

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

In re:

ONH AFC CS INVESTORS LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11 (Subchapter V)

Case No. 23-10931 (CTG)

(Jointly Administered)

**DECLARATION OF ANNA PHILLIPS IN SUPPORT OF THE AMENDED  
SMALL BUSINESS DEBTORS' JOINT PLAN OF LIQUIDATION**

I, Anna Phillips, declare that the following is true and correct to the best of my knowledge, information, and belief:

1. I submit this declaration (the "Phillips Declaration") in support of confirmation of the *Amended Small Business Debtors' Joint Plan of Liquidation* (as may be modified, amended, or supplemented from time to time, the "Plan").<sup>2</sup>

2. I am over the age of 18 and am authorized to submit this Declaration on the Debtors' behalf, and, if called upon to testify, I could and would testify competently to the facts set forth herein.

3. I am the independent manager of both ONH AFC CS Investors LLC ("ONH AFC") and ONH 1601 CS Investors LLC ("ONH 1601", together with ONH AFC, the "Debtors") (the "Independent Manager"). I was appointed by a majority vote of the members of each Debtor and assumed that role for both debtors on June 7, 2023. I have extensive experience as an independent manager and independent director and over thirty-five years of international business experience in many capacities – as a board member, trustee, principal investor, and financial and investment

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<sup>1</sup> The last four digits of the Debtors' federal tax identification numbers are 1199 (ONH AFC CS Investors LLC) and 6326 (ONH 1601 CS Investors LLC). The Debtors' mailing address is 3445 Peachtree Road, Suite 1225 Atlanta, GA 30326.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning given to such terms in the Plan.

banking advisory roles on behalf of companies and creditors, and as a lender. I was previously a Partner of Ernst & Young in the Corporate Finance group specializing in corporate restructuring, a Senior Managing Director in the US based corporate finance (restructuring) practice of FTI Consulting, and I hold a Bachelor of Commerce from the University of Tasmania.

4. As the Debtors' Independent Manager, I am an authorized person/officer for purposes of executing documents in connection with Debtors' bankruptcy petitions and related documents. Since my appointment as Independent Manager, I have worked closely with the Debtors' Chief Restructuring Officer, Eric Lee (the "CRO"). I have become well acquainted with those portions of the Debtors' businesses, financial condition, and books and records that I received from the prior manager of the Debtors and during the course of these Bankruptcy Cases.

5. Except as otherwise indicated, the facts set forth in this Phillips Declaration are based upon my personal knowledge, my review of relevant documents, including the Plan and all solicitation materials, information provided to me by employees or consultants working under my supervision, or my opinion based on experience, knowledge, and information concerning the Debtors' businesses and financial condition. Other than my role as Independent Manager, I have no connection to the Debtors, CrowdStreet, or the Schwartz Nightingale Parties (defined below).

#### **COMPLIANCE WITH THE BANKRUPTCY CODE**

##### **A. Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).**

6. I believe that the Plan complies with the applicable provisions of the Bankruptcy Code, including, but not limited to, the following:

i. *Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).* Article 2 of the Plan designates seven (7) Classes of Claims or Interests. I am familiar with the classification of Claims and Interests in the Plan and believe that such classification system is based upon the legal nature and relative rights of the Claims and Interests, and is not proposed for any improper purposes. Each Class contains only Claims or Interests that are substantially similar to other Claims and Interests therein.

ii. *Specified Treatment of Unimpaired Claims (11 U.S.C. 1123(a)(2))*. The Plan Specifies whether each Class of Claims or Interests is Unimpaired under the Plan, and sets forth the treatment of such Classes of Claims and Interests.

iii. *Specified Treatment of Impaired Claims (11 U.S.C. 1123(a)(3))*. The Plan specifies whether each Class of Claims and Interests is Impaired under the Plan, and sets forth the treatment of such Classes of Claims and Interests.

