 (S.D.N.Y. 2021).

1.1.29 “**Class**” means a category of Claims or Equity Interests set forth in Article III of the Plan.

1.1.30 “**Collateral**” means any property or interest in property of the Estates subject to an unavoidable Lien to secure the payment or performance of a Claim.

1.1.31 “**Confirmation Date**” means the date on which the Confirmation Order is entered on the docket of the Chapter 11 Cases.

1.1.32 “**Confirmation Hearing**” means the hearing or hearings conducted by the Bankruptcy Court to consider confirmation of the Plan as it may be modified hereafter from time to time.

1.1.33 “**Company**” means the Debtors.

1.1.34 “**Confirmation Order**” means the order(s) confirming the Plan.

1.1.35 “**Contract Pending Licensure**” means any Executory Contract that is not a Contract Pending Novation for which a licensing issue remains pending under the Purchase Agreement or Transition Services Agreement and therefore constitutes a “Delayed Contract” under the Purchase Agreement.

1.1.36 “**Contract Pending Novation**” means any Executory Contract that is a federal, state, or local government contract or quasi-governmental contract that remains subject to novation or consent procurement under the Purchase Agreement or Transition Services Agreement and therefore constitutes a “Delayed Contract” under the Purchase Agreement.

1.1.37 “**Creditors’ Committee**” means the official committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to section 1102(a) of the Bankruptcy Code on May 4, 2022 [D.I. 52].

1.1.38 “**Creditors’ Committee Members**” means each of the following, in each case solely in their capacity as a member of the Creditors’ Committee: (a) Tom Birdsey; (b) Thomas G. McDougall Trust; (c) David Watkins; (d) Peter Ottavio; (e) Leila Kamal; (f) John Kempf; and (g) Paul King.

1.1.39 “**D&O Insurance Policy**” means any insurance policy for, among others, directors, members, trustees and officers’ liability (or any equivalents) maintained by the Debtors or their Estates, and all agreements, documents or instruments relating thereto, including any runoff policies or tail coverage.

1.1.40 “**Debtors**” means, collectively, EYP Group Holdings, Inc., EYP Holdings, Inc., EYP, Inc., EYP Architecture & Engineering, P.C., EYP Architecture & Engineering of CT, Inc., EYP Architecture & Engineering of NJ, Inc., EYP AE, Inc., WHR Architecture, P.C. and WHR Design, P.C.

1.1.41 “**Delaware Litigation**” means that certain lawsuit captioned as *Birdsey, et al. v. EYP Group Holdings, Inc., et al.*, Case No. 2020-0335-KSJM, pending in the Court of Chancery for the State of Delaware.

1.1.42 “**Disallowed**” means, when used in reference to a Claim, a Claim or any portion thereof that (a) has been disallowed by a Final Order; (b) is scheduled at zero or as contingent, disputed or unliquidated and as to which no Proof of Claim has been filed by the applicable Bar Date or deemed timely filed with the Bankruptcy Court or any Final Order or under applicable law; (c) is not scheduled, and as to which (i) no Proof of Claim has been filed by the applicable Bar Date or under applicable law and (ii) no request for payment of an Administrative Claim has been filed by the applicable Administrative Claim Bar Date or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order or under applicable law; or (d) after the Effective Date, has been disallowed in a written agreement by and between the Debtors (with the consent of the Creditors’ Committee) or the Litigation Trustee, as applicable, and the holder of such Claim.

1.1.43 “**Disclosure Statement**” means the disclosure statement for the Plan filed with the Bankruptcy Court by the Debtors in accordance with section 1125 of the Bankruptcy Code, including all exhibits and schedules thereto, as it may be amended from time to time.

1.1.44 “**Disputed Claim**” means a Claim, or any portion thereof, that is neither an Allowed Claim nor a Disallowed Claim, and is any Claim, proof of which was filed, or an Administrative Claim or other unclassified Claim, which is the subject of a dispute under the Plan or as to which Claim a Debtor (with the consent of the Creditors’ Committee) or the Litigation Trustee has interposed a timely objection and/or a request for estimation in accordance with section 502(c) of the Bankruptcy Code and Bankruptcy Rule 3018 or other applicable law, which dispute, objection and/or request for estimation has not been withdrawn or determined by a Final Order, and any Claim, proof of which was required to be filed by order of the Bankruptcy Court, but as to which a Proof of Claim was not timely or properly filed (or deemed timely or properly filed).

1.1.45 “**Disputed Claims Reserve**” means an account or accounts established and funded by the Debtors, in an amount agreeable to the Creditors’ Committee, and administered by the Litigation Trustee for payment of Disputed Claims that become Allowed Claims after the Effective Date, and which shall hold Cash and/or other Assets as applicable, for the benefit of the holders of Disputed Claims.

1.1.46 “**Distributable Cash**” means Cash in the Estates as of the Effective Date *less* (i) the Cash in the Disputed Claims Reserve, (ii) the Cash in the Litigation Trust Reserve, and (iii) the Cash in the Administrative Claims Fund.

1.1.47 “**Distribution**” means the distribution to holders of Allowed Claims in accordance with the Plan of any Assets, or other consideration distributed under Article IV herein.

1.1.48 “**Distribution Address**” means the address set forth in the applicable Proof of Claim, as such address may have been updated pursuant to Bankruptcy Rule 2002(g). If no proof of claim is or has been filed in respect of a particular Claim, “Distribution Address” means the address set forth in the Debtors’ Schedules, as such address may have been updated pursuant to Bankruptcy Rule 2002(g).

1.1.49 “**Distribution Date**” means any date on which the Litigation Trustee determines, in consultation with the Litigation Trust Oversight Committee, that a Distribution, under or in accordance with the Plan, should be made to holders of Allowed Claims (or to a particular holder of an Allowed Claim) in light of, for example, resolutions of Disputed Claims, liquidation of Assets (including aggregate recoveries on account of Retained Causes of Action) and the administrative costs of such a Distribution.

1.1.50 “**Effective Date**” means a Business Day, selected by the Creditors’ Committee (with the consent of the Debtors, which consent shall not be unreasonably withheld), on which all conditions to the Effective Date have been satisfied or waived by the Creditors’ Committee, and on which no stay of the Confirmation Order shall be pending; *provided* that such Business Day shall not be more than thirty (30) days after the Confirmation Date.

1.1.51 “**Equity Interest**” means any equity interest or proxy related thereto, direct or indirect, in any of the Debtors, and represented by duly authorized, validly issued and outstanding shares of preferred stock or common stock, stock appreciation rights, membership interests, partnership interests or any other instrument evidencing a present ownership interest, direct or indirect, inchoate or otherwise, in any of the Debtors, or right to convert into such an equity interest or acquire any equity interest of the Debtors, whether or not transferable, or an option, warrant or right, contractual or otherwise, to acquire any such interest, which was in existence prior to or on the Petition Date. For the avoidance of doubt, the Group I Notes, the Group II Notes, and the Redemption Notes and the rights arising out of or relating thereto do not constitute Equity Interests.

1.1.52 “**ESOP Loan Agreement**” means the loan agreement, dated June 28, 2016, by and among the ESOP Loan Debtors and the EYP ESOP, acting through GreatBanc.

1.1.53 “**ESOP Loan Debtors**” means EYP, Inc., EYP Holdings, Inc., and EYP Group Holdings, Inc.

1.1.54 “**ESOP Note**” means the promissory note dated June 28, 2016, by which the EYP ESOP promised to pay EYP, Inc. the principal sum of \$44,286,647.24 plus interest thereon and any other amounts arising under such note.

1.1.55 “**ESOP Transaction**” means the transaction culminating in the EYP ESOP, as further described in Paragraphs 37–56 of the First Day Declaration, including without limitation, the creation of the ESOP Trust, the formation and implementation of the ESOP Plan, GreatBanc’s appointment as ESOP trustee, the sale by LPC of EYP Holdings’ shares for cash and the LPC Note, the issuance and/or amendment of any Redemption Note, Group I Note and/or Group II Note (including, without limitation, the SBS Notes).

1.1.56 “**Estates**” means the estates of the Debtors as created under section 541 of the Bankruptcy Code.

1.1.57 “**Excluded Assets**” has the meaning ascribed to this term in the Purchase Agreement.

1.1.58 “**Exculpated Parties**” means all of the following: (a) each of the Debtors; (b) each of the Debtors’ respective Authorized Officers, directors or officers, in each case who served in such capacity at any time during the pendency of the Chapter 11 Cases; (c) the Creditors’ Committee and each of the Creditors’ Committee Members (solely in their capacities as members of the Creditors’ Committee); (d) Epiq Corporate Restructuring, LLC, in its capacity as claims and noticing agent and administrative and balloting agent; and (e) each of the Debtors’ and Creditors’ Committee’s Professionals, including Berkeley Research Group, LLC.

1.1.59 “**Executory Contracts and Unexpired Leases**” means any executory contract or unexpired lease, as contemplated by section 365 of the Bankruptcy Code, entered into prior to the Petition Date and in effect on the Confirmation Date, to which one or more of the Debtors is a party and which has neither been assumed nor rejected prior to the Confirmation Date pursuant to section 365(a) of the Bankruptcy Code.

1.1.60 “**Exhibit Filing Date**” means the date that is seven (7) days prior to the earlier of (a) the deadline for submission of Ballots to vote to accept or reject the Plan, and (b) the deadline to object to confirmation of the Plan, unless otherwise ordered by the Bankruptcy Court.

1.1.61 “**EYP ESOP**” means the EYP Employee Stock Ownership Plan and Trust, effective January 1, 2016, amended and restated, effective June 28, 2016.

1.1.62 “**Final Order**” means an order as to which the time to appeal, petition for *certiorari*, or move for re-argument or rehearing has expired and as to which no appeal, petition for *certiorari* or other proceedings for re-argument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, move for re-argument or rehearing shall have been waived in writing or, in the event an appeal, writ of *certiorari*, or re-argument or rehearing thereof has been sought, such order shall have been affirmed by the highest court to which such order was appealed, or *certiorari* has been denied, or from which re-argument or rehearing was sought, and the time to take any further appeal, petition for *certiorari*, or motion for re-argument or rehearing shall have expired.

1.1.63 “**First Day Declaration**” means the *Declaration of Kefalari L. Mason in Support of First Day Motions* [D.I. 15].

1.1.64 “**General Unsecured Claim**” means any Claim that is not (i) an Administrative Claim, (ii) a Professional Fee Claim, (iii) a Priority Tax Claim, (iv) a Secured Claim, (v) an Other Priority Claim, (vi) the LPC Claims, (vii) the Birdsey Indemnification Claim, (viii) the Watkins Indemnification Claim, (ix) the GreatBanc Indemnification Claim, (x) the Redemption Note Claims, (xi) the Group I/II Noteholder Claims, (xii) the SBS Equity Owner Claims, or (xiii) the Equity Interests, but including, for the avoidance of doubt, the Other Indemnification Claims, to the extent any exist.

1.1.65 “**GreatBanc**” means GreatBanc Trust Company, in its capacity as trustee of the EYP Employee Stock Ownership Trust established under the EYP ESOP.

1.1.66 “**GreatBanc Indemnification Claim**” means all past, present, and future Claims for indemnification and advancement held or asserted by GreatBanc, including those arising out of the Trustee Engagement Agreement dated December 23, 2015, between GreatBanc, as Trustee, and EYP Inc., as the company.

1.1.67 “**Group I Note**” means any Subordinated Promissory Note, dated June 28, 2016, issued by EYP Group Holdings, Inc., as the maker and issuer of such Group I Note under Section 2.6.1(a) of the Merger Agreement, to the respective Group I Noteholder, as such Group I Note may have been amended, modified or supplemented from time to time in accordance with its terms. The term “**Group I Notes**” shall be defined accordingly and shall include, for the avoidance of doubt, (i) those certain Subordinated Promissory Notes, dated November 1, 2017, issued by EYP Group Holdings, Inc. to Tom Birdsey and Karen Birdsey in the amounts of \$12,878,602.07 and \$5,000,000, respectively, and (ii) those certain Subordinated Promissory Notes, dated November 1, 2017, issued by EYP Group Holdings, Inc. to David Watkins and Marilyn Selma Watkins in the amounts of \$5,072,298.19 and \$5,072,298.19, respectively, as set forth on Schedule 1(a) of the Disclosure Statement.

1.1.68 “**Group I Noteholder**” means any holder of the Group I Note as payee thereunder, as identified on Schedule 1(a) to the Disclosure Statement, or any assignee thereof. The term “**Group I Noteholders**” shall be defined accordingly and shall include, for the avoidance of doubt, Karen Birdsey and Marilyn Selma Watkins.

1.1.69 “**Group I/II Noteholder Claim**” means any Claim of (i) a Group I Noteholder arising under or on account of its Group I Note(s) or (ii) a Group II Noteholder arising under or on account of its Group II Note(s).

1.1.70 “**Group II Note**” means any Group II subordinated promissory note, dated June 28, 2016, issued by EYP Group Holdings, Inc., as the maker and issuer of such Group II Note under Section 2.6.1(b) of the Merger Agreement, to the respective Group II Noteholder, as such Group II Note may have been amended, modified or supplemented from time to time in accordance with its terms, as set forth on Schedule 1(b) of the Disclosure Statement. For the avoidance of doubt, the Group II Notes include the SBS Notes.

1.1.71 “**Group II Noteholder**” means any holder of the Group II Note as payee thereunder, as identified on Schedule 1(b) to the Disclosure Statement, or any assignee thereof. The term “**Group II Noteholders**” shall be defined accordingly and shall include, for the avoidance of doubt, the SBS Noteholders.

1.1.72 “**Impaired**” means any Class of Claims or Equity Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

1.1.73 “**Initial Warrants**” means warrants to purchase 454,545 shares of common stock of EYP Group Holdings, Inc. issued in connection with the ESOP Transaction to certain Persons who then held equity interests in EYP Holdings, Inc.

1.1.74 “**Initial Warrant Claims**” means any Claim of a holder of an Initial Warrant arising under or on account of its Initial Warrants.

1.1.75 “**Interest in Pending Contract Debtors**” means an Equity Interest in a Debtor that remains a counterparty to a Contract Pending Novation.

1.1.76 “**Internal Revenue Code**” means the Internal Revenue Code of 1986, as amended from time to time.

1.1.77 “**Licensed Operating Debtors**” means any of the following: (i) EYP Architecture & Engineering, P.C., (ii) EYP Architecture & Engineering of CT, Inc., (iii) EYP Architecture & Engineering of NJ, Inc., (iv) EYP AE, Inc., (v) WHR Architecture, P.C. and (vi) WHR Design, P.C.

1.1.78 “**Lien**” means any charge against, security interest in, encumbrance upon or other interest in property to secure payment of a debt or performance of an obligation.

1.1.79 “**Litigation Trust**” means the trust described in Article V of the Plan to be established under Delaware trust law for the benefit of the Litigation Trust Beneficiaries that shall effectuate the wind down of the Debtors, prosecute the Retained Causes of Action and make

Distributions pursuant to the terms of the Plan and Litigation Trust Agreement. With respect to any action required or permitted to be taken by the Litigation Trust, the term includes the Litigation Trustee, or any other person authorized to take such action in accordance with the Litigation Trust Agreement.

1.1.80 **“Litigation Trust Agreement”** means the agreement between the Debtors and the Litigation Trustee (and agreed to by the Creditors’ Committee) to be entered into as of the Effective Date, substantially in form and substance as that filed as part of the Plan Supplement, as it may be amended from time to time in accordance with its terms.

1.1.81 **“Litigation Trust Assets”** means from and after the Effective Date (a) all Assets of the Debtors and the proceeds thereof; (b) all legal and equitable interests of the Debtors in Retained Causes of Action, including the Avoidance Actions not sold to the Buyer under the Purchase Agreement, and the proceeds thereof; (c) all legal and equitable defenses or counterclaims of the Debtors to Claims; and (d) any other Assets to be vested in the Litigation Trust pursuant to this Plan and the Litigation Trust Agreement.

1.1.82 **“Litigation Trust Expenses”** means reasonable and documented out-of-pocket fees, costs and expenses incurred by the Litigation Trust or the Litigation Trustee (or any professional or other Person retained by the Litigation Trustee in administering the Litigation Trust) on or after the Effective Date in connection with any of their respective duties under the Plan and the Litigation Trust Agreement, including any administrative fees, attorneys’ fees and expenses, insurance fees, taxes and escrow expenses.

1.1.83 **“Litigation Trust Reserve”** means the reserve created by the Debtors (with the consent of the Creditors’ Committee) for the benefit of the holders of the Litigation Trust Interests funded from the Distributable Cash in the amount acceptable to the Creditors’ Committee to cover Litigation Trust Expenses.

1.1.84 **“Litigation Trust Interest”** means an uncertified beneficial interest in the Litigation Trust representing the right of (i) each holder of an Allowed Claim not paid in accordance with the Plan before the Litigation Trust Assets are transferred to the Litigation Trust in accordance with Section 5.1 to receive Distributions from the Litigation Trust, or (ii) a holder of a Disputed Claim that becomes Allowed Claim to receive Distributions from the Disputed Claims Reserve, in each case (i) and (ii) in accordance with the terms and priorities set forth in this Plan and the Litigation Trust Agreement.

1.1.85 **“Litigation Trust Oversight Committee”** means the committee of three (3) Persons created hereunder that shall provide oversight and direction to the Litigation Trustee in accordance with the terms of the Litigation Trust Agreement, which shall be comprised of three Persons appointed by the Creditors’ Committee. For the avoidance of doubt, the members of the Creditors’ Committee may serve as members of the Litigation Trust Oversight Committee.