iv. *No Discrimination (11 U.S.C. § 1123(a)(4))*. Pursuant to the Plan, the treatment of each Claim or Interest in each particular Class is the same as the treatment of each other Claim or Interest in such Class, unless the holder of a particular Claim or Interest has agreed to less favorable treatment of such particular Claim or Interest.

v. *Implementation of the Plan (11 U.S.C. § 1123(a)(5))*. Article 2 of the Plan, as well as various other provisions of the Plan, provides adequate and proper means for implementation of the Plan. The Liquidating Trust will be created on the Effective Date and the Liquidating Trustee shall be responsible for distributions under the Plan on the Effective Date.

vi. *Nonvoting Equity Securities (11 U.S.C. § 1123(a)(6))*. The Plan does not contemplate the issuance of non-voting equity securities.

vii. *Officers, Directors, and Trustees (11 U.S.C. § 1123(a)(7))*. The Plan is a liquidating plan, and the Debtors' operations will terminate on the Effective Date. As set forth in the Plan, the identity of the Liquidating Trustee was disclosed in the Plan Supplement.

viii. *Impairment of Classes (11 U.S.C. § 1123(b)(1))*. Article 2 of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims or Interests under the Plan. Specifically: Class 2 (Allowed Priority Non-Tax Claims against ONH AFC) and Class 3 (Allowed Priority Non-Tax Claims against ONH 1601) are unimpaired under the Plan. Class 1 (Allowed DIP Claims), Class 4 (General Unsecured Claims against ONH AFC), Class 5 (General Unsecured Claims against ONH 1601), Class 6 (Equity Interests in ONH AFC and Section 510(b) Subordinated Claims), and Class 7 (Equity Interests in ONH 1601 and Section 510(b) Subordinated Claims) are Impaired under the Plan.

ix. *Treatment of Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2))*. Section 2.4 of the Plan provides that each Executory Contract not assumed in the Chapter 11 Cases, with the exception of any executory contracts with professionals that have been approved by the Bankruptcy Court, will be automatically rejected upon the Court's entry of the Confirmation Order.

x. *Schwartz Nightingale Settlement, CrowdStreet Settlement Proposal, Releases, and Exculpation (11 U.S.C. § 1123(b)(3))*. The Plain contains settlements between the Debtors and the Schwartz Nightingale Parties and the Debtors and CrowdStreet. Additionally, the Plan contains opt-in provisions to allow Holders of Claims or Interests to elect to opt-in to releases of CrowdStreet or the Schwartz

Nightingale Parties from certain claims as outlined in the Plan. The Plan also contains exculpation and injunction provisions. As discussed in detail below, the Schwartz Nightingale Settlement and the CrowdStreet Settlement and the provisions related thereto were an integral component of the negotiations and compromises in these Chapter 11 Cases and the Plan. The Schwartz Nightingale Settlement and CrowdStreet Settlement were negotiated after months of independent, arms'-length negotiations, investigation, and due diligence. Based on my personal knowledge of the negotiations, the Settlements and related provisions are fair and reasonable, and necessary to implement the Plan and the value realized thereunder as more specifically addressed herein.

xi. *Identification of Plan Proponents (Fed R. Bankr. P. 3016(a))*. As required by Bankruptcy Rule 3016(a), the Plan is dated and identifies the Plan Proponents as the Debtors.

**B. Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).**

7. To the best of my knowledge, the Debtors have complied with the Bankruptcy Code in proposing the Plan.

8. As set forth in section 1181(b) of the Bankruptcy Code, absent a court order, a separate disclosure statement is not required in Subchapter V cases. Pursuant to section 1190(1) of the Bankruptcy Code, the plan itself must include certain information normally found in a disclosure statement, including: (1) a brief history of the business operations of the debtor; (2) a liquidation analysis; and (3) projections with respect to the ability of the debtor to make payments under a proposed plan. I believe the Plan complies with section 1190(1) and includes the foregoing information except for financial projections because the Plan is a liquidating plan and all required payments under the Plan will be made from the Liquidating Trust.