1.1.86 **“Litigation Trustee”** means, with the consent of the Creditors’ Committee, the Person identified as such in the Plan Supplement or other filing with the Bankruptcy Court, and retained as of the Effective Date pursuant to the terms of the Litigation Trust Agreement, as the

fiduciary responsible for implementing the applicable provisions of the Plan and the Litigation Trust Agreement.

1.1.87 “**LPC**” means Long Point Capital Partners III, L.P., Long Point Capital Fund II, L.P., Long Point Capital Partners II, L.P., Long Point Capital, Inc. and/or Long Point Capital Fund III, L.P.

1.1.88 “**LPC Causes of Action**” means any and all Causes of Action against LPC and/or its Related Parties, including Ira Starr, Norman Scherr, and/or Eric Von Stroh.

1.1.89 “**LPC Claim Reduction Amount**” means the amount by which LPC has agreed to reduce its asserted Claims pursuant to the LPC Settlement, which amount shall equal to \$6.5 million.

1.1.90 “**LPC Claims**” means, collectively and each individually, any and all Claims of any kind or nature held by any one or more of the LPC Parties and/or any of their Related Parties, including the LPC Note Claim and the LPC Indemnification Claims.

1.1.91 “**LPC Indemnification Claim**” means any Claim now existing or arising in the future for indemnification, advancement and/or reimbursement of any kind or nature (including as a result of the New York Litigation, the Clare Action or otherwise) against any Debtor held or asserted by the LPC Parties and/or their respective Related Parties, including Claims arising under, based on or on account of (i) that certain Management Agreement by and among EYP Holdings, Inc., EYP, Inc. and Long Point Capital, Inc., dated May 9, 2011, as amended, modified or supplemented from time to time in accordance with its terms, and (ii) the Debtors’ bylaws and/or certificates of incorporation.

1.1.92 “**LPC Note**” means that certain *Subordinated Promissory Note*, dated June 28, 2016, issued by EYP, Inc. to Long Point Capital Partners III, L.P., as agent and for the benefit of Long Point Capital Fund III, L.P. and Long Point Capital Partners III, L.P., as amended, modified or supplemented from time to time in accordance with its terms.

1.1.93 “**LPC Note Claim**” means any Claim arising under or on account of the LPC Note.

1.1.94 “**LPC Parties**” means, collectively, Ira Starr, Norman Scherr and Eric Von Stroh together with LPC. “**LPC Party**” means any one of the LPC Parties.

1.1.95 “**LPC Releases**” shall have the meaning ascribed to this term in Section 4.6 of the Plan.

1.1.96 “**Merger Agreement**” means that certain Agreement and Plan of Merger by and among EYP Holdings, Inc., EYP Group Holdings, Inc., EYP Merger Sub, Inc., certain sellers and those sellers’ representative, dated as of June 28, 2016.

1.1.97 “**Net Litigation Proceeds**” means any recovery generated by the Litigation Trust, including by prosecuting the Retained Causes of Action, *less* Litigation Trust Expenses.



1.1.98 **“New York Litigation”** means, collectively, the derivative and putative class action lawsuit captioned *Kohlberg, et al. v. Birdsey, et al.*, Civil Action No. 20-cv-6250-ALC (S.D.N.Y. 2020), and the litigation originally captioned *Kohlberg, et al. v. Birdsey, et al.*, Index No. 651555/2022 (N.Y. Sup. Ct. 2022) and that has been removed to federal court and now bears the caption *Kohlberg, et al. v. Birdsey, et al.*, Civil Action No. 22-cv-03079-ALC (S.D.N.Y. 2022) (also referred to as the **“Kohlberg State Action”**).

1.1.99 **“Noteholder Party”** means any Redemption Noteholder, Group I Noteholder or Group II Noteholder (including, for the avoidance of doubt, SBS Noteholders in their capacity as SBS Equity Owners).

1.1.100 **“Operating Debtors”** means, collectively, EYP, Inc. and the Licensed Operating Debtors.

1.1.101 **“Other Indemnification Claim”** means any Claim now existing or arising in the future for indemnification, advancement and/or reimbursement held or asserted by Kefalari L. Mason and Scott Butler against any Debtor.

1.1.102 **“Other Priority Claim”** means any Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code other than (a) an Administrative Claim or (b) a Priority Tax Claim.

1.1.103 **“Person”** means an individual, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, association, joint venture, trust, estate, unincorporated organization, governmental authority, governmental unit or any agency or political subdivision thereof or any entity of whatever nature.

1.1.104 **“Petition Date”** means April 24, 2022 (and with respect to EYPAE, Inc., April 25, 2022), the date upon which each of the chapter 11 petitions of the Debtors was filed with the Bankruptcy Court.

1.1.105 **“Plan”** means this liquidating plan under Chapter 11 of the Bankruptcy Code, including, without limitation, the exhibits, appendices and schedules hereto to be filed with the Plan Supplement, as such may be altered, amended or otherwise modified from time to time.

1.1.106 **“Plan Settlements”** means any settlements as may be incorporated in the Plan as set forth in Section 5.30 of the Plan.

1.1.107 **“Plan Supplement”** means, as approved by the Creditors’ Committee, the supplemental documents, schedules and exhibits to the Plan, to be filed by the Debtors no later than the Exhibit Filing Date, containing information required to be disclosed in accordance with section 1129(a)(5), including (i) a schedule of to-be rejected Executory Contracts and Unexpired Leases, if any (provided that the failure to include an Executory Contract or Unexpired Lease in the Plan Supplement shall not alter the effect of Section 7.1), (ii) the Litigation Trust Agreement, (iii) the identities of the members of the Litigation Trust Oversight Committee, (iv) the Plan Settlements, (v) a list of the Debtors’ officers and/or directors who may continue their duties beyond the Effective Date pursuant to the Transition Services Agreement, (vi) the identity of the

Litigation Trustee, and (vii) a list of the Retained Causes of Action. The Debtors, with the consent of the Creditors' Committee, shall have the right to amend all of the documents contained in, and exhibits to, the Plan Supplement through the Effective Date.

1.1.108 **"Priority Tax Claim"** means any Claim entitled to priority pursuant to sections 502(i) and 507(a)(8) of the Bankruptcy Code.

1.1.109 **"Pro Rata Share"** means, with respect to any Allowed Claim, the ratio of the amount of such Claim in a particular Class relative to the aggregate amount of all Claims (including Disputed Claims but excluding Disallowed Claims) in such Class.

1.1.110 **"Professional Fee Claim"** means a Claim for compensation for services rendered, indemnification or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code in connection with the Chapter 11 Cases incurred on or after the Petition Date and prior to the Effective Date.

1.1.111 **"Professionals"** mean the attorneys, accountants, financial advisors, investment banker and other professionals whose retention in the Chapter 11 Cases has been approved by the Bankruptcy Court, excluding the Litigation Trustee.

1.1.112 **"Proof of Claim"** means a proof of claim filed against any of the Debtors in the Chapter 11 Cases in a manner consistent with the Bar Date Order and/or the Plan.

1.1.113 **"Purchase Agreement"** means that certain Asset Purchase Agreement between the Debtors and the Buyer, dated June 20, 2022, as approved by and annexed to the Sale Order.

1.1.114 **"Purchase Warrants"** means warrants to purchase 363,636 shares of common stock of EYP Group Holdings, Inc. issued to certain key members of the Company's management in connection with the ESOP Transaction.

1.1.115 **"Purchase Warrant Claims"** means any Claim of a holder of a Purchase Warrant arising under or on account of its Purchase Warrant.

1.1.116 **"Redemption Note"** means a Redemption Note, as of the date specified therein, issued by EYP Holdings, Inc., as maker and issuer, *on the one hand*, and the payee thereunder, *on the other hand*, as the same may have been amended, modified or supplemented from time to time in accordance with its terms, and as set forth on Schedule 1(c) to the Disclosure Statement.

1.1.117 **"Redemption Noteholder"** means a holder of its Redemption Note(s) as identified on Schedule 1(c) to the Disclosure Statement, or any assignee thereof.

1.1.118 **"Redemption Note Claim"** means a Claim arising under or on account of a Redemption Note.

1.1.119 **"Related Party"** means each of, and in each case in its capacity as such, current and former directors, trustees, managers, officers, investment committee members, special

or other committee members, predecessors, successors, assigns, subsidiaries, Affiliates, partners, limited partners, general partners, principals, members, managers, employees, agents, advisory board members, financial advisors, attorneys (including any other attorneys or professionals retained by any current or former director, trustee or manager in his or her capacity as director or manager of an entity), accountants, investment bankers, consultants, representatives and other professionals and advisors and any such Person's respective heirs, executors, estates and nominees.

1.1.120 **“Released Party”** means each of the following in its capacity as such (but not including the Carved-Out Parties): (a) the Creditors' Committee and the Creditors' Committee Members (solely in their capacity as such); (b) each Professional of the Creditors' Committee; (c) each Professional of the Debtors, including Berkeley Research Group, LLC; (d) each of the Restructuring Committee Members; (e) the LPC Parties and their respective Related Parties; (f) David Watkins; (g) the Debtors' Related Parties; (h) Tom Birdsey; and (i) Karen Birdsey; *provided, however*, that the following Persons shall not be Released Parties: (w) any Person that opts out of being a Releasing Party, (x) any Person, other than the Creditors' Committee (and the LPC Parties *but only to the extent* their objection is based on the Plan's deviation from the LPC Settlement in a manner materially adverse to the LPC Parties), that files an objection to confirmation of the Plan and/or contests the Plan at the Confirmation Hearing, (y) other than with respect to releases from the Debtors and Debtors' Estates under Section 6.4, any Non-Releasing Employee, and (z) any Person that is otherwise not a Releasing Party.

1.1.121 **“Releasing Party”** means each of the following, in each case in their respective capacities as such: (a) each Released Party; (b) each present and former holder of a Claim who either (i) votes to accept the Plan or (ii) is conclusively presumed to have accepted the Plan and does not object to the release by filing an objection to the Plan; and (c) each present and former holder of a Claim who is entitled to vote on the Plan and (i) votes to reject the Plan and (ii) does not check the appropriate box on such holder's Ballot to indicate such holder opts not to grant the releases provided under the Plan; *provided, however*, that the Debtors' and non-Debtor Affiliates' non-officer and non-director employees shall not be included as Releasing Parties solely on account of their inclusion as Released Parties in Section 1.1.120(g) (each, a **“Non-Releasing Employee”**).

1.1.122 **“Restructuring Committee”** means the restructuring committee of the Company's Board of Directors formed in March 2020.

1.1.123 **“Restructuring Committee Members”** means Amy Johnson, Matthew Kahn and Robert Gross.

1.1.124 **“Retained Causes of Action”** means all Causes of Action of the Debtors and their Estates, including all Causes of Action identified in the Plan Supplement, that (i) were not Purchased Assets and (ii) are not released pursuant to Section 6.4, namely (x) all Causes of Action against the Carved-Out Parties in connection with the ESOP Transaction, and (y) all Avoidance Actions against non-debtor entities who were not party to an “Assigned Contract” as defined in the Purchase Agreement. For the avoidance of doubt, the Retained Causes of Action do not include the LPC Causes of Action and the Birdsey Causes of Action that are expressly released under the Plan.

1.1.125 “**Sale**” means the Sale Transaction approved by the Sale Order.

1.1.126 “**Sale Order**” means the order of the Bankruptcy Court approving the Sale Transaction, dated June 22, 2022 [D.I. 291].

1.1.127 “**Sale Transaction**” means the transaction between the Debtors and the Buyer pursuant to which the Debtors sold substantially all of their assets to the Buyer free and clear of all Liens, Claims, Equity Interests and encumbrances pursuant to sections 363 and 1123 of the Bankruptcy Code, as set forth in the Purchase Agreement and the Sale Order.

1.1.128 “**SBS Equity Owner**” means any of the following persons: (i) R. Blackburn Sears, (ii) Betsy Sears, (iii) Portia Ellis, (iv) Donald Glitsis, (v) Kimberly Stanley and (vi) Veronique Pryor, each a holder of a warrant provided to equity owners at the closing of the SBS acquisition.

1.1.129 “**SBS Equity Owner Claims**” means any Claim arising under the warrants provided to the SBS Equity Owners.

1.1.130 “**SBS Note**” means a Subordinated Promissory Note, dated December 1, 2016, issued by EYP Group Holdings, Inc., as maker and issuer, *on the one hand*, and the payee thereunder, *on the other hand*, as amended, modified or supplemented from time to time in accordance with its terms, and as set forth on Schedule 1(b) to the Disclosure Statement.

1.1.131 “**SBS Noteholder**” means any of the following persons: (i) R. Blackburn Sears, (ii) Betsy Sears, (iii) Portia Ellis, (iv) Donald Glitsis, (v) Kimberly Stanley and (vi) Veronique Pryor as holders of a subset of Group II Notes, made and issued by EYP Group Holdings, Inc., in respect of certain purchase warrants and in connection with the Debtors’ acquisition of Stanley Bearman and Sears on or around December 30, 2016.

1.1.132 “**SBS Noteholder Claims**” means any Claim of an SBS Noteholder arising under or on account of its SBS Note(s).

1.1.133 “**Schedules**” means, unless otherwise specified, the respective schedules of assets and liabilities, the list of holders of Equity Interests and the statements of financial affairs filed by the Debtors in accordance with section 521 of the Bankruptcy Code and the Bankruptcy Rules, as such schedules and statements have been or may be supplemented or amended on or prior to the Confirmation Date.

1.1.134 “**Secured Claim**” means a Claim that is secured by a Lien on any Asset of the Debtor, or right of setoff, which Lien or right of setoff, as the case may be, is valid, perfected and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or applicable non-bankruptcy law, but only to the extent of the value, pursuant to section 506(a) of the Bankruptcy Code, of any interest of the holder of the Claim in property of the Estates securing such Claim.

1.1.135 “**Settling Claims**” and “**Settling Claimants**” shall have the respective meanings ascribed to these terms in Section 4.6 of the Plan.

1.1.136 “**Threshold LPC Releases**” means the LPC Release executed by (a) ninety percent (90%) of the aggregate amount of the Noteholder Parties’ Claims calculated as the principal amounts set forth on Schedules 1(a), 1(b) and 1(c) annexed to the Disclosure Statement plus any accrued interest thereon as of the Petition Date; (b) each of the NY Plaintiffs; (c) each Group I Noteholder and each Group II Noteholder holding a Claim as of the Petition Date of at least \$150,000, including accrued interest; and (d) each Redemption Noteholder holding a Claim as of the Petition Date of at least \$100,000, including accrued interest.

1.1.137 “**Transition Services Agreement**” means that certain Transition Services Agreement (together with all exhibits, schedules and annexes thereto), dated June 20, 2022, by and between EYP Group Holdings, Inc. and EYP, Inc., *on the one hand*, and Buyer and/or its designee, *on the other hand*.

1.1.138 “**U.S. Trustee**” means the office of the United States Trustee for Region 3.

1.1.139 “**U.S. Trustee Fees**” means all fees and charges due pursuant to section 1930 of title 28 of the United States Code, and any interest thereon pursuant to section 3717 of title 31 of the United States Code.

1.1.140 “**Unimpaired**” means any Class of Claims or Equity Interests that is not Impaired within the meaning of section 1124 of the Bankruptcy Code.

1.1.141 “**Voting Record Date**” means (A) September 20, 2022, for all Persons who either (a) were not required to file proofs of claim or (b) filed a Proof of Claim prior to September 20, 2022; and (B) October 3, 2022, with respect to Persons who were not excused from filing proofs of claim and who do not have a proof of claim filed by September 20, 2022 and who do file a Proof of Claim by October 3, 2022.

1.1.142 “**Watkins Indemnification Claim**” means any Claim now existing or arising in the future for indemnification, reimbursement and/or advancement against any Debtor held or asserted by David Watkins and/or Marilyn Watkins.

**Section 1.2 Defined Terms.** Capitalized terms used in the Plan have the meanings given to such terms in Article I of the Plan. Any term used but not defined in the Plan that is used in the Bankruptcy Code or Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or Bankruptcy Rules.

**Section 1.3 Rules of Construction.** The meanings set forth herein shall be equally applicable to the singular and plural forms of the terms defined, and pronouns stated in the masculine, feminine, or neutral gender shall include the masculine, feminine, and neutral gender. Unless otherwise stated, the words “herein,” “hereof,” “hereto,” “hereunder” and other similar words refer to the Plan as a whole and not to any particular article, section, subsection, clause, paragraph or portion contained therein. Unless otherwise expressly provided in the Plan, the term “with the consent of the Creditors’ Committee” means from and after the Confirmation Date. All of the definitions and provisions contained in this Article I are and shall be regarded as integral, substantive and operative provisions of the Plan. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Except as otherwise

provided, any references to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter. The rules of construction set forth in section 102 of the Bankruptcy Code shall apply to all of the provisions of the Plan.

**Section 1.4 Exhibits, Supplements, Appendices, and Schedules.** All exhibits, supplements, appendices, and schedules to the Plan, including those filed with the Plan Supplement, are incorporated into and are a part of the Plan as if set forth herein. To the extent that any exhibit, schedule, or Plan Supplement is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the Plan shall control.

**Section 1.5 Controlling Document.** The provisions of the Plan and of the Confirmation Order shall be construed in a manner consistent with each other so as to effect the purposes of each; *provided*, that, if there is determined any inconsistency between a Plan provision and a provision of the Confirmation Order, the Confirmation Order provision shall govern and such provision shall be deemed a modification of the Plan and shall control and take precedence.

## ARTICLE II TREATMENT OF UNCLASSIFIED CLAIMS

### Section 2.1 Administrative Claims

- (a) **General.** Subject to the Bar Date, other existing orders (including the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [D.I. 181], rights under which are expressly preserved), and other provisions herein and, except to the extent the Debtors (with the consent of the Creditors' Committee) or the Litigation Trustee, as applicable, and the holder of an Allowed Administrative Claim agree to a different treatment, the Litigation Trustee shall pay, in full satisfaction and release of such Claim, to each holder of an Allowed Administrative Claim, Cash, in an amount equal to such Allowed Administrative Claim, on the later of (i) the Effective Date and (ii) the first Business Day after the date that is thirty (30) calendar days after the date on which such Administrative Claim becomes an Allowed Administrative Claim, or as soon thereafter as is practicable. Allowed Administrative Claims shall be paid (x) *first*, from Cash in the Administrative Claims Fund, and (y) *second*, from Distributable Cash (but only to the extent the Administrative Claims Fund lacks sufficient Cash to pay Allowed Administrative Claims in full).

### Section 2.2 Professional Fee Claims

- (a) All requests for payment of Professional Fee Claims must be filed and served by the Professional Fee Claim Bar Date. The Bankruptcy Court will determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code. Allowed Professional Fee Claims shall be paid from the Administrative Claims Fund. Notwithstanding the foregoing, the holder of an Allowed Professional Fee Claim may receive such other, less favorable treatment as may be agreed upon between such holder and the Debtors (with the consent of the Creditors' Committee). From

and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Litigation Trustee may employ and pay any Professional, in accordance with the Litigation Trust Agreement, in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court; *provided, however*, that the Litigation Trust shall comply with the Litigation Trust Agreement.

### **Section 2.3 Administrative Claim Bar Dates.**

- (a) **General Administrative Claim Bar Date Provisions.** Except as provided below for (i) Professionals requesting compensation or reimbursement for Professional Fee Claims and (ii) U.S. Trustee Fees, requests for payment of Administrative Claims incurred from July 1, 2022, through and including the Effective Date, must be filed no later than thirty (30) days after notice of the occurrence of the Effective Date is filed with the Bankruptcy Court or such later date as may be established by order of the Bankruptcy Court. A holder of an Administrative Claim who is required to file a request for payment of such Claim and who does not file such request by the applicable Bar Date, shall be forever barred from asserting such Claim against the Debtors, their Estates, or their properties, and the holder thereof shall be enjoined from commencing or continuing any action, proceeding or act to collect, offset or recover such Administrative Claim.
- (b) **Professional Fee Claim Bar Date.** All Professionals requesting compensation or reimbursement of Professional Fee Claims for services rendered during the period from the Petition Date through the Effective Date (including compensation requested by any Professional or other Person 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 forty-five (45) days after the Effective Date. Objections to applications of Professionals or other entities for compensation or reimbursement of expenses must be filed no later than twenty-one (21) days after any such application is filed. All compensation and reimbursement of expenses allowed by the Bankruptcy Court shall be paid by the Litigation Trustee to the applicable Professional or other entities requesting compensation or reimbursement of Professional Fee Claims no later than five (5) Business Days after entry of an order approving and allowing such Professional Fee Claims.

Each Professional or other Person that intends to seek payment on account of a Professional Fee Claim shall provide the Debtors and the Creditors' Committee with a statement, by no later than the Confirmation Date, of the amount of estimated unpaid fees and expenses accrued by such Professional up to the date of such statement, the amount of fees and expenses that each such Professional expects to incur from such date through the Effective Date, and the amount of fees and expenses that each such Professional expects to incur from such date in connection with the preparation and prosecution of each such Professional's final fee application. The Debtors, with the consent of the Creditors' Committee, shall fund

such estimate into the Administrative Claims Fund within five (5) Business Days after the Confirmation Date.

- (c) **U.S. Trustee Fees.** The Debtors or the Litigation Trustee (as applicable) shall pay all U.S. Trustee Fees, in accordance with the terms of the Plan, until such time as the Bankruptcy Court enters a final decree closing the Chapter 11 Cases. For the avoidance of doubt, the U.S. Trustee shall not be required to file a proof of claim or request for payment for U.S. Trustee Fees.

**Section 2.4 Priority Tax Claims.** Except to the extent the Debtors (with the consent of the Creditors' Committee) or the Litigation Trustee, as applicable, and the holder of an Allowed Priority Tax Claim agree to a different and less favorable treatment, the Litigation Trustee shall pay, in full satisfaction and release of such Claim, to each holder of a Priority Tax Claim, Cash, in an amount equal to such Allowed Priority Tax Claim, on the later of: (a) the Effective Date and (b) the first Business Day after the date that is thirty (30) calendar days after the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, or as soon thereafter as is reasonably practicable.

### **ARTICLE III CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**Section 3.1 General Notes on Classification and Treatment of Classified Claims and Equity Interests.** Pursuant to sections 1122 and 1123 of the Bankruptcy Code, Claims and Equity Interests (other than Claims arising under sections 507(a)(2) or 507(a)(8) of the Bankruptcy Code, which Claims do not require classification pursuant to section 1123(a) of the Bankruptcy Code and are receiving the treatment set forth in Article II) are classified for all purposes, including, without limitation, voting, confirmation and Distribution pursuant to the Plan, as set forth herein; *provided* that a Claim or Equity Interest is placed in a particular Class for the purpose of receiving Distributions pursuant to this Plan only to the extent that such Claim or Equity Interest is an Allowed Claim or Allowed Equity Interest in that Class and such Claim or Equity Interest has not been satisfied, released or otherwise settled prior to the Effective Date. A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class.

Any Claim that constitutes a payment obligation of the Buyer under the Purchase Agreement shall be satisfied by the Buyer (and not the Debtors or the Debtors' Estates) notwithstanding that such Claim may be included in a Class under this Plan.

**Section 3.2 Special Provision Governing Unimpaired Claims.** Except as otherwise provided in the Plan, nothing under the Plan shall affect the rights of the Debtors or the Litigation Trustee, as applicable, in respect of any Unimpaired Claims, including all rights in respect of legal and equitable defenses to, or setoffs or recoupments against, any such Unimpaired Claims.



**Section 3.3 Classification and Treatment of Classified Claims and Equity Interests.**

The following tables designate the Classes of Claims against and Equity Interests in each of the Debtors and specify which of those Classes are (i) Impaired or Unimpaired by the Plan, (ii) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code and (iii) deemed to reject the Plan. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims have not been classified and, thus, are excluded from the Classes of Claims and Equity Interests set forth in this Article III. All of the potential Classes for the Debtors are set forth herein. Certain of the Debtors may not have holders of Claims or Equity Interests in a particular Class or Classes, and such Classes shall be treated as set forth in Section 4.3.

As set forth in Article V below, to preserve such Debtors' structural subordination, the Plan shall apply as a separate Plan to each of the Class Category of Debtors as among (a) the Class Category A of the Operating Debtors, (b) the Class Category B of EYP Holdings, Inc. and (c) Class Category C of EYP Group Holdings, Inc.; *provided* that within the Class Category A, the Licensed Operating Debtors are substantively consolidated into EYP, Inc. for all purposes.

**Class Category A - Claims Against EYP, Inc. and/or the Licensed Operating Debtors**

<b>Class</b>	<b>Type</b>	<b>Treatment</b>	<b>Entitled to Vote</b>
<b>A</b>	Secured Claims	Unimpaired	No (Deemed to Accept)
<b>A0</b>	Other Priority Claims	Unimpaired	No (Deemed to Accept)
<b>A1</b>	LPC Claims	Impaired	Yes (Entitled to Vote)
<b>A2A</b>	Birdsey and Watkins Indemnification Claims	Impaired	Yes (Entitled to Vote)
<b>A2B</b>	GreatBanc Indemnification Claim	Impaired	Yes (Entitled to Vote)
<b>A3</b>	General Unsecured Claims	Unimpaired	No (Deemed to Accept)
<b>A4</b>	Equity Interests in the Operating Debtors	Impaired	No (Deemed to Reject)

**Class Category B - Claims Against EYP Holdings, Inc.**

<b>Class</b>	<b>Type</b>	<b>Treatment</b>	<b>Entitled to Vote</b>
<b>B0</b>	Other Priority Claims	Unimpaired	No (Deemed to Accept)
<b>B1</b>	Redemption Note Claims	Impaired	Yes (Entitled to Vote)
<b>B2</b>	General Unsecured Claims	Unimpaired	No (Deemed to Accept)
<b>B3</b>	Equity Interests in EYP Holdings, Inc.	Impaired	No (Deemed to Reject)

**Class Category C - Claims Against EYP Group Holdings, Inc.**

<b>Class</b>	<b>Type</b>	<b>Treatment</b>	<b>Entitled to Vote</b>
<b>C0</b>	Other Priority Claims	Unimpaired	No (Deemed to Accept)
<b>C1</b>	Group I/II Noteholder Claims, Including SBS Noteholder Claims	Impaired	Yes (Entitled to Vote)
<b>C2</b>	SBS Equity Owner Claims	Impaired	Yes (Entitled to Vote)
<b>C3</b>	General Unsecured Claims	Impaired	Yes (Entitled to Vote)
<b>C4</b>	Equity Interests in EYP Group Holdings, Inc.	Impaired	No (Deemed to Reject)
<b>C5</b>	Initial Warrant Claims and Purchase Warrant Claims	Canceled	No (Deemed to Reject)

**3.3.1 Class A: Secured Claims**

(a) *Classification.* Class A consists of the Allowed Secured Claims against EYP, Inc. and/or the Licensed Operating Debtors.

(b) *Treatment.* Except to the extent a holder of an Allowed Secured Claim has agreed to a less favorable treatment of such Claim, and only to the extent that any such Allowed Secured Claim has not been satisfied prior to the Effective Date (with the consent of the Creditors' Committee), on the Effective Date (or as soon as reasonably practicable thereafter), in full and final satisfaction of such Allowed Secured Claim against all Debtors, each holder of an Allowed Secured Claim shall receive, at the option of the Litigation Trustee, such treatment as to render such holder's Allowed Secured Claim Unimpaired. The Debtors believe that, to the extent there are any Allowed Secured Claims, they are on account of taxes in de minimis amounts, not exceeding \$10,000.

(c) Class A is Unimpaired under the Plan and, therefore, holders of Allowed Secured Claims as of the Voting Record Date are deemed to accept the Plan under section 1126(f) of the Bankruptcy Code and are not entitled to vote.

**3.3.2 Class A0: Other Priority Claims**

(d) *Classification.* Class A0 consists of the Allowed Other Priority Claims against EYP, Inc. and/or the Licensed Operating Debtors.

(e) *Treatment.* Except to the extent a holder of an Allowed Other Priority Claim has agreed to a less favorable treatment of such Claim, and only to the extent that any such Allowed Other Priority Claim has not been satisfied prior to the Effective Date (with the consent of the Creditors' Committee), on the Effective Date (or as soon as reasonably practicable thereafter), in full and final satisfaction of such Allowed Other Priority Claim against all Debtors, each holder of an Allowed Other Priority Claim shall receive either: (A) Cash equal to the full unpaid amount of such Allowed Other Priority Claim or (B) such other treatment as the Litigation Trustee and the holder of such Allowed Other Priority Claim shall have agreed.

(f) *Voting.* Class A0 is Unimpaired under the Plan and, therefore, holders of Allowed Other Priority Claims as of the Voting Record Date are deemed to accept the Plan under section 1126(f) of the Bankruptcy Code and are not entitled to vote.

### 3.3.3 *Class A1: LPC Claims*

(a) *Classification.* Class A1 consists of the Allowed LPC Claims against EYP, Inc. and/or other Debtors.

(b) *Treatment.* As being compromised and agreed to by the holders of the Allowed LPC Claims in connection with the Global Settlement and conditioned upon the effectiveness of the releases that are granted to the LPC Parties or that are required to be delivered to the LPC Parties under the Plan, and only to the extent that the Allowed LPC Claims have not been satisfied prior to the Effective Date (with the consent of the Creditors' Committee), on the Effective Date (or as soon as reasonably practicable thereafter), the LPC Claims shall be Allowed in the aggregate amount of \$1,500,000, and the holders of the Allowed LPC Claims shall receive, in full and final satisfaction of any Claims against all Debtors, Cash in the amount of \$1,500,000 from Distributable Cash, \$1,500,000 of which shall be paid on account of the LPC Note Claim and \$0.00 shall be paid on account of the LPC Indemnification Claims (for the avoidance of doubt, no postpetition interest shall accrue or be paid on the LPC Claims); *provided, however*, that to receive the Distribution as set forth in this Section 3.3.3(b), the holders of the LPC Claim must consent to and vote to accept the Plan. For purposes of voting on and distribution under the Plan, LPC Parties have appointed Long Point Capital Fund III, L.P. as agent and attorney in fact for and on behalf each and all of the LPC Parties to vote its Allowed Claim in the aggregate amount of \$1,500,000.

(c) *Voting.* Class A1 is Impaired under the Plan, and, therefore, the holders of the Allowed LPC Claims as of the Voting Record Date are entitled to vote to accept or reject the Plan.

### 3.3.4 *Class A2A: Birdsey and Watkins Indemnification Claims*

(a) *Classification.* Class A2A consists of all Allowed Birdsey and Watkins Indemnification Claims against EYP, Inc. and/or all other Debtors.

(b) *Treatment.* As being compromised and agreed to by each holder of the A2A Indemnification Claim in this Class A2A, and only to the extent that any such Allowed A2A Indemnification Claim has not been satisfied prior to the Effective Date (with the consent of the Creditors' Committee), on the Effective Date (or as soon as reasonably practicable thereafter), holders of an Allowed A2A Indemnification Claim shall receive, in full and final satisfaction of such Claims against all Debtors, the following: (i) Tom and Karen Birdsey (\$625,000); and (ii) David and Marilyn Watkins (\$275,000), in each case from the Distributable Cash; for the avoidance of doubt, no postpetition interest shall accrue or be paid on the A2A Indemnification Claims.

(c) *Voting.* Class A2A is Impaired under the Plan, and, therefore, the holders of the Allowed Birdsey and Watkins Indemnification Claims as of the Voting Record Date are entitled to vote to accept or reject the Plan.

**3.3.5 Class A2B: GreatBanc Indemnification Claim**

(a) *Classification.* Class A2B consists of the Allowed GreatBanc Indemnification Claim against EYP, Inc. and/or all other Debtors.

(b) *Treatment.* As agreed by and between the Debtors, on the one hand, and GreatBanc, on the other hand, in the 9019 Settlement Agreement, and only to the extent such Allowed A2B Indemnification Claim has not been satisfied prior to the Effective Date (with the Consent of the Creditors' Committee), on the Effective Date (or as soon as practicable thereafter), the holder of the Allowed A2B Indemnification Claim shall receive from Distributable Cash \$200,000 in full and final satisfaction of such Claim against all Debtors, which amounts shall be in full satisfaction of the Debtors' obligations under the 9019 Settlement Agreement. All terms and conditions of the 9019 Order shall remain in full force and effect and shall govern the treatment of Claims in this Class. For the avoidance of doubt, no postpetition interest shall accrue or be paid on the GreatBanc Indemnification Claim.

(c) *Voting.* Class A2B is Impaired under the Plan, and, therefore, the holder of the Allowed GreatBanc Indemnification Claim as of the Voting Record Date is entitled to vote to accept or reject the Plan.

**3.3.6 Class A3: General Unsecured Claims**

(a) *Classification.* Class A3 consists of all Allowed General Unsecured Claims against EYP, Inc. and/or the Licensed Operating Debtors.

(b) *Treatment.* Except to the extent a holder of an Allowed General Unsecured Claim has agreed to a less favorable treatment of such Claim, and only to the extent that any such Allowed General Unsecured Claim has not been satisfied prior to the Effective Date (with the consent of the Creditors' Committee), on the Effective Date (or as soon as reasonably practicable thereafter), in full and final satisfaction of such Allowed General Unsecured Claim against all Debtors, a holder of any such Allowed General Unsecured Claim shall be paid in full from the Distributable Cash so as to render such Claim Unimpaired (including any amounts on account of postpetition interest to which such Claim is entitled under applicable law).

(c) *Voting.* Class A3 is Unimpaired under the Plan, and, therefore, the holders of Allowed General Unsecured Claims as of the Voting Record Date are deemed to accept the Plan under section 1126(f) of the Bankruptcy Code and are not entitled to vote.

**3.3.7 Class A4: Equity Interests in the Operating Debtors**

(a) *Classification.* Class A4 consists of all Equity Interests in the Operating Debtors.

(b) *Treatment.* Class A4 Equity Interests in the Operating Debtors will receive no Distributions on account of such Equity Interests and will be canceled, released, and extinguished as set forth in Section 5.13.

(c) *Voting.* Class A4 is Impaired under the Plan. Because holders of Class A4 Equity Interests of the Operating Debtors are not expected to receive any Distributions

under the Plan, they are conclusively deemed to reject the Plan under section 1126(g) of the Bankruptcy Code and are, therefore, not entitled to vote on the Plan; *provided, however*, the Distributable Cash remaining after satisfaction of the Allowed Claims in Classes A, A0, A1, A2A, A2B, and A3 in accordance with the applicable terms set forth above shall be distributed to creditors of EYP Holdings, Inc. or EYP Group Holdings, Inc., as set forth below.

### 3.3.8 ***Class B0: Other Priority Claims***

(d) *Classification.* Class B0 consists of the Allowed Other Priority Claims against EYP Holdings, Inc.

(e) *Treatment.* Except to the extent a holder of an Allowed Other Priority Claim has agreed to a less favorable treatment of such Claim, and only to the extent that any such Allowed Other Priority Claim has not been satisfied prior to the Effective Date (with the consent of the Creditors' Committee), on the Effective Date (or as soon as reasonably practicable thereafter), in full and final satisfaction of such Allowed Other Priority Claim against all Debtors, each holder of an Allowed Other Priority Claim shall receive either: (A) Cash equal to the full unpaid amount of such Allowed Other Priority Claim or (B) such other treatment as the Litigation Trustee and the holder of such Allowed Other Priority Claim shall have agreed.