**C. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)).**

9. I believe the Plan has been proposed by the Debtors with the legitimate and honest purpose of liquidating the Debtors' assets and maximizing the value available for distribution to the Holders of Allowed Claims or Interests. The Plan and the process leading to its formulation are the result of extensive arm's length negotiations among the Debtors, CrowdStreet, and the

Schwartz Nightingale Parties, and their respective advisors, as well as certain other interested parties, as applicable. To the best of my knowledge, these parties have acted in good faith. The Plan contemplates and is premised upon the liquidation of the Debtors' assets and the distribution of the net proceeds thereof. To facilitate such liquidation and distribution, the Liquidating Trustee will pursue the Retained Causes of Action and then distribute the proceeds thereof in accordance with the Plan and the Liquidating Trust Agreement. Therefore, the Plan achieves one of the primary objectives underlying a chapter 11 case: the equitable distribution of value to creditors and interest holders. Accordingly, I believe that the Plan and the related documents have been filed in good faith.

**D. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).**

10. Any payment made or to be made by the Debtors for services or for costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, outside the ordinary course of business, has been approved by, or is subject to the approval of, the Court as reasonable. Moreover, Section 2.1 of the Plan provides that all requests for professional fees incurred during the period from the Petition Date through the Effective Date shall be paid in full on the Effective Date or as otherwise agreed by the holders of such claims, subject to Bankruptcy Court approval.

**E. Identity of Trustees (11 U.S.C. § 1129(a)(5)).**

11. In accordance with the Plan, the Debtors disclosed the identity of the Liquidating Trustee in the Plan Supplement.

**F. No Rate Changes (11 U.S.C. § 1129(a)(6)).**

12. The Plan does not provide for rate changes subject to the jurisdiction of any governmental regulatory agency applicable to this section.

**G. Best Interests of Creditors Test (11 U.S.C. § 1129(a)(7)).**

13. Under the “best interests test,” with respect to each Impaired Class, each holder of a Claim or Interest against the Debtors has accepted the Plan and will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date, that is not less than the amount that such holder would have received or retained had the Debtors been liquidated under chapter 7 of the Bankruptcy Code on such date.

14. As discussed in the Liquidation Analysis included in the Plan as Article IV, each holder of Claims or Interests would receive the same amount or less if the case was converted to chapter 7 than under the Plan because the Debtors’ cost of liquidation under chapter 7 would include the fees payable to a trustee in bankruptcy and to any additional attorneys and other professionals engaged by such trustee as well as any unpaid expenses incurred by the Debtors during these Chapter 11 Cases prior to conversion, including compensation of attorneys and accountants. The additional costs and expenses incurred by a trustee in a Chapter 7 liquidation could be substantial. In contrast, under the Plan, the additional costs of converting to chapter 7 and the chapter 7 trustee’s statutory fees thereunder will not dilute distributions to Holders of Claims or Interests, and the delay resulting from a transition to chapter 7 and retention of new professionals will not occur.

15. Accordingly, converting the Chapter 11 Cases to chapter 7 will not increase the assets of the Estates but, instead, will add additional expenses to be paid ahead of the General Unsecured Claims, and will delay recoveries. Therefore, the Impaired Classes of Claims and Interests would not receive more under a chapter 7 liquidation and the Plan passes the “best interests” test.