(f) *Voting.* Class B0 is Unimpaired under the Plan and, therefore, holders of Allowed Other Priority Claims as of the Voting Record Date are deemed to accept the Plan under section 1126(f) of the Bankruptcy Code and are not entitled to vote.

### 3.3.9 ***Class B1: Redemption Note Claims***

(a) *Classification.* Class B1 consists of the Allowed Redemption Note Claims against EYP Holdings, Inc.

(b) *Treatment.* As being compromised and agreed to by each holder of a Redemption Note Claim in this Class B1, and to the extent a holder of an Allowed Redemption Note Claim has agreed to a less favorable treatment of such Claim, and only to the extent that any such Allowed Redemption Note Claim has not been satisfied prior to the Effective Date (with the consent of the Creditors' Committee), on the Effective Date (or as soon as reasonably practicable thereafter), holders of Allowed Redemption Note Claims shall receive their Pro Rata Share of a cash payment of \$5,490,375 in the aggregate in full and final satisfaction of such Claim. From the Cash Distribution to the holders of Redemption Notes, \$90,375 shall be distributed to Pollock Solomon Duffy LLP, as counsel to various holders of Redemption Notes (at full standard hourly rates without a contingency component). For the avoidance of doubt, the \$5,490,375 payment shall be reduced by the payment of \$90,375 prior to calculating the Pro Rata Share of each Redemption Noteholder.

The LPC Parties' agreement to the terms of the LPC Settlement is conditioned upon receipt by the LPC Parties of the Threshold LPC Releases as set forth in Sections 1.1.136, 4.6 and 8.2 of the Plan.

(c) *Voting.* Class B1 is Impaired under the Plan, and, therefore, the holder of an Allowed Redemption Note Claims as of the Voting Record Date is entitled to vote to accept or reject the Plan.

### 3.3.10 *Class B2: General Unsecured Claims*

(a) *Classification.* Class B2 consists of all Allowed General Unsecured Claims against EYP Holdings, Inc.

(b) *Treatment.* Except to the extent a holder of an Allowed General Unsecured Claim has agreed to a less favorable treatment of such Claim, and only to the extent that any such Allowed General Unsecured Claim has not been satisfied prior to the Effective Date (with the consent of the Creditors' Committee), on the Effective Date (or as soon as reasonably practicable thereafter), in full and final satisfaction of such Allowed General Unsecured Claim against all Debtors, a holder of any such Allowed General Unsecured Claim shall be paid in full from the Distributable Cash so as to render such Claim Unimpaired (including any amounts on account of postpetition interest to which such Claim is entitled under applicable law).

(c) *Voting.* Class B2 is Unimpaired under the Plan, and, therefore, the holders of Allowed General Unsecured Claims as of the Voting Record Date are deemed to accept the Plan under section 1126(f) of the Bankruptcy Code and are not entitled to vote.

### 3.3.11 *Class B3: Equity Interests in EYP Holdings, Inc.*

(a) *Classification.* Class B3 consists of the Equity Interest of EYP Holdings, Inc.

(b) *Treatment.* Class B3 Equity Interests in EYP Holdings, Inc. will receive no Distributions on account of such Equity Interests and will be canceled, released, and extinguished as set forth in Section 5.13.

(c) *Voting.* Class B3 is Impaired under the Plan. Because holders of Class B3 Equity Interests of EYP Group Holdings, Inc. are not expected to receive any Distributions under the Plan, they are conclusively deemed to reject the Plan under section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote on the Plan; *provided, however*, that the Distributable Cash remaining after satisfaction of the Allowed Claims in Classes B0, B1, and B2 in accordance with the applicable terms set forth above (and, for the avoidance of doubt, to Classes A, A0, A1, A2A, A2B, and A3) will be distributed to creditors of EYP Group Holdings, Inc. as set forth below.

### 3.3.12 *Class C0: Other Priority Claims*

(g) *Classification.* Class C0 consists of the Allowed Other Priority Claims against EYP Group Holdings, Inc.

(h) *Treatment.* Each holder of an Allowed Other Priority Claim against EYP Group Holdings, Inc. shall receive, on the Effective Date, on account of, and in exchange for, such Allowed Other Priority Claim, either: (A) Cash equal to the full unpaid amount of such Allowed Other Priority Claim; or (B) such other treatment as the Debtors (with the

consent of the Creditors' Committee) or the Litigation Trustee (as applicable) and the holder of such Allowed Other Priority Claim shall have agreed.

(i) *Voting.* Class C0 is Unimpaired under the Plan and, therefore, holders of Allowed Other Priority Claims as of the Voting Record Date are deemed to accept the Plan and not entitled to vote.

### 3.3.13 *Class C1: Group I/II Noteholder Claims*

(a) *Classification.* Class C1 consists of all Allowed Group I/II Noteholder Claims against EYP Group Holdings, Inc.

(b) *Treatment.* Except to the extent a holder of an Allowed Group I/II Noteholder Claim has agreed to a less favorable treatment of such Claim, and only to the extent that any such Allowed Group I/II Noteholder Claim has not been satisfied prior to the Effective Date (with the consent of the Creditors' Committee), on the Effective Date (or as soon as reasonably practicable thereafter), holders of Group I and Group II Notes shall receive distributions from: (A) Distributable Cash *less* payments to Classes A, A0, A1, A2A, A2B, A3, B0, B1, B2, C0, C2, and C3, *less* the LPC Claim Reduction Amount, split 60% to holders of Group I Notes and 40% to holders of Group II Notes; (B) subject to the satisfaction of Section 4.6 of the Plan, their Pro Rata Share (calculated with respect to principal amount only and not any accrued interest) of the LPC Claim Reduction Amount; and (C) the proceeds of recoveries or benefits obtained through the prosecution of the Retained Causes of Action, which shall be assigned by the Debtors to the Litigation Trust, of which holders of Group I Notes and holders of Group II Notes shall receive their Pro Rata Share.

From the distributions to the holders of the Group I Notes: (i) up to \$100,000 (limited to actual documented out-of-pocket fees incurred) shall be distributed to Winthrop & Weinstein P.A. as counsel to various holders of Group I Notes; (ii) up to \$236,250 (limited to actual documented out-of-pocket fees incurred) shall be distributed to Pollack Solomon Duffy LLP as counsel to various other holders of Group I Notes (at full standard hourly rates without a contingency component); and (iii) up to \$4,255.32 (limited to actual documented out-of-pocket fees incurred) shall be distributed to Berger Singerman LLP as counsel to another holder of a Group I Note.

From the distributions to the holders of the Group II Notes: (i) up to \$225,000 (limited to actual documented fees and out-of-pocket expenses incurred) shall be distributed to Prince Lobel Tye LLP as counsel to various holders of Group II Notes; (ii) up to \$48,375 (limited to actual documented out-of-pocket fees incurred) shall be distributed to Pollack Solomon Duffy LLP as counsel to various other holders of Group II Notes (at full standard hourly rates without a contingency component); (iii) up to \$195,744.68 (limited to actual documented out-of-pocket fees incurred) shall be distributed to Berger Singerman LLP as counsel to various other holders of Group II Notes; and (iv) up to \$25,000 (limited to actual documented out-of-pocket fees incurred) shall be distributed to Rupp Baase Pfalzgraf Cunningham as counsel to various other holders of Group II Notes.

Additionally, in consideration for the payment of the Birdsey Indemnification Claim and the release of the obligations under that certain Promissory Note dated August 27, 2018 (in

the approximate amount of \$171,181), and conditioned upon receipt by the Birdseys of the Birdsey Release, Tom and Karen Birdsey agree to distribute, through the Litigation Trust, their recoveries in relation to \$4,000,000 (*plus* any accrued and unpaid interest at the non-default contract rate as of the Petition Date) (which in total equates to a Claim of \$5,164,932, the “**Birdsey Claim Reduction Amount**”) of the Group I Notes held by either or both of Tom and/or Karen Birdsey to the remaining Group I and Group II Noteholders. Each Group I Noteholder, other than the Birdseys, and each Group II Noteholder shall receive their Pro Rata Share (calculated with respect to principal amount only and not any accrued interest) of the value distributable on account of the Birdsey Claim Reduction Amount. Any unused balance in the Disputed Claims Reserve, Litigation Trust Reserve and Administrative Claims Fund shall be distributed 60% to the holders of Group I Notes and 40% to the holders of Group II Notes.

As set forth in Section 4.6 of the Plan, each holder of an Allowed Group I/II Noteholder Claim (including SBS Noteholder Claims in their capacities as such and in their capacities as SBS Equity Owners) must execute a general release, in the form attached hereto as **Exhibit A**, in order to receive its Pro Rata Share of the LPC Claim Reduction Amount as part of its Distribution contemplated in this Section 3.3.13(b). The LPC Parties’ agreement to the terms of the LPC Settlement is conditioned upon receipt by the LPC Parties of the Threshold LPC Releases as set forth in Sections 1.1.136, 4.6 and 8.2 of the Plan.

(c) *Voting.* Class C1 is Impaired under the Plan, and, therefore, the holders of the Allowed Group I/II Noteholder Claims as of the Voting Record Date are entitled to vote to accept or reject the Plan.

### 3.3.14 ***Class C2: SBS Equity Owner Claims***

(a) *Classification.* Class C2 consists of the Allowed SBS Equity Owner Claims against EYP Group Holdings, Inc.

(b) *Treatment.* As being compromised and agreed to by each holder of an SBS Equity Owner Claim in this Class C2, and only to the extent that any such Allowed SBS Equity Owner Claim has not been satisfied prior to the Effective Date (with the consent of the Creditors’ Committee), on the Effective Date (or as soon as reasonably practicable thereafter), the holders of Allowed SBS Equity Owner Claims, in exchange for a release of their Class C2 Claims only, shall receive a payment from the Distributable Cash in the total aggregate amount of \$351,444.80 (with such amount being shared *pro rata* as between holders of Allowed SBS Equity Owner Claims), in exchange for the alleged value of the warrants provided to the SBS Equity Owners at the closing of the SBS Transaction. From the Distributions to the holders of the Allowed SBS Equity Owner Claims up to \$125,000 (limited to actual documented fees and out-of-pocket expenses incurred) shall be distributed to Rupp Baase Pfalzgraf Cunningham as counsel to the holders of the Allowed SBS Equity Owner Claims.

(c) *Voting.* Class C2 is Impaired under the Plan, and, therefore, the holders of the Allowed SBS Equity Owner Claims as of the Voting Record Date are entitled to vote to accept or reject the Plan.



**3.3.15 Class C3: General Unsecured Claims**

(a) *Classification.* Class C3 consists of Allowed General Unsecured Claims against EYP Group Holdings, Inc.

(b) *Treatment.* Except to the extent a holder of an Allowed General Unsecured Claim has agreed to a less favorable treatment of such Claim, and only to the extent that any such Allowed General Unsecured Claim has not been satisfied prior to the Effective Date (with the consent of the Creditors' Committee), on the Effective Date (or as soon as reasonably practicable thereafter), each holder of an Allowed General Unsecured Claim shall receive its Pro Rata Share of \$50,000 from Distributable Cash, not to exceed 35% in recoveries on account of any Allowed General Unsecured Claim, in full and final satisfaction of such Claim; provided that any amounts remaining of the \$50,000 after payment of Claims in Class C3 shall be paid to holders of Claims in Class C1.

(c) *Voting.* Class C3 is Impaired under the Plan, and, therefore, the holders of Allowed General Unsecured Claims as of the Voting Record Date are entitled to vote to accept or reject the Plan.

**3.3.16 Class C4: Equity Interests in EYP Group Holdings, Inc.**

(a) *Classification.* Class C4 consists of the Equity Interests in EYP Group Holdings, Inc.

(b) *Treatment.* The Class C4 Equity Interests will receive no Distributions on account of such Equity Interests and will be canceled, released, and extinguished as set forth in Section 5.13.

(c) *Voting.* Class C4 is Impaired under the Plan. Because holders of Class C4 Equity Interests in EYP Group Holdings, Inc. are not expected to receive any Distributions under the Plan, they are conclusively deemed to reject the Plan under section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote on the Plan.

**3.3.17 Class C5: Initial Warrant Claims and Purchase Warrant Claims**

(a) *Classification.* Class C5 consists of Allowed Initial Warrant Claims and Purchase Warrant Claims against EYP Group Holdings, Inc.

(b) *Treatment.* The Class C5 Initial Warrant Claims and Purchase Warrant Claims shall be canceled, released, and expunged without any Distribution on account of such Claims.

(c) *Voting.* The Class C5 Initial Warrant Claims and Purchase Warrant Claims are Impaired under the Plan. Because holders of Class C5 Initial Warrant Claims and Purchase Warrant Claims are not expected to receive any Distributions under the Plan, they are conclusively deemed to reject the Plan under section 1126(g) of the Bankruptcy Code and are, therefore, not entitled to vote on the Plan.

## **ARTICLE IV VOTING AND DISTRIBUTIONS UNDER THE PLAN**

**Section 4.1 Voting of Claims and Interests.** Only Class A1 LPC Claims, Class A2A Birdsey and Watkins Indemnification Claims, Class A2B GreatBanc Indemnification Claim, Class B1 Redemption Note Claims, Class C1 Group I/II Noteholder Claims (including SBS Noteholder Claims), Class C2 SBS Equity Owner Claims and Class C3 General Unsecured Claims are Impaired and entitled to vote to accept or reject the Plan. Class A Secured Claims, Classes A0, B0 and C0 Other Priority Claims, and Classes A3 and B2 General Unsecured Claims are Unimpaired and presumed to accept the Plan. Class A4 Equity Interests in the Operating Debtors, Class B3 Equity Interests in EYP Holdings, Inc., Class C4 Equity Interests in EYP Group Holdings, Inc. and Class C5 Initial Warrant Claims and Purchase Warrant Claims are Impaired and are deemed to reject the Plan. All Classes of Claims and Equity Interests are permitted to object to the Plan. Objections to the Plan must be filed no later than **October 25, 2022, at 4:00 p.m. (Eastern Time)**.

**Section 4.2 Proofs of Claim.** All creditors may be required to file proofs of claim as directed by the terms of the Bar Date Order. For the avoidance of doubt, notwithstanding anything in the Bar Date Order to the contrary, the U.S. Trustee shall not be required to file a proof of claim or request for payment for U.S. Trustee Fees.

**Section 4.3 Elimination of Vacant Classes.** Any Class of Claims or Equity Interests that does not have a holder of an Allowed Claim or Allowed Equity Interest or a Claim or Equity Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing, shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

**Section 4.4 Distributions Under the Plan.** Whenever any Distribution to be made pursuant to the Plan shall be due on a day other than a Business Day, such Distribution shall instead be made on the immediately succeeding Business Day and shall be deemed to have been made on the date due. As of the close of business on the Confirmation Date, there shall be no further changes in the record holders of the Claims for purposes of Distributions under the Plan. The Debtors and the Litigation Trustee shall have no obligation to recognize any transfer of Claims occurring after the Confirmation Date.

**Section 4.5 Distribution Deadlines.** Any Distribution to be made by the Litigation Trustee pursuant to the Plan shall be deemed to have been timely made if made within thirty (30) days after the time therefor specified in the Plan or such other agreements. No interest shall accrue or be paid with respect to any Distribution as a consequence of such Distribution not having been made on the date specified therefor herein.

**Section 4.6 Conditions to Payment of Group I/II Noteholder Claims.** As a condition to receiving from the Litigation Trust a Pro Rata Share of the LPC Claim Reduction Amount on account of its Group I/II Noteholder Claim (including SBS Noteholder Claims) (collectively, the “**Settling Claims**”), each holder of a Settling Claim shall execute and deliver to the Creditors’ Committee or the Litigation Trust, as applicable, a full and complete general release of the LPC

Parties and each of their respective Related Parties, in the form attached hereto as **Exhibit A**, of any and all claims and causes of action arising from or relating to the ESOP Transaction or the issuance of the Redemption Notes, the Group I and Group II Notes (including the SBS Notes) and/or any warrants issued to the SBS Equity Owners (the releases executed by the holders of the Settling Claims, collectively, the “**LPC Releases**,” and the Noteholder Parties that execute such LPC Releases, collectively, the “**Settling Claimants**”). The LPC Parties and their Related Parties shall be deemed to have granted the releases set forth in the LPC Releases to and in favor of each of the Settling Claimants and its Related Parties without the need for the LPC Parties to counter-execute the LPC Releases.

The LPC Parties’ agreement to the terms of the LPC Settlement is conditioned upon receipt by the LPC Parties of the Threshold LPC Releases as set forth in Sections 1.1.136, 4.6 and 8.2 of the Plan. If a Group I Noteholder or Group II Noteholder fails to sign the LPC Release, such Group I Noteholder’s or Group II Noteholder’s Pro Rata Share of the LPC Claim Reduction Amount that would otherwise be paid to such Group I Noteholder or Group II Noteholder, as applicable, as a result of the LPC Settlement shall be paid to the LPC Parties in addition to \$1.5 million provided for by the LPC Settlement.

Within five (5) days of the delivery of the Threshold LPC Releases to the Creditors’ Committee, (i) the NY Plaintiffs (as defined in the Disclosure Statement) shall file a motion or stipulation seeking to dismiss with prejudice the New York Litigation against the LPC Parties and (ii) the Delaware Plaintiffs (as defined in the Disclosure Statement) shall file a motion or stipulation seeking to dismiss with prejudice the Delaware Litigation, and in each case shall promptly deliver evidence of such filing to the Debtors and Creditors’ Committee. The Creditors’ Committee or the Litigation Trustee, as applicable, shall promptly provide copies of the Threshold LPC Releases and any other LPC Releases as well as the relevant pleadings and orders with respect to the New York Litigation to LPC at the following address: Long Point Capital, Inc., 1211 Avenue of the Americas, 40<sup>th</sup> Floor, New York, NY 10036 (Attn: Ira Starr), with a copy emailed to Covington & Burling LLP, The New York Times Bldg., 620 Eighth Avenue, New York, NY 10018 (Attn: Christopher Y.L. Yeung).

**Section 4.7 Manner of Payment Under the Plan.** Unless the Person receiving a payment agrees otherwise, any payment in Cash to be made by the Litigation Trustee shall be made by check drawn on a domestic bank, by automated clearing house transfer, or by wire transfer.

**Section 4.8 De Minimis Distributions.** The Litigation Trustee shall not be required to make any Cash payment of less than fifty dollars (\$50.00) with respect to any Allowed Claim unless a request therefor is made in writing to the Litigation Trustee on or before sixty (60) days after the Effective Date. Any de minimis Distributions not subject to a timely request for payment shall revert to the Litigation Trust and be treated as Distributable Cash.

**Section 4.9 Unclaimed Property.** All Distributions to any holder of an Allowed Claim shall be made at the Distribution Address unless the Debtors and/or the Litigation Trustee, as applicable, have been notified in writing of a change of address. If any Distribution to any holder of an Allowed Claim is returned as undeliverable, no further Distributions to such holder shall be made unless and until the Litigation Trustee is notified of such holder’s then current address, at

which time all eligible missed Distributions shall be made to such holder, without interest. All demands for undeliverable Distributions shall be made on or before ninety (90) days after the date such undeliverable Distribution was initially made. Thereafter, the amount represented by such undeliverable Distribution shall irrevocably revert to the Litigation Trust and be treated as Distributable Cash. Any entitlement of any holder of any Claim to such Distributions shall be extinguished and forever barred.

**Section 4.10 Time Bar to Cash Payments.** Checks issued by the Litigation Trust in respect of Allowed Claims shall be null and void if not negotiated within ninety (90) days after the date of issuance thereof. Requests for reissuance of any check shall be in writing to the Litigation Trustee by the holder of the Allowed Claim to whom such check originally was issued. Any such written claim in respect of such a voided check must be received by the Litigation Trustee on or before ninety (90) days after the expiration of the 90-day period following the date of issuance of such check. Thereafter, the amount represented by such voided check shall be treated as Distributable Cash. Any Claim in respect of such voided check shall be discharged and forever barred from assertion against the Debtors, the Estates or the Litigation Trust.

## ARTICLE V IMPLEMENTATION OF PLAN

### **Section 5.1 Creation of the Litigation Trust and Appointment of Litigation Trustee and Litigation Trust Oversight Committee.**

- (a) **Creation of Litigation Trust.** On or prior to the Effective Date, the Litigation Trustee and the Debtors shall execute the Litigation Trust Agreement. The Litigation Trust shall become effective on the Effective Date. On the Effective Date, the Litigation Trust shall be deemed to be valid, binding and enforceable in accordance with the terms and provisions of the Plan and the Litigation Trust Agreement. After the Effective Date, the Litigation Trust Agreement may be amended in accordance with its terms without further order of the Bankruptcy Court. The Litigation Trust Agreement shall be satisfactory in form and substance to the Debtors and the Creditors' Committee.
- (b) **Purpose of the Litigation Trust.** The Litigation Trust shall be established for the sole purpose of liquidating and distributing its assets, with no objective to continue or engage in the conduct of a trade or business. It is intended that the Litigation Trust be classified for federal income tax purposes as a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d).
- (c) **Funding of the Litigation Trust.** With agreement of the Creditors' Committee, \$500,000 of the Distributable Cash shall be set aside for the payment of Litigation Trust Expenses incurred by the Litigation Trust.
- (d) **Transfer of Litigation Trust Assets to the Litigation Trust.** As of the Effective Date, pursuant to the provisions of sections 1141(b) and (c) of the Bankruptcy Code, the Debtors and the Estates shall preserve, transfer and assign all of their respective right, title and interest in and to all of the Litigation Trust Assets, which

shall automatically vest in the Litigation Trust free and clear of all Claims, Liens, encumbrances, charges, Equity Interests and other interests, subject only to the Allowed Claims of the holders of Litigation Trust Interests as set forth in the Plan and in the Litigation Trust Agreement. On the Effective Date, all Assets shall transfer to the Litigation Trust except any Contracts Pending Novation or Contracts Pending Licensure, which in the Debtors' discretion shall be transferred to the Buyer upon novation.

- (e) **Appointment of the Litigation Trustee.** On the Effective Date, the Litigation Trustee shall be deemed the Estates' representative in accordance with section 1123 of the Bankruptcy Code and shall have all powers, authority and responsibilities specified in the Plan, including, without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code and Bankruptcy Rule 2004.
- (f) **Governance of Litigation Trust.** The Litigation Trust shall be governed by the Litigation Trust Agreement and administered by the Litigation Trustee who shall report to the Litigation Trust Oversight Committee subject to the terms of the Plan and the Litigation Trust Agreement. The Litigation Trustee shall direct all litigation brought on behalf of the Litigation Trust, subject to the terms of the Litigation Trust Agreement.
- (g) **Tax Treatment.** Except to the extent allocable to Disputed Claims, consistent with the principles of Revenue Procedure 94-45, 1994-2 C.B. 684, as of the Effective Date, for federal income tax purposes, (i) the Debtors will be deemed to transfer the Litigation Trust Assets to the holders of Allowed Claims in proportion to their respective beneficial interests in the Litigation Trust, (ii) the holders of Allowed Claims will be deemed to transfer such Assets to the Litigation Trust, (iii) the Litigation Trust will be treated as a "liquidating trust," as defined in Treasury Regulation section 301.7701-4(d), and as a "grantor trust" within the meaning of Internal Revenue Code sections 671-679 and (iv) the beneficiaries of Allowed Claims will be treated as the "grantors" of the Litigation Trust.
- (h) **Securities Registration Exemption.** The Debtors intend that the Litigation Trust Interests shall not be deemed "securities" under applicable laws, but to the extent such units are deemed to be "securities," the Debtors believe the issuance of such units under the Plan is exempt, pursuant to section 1145 of the Bankruptcy Code (except with respect to an entity that is an "underwriter" as defined in subsection (b) of section 1145 of the Bankruptcy Code).

**Section 5.2 Rights, Powers and Duties of the Litigation Trust and the Litigation Trustee.** The Litigation Trustee will act for the benefit of holders of Litigation Trust Interests in a fiduciary capacity and shall have comparable authority as a bankruptcy trustee of the Debtors, as the exclusive representative of the Estates under section 1123(a)(5)(B) of the Bankruptcy Code or any corresponding federal or state laws with respect to the Litigation Trust Assets and shall succeed to all of the Debtors' and the Estate's rights with respect thereto, subject to the provisions of the Plan and the Litigation Trust Agreement. The powers, rights and duties of the Litigation Trustee shall arise on the Effective Date and shall include, without limitation:

- (a) having the power and authority to collect, liquidate and distribute the Litigation Trust Assets for the benefit of holders of Litigation Trust Interests holding Allowed Claims under the jurisdiction of the Bankruptcy Court;
- (b) investing Cash in accordance with section 345 of the Bankruptcy Code, and withdrawing and making Distributions of Cash to holders of Litigation Trust Interests holding Allowed Claims and paying taxes and other obligations incurred by the Litigation Trustee in connection with winding down the Estate(s), from the Litigation Trust Reserve, the Administrative Claims Fund and Distributable Cash in accordance with the Plan;
- (c) engaging attorneys, consultants, agents, employees and any other professional persons to assist the Litigation Trustee with respect to the Litigation Trustee's responsibilities;
- (d) executing and delivering all documents and taking all actions necessary to consummate the Plan and liquidate the Litigation Trust Assets;
- (e) coordinating the turnover of property, if any, subject to rejected executory contracts or abandonment or liquidation of any Litigation Trust Assets;
- (f) coordinating the collection of outstanding accounts receivable not sold to the Buyer;
- (g) coordinating the storage, maintenance and disposition of the Debtors' books and records;
- (h) overseeing compliance with the accounting, finance and reporting obligations;
- (i) preparing financial statements and U.S. Trustee post-confirmation quarterly reports, and filing such reports on the docket of the Chapter 11 Cases until such time as a final decree has been entered;
- (j) overseeing the filing of final tax returns, refund requests, audits and other corporate dissolution documents, as required;
- (k) performing any additional corporate actions as necessary to carry out the wind up and liquidation of the Estates;
- (l) paying the fees and expenses of the attorneys, consultants, agents, employees and other professional persons engaged by the Litigation Trust and paying all other expenses, including for winding down the Estates, subject to the terms of the Plan;
- (m) disposing of, and delivering title to others of, or otherwise realizing the value of, all the Litigation Trust Assets, including, without limitation, the Excluded Assets and Retained Causes of Action;
- (n) objecting to Claims;

- (o) compromising and settling Claims without notice or Bankruptcy Court approval;
- (p) acting on behalf of the Litigation Trust in all adversary proceedings and contested matters (including, without limitation, any Retained Cause of Action), then pending or that can be commenced in the Bankruptcy Court and in all actions and proceedings pending or commenced elsewhere, and to settle, retain, enforce, dispute or adjust any claim and otherwise pursue actions involving the Litigation Trust Assets that could arise or be asserted at any time under the Bankruptcy Code, unless otherwise waived or relinquished in the Plan;
- (q) implementing and/or enforcing all provisions of the Plan;
- (r) consulting with members of the Litigation Trust Oversight Committee regarding the prosecution and/or settlement of Retained Causes of Action and report to the Litigation Trust Oversight Committee regarding such matters, and seek approval from the Litigation Trust Oversight Committee regarding the prosecution and/or settlement of each Cause of Action, to the extent set forth in the Litigation Trust Agreement; and
- (s) exercising such other powers as may be vested in or assumed by the Litigation Trustee pursuant to the Plan, Litigation Trust Agreement or other Order of the Bankruptcy Court or as may be needed or appropriate to carry out the provisions of the Plan.

**Section 5.3 Litigation Trust Interests.** Each holder of an Allowed Claim shall, by operation of the Plan, receive its Pro Rata Share of the Litigation Trust Interests in accordance with the terms of and priorities set forth in the Plan. Litigation Trust Interests shall also be reserved for holders of Disputed Claims and held by the Litigation Trustee pending allowance or disallowance of such Claims. No other Person shall have any interest, legal, beneficial or otherwise, in the Litigation Trust Assets upon the assignment and transfer of such assets to the Litigation Trust. As set forth in the Litigation Trust Agreement, Distributions from the Litigation Trust on account of Litigation Trust Interests shall be made from the Litigation Trust Assets after paying, reserving against or satisfying, among other things, the Litigation Trust Expenses. The Litigation Trust Interests shall be uncertificated and shall be nontransferable except upon death of the holder or by operation of law. Holders of Litigation Trust Interests shall have no voting rights with respect to such interests.

**Section 5.4 Implementation.** The Litigation Trustee will implement the Litigation Trust in a manner consistent with the terms and conditions set forth in the Plan and the Confirmation Order. On and after the Effective Date, except as otherwise provided in the Plan, the Litigation Trustee may use, acquire or dispose of property and compromise or settle any Claims, Equity Interests or Retained Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

**Section 5.5 Partial Substantive Consolidation for Plan Purposes.** The Plan shall apply as a separate Plan as among (a) Class Category A for the Operating Debtors (with Licensed Operating Debtors substantively consolidated into EYP, Inc.), (b) Class Category B for EYP

Holdings, Inc. and (c) Class Category C for EYP Group Holdings, Inc., as set forth in Article III, to preserve the Debtors' structural subordination. The Plan contemplates and is predicated upon entry of an order (which may be the Confirmation Order) substantively consolidating the Licensed Operating Debtors' Estates into EYP, Inc.'s Estate for all purposes, including voting, Distribution and confirmation. Accordingly, on the Effective Date, (a) all Claims between the Licensed Operating Debtors and EYP, Inc. shall be eliminated; (b) all assets and liabilities of the Licensed Operating Debtors shall be merged or treated as if they were merged with the assets and liabilities of EYP, Inc.; (c) any obligation of a Licensed Operating Debtor and any guarantee thereof be deemed to be one obligation of EYP, Inc., and any such guarantee shall be eliminated; (d) each Claim filed or to be filed against any Licensed Operating Debtor shall be deemed filed only against EYP, Inc. and shall be deemed a single Claim against and a single obligation of EYP, Inc.; and (e) any joint or several liability of the Licensed Operating Debtors shall be deemed one obligation of EYP, Inc.

The Plan shall serve as, and shall be deemed to be, a motion for entry of an order substantively consolidating the Licensed Operating Debtors' Estates into EYP, Inc.'s Estate. If no objection to substantive consolidation is timely filed and served by any holder of an Impaired Claim affected by the Plan as provided herein on or before the deadline to object to confirmation of the Plan, or such other date as may be fixed by the Bankruptcy Court, the substantive consolidation of the Licensed Operating Debtors' Estates into EYP, Inc.'s Estate may be approved by the Bankruptcy Court. If any objection is timely filed and served, a hearing with respect to the substantive consolidation of the Licensed Operating Debtors' Estates into EYP, Inc.'s Estate and the objections thereto shall be scheduled by the Bankruptcy Court, which hearing may, but is not required to, coincide with the Confirmation Hearing.

**Section 5.6 Operation of the Debtors Prior to the Effective Date.** From the date of the Confirmation Order until the Effective Date, the Debtors and the Creditors' Committee will work to address claims objections, potential litigation matters and other issues to ensure the efficient administration of the Chapter 11 Cases. Such steps may include providing the Creditors' Committee with authorization to pursue claims objections, commence litigation and other similar matters. During this period, any matters of substance shall require the written consent of the Creditors' Committee for action taken by the Debtors.

**Section 5.7 Funding for the Plan.** The Plan shall be funded from (i) the Distributable Cash and the (ii) Net Litigation Proceeds.

**Section 5.8 Cancellation of Liens; Release of Collateral.** Except as otherwise specifically provided herein, unless a holder of a Secured Claim receives a return of its Collateral in respect of such Claim under the Plan, upon the payment of a Secured Claim in accordance with the Plan, any Lien securing such Secured Claim shall be deemed released, and the holder of such Secured Claim shall be authorized and directed to release any Collateral or other Assets held by such holder and to take such actions as may be requested by the Litigation Trustee, to evidence the release of such Lien, including the execution, delivery and filing or recording of such releases as may be requested by the Litigation Trustee; and (i) each holder of (A) an Allowed Secured Claim; and/or (B) an Allowed Claim that is purportedly secured, on the Effective Date shall (1) turn over and release to the Litigation Trust any and all Collateral that secures or purportedly secures such Claim; and (2) execute such documents and instruments as the Litigation Trustee requires to



evidence such claimant's release of such Collateral; and (ii) on the Effective Date, all claims, rights, title and interest in such Collateral shall revert to the Litigation Trust, free and clear of all Claims, including (without limitation) Liens, charges, pledges, encumbrances and/or security interests of any kind. No Distribution shall be made to or on behalf of any holder of such Claim unless and until such holder executes and delivers to the Litigation Trustee such release of Liens. Any such holder that fails to execute and deliver such release of Liens within sixty (60) days of any demand thereof shall be deemed to have no further Claim and shall not participate in any Distribution hereunder. Notwithstanding the immediately preceding sentence, a holder of a Disputed Claim shall not be required to execute and deliver such release of Liens until the time such Claim is Allowed or Disallowed.

**Section 5.9 Establishment of Reserves.** At least fourteen (14) days prior to the Confirmation Hearing, the Debtors shall file with the Bankruptcy Court a notice that reflects the proposed amounts of the Administrative Claims Fund, the Disputed Claims Reserve and the Litigation Trust Reserve (which amounts shall be set with the consent of the Creditors' Committee).

**Section 5.10 Global Settlement.** Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, Distributions, releases and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Equity Interests and controversies resolved pursuant to the Global Settlement imbedded in the Plan. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the foregoing compromises or settlements provided for in the Plan comprising the Global Settlement, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements included in the Global Settlement are fair and equitable. All Distributions made to holders of Allowed Claims and Equity Interests in accordance with the Plan are intended to be and shall be final.

**Section 5.11 Cancellation of Existing Securities and Agreements.** Except for the purpose of evidencing a right to payment under the Plan and except as otherwise set forth in the Plan, and subject to Section 5.13 of the Plan, on the Effective Date, all agreements, instruments and other documents evidencing any Claim and any rights of any holder in respect thereof shall be deemed cancelled and of no force or effect and the obligations of the Debtors thereunder shall be deemed fully satisfied and released.

**Section 5.12 Notice of Effective Date.** Not later than three (3) Business Days following the Effective Date, the Debtors (with the consent of the Creditors' Committee) shall file a notice of the occurrence of the Effective Date of the Plan in accordance with the Bankruptcy Rules and orders of the Bankruptcy Court.