**H. Acceptance of the Plan (11 U.S.C. § 1129(a)(8)).**

16. As noted in the *Declaration of Emily Young of Epiq Corporate Restructuring, LLC Regarding the Solicitation and Tabulation of Ballots Cast on Amended Small Business Debtors' Joint Plan of Liquidation* (the "Voting Declaration") (Doc. 198), Classes 1, 4, 5, 6, and 7 were Impaired under the Plan and entitled to vote, and Classes 2 and 3 were unimpaired and deemed to accept. Class 1 (Allowed DIP Claims) voted to accept with 100% acceptance rate in the amount of \$1,805,000.00. Class 4 (General Unsecured Claims Against ONH AFC) voted to accept with 100% acceptance rate in the amount of \$400,000.00. Class 5 (General Unsecured Claims Against ONH 1601) voted to accept with 100% acceptance rate in the amount of \$400,000.00. Class 6 (Equity Interests in ONH AFC and Section 510(b) Subordinated Claims) voted to accept with 99.66% acceptance rate by vote (594 accepted; 2 rejected) with \$41,184,295.31 voting to accept and \$125,000.00 voting to reject (99.70% acceptance by monetary value). Class 7 (Equity Interests in ONH 1601 and Section 510(b) Subordinated Claims) voted to accept with 99.37% acceptance rate by vote (157 accepted; 1 rejected) with \$8,490,000.00 voting to accept and \$40,000.00 voting to reject (99.53% acceptance by monetary value).

17. Accordingly, all Classes under the Plan have accepted the Plan or are unimpaired.

**I. Treatment of Administrative and Tax Claims (11 U.S.C. § 1129(a)(9)).**

18. The Plan, under Article 2, provides for the payment of Allowed Administrative Expenses, Allowed Priority Tax Claims, and Allowed Priority Non-Tax Claims, and Allowed Secured Claims, except to the extent that the holder of a particular claim has agreed to a different treatment under such Claim.

**J. Acceptance by at Least One Impaired Class (11 U.S.C. § 1129(a)(10)).**

19. As discussed above, all Classes under the Plan, including all Impaired Classes, have voted to accept the Plan by overwhelming majority or have been deemed to accept as unimpaired.

**K. Feasibility (11 U.S.C. § 1129(a)(11)).**

20. The Plan is a liquidating plan, so there is no need to evaluate the commercial viability of the Debtors after confirmation, although the Plan must still be feasible with what it proposes to do. The Plan contemplates the creation of a Liquidating Trust governed by a Liquidating Trust Agreement and the appointment of a Liquidating Trustee. The payments required under the Schwartz Nightingale Settlement and the subordinated loans under the CrowdStreet Settlement will provide funding to the Liquidating Trust. The Debtors will transfer all of their assets to the Liquidating Trust, including Retained Causes of Action, and the Liquidating Trustee will have the authority to investigate, negotiate, and prosecute all claims and Retained Causes of Action, the recoveries of which are expected to bring in proceeds for distributions to the Holders of Claims and Interests.

21. Accordingly, I believe that the Plan is feasible and provides a proper mechanism for liquidating the Debtors' remaining assets and making distributions to Holders of Claims or Interests.

**L. Payment of Fees (11 U.S.C. § 1129(a)(12)).**

22. There is no requirement to pay fees to the United States Trustee under 28 U.S.C. § 1930 in cases commenced under Subchapter V of the Bankruptcy Code. Therefore, this section is inapplicable to the Plan.

**M. Retiree Benefits (11 U.S.C. § 1129(a)(13)).**

23. The Debtors provide no "retiree benefits" as such term is defined in section 1114 of the Bankruptcy Code. Therefore, 11 U.S.C. § 1129(a)(13) is inapplicable and need not be addressed.

**N. Domestic Support Obligations (11 U.S.C. § 1129(a)(14)).**

24. The Debtors are not required to pay any domestic support obligations under 11 U.S.C. § 1129(a)(14) of the Bankruptcy Code. Therefore, this section is inapplicable and need not be addressed.

**O. Individual Debtor Requirements (11 U.S.C. § 1129a)(15).**

25. Section 1129(a)(15) is inapplicable to cases filed under Subchapter V of the Bankruptcy Code and the Debtors are not “individuals” within the meaning of the Bankruptcy Code. Accordingly, section 1129(a)(15) does not need to be addressed.