**Section 5.13 Corporate Action.** Upon the Effective Date, the Plan will be administered by the Litigation Trustee and all actions taken under the Plan in the name of the Debtors shall be taken through the Litigation Trustee. Upon the distribution of all Assets pursuant to the Plan and the filing by the Litigation Trustee of a certification to that effect with the Bankruptcy Court (which may be included in the application for the entry of the final decree), unless directed otherwise by the Litigation Trustee, the Debtors shall be deemed dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Debtors or payments to be made

in connection therewith, *provided, however*, that the Debtors may, but will not be required to, take appropriate action to dissolve under applicable law. After the Effective Date, the Litigation Trustee may cancel any interest in his or her discretion, other than the Interests in Pending Contract Debtors. The Litigation Trustee shall require the consent of the Debtors to cancel any Equity Interests in Pending Contract Debtors, that consent shall not be reasonably withheld.

**Section 5.14 Dissolution of Creditors' Committee.** On the Effective Date, the Creditors' Committee shall be deemed dissolved and all Creditors' Committee Members, professionals, employees or agents thereof shall be released and discharged from all rights and duties arising from or related to the Chapter 11 Cases, except to the extent necessary to prosecute any appeals or other matters with respect to which they have been granted standing or to prepare and file an application for final allowance of compensation and reimbursement of expenses. Neither the Debtors nor the Litigation Trustee shall be responsible for paying any fees or expenses incurred by Creditors' Committee Members or Creditors' Committee professionals and advisors after the Effective Date.

**Section 5.15 Confidentiality, Privilege.** On and after the Effective Date, any confidentiality obligations, attorney-client privilege or other privilege or immunity attaching to any documents or communications shall vest in the Litigation Trust and its representatives, and the Litigation Trustee. The Debtors are authorized and directed to take all actions they deem necessary to effectuate the transfer of such privilege, and any documents or communications that would otherwise be protected from discovery by virtue of any applicable privilege or immunity shall remain so protected. The Confirmation Order shall provide that the Litigation Trustee's receipt of transferred privileges shall be without waiver in recognition of the joint and/or successorship interest in prosecuting claims on behalf of the Debtors' Estate. If any privileged documents are inadvertently produced to third parties, such production shall not be deemed to destroy any privilege or be deemed a waiver of any confidentiality protections afforded to such privileged documents.

**Section 5.16 Litigation Trust Accounts.** The Litigation Trustee shall deposit and maintain the Litigation Trust Assets, including the Litigation Trust Reserve, the Administrative Claims Fund and the Disputed Claims Reserve, in one or more segregated accounts for distribution solely in accordance with the Plan and Litigation Trust Agreement.

**Section 5.17 Retention of Professionals.** The Litigation Trustee shall have the right to retain the services of attorneys, accountants and other professionals that are necessary to assist the Litigation Trustee in the performance of its duties as Litigation Trustee or otherwise under this Plan. The reasonable fees and expenses of such professionals and the additional expenses of the Litigation Trustee incurred in the performance of its duties as Litigation Trustee under this Plan shall be paid by the Litigation Trustee from the Litigation Trust Reserve, and shall not be subject to the approval of the Bankruptcy Court. If there are insufficient funds available to pay all fees and expenses of such professionals and compensation of the Litigation Trustee in full, such professionals and the Litigation Trustee shall share *pro rata* in the available funds until payment in full is made.

**Section 5.18 Distributions to Holders of Claims and Equity Interests.**

- (a) **Estimation of Claims.** The Litigation Trustee may, at any time, request that the Bankruptcy Court (or the District Court, if applicable) estimate any Claim not expressly Allowed by the terms of the Plan and otherwise subject to estimation under section 502(c) of the Bankruptcy Code and for which the Debtors may be liable under the Plan, including any Claim for taxes, to the extent permitted by section 502(c) of the Bankruptcy Code, regardless of whether any party in interest previously objected to such Claim, and the Bankruptcy Court (or the District Court, if applicable) shall retain jurisdiction to estimate any Claim pursuant to section 502(c) of the Bankruptcy Code at any time prior to the time that such Claim becomes an Allowed Claim, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection. If the Bankruptcy Court (or the District Court, if applicable) estimates any Disputed, contingent or unliquidated Claim, the estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court (or the District Court, if applicable), for all purposes under the Plan (including for purposes of distributions), and if the estimated amount is a maximum limitation on such claim, the Litigation Trustee may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim. Notwithstanding any other provision in the Plan, a Claim that has been expunged from the claims register, but that has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court (or the District Court, if applicable). Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such holder has filed a motion requesting the right to seek such reconsideration on or before twenty-one (21) days after the date on which such Claim is estimated. The foregoing objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another. Claims may be estimated by the Bankruptcy Court (or the District Court, if applicable) and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court (or the District Court, if applicable).
- (b) **No Recourse.** Notwithstanding that the Allowed amount of any particular Disputed Claim is reconsidered under the applicable provisions of the Bankruptcy Code and Bankruptcy Rules or is Allowed in an amount for which after application of the payment priorities established by the Plan there is insufficient value to provide a recovery equal to that received by other holders of Allowed Claims in the respective Class, no Claim holder shall have recourse against the Debtors, the Estates, the Litigation Trustee or any of their respective professionals, consultants, officers, directors, or members or their successors or assigns, or any of their respective property, excepting claims against officers and/or directors of the Debtors who have been named in existing lawsuits as of the Petition Date, which claims are expressly preserved. Except as specifically stated otherwise in the Plan,

nothing in the Plan shall modify any right of a holder of a Claim under section 502(j) of the Bankruptcy Code.

THE ESTIMATION OF CLAIMS AND ESTABLISHMENT OF RESERVES UNDER THIS PLAN MAY LIMIT THE DISTRIBUTION TO BE MADE ON INDIVIDUAL DISPUTED CLAIMS IF THE ESTIMATION IS MADE SOLELY FOR THE PURPOSE OF ESTIMATING A MAXIMUM LIABILITY FOR RESERVE PURPOSES, REGARDLESS OF THE AMOUNT FINALLY ALLOWED ON ACCOUNT OF SUCH DISPUTED CLAIMS.

- (c) **Automatic Disallowance and Expungement of Certain Claims.** Any holder of a Claim against any Debtor who receives notice of the applicable Bar Date (whether such notice was actually or constructively received), and is required, but fails to file a Proof of Claim or Administrative Claim Request in accordance with the Bar Date Order on or before the applicable Bar Date (a) shall be forever barred, estopped, and enjoined from asserting such claim against any Debtor (or filing a Proof of Claim or Administrative Claim Request with respect thereto) and (b) shall not receive or be entitled to receive any payment or distribution of property from the Debtors or their successors or assigns with respect to such claim. Therefore, the aforementioned Claims will be expunged on the Effective Date.

#### **Section 5.19 Disputed Claims**

- (a) **Objections to Claims.** Unless otherwise ordered by the Bankruptcy Court, on and after the Effective Date, the Litigation Trustee shall have the right to make, file and prosecute objections to and settle, compromise or otherwise resolve Disputed Claims, except that as to applications for allowances of Professional Fee Claims, objections may be made in accordance with the applicable Bankruptcy Rules by parties in interest. Subject to further extension by the Bankruptcy Court, the Litigation Trustee shall file and serve a copy of any such objection upon the holder of the Claim to which an objection is made on or before the latest to occur of: (i) sixty (60) days after the Effective Date, (ii) thirty (30) days after a request for payment or Proof of Claim is timely filed and properly served upon the Litigation Trustee and (iii) such other date as may be fixed by the Bankruptcy Court either before or after the expiration of such time periods. Notwithstanding any authority to the contrary, an objection to a Claim shall be deemed properly served on the claimant if the Litigation Trustee effects service in any of the following manners (x) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004; (y) by first-class mail, postage prepaid, on the signatory of the Proof of Claim or other representative identified in the Proof of Claim or any attachment thereto at the address of the creditor set forth therein; or (z) by first-class mail, postage prepaid, on any counsel that has appeared on the claimant's behalf in the Chapter 11 Cases. From and after the Effective Date, the Litigation Trustee may settle or compromise any Disputed Claim or Retained Cause of Action pursuant to the terms of the Plan without further order of the Bankruptcy Court.

- (b) **Resolution of Disputed Claims.** No Distribution or payment shall be made on account of a Disputed Claim until such Disputed Claim becomes an Allowed Claim.
- (c) **Establishment of Disputed Claims Reserve.** On or before the Effective Date (with the consent of the Creditors' Committee in relation to amount), the Debtors shall establish and fund the Disputed Claims Reserve, which shall be administered by the Litigation Trustee.
- (d) **Duties in Connection with Disputed Claims.** On and before the Effective Date, the Debtors (with the consent of the Creditors' Committee) and, after the Effective Date, the Litigation Trustee shall (i) deposit in the Disputed Claims Reserve, Cash in an amount required by order of the Bankruptcy Court or the District Court, if applicable, (including any order estimating the maximum liability of a Disputed Claim) or, in the absence of such order, Cash equal to the Distributions that would have been made to the holder of such Disputed Claim, if it were an Allowed Claim in a liquidated amount, if any, on the Effective Date, (ii) object to, settle or otherwise resolve Disputed Claims, and (iii) make Distributions to holders of Disputed Claims that subsequently become Allowed Claims in accordance with the Plan.
- (e) **Distributions when Disputed Claims Are Resolved.** On the next Distribution Date following the date upon which a Disputed Claim is ultimately Allowed, the holder of such Claim shall receive from the Disputed Claims Reserve any amounts attributable to such Claim, in accordance with the Plan. Any Cash Distributions held in the Disputed Claims Reserve for the benefit of a holder of a Disputed Claim, which is subsequently Disallowed, in whole or in part, shall be treated as Distributable Cash.

## **Section 5.20 Miscellaneous Distribution Provisions**

- (a) **Method of Cash Distributions.** All Distributions shall be made by the Litigation Trustee or a duly appointed disbursing agent to the holders of Allowed Claims. Cash payments made pursuant to the Plan shall be in United States dollars by checks drawn on a domestic bank selected by the Litigation Trustee or by wire transfer from a domestic bank, at the option of the Litigation Trustee; *provided, however,* that Cash payments made to foreign creditors, if any, holding Allowed Claims may be (but are not required to be) paid, at the option of the Litigation Trustee in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.
- (b) **No Distribution in Excess of Allowed Amount of Claim.** Notwithstanding anything to the contrary herein, no holder of an Allowed Claim shall receive in respect of such Claim any Distribution in excess of the amount of such Allowed Claim plus interest as provided herein.

**Section 5.21 Allocation of Payments.** Amounts paid to holders of Allowed Claims in satisfaction thereof shall be allocated first to the principal amounts of such Allowed Claims, with any excess allocated to any interest that has accrued on such Allowed Claims but remains unpaid.

**Section 5.22 Setoffs.** The Litigation Trustee is authorized, pursuant to and to the extent permitted by applicable law, to set off against any Allowed Claim and the Distributions to be made on account of such Allowed Claim, the claims, rights and Retained Causes of Action of any nature that the Debtors or the Litigation Trustee, as applicable, may hold against the holder of such Allowed Claim. Neither the failure to effect such a setoff nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors or the Litigation Trustee of any such claims, rights and Retained Causes of Action the Debtors or the Litigation Trustee, as applicable, may have against such holder.

**Section 5.23 Exemption from Transfer Taxes.** Pursuant to section 1146(a) of the Bankruptcy Code, the assignment or transfer of any lease or sublease, the delivery, making, filing, or recording of any deed or other instrument of transfer, or the issuance, transfer or exchange of any security, under the Plan, or any other disposition of Assets contemplated by the Plan, shall not be subject to any stamp, real estate transfer, mortgage, recording or other similar tax to the maximum extent covered by section 1146 of the Bankruptcy Code.

**Section 5.24 Disputed Payments.** If any dispute arises as to the identity of a holder of an Allowed Claim who is to receive any Distribution, the Litigation Trustee may, in lieu of making such Distribution to such Person, make such Distribution into an escrow account to be held in trust for the benefit of such holder. Such Distribution shall be held in escrow until the disposition thereof shall be determined by order of the Bankruptcy Court or other court of competent jurisdiction or by written agreement signed by all of the interested parties to such dispute.

**Section 5.25 Withholding Taxes.** The Litigation Trustee shall not be required to withhold taxes or comply with any applicable reporting requirements. The recipients of Distributions will be required to comply with all applicable laws and regulations concerning the reporting and taxing of the Distributions. If requested by the recipient of a Distribution, the Litigation Trustee will issue an IRS Form 1099.

**Section 5.26 Request for Expedited Determination of Taxes.** The Debtors (with the consent of the Creditors' Committee) or the Litigation Trustee, as applicable, shall have the right to request an expedited determination under section 505(b) of the Bankruptcy Code with respect to tax returns filed, or to be filed, for any and all taxable periods ending after the Petition Date through the Effective Date.

**Section 5.27 Resignation of Directors and Officers.** Upon the Effective Date, except as may be provided for by the Transition Services Agreement, the Debtors' boards of directors and officers shall be deemed to have resigned without the necessity of any further action or writing, and, except as may be provided for in the Transition Services Agreement and as set forth in the Plan Supplement, shall be released from responsibilities, duties and obligations arising after the Effective Date to the Debtors or their creditors under the Plan and applicable law; *provided, however,* that pursuant to section 1142(b) of the Bankruptcy Code, after the Effective Date the officers and directors of the Debtors (or the Litigation Trustee) shall be authorized to file the

Debtors' tax returns and take any other actions related to or required for the dissolution of the Debtors and shall provide reasonable cooperation and assistance as may be requested by the Litigation Trustee.

**Section 5.28 Resignation or Removal of Litigation Trustee.** If the Litigation Trustee resigns or is removed, dies, dissolves or is incapacitated, the Litigation Trust Oversight Committee shall designate another Person to become the Litigation Trustee and thereupon the successor Litigation Trustee, without further act, shall become fully vested with all of the rights, powers, duties and obligations of his or her predecessor, including the compensation of the predecessor Litigation Trustee. No successor Litigation Trustee hereunder shall in any event have any liability or responsibility for the acts or omissions of any of his or her predecessors.

**Section 5.29 Liability; Indemnification; No Agency Relationship.** The Litigation Trustee and any professional person, representative, director, officer, employee or agent of the Litigation Trust or the Litigation Trustee (collectively, the "**Litigation Trust Parties**") shall not be deemed to be the agent for any of the holders of Claims in connection with the funds held or distributed pursuant to the Plan. The Litigation Trust Parties shall be indemnified and held harmless, including the cost of defending such claims and attorneys' fees in seeking indemnification, by the Litigation Trust against any and all claims arising out of his or her duties under the Plan and the Litigation Trust, except to the extent his or her actions constitute gross negligence or willful misconduct or breach of fiduciary duty. The Litigation Trust Parties may conclusively rely, and shall be fully protected personally in acting upon any statement, instrument, opinion, report, notice, request, consent, order or other instrument or document which he or she believes to be genuine and to have been signed or presented by the proper party or parties. The Litigation Trust Parties may rely upon information previously generated by the Debtors and such additional information provided to him or her by former employees of the Debtors. The Litigation Trustee shall not be required to give any bond for the faithful performance of his or her duties but may do so, in the Litigation Trust Oversight Committee's discretion, in which case the expense incurred by such bonding shall be paid by the Litigation Trust.

**Section 5.30 Plan Settlements.** The terms of this Plan incorporate the Plan Settlements among the Debtors and certain other creditors that shall become effective on the Effective Date. The terms of the Plan Settlements are set forth in the Plan Supplement.

## **ARTICLE VI**

### **EFFECT OF PLAN ON CLAIMS, INTERESTS, AND CAUSES OF ACTION**

**Section 6.1 Binding Effect.** Except as otherwise provided in section 1141(d) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim or Equity Interest against the Debtors who held such Claim or Equity Interest at any time during the Chapter 11 Cases and its respective successors and assigns, whether or not the Claim or Equity Interest of such holder is Impaired under the Plan and whether or not such holder has accepted (or has been deemed to accept) the Plan.

**Section 6.2 Term of Injunctions or Stays.** Unless otherwise provided herein, all injunctions or stays provided for in the Chapter 11 Cases pursuant to sections 105 or 362 of the

Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect following confirmation of the Plan until the later of the closing of all of the Debtors' Chapter 11 Cases and the date indicated in the order providing for such injunction or stay.

**Section 6.3 Retention of Rights and Causes of Action.** Except as otherwise provided in the Plan, all present or future rights, claims and counter-claims, Causes of Action, rights of setoff, recoupment, subrogation, recharacterization, and/or equitable subordination and/or other legal or equitable defenses that the Debtors held on behalf of the Estates or of the Debtors in accordance with any provision of the Bankruptcy Code or any applicable nonbankruptcy law against any Person and have not been released or sold on or prior to the Effective Date are preserved for the Litigation Trust. On the Effective Date, pursuant to section 1123(b)(3) of the Bankruptcy Code, the Litigation Trust shall have possession and control of, and shall retain and have the right to enforce and pursue, any and all present or future rights, claims or Retained Causes of Action, rights of setoff or recoupment or other legal or equitable defenses against any Person and with respect to any rights of the Debtors or the Estates that arose before or after the Petition Date. The Litigation Trust retains, reserves and shall be entitled to assert and pursue all such claims, Retained Causes of Action, rights of setoff or other legal or equitable defenses, and all legal and equitable rights of the Debtors and the Estates not expressly released under the Plan that may be asserted after the Effective Date. The Debtors (with the consent of the Creditors' Committee) or the Litigation Trustee, as applicable, may abandon, settle or release any or all such claims, rights or Retained Causes of Action, as it deems appropriate without further order of the Bankruptcy Court. In pursuing any claim, right or Retained Cause of Action, the Litigation Trustee, as the representative of the Estates, shall be entitled to the extensions provided under section 108 of the Bankruptcy Code. Except as otherwise provided in the Plan, all Retained Causes of Action shall survive confirmation and the commencement or prosecution of Retained Causes of Action shall not be barred or limited by any estoppel, whether judicial, equitable or otherwise. Notwithstanding the foregoing, the Debtors shall not retain any Claims or Causes of Action released pursuant to Section 6.4, Section 6.5, Section 6.6 or Section 6.7 of the Plan against the Released Parties.

**Section 6.4 Releases by the Debtors and Their Estates.** Pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or arising from intentional fraud, gross negligence or willful misconduct, for good and valuable consideration, on and after the Effective Date, each Released Party is deemed released by each of the Debtors and the Estates from any and all claims, obligations, rights, suits, damages, Causes of Action (including LPC Causes of Action and Birdsey Causes of Action), remedies and liabilities whatsoever, asserted by or on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, whether for tort, contract, violations of federal or state securities laws or otherwise, that the Debtors or the Estates would have been legally entitled to assert in their own right (whether individually or collectively) or derivatively based on or relating to, or in any manner arising from, in whole or in part, the Debtors or their Affiliates, the Chapter 11 Cases, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the business or contractual arrangements between the Debtors and any Released Party, the restructuring of Claims and Equity Interests before or in the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Plan



Supplement, the Disclosure Statement, the Sale Order, the Purchase Agreement, the Transition Services Agreement or related agreements, instruments or other documents, or upon any other act or omission, transaction, agreement, event or other occurrence relating to the Debtors taking place on or before the Effective Date; *provided, however*, that the foregoing release shall not prohibit the Debtors, the Litigation Trust or the Litigation Trustee from asserting any and all defenses and counterclaims in respect of any Claim asserted by any Released Party; *and further provided*, that the foregoing release shall not extend to any Retained Causes of Action, including any derivative claims that may be asserted on behalf of the Debtors. Notwithstanding anything to the contrary in the foregoing and any other provision of this Plan, the releases granted by the Debtors and the Estates to the LPC Parties and their respective Related Parties shall be full general releases and shall include any claim arising from any alleged intentional fraud, gross negligence or willful misconduct.

**Section 6.5 Releases by Holders of Claims and Interests.** As of the Effective Date, to the maximum extent permitted by law and except as otherwise provided in the Plan, each of the Releasing Parties is deemed to have conclusively, absolutely, unconditionally, irrevocably and forever released the Released Parties from, and covenants not to sue on account of, any and all claims, interests, obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever, including any direct claims held by any of the Releasing Parties against the Released Parties (including any and all Claims against the LPC Parties and their respective Related Parties and against Tom Birdsey and Karen Birdsey), whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, whether for tort, contract, violations of federal or state securities laws or otherwise, that each Releasing Party would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors or their direct subsidiaries, the ESOP Transaction, the Chapter 11 Cases, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the business or contractual arrangements between the Debtors and any Released Party, the restructuring, negotiation or compromise of Claims and Equity Interests before or in the Chapter 11 Cases, the negotiation, formulation, preparation, or dissemination of the Plan (including the Plan Supplement), the Disclosure Statement, or any other related documents, agreements, events or occurrences, the Sale Order, the Purchase Agreement, the Transition Services Agreement or related agreements, instruments or other documents or upon any other act or omission, transaction, agreement, event or other occurrence relating to the Debtors taking place on or before the Effective Date, *other than* claims or liabilities arising out of or relating to any act or omission of a Released Party that is determined by a Final Order of a court of competent jurisdiction to have constituted intentional fraud, gross negligence or willful misconduct (except that the releases granted by Releasing Parties to the LPC Parties and each of their Related Parties shall be full general releases and shall include any claim arising from any alleged intentional fraud, gross negligence or willful misconduct). Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party under the Plan or any document, instrument or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

**For the avoidance of doubt, as of the Effective Date, the LPC Parties and their Related Parties shall be deemed to have granted the releases set forth in Section 6.5 of the Plan and in the LPC Releases to and in favor of each of the Settling Claimants and its Related Parties.**

**Section 6.6 Exculpation; Plan Injunction; Discharge.**

- (a) **Satisfaction of Claims.** The treatment to be provided for Allowed Claims in Unimpaired Classes shall be in full satisfaction, settlement and release of each such Claim. By accepting Distributions pursuant to this Plan, each holder of an Allowed Claim will be deemed to have specifically consented to the Injunction set forth in this Section.
- (b) **Exculpation.** Except as otherwise set forth in the Plan, none of the Exculpated Parties shall have or incur any liability to any holder of a Claim or Equity Interest or other Person for any action taken or omitted to be taken from the Petition Date through the Effective Date in connection with or related to the filing of these Chapter 11 Cases, the formulation, preparation, dissemination, solicitation, implementation, confirmation, or consummation of the Plan, the Disclosure Statement, the Sale Order, the Purchase Agreement, the Transition Services Agreement or any contract, release or other agreement or document created or entered into, or any other action taken or omitted to be taken in connection with the Plan, the administration of the Plan or property to be distributed pursuant to the Plan, the Sale Transaction, the Transition Services Agreement, and any other post-petition actions taken or omitted to be taken in connection with the Chapter 11 Cases or the operations, monitoring or administration of the Debtors during the Chapter 11 Cases, the winding down and post-confirmation administration of the Estates; *provided, however*, that the foregoing provisions of this exculpation shall not operate to waive, release or otherwise impair (i) the Retained Causes of Action or (ii) any causes of action arising from criminal acts, intentional fraud, gross negligence, or willful misconduct of such Exculpated Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.
- (c) **Plan Injunction.** Except as otherwise provided in the Plan or the Confirmation Order, all Persons that held, hold or may hold a Claim against or Equity Interest in the Debtors are, with respect to such Claims or Equity Interests or any theory that arises out of such Claims or Equity Interests, permanently enjoined, as of the Effective Date, from taking any of the following actions against the Litigation Trust or Litigation Trust Assets, including, for the avoidance of doubt, property to be distributed under the Plan: (i) commencing or continuing in any manner, directly or indirectly, any action or other proceeding of any kind (including in a judicial, arbitral, administrative or other forum); (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree or order; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any Liens or encumbrances; (iv) asserting any right of setoff,

directly or indirectly, except as allowed by Section 6.6(e) of the Plan; (v) asserting any right of subrogation; and (vi) prosecuting or otherwise asserting any right, claim or cause of action released pursuant to this Plan, including, without limitation, any right, claim or cause of action against an Exculpated Party that has been exculpated pursuant to Section 6.6(b) of this Plan; *provided, however*, that the injunction provided in this Section shall neither bar any Person from asserting any defense in an action commenced by or on behalf of any of the Debtors or the Litigation Trust nor prohibit any Person from asserting any right expressly preserved by this Plan. Nothing shall preclude the holder of a Claim or Equity Interest from pursuing any applicable insurance after the Chapter 11 Cases are closed, from seeking discovery in actions against third parties, from pursuing third-party insurance that does not cover Claims against the Debtors, or from pursuing third parties for claims not released under this Plan. For the avoidance of doubt, nothing in this injunction shall limit the rights of a holder of a Claim to enforce the terms of the Plan.

- (d) **Cause of Action Injunction.** On and after the Effective Date, all Persons other than the Litigation Trustee will be permanently enjoined from commencing or continuing in any manner any action or proceeding (whether directly, indirectly, derivatively or otherwise) on account of, or respecting any claim, debt, right or Cause of Action that the Litigation Trustee retains authority to pursue in accordance with the Plan.
- (e) **Setoff.** Notwithstanding anything in the Plan, in no event shall any holder of a Claim or Equity Interest be entitled to set off any Claim or Equity Interest against any claim, right or Cause of Action of the Debtors or Litigation Trust unless such holder preserves its right of setoff by (i) timely filing a Proof of Claim or (ii) filing a motion for authority to effect such setoff on or before the Confirmation Date (regardless of whether such motion is heard prior to or after the Confirmation Date).
- (f) **Discharge of the Debtors.** Pursuant to section 1141(d)(3) of the Bankruptcy Code, confirmation of the Plan shall not discharge Claims against the Debtors; *provided, however*, that no Holder of a Claim or Equity Interest may, on account of such Claim or Equity Interest, seek or receive any payment or other Distribution from, or seek recourse against, the Litigation Trust or Litigation Trust Assets, except as expressly provided in the Plan.

**Section 6.7 Preservation and Application of Insurance.** Notwithstanding anything in the Plan or Plan Supplement to the contrary, the provisions of the Plan shall not diminish or impair in any manner the enforceability of any insurance policy, including coverage of any D&O Insurance Policy, that may cover Claims against the Debtors, the Debtors' current and former officers and directors, or any other Person. No prepaid D&O Insurance Policy shall be cancelled except as otherwise permitted by the terms thereof and non-bankruptcy applicable law, and the Debtors' current or former directors, officers and employees who have valid claims against a D&O Insurance Policy for indemnification, defense, reimbursement or limitation of liability may be paid

from the D&O Insurance Policy to the extent of the coverage provided by the D&O Insurance Policy and subject to the terms of the D&O Insurance Policy and applicable non-bankruptcy and bankruptcy law. As such, and notwithstanding anything in the Plan to the contrary, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, each D&O Insurance Policy, to the extent the contract providing for such is determined to be an executory contract, shall be deemed assumed by the Debtors.

**Section 6.8 Post-Effective Date Activity.** As of the Effective Date, the Litigation Trustee may conclude the implementation of the Plan and winding down of the Debtors' affairs without supervision of the Bankruptcy Court, other than those restrictions expressly imposed by the Plan and the Confirmation Order. Without limiting the foregoing, the Litigation Trust may pay any charges it incurs for taxes, professional fees, disbursements, expenses or related support services after the Effective Date without application to and approval of the Bankruptcy Court.

**Section 6.9 Avoidance Actions.** On the Effective Date, the Litigation Trustee shall be deemed the successor to any and all Avoidance Actions (excluding any Avoidance Actions sold to the Buyer under the Purchase Agreement) that a trustee, debtor in possession or other appropriate party in interest would be able to assert on behalf of the Debtors under applicable state statutes or the avoidance provisions of chapter 5 of the Bankruptcy Code, including actions under one or more of the provisions of Bankruptcy Code sections 502, 506, 541 through 551 and 553, including without limitation, the actions specifically identified on the schedule of Retained Causes of Action filed with the Plan Supplement.

## ARTICLE VII EXECUTORY CONTRACTS AND UNEXPIRED LEASES

**Section 7.1 Executory Contract and Unexpired Leases.** To the extent not previously rejected or listed on the schedule of rejected Executory Contracts and Unexpired Leases filed with the Plan Supplement, on the Confirmation Date, but subject to the occurrence of the Effective Date, all of the Debtors' Executory Contracts and Unexpired Leases entered into prior to the Petition Date that have not previously been assumed or rejected, and have not been assumed and assigned during the Chapter 11 Cases, shall be deemed automatically rejected by the Debtors pursuant to the provisions of sections 365 and 1123 of the Bankruptcy Code *unless* any of such Executory Contracts or Unexpired Leases: (a) as of the Effective Date is subject to a pending motion to assume such Executory Contract or Unexpired Lease; (b) is a contract, release or other agreement or document entered into in connection with the Plan; (c) is a D&O Insurance Policy or an insurance policy; (d) is identified for assumption on the Assumption Schedule included in the Plan Supplement; or (e) is a Contract Pending Novation or Contract Pending Licensure.

**Section 7.2 Rejection Damages Bar Date.** Pursuant to the Plan, if rejection of an Executory Contract or Unexpired Lease, results in a Claim, then such Claim shall be forever barred and shall not be enforceable against the Debtors or their property or the Litigation Trustee unless a Proof of Claim is filed with the Bankruptcy Court and served upon the Litigation Trustee not later than thirty (30) days after notice of the occurrence of the Effective Date is filed with the Bankruptcy Court or such later date as may be established by order of the Bankruptcy Court.. Any such Claim, to the extent Allowed, shall be classified as a General Unsecured Claim in the appropriate Class Category.

**Section 7.3 Effect of Post-Confirmation Rejection.** The entry by the Bankruptcy Court on or after the Confirmation Date of an order authorizing the rejection of an Executory Contract or Unexpired Lease entered into prior to the Petition Date shall result in such rejection being a prepetition breach under sections 365(g) and 502(g) of the Bankruptcy Code.

**Section 7.4 Termination of ESOP.** On the Effective Date, EYP Group Holdings, Inc., as the assignee of the ESOP Note, will be deemed to have a claim against the EYP ESOP, and the EYP ESOP will be deemed to be indebted to EYP Group Holdings, Inc., in the amount outstanding under the ESOP Note in accordance with the terms of the ESOP Credit Agreement. On or after the Effective Date, the Litigation Trustee may terminate the EYP ESOP and Equity Interests in EYP Group Holdings, Inc. in accordance with this Plan and the applicable provisions of ERISA and the Internal Revenue Code, and upon such termination, the EYP ESOP shall be deemed terminated in accordance with its terms, at which time 100% of the unpaid principal and accrued but unpaid interest remaining on the ESOP Note shall be forgiven. On or at any time after the Effective Date, the Litigation Trustee may amend the EYP ESOP in accordance with the terms of the EYP ESOP plan documents and applicable provisions of ERISA and the Internal Revenue Code. Such amendments may include converting the EYP ESOP to a profit-sharing plan to eliminate the obligation to hold employer stock. Should such a conversion be made, the Litigation Trustee may liquidate the EYP ESOP's Equity Interests in EYP Group Holdings, Inc. in accordance with this Plan. Such conversion and liquidation shall not be deemed to be a termination of the EYP ESOP for the purposes of the ESOP Note forgiveness.

## ARTICLE VIII

### CONDITIONS TO CONFIRMATION AND OCCURRENCE OF EFFECTIVE DATE

**Section 8.1 Conditions to Confirmation.** The Plan may not be confirmed unless the Confirmation Order is entered in a form reasonably acceptable to the Debtors.

**Section 8.2 Conditions to Occurrence of Effective Date.** The Effective Date for the Plan may not occur unless each of the conditions set forth below is satisfied. Except with respect to Paragraphs (g), (h), (i), and (j) of this Section 8.2, any one or more of the following conditions may be waived in whole or in part at any time by the Creditors' Committee (with the consent of the Debtors, which consent shall not be unreasonably withheld; *provided* that on the day that is thirty (30) days after the Confirmation Date, the Debtors shall be deemed have consented to the waiver of each of the following conditions):

- (a) The Bankruptcy Court shall have entered the Confirmation Order and it shall have become a Final Order and shall not have been stayed, modified or vacated on appeal.
- (b) The Confirmation Order shall provide for the releases, injunctions and exculpation of the parties provided for by the Plan.
- (c) The Person identified in the Plan Supplement shall have been appointed as Litigation Trustee and shall have accepted to act in such capacity in accordance with the terms and conditions of the Plan.

- (d) All actions, documents and agreements necessary to implement and consummate the Plan shall have been effected or executed and binding on all parties thereto.
- (e) All governmental and third-party approvals and consents, including Bankruptcy Court approval, necessary in connection with the transactions contemplated by the Plan shall have been obtained, not be subject to unfilled conditions, and be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent, or otherwise impose materially adverse conditions on such transactions.
- (f) All Contracts Pending Novation have been novated and transferred.
- (g) The motion or stipulation seeking the dismissal with prejudice of the New York Litigation against the LPC Parties shall have been filed by the NY Plaintiffs.
- (h) The motion or stipulation seeking the dismissal with prejudice of the Delaware Litigation against all Delaware Defendants shall have been filed by the parties to the Delaware Litigation.
- (i) The Threshold LPC Releases shall have been delivered to the Debtors or the Creditors' Committee, and copies of such Threshold LPC Releases provided to LPC's counsel at the email address specified in Section 4.6 of the Plan.
- (j) The Birdsey Releases (in the form attached to the Plan Supplement) shall have been delivered to the Debtors or the Creditors' Committee, with copies of such Birdsey Releases provided to Birdsey's counsel, Eric Snyder, at esnyder@wilkauslander.com.

For the avoidance of doubt, (w) the condition precedent set forth in this Section 8.2(g) may be waived only by the LPC Parties; (x) the LPC Parties shall have consent rights over the waiver of the condition precedent set forth in this Section 8.2(i); (y) the condition precedent set forth in this Section 8.2(h) may be waived only by the Delaware Defendants; and (z) Tom Birdsey shall have consent rights over the waiver of the condition precedent in this Section 8.2(j).

**Section 8.3 Effect of Nonoccurrence of the Conditions to Occurrence of Effective Date.** If each of the conditions to the occurrence of the Effective Date has not been satisfied or duly waived on or before the date which is no later than the first Business Day after 90 days after the Confirmation Date, or by such later date as is approved, after notice and a hearing, by the Bankruptcy Court, then upon motion by any party in interest made before the time that each of the conditions has been satisfied or duly waived, the Confirmation Order may be vacated by the Bankruptcy Court; *provided, however*, that, notwithstanding the filing of such a motion, the Confirmation Order shall not be vacated if each of the conditions to occurrence of the Effective Date is either satisfied or duly waived before the Bankruptcy Court enters an order granting the relief requested in such motion. If the Confirmation Order is vacated pursuant the Plan, then the Plan shall be null and void in all respects, and nothing contained in the Plan shall: (a) constitute a waiver or release of any claims by or against the Debtors, or (b) prejudice in any manner the rights of the Debtors or of any other party in interest.

**Section 8.4 Closing of the Chapter 11 Cases.** After all Disputed Claims filed against the Debtors have become Allowed Claims or Disallowed Claims, and have been satisfied in accordance with the Plan, or at such earlier time as the Litigation Trustee deems appropriate, the Litigation Trustee shall seek authority from the Bankruptcy Court to close the Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules.

## **ARTICLE IX CONFIRMABILITY AND SEVERABILITY OF THE PLAN**

**Section 9.1** The Debtors reserve the right, after consulting with the Creditors' Committee, to alter, amend, modify, revoke or withdraw the Plan, including the right to revoke or withdraw the Plan for any Debtor or all Debtors, prior to the Confirmation Date. If the Debtors, after consulting with the Creditors' Committee, revoke or withdraw the Plan, or if confirmation or consummation of the Plan does not occur, then: (i) the Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Equity Interest or Class of Claims or Equity Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (ii) nothing contained in the Plan shall: (A) constitute a waiver or release of any Claims or Equity Interests by or against the Debtors; (B) prejudice in any manner the rights of the Debtors, the Debtors' Estates, or any other Person; or (C) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors, the Debtors' Estates, or any other Person. A determination by the Bankruptcy Court that the Plan, as it applies to the Debtors, is not confirmable pursuant to section 1129 of the Bankruptcy Code shall not limit or affect the Debtors' ability to modify the Plan to satisfy the confirmation requirements of section 1129 of the Bankruptcy Code. Each provision of the Plan shall be considered severable and, if for any reason any provision or provisions herein are determined to be invalid and contrary to any existing or future law, the balance of the Plan shall be given effect without relation to the invalid provision, to the extent it can be done without causing a material change in the Plan.

**Section 9.2** The Debtors shall have the right to request the Bankruptcy Court to confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code.

## **ARTICLE X ADMINISTRATIVE PROVISIONS**

**Section 10.1 Retention of Jurisdiction.** Notwithstanding confirmation of the Plan or occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction and authority for all purposes permitted under applicable law, including, without limitation, for the following purposes:

- (a) to determine any motion, adversary proceeding, Avoidance Action, application, contested matter or other litigated matter pending on or commenced after the Confirmation Date;

- (b) to hear and determine applications for the assumption or rejection of executory contracts or unexpired leases and the allowance, estimation, or payment of Claims and cure disputes resulting therefrom;
- (c) to ensure that Distributions to holders of Allowed Claims are accomplished as provided herein and to adjudicate any and all disputes arising from or relating to Distributions under the Plan;
- (d) to hear and determine objections to the allowance of Claims, whether filed, asserted, or made before or after the Effective Date, including, without limitation, to hear and determine objections to the classification of Claims and the allowance or disallowance of Disputed Claims, in whole or in part;
- (e) to consider Claims or the allowance, classification, priority, compromise, estimation or payment of any Claim; *provided, however*, that the District Court shall have jurisdiction to estimate any Claim that cannot be estimated by the Bankruptcy Court;
- (f) to enter, implement, or enforce such Orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified or vacated;
- (g) to determine any matter (i) under the Purchase Agreement; (ii) under the Transition Services Agreement, (iii) in connection with the Sale Transaction; or (iv) the Sale Order;
- (h) to issue injunctions, enter and implement other Orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person with the consummation, implementation or enforcement of the Plan, the Confirmation Order or any other Order of the Bankruptcy Court;
- (i) to hear and determine any application to modify the Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure Statement or any Order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;
- (j) to hear and determine all Professional Fee Claims;
- (k) to hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan, the Plan Supplement, the Confirmation Order or any transactions or payments contemplated hereby or thereby, or any agreement, instrument or other document governing or relating to any of the foregoing;
- (l) to take any action and issue such Orders as may be necessary to construe, enforce, implement, execute and consummate the Plan, the Litigation Trust Agreement and



the Plan Settlements, including any release or injunction provisions set forth herein, or to maintain the integrity of the Plan following consummation;

- (m) to determine such other matters and for such other purposes as may be provided in the Confirmation Order;
- (n) to hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;
- (o) to enter a final decree closing the Chapter 11 Cases;
- (p) to recover all Assets of the Debtors and the Litigation Trust, and property of the Estates, wherever located;
- (q) to hear and determine any rights, Claims or Causes of Action held by or accruing to the Debtors and/or the Litigation Trust pursuant to the Bankruptcy Code or pursuant to any statute or legal theory;
- (r) to hear and determine any matters for which jurisdiction was retained by the Bankruptcy Court pursuant to prior Orders; and
- (s) to hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code, title 28 of the United States Code and other applicable law.

**Section 10.2 Courts of Competent Jurisdiction.** If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising out of the Plan, such abstention, refusal or failure of jurisdiction shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

**Section 10.3 Governing Law.** Except to the extent the Bankruptcy Code, Bankruptcy Rules or other federal laws apply, the laws of the State of Delaware shall govern the rights and obligations arising under the Plan, including, for the avoidance of doubt, any Exhibit attached to the Plan or Plan Supplement), without giving effect to principles of conflicts of law of Delaware.

**Section 10.4 Continuing Effect of Sale Order.** Notwithstanding anything in the Plan to the contrary, the Sale Order and any and all related documents shall not be modified, limited, or amended by the Plan.

**Section 10.5 Effectuating Documents and Further Transactions.** The Debtors or the Litigation Trustee, as applicable, shall be authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such action as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

**Section 10.6 Waiver of Bankruptcy Rule 7062.** The Debtors may request that the Confirmation Order include (a) a finding that Bankruptcy Rule 7062 shall not apply to the Confirmation Order and the Plan be immediately binding and enforceable; and (b) authorization for the Debtors to consummate the Plan immediately after entry of the Confirmation Order.

**Section 10.7 No Admissions.** Notwithstanding anything herein to the contrary, nothing contained in the Plan, or the Disclosure Statement shall be deemed as an admission by any Person with respect to any matter set forth herein.

**Section 10.8 Payment of Statutory Fees.** All U.S. Trustee Fees prior to the Effective Date shall be paid by the Debtors in full in cash on the Effective Date. After the Effective Date, the post-Effective Date Debtors and the Litigation Trust shall be jointly and severally liable to pay any and all U.S. Trustee Fees in full in cash when due and payable. The Debtors shall file all monthly operating reports due prior to the Effective Date when they become due, using UST Form 11-MOR. After the Effective Date, the Litigation Trustee and each of the post-Effective Date Debtors shall file with the Bankruptcy Court separate UST Form 11-PCR reports when they become due. Notwithstanding the substantive consolidation of certain of the Debtors called for in the Plan, each and every one of the Debtors, the post-Effective Date Debtors, and Litigation Trust shall remain obligated to pay U.S. Trustee Fees until the earliest of that particular Debtor's case is closed, dismissed or converted to a case under chapter 7 of the Bankruptcy Code. The U.S. Trustee shall not be treated as providing any release under the Plan.

**Section 10.9 Abandonment of Certain Assets.** The Plan shall constitute a motion for authorization to abandon, pursuant to section 554 of the Bankruptcy Code, all of the Debtors' rights, interest and title to any and all real or personal property, if any, designated on a notice of abandonment filed by the Debtors on or before the Confirmation Date (with the consent of the Creditors' Committee). Such notice shall specify the Assets that the Debtors seeks to abandon with reasonable particularity and shall be served upon those parties entitled to notice under Bankruptcy Rule 2002. Any Assets owned by the Debtors and provided for under the Plan as designated on a notice(s) of abandonment filed by the Debtors with the Bankruptcy Court on or before the Confirmation Date shall be deemed abandoned as of the Effective Date pursuant to section 554 of the Bankruptcy Code without further order of the Bankruptcy Court, unless a party files an objection to such notice no later than ten (10) days following the service of such notice.

**Section 10.10 Books and Records.** To the extent not already transferred on the Effective Date, the Debtors shall transfer dominion and control over all of their books and records to the Litigation Trust in whatever form, manner, or media those books and records existed immediately prior to the transfer thereof to the Litigation Trust, unless such books and records are maintained by the Buyer and access provided to the Debtors pursuant to the Transition Services Agreement. The Litigation Trust shall be deemed authorized but not required to abandon all such books and records on or after ninety (90) days from the Effective Date, *provided, however*, that the Litigation Trust shall not dispose or abandon any books and records that are reasonably likely to pertain to pending litigation in which the Debtors or their current or former officers or directors are a party or that pertain to Claims without further order of the Bankruptcy Court. Pursuant to section 554 of the Bankruptcy Code, this Section 10.10 of the Plan shall constitute a motion and notice, so that no further notice or Bankruptcy Court filings are required to effectuate the aforementioned abandonment of the books and records of the Debtors.

#### **Section 10.11 Amendments**

- (a) **Pre-Confirmation Amendment.** The Debtors may (with the consent of the Creditors' Committee with respect to the material changes) modify the Plan at any

time prior to the entry of the Confirmation Order provided that the Plan, as modified, and the Disclosure Statement pertaining thereto meet applicable Bankruptcy Code requirements, including those set forth in section 1125 of the Bankruptcy Code. Entry of the Confirmation Order, including under section 1127 of the Bankruptcy Code, shall mean that all modifications or amendments to the Plan occurring after the solicitation and before entry of the Confirmation Order are approved pursuant to section 1127(a) of the Bankruptcy Code, as applicable, and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

- (b) **Post-Confirmation Amendment Not Requiring Resolicitation.** After the entry of the Confirmation Order and before the substantial consummation of the Plan, the Debtors (with the consent of the Creditors' Committee) may modify the Plan to remedy any defect or omission or to reconcile any inconsistencies in the Plan or in the Confirmation Order, as may be necessary to carry out the purposes and effects of the Plan, provided (i) the Debtors obtain approval of the Bankruptcy Court for such modification, after notice and a hearing, and (ii) such modification shall not materially and adversely affect the interests, rights or treatment, of any Class under the Plan.
- (c) **Post-Confirmation Amendment Requiring Resolicitation.** After the entry of the Confirmation Order and before the Effective Date of the Plan, the Debtors may modify the Plan in a way that materially and/or adversely affects the interests, rights, treatment, or Distributions of a Class of Claims or Equity Interests, provided: (i) the modified Plan meets applicable Bankruptcy Code requirements; (ii) the Debtors obtain Bankruptcy Court approval for such modification, after notice to all creditors entitled to receive notice pursuant to the Bankruptcy Code and the Bankruptcy Rules and a hearing; (iii) such modification is accepted by at least two-thirds in amount, and more than one-half in number, of Allowed Claims and Equity Interests voting in each Class affected by such modification; and (iv) the Debtors comply with section 1125 of the Bankruptcy Code with respect to the modified Plan; *provided* that a holder of a Claim or Equity Interest that has accepted the Plan shall be deemed to have accepted such Plan as modified if the proposed alterations, amendments, or modifications do not adversely change the treatment of the Claim or Equity Interest of such holder.

**Section 10.12 Successors and Assigns.** The rights, benefits and obligations of any Person named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the heir, executor, administrator, successor or assign of such Person.

**Section 10.13 Confirmation Order and Plan Control.** To the extent the Confirmation Order and/or the Plan is inconsistent with the Disclosure Statement, the Litigation Trust Agreement or any other agreement entered into between the Debtors and any third party, the Plan shall control the Disclosure Statement, the Litigation Trust Agreement and any previous agreements, and the Confirmation Order shall control the Plan, the Disclosure Statement, the Litigation Trust Agreement and any previous agreements.

**Section 10.14 Notices.** Any notice required or permitted to be provided under the Plan, unless otherwise provided herein, shall be in writing and served by either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery, (c) e-mail or (d) overnight delivery service, postage prepaid and addressed as follows:

<p><b>To the Debtors:</b></p> <p>EYP Group Holdings, Inc., 201 Fuller Road, 5th Floor Albany, NY 12203 Attn: Matthew Kahn, Authorized Officer</p> <p><i>with copies to:</i></p> <p>DLA Piper LLP (US) Counsel to the Debtors and Debtors in Possession 444 West Lake Street, Suite 900 Chicago, IL 60606 Telephone: (312) 368-3974 Facsimile: (312) 251-5874 Attn: Richard Chesley, Esq. Oksana Koltko Rosaluk, Esq. Email: Richard.Chesley@us.dlapiper.com Oksana.KoltkoRosaluk@us.dlapiper.com</p>	<p><b>To the Creditors' Committee:</b></p> <p>Bernstein, Shur Sawyer &amp; Nelson P.A. 100 Middle Street Portland ME 04101 Telephone: (207) 774-1200 Facsimile: (207) 774-1127 Attn: Sam Anderson Email: sanderson@bernsteinshur.com</p> <p>Dilworth Paxson LLP Martin J. Weis 704 King Street, PO Box 1031, Suite 500, Wilmington, DE 19899-1031 Telephone: (302) 571-9800 Facsimile: (302) 351-8735 Attn: Martin J. Weis Email: mweis@dilworthlaw.com</p>
<p><b>To the Litigation Trustee:</b></p> <p>Lawton Bloom Argus Management Corporation 2 Rosenfeld Drive, Suite F Hopedale, MA 01747 Telephone: (212) 686-1593 Email: lbloom@arguscorp.net</p> <p><i>with copies to:</i></p> <p>Bernstein, Shur Sawyer &amp; Nelson P.A. 100 Middle Street Portland ME 04101 Telephone: (207) 774-1200 Facsimile: (207) 774-1127 Attn: Sam Anderson Email: sanderson@bernsteinshur.com</p>	

**Section 10.15 Post-Effective Date Notice.** Pursuant to Bankruptcy Rule 2002 and any applicable local Bankruptcy Rules, notice of all post-Effective Date matters for which notice is

required to be given shall be deemed sufficient if served upon the U.S. Trustee's Office, counsel to the Litigation Trustee and any creditor that has a direct pecuniary interest in the relief sought by the pleading. With the exception of the U.S. Trustee, any Person desiring to remain on the Debtors' Bankruptcy Rule 2002 service list shall be required to file a request for continued service and to serve such request upon counsel to the Litigation Trustee. Parties who do not file a request for continued service shall be removed from the Debtors' Bankruptcy Rule 2002 service list upon the Effective Date and shall be served with pleadings only where they have a direct pecuniary interest in the relief sought by the pleading. Notice of the requirement to file a request for continued service will be provided in the notice sent to all creditors regarding the confirmation of the Plan.

**Section 10.16 Substantial Consummation.** On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

**Section 10.17 Deemed Acts.** Whenever an act or event is expressed under the Plan to have been deemed done or to have occurred, it shall be deemed to have been done or to have occurred without any further act by any party, by virtue of the Plan and the Confirmation Order.

*[Signature Page Follows]*

Dated: September 19, 2022  
Wilmington, Delaware

Respectfully submitted,

EYP Group Holdings, Inc.

EYP Holdings, Inc.

EYP, Inc.

EYP Architecture & Engineering, P.C.

EYP Architecture & Engineering of CT, Inc.

EYP Architecture & Engineering of NJ, Inc.

EYP AE, Inc.

WHR Architecture, P.C.

WHR Design, P.C.

/s/ Matthew Kahn

Matthew Kahn

Authorized Officer for and on behalf of  
Debtors and Debtors in Possession

**EXHIBIT A**

**(General Release)**

## GENERAL RELEASE

This General Release (“Release”) is executed by \_\_\_\_\_ (“Claimant”) in accordance with the *Second Amended Joint Chapter 11 Plan of Liquidation of EYP Group Holdings, Inc., and its Debtor-Affiliates* (as amended, the “Plan”).<sup>1</sup> In consideration of the Plan’s treatment of Claimant’s Claim and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Claimant agrees as follows:

For and on behalf of Claimant and anyone claiming through Claimant, Claimant completely releases, acquits, and forever discharges the LPC Parties and their respective Related Parties from, and covenants not to sue on account of, any and all claims, interests, obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever, including any direct claims held by Claimant against the LPC Parties and their respective Related Parties, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, whether for tort, contract, violations of federal or state securities laws or otherwise, that Claimant would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors or their Related Parties, the ESOP Transaction, the Chapter 11 Cases, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the business or contractual arrangements between the Debtors and the LPC Parties and their respective Related Parties, the restructuring, negotiation or compromise of Claims and Equity Interests before or in the Chapter 11 Cases, the negotiation, formulation, preparation, or dissemination of the Plan (including the Plan Supplement), the Disclosure Statement, or any other related documents, agreements, events or occurrences, the Sale Order, the Purchase Agreement, the Transition Services Agreement or related agreements, instruments or other documents, or upon any other act or omission, transaction, agreement, event or other occurrence related to the Debtors taking place on or before the Effective Date.

Claimant expressly waives all provisions, rights, and benefits conferred by any law of any state or territory of the United States which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

In agreeing to the foregoing, Claimant expressly acknowledges and understands Claimant may hereafter discover facts in addition to or different from those Claimant now believes to be true, but expressly agrees that Claimant has taken these possibilities into account in electing to execute this Release, and that the Release shall be and remain in effect as a full and complete general release notwithstanding the discovery or existence of any such additional or different facts, as to which Claimant expressly assumes the risk.

Any causes of action arising from any disputes arising under this Release shall be brought in the Bankruptcy Court. The Parties agree that the Bankruptcy Court shall have exclusive jurisdiction over enforcement of this Release, and hereby consent to and submit to the jurisdiction of the Bankruptcy Court for any such action and, if necessary, to the reopening of the Chapter 11 Cases for purposes of enforcement of this Release. In the event the Chapter 11 Cases are closed by a final decree and not reopened, the Parties agree that any dispute regarding enforcement of this Release shall be brought exclusively in any federal or state court of competent jurisdiction located in Delaware, and consent to and submit to the jurisdiction of such court in Delaware for any such action.

**The Undersigned has carefully read the foregoing release, knows and fully understands the contents thereof, and signs this release as Claimant’s own free act.**

Name: \_\_\_\_\_

Dated: \_\_\_\_\_

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<sup>1</sup> Capitalized terms used but not otherwise defined in this Release have the meaning ascribed to them in Article I of the Plan. The rules of construction set forth in Article I of the Plan apply to this Release. To the extent that any provision of this Release conflicts with any term of the Plan, the terms of the Plan shall control.