**P. Consensual Confirmation (11 U.S.C. § 1191(a))**

26. All Impaired Classes voted to accept the Plan. Accordingly, I believe the Plan satisfies the requirements of section 1191(a) of the Bankruptcy Code.

**Q. Cramdown (11 U.S.C. § 1191(b)).**

27. To the extent applicable, I believe the Plan complies with all applicable cramdown requirements because the Plan (i) provides for distributions in accordance with the priorities set forth in the Bankruptcy Code, and (ii) except as provided for in the Plan, provides that equity interests will be paid only to the extent funds are available after satisfaction of all creditor claims.

28. Additionally, I believe the Plan does not discriminate unfairly and is fair and equitable with respect to the Impaired Classes under the Plan. The Debtors will not have any projected disposable income because they are transferring all of their assets to the Liquidating Trust and will no longer be operating entities as of the Effective Date. Further, once the Liquidating Trust is created on the Effective Date and all assets are transferred to the Liquidating Trust, all distributions will be from the Liquidating Trust, and no subsequent distributions are dependent on any metrics related to the Debtors. The Liquidating Trust will be established and funded with the

amounts from the Schwartz Nightingale Settlement and the CrowdStreet Settlement in order to ensure payments according to the Plan.

**R. Principal Purpose of Plan (11 U.S.C. § 1129(d)).**

29. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933.

**S. Exculpation, Injunction, and Settlements**

*a. The Exculpation Provision*

30. Section 6.9 of the Plan contains a customary exculpation provision that is limited to the Debtors and the fiduciaries of the Estates. The exculpation provided under the Plan serves an important function in protecting parties with fiduciary duties to the Estates that have made substantial contributions in the Chapter 11 Cases. The scope of exculpation provisions is appropriately limited to actions taken or failed to be taken in connection with the Chapter 11 Cases following the Petition Date and the negotiation of the Plan. As with the releases and the settlements, the exculpation provision is a discretionary provision, which is the product of arms'-length negotiations and is a critical component of the Plan. For these reasons, I believe the exculpation is appropriate and should be approved.

*b. The Injunction Provision*

31. The injunction provision in Section 6.10 of the Plan permanently enjoins all Holders of Claims and Interests from taking any action to interfere with the implementation and consummation of the Plan (the "Injunction Provision"). I believe the Injunction Provision is necessary to implement and consummate the Plan and thus, should be approved.

*c. The Schwartz Nightingale Settlement*

32. The Plan provides that, to the extent that any holder of Equity Interest elects the SN Opt-In, such holder is deemed to assign to the Liquidating Trust any and all claims and causes of action from the beginning of time to the Effective Date relating in any way to the Debtors against the Schwartz Nightingale Parties or anyone acting on its behalf. As consideration for electing the SN Opt-In and the assignment of any Claim of the holder of an Equity Interest relating in any way to the Debtors against the Schwartz Nightingale Parties or anyone acting on its behalf, each holder of an Equity Interest in a Debtor or Section 510(b) Subordinated Claim in a Debtor shall have the option of electing to assign all Investor Individual SN Claims it holds to the Liquidating Trust in exchange for 5% annual simple interest on the unpaid amount of such holder's Equity Interest, beginning on the Effective Date and ending on the date of payment, to be paid after recovery of its Equity Interest.

33. The settlement with the Schwartz Nightingale Parties forms the basis for the payments to be made under the Plan. The Debtors engaged in substantial due diligence and negotiated for more than three months with the Schwartz Nightingale Parties regarding a settlement on behalf of the Debtors' estates and investors.

34. The Schwartz Nightingale Settlement was negotiated at arms'-length. The SN Opt-In was disclosed and explained in the Court-approved Confirmation Hearing Notice and Ballots for Classes 4, 5, 6, and 7. Accordingly, for these reasons and for the reasons set forth below, the Schwartz Nightingale Settlement should be approved.

35. Under the Plan, Holders of a Claim or Interest that elected the SN Opt-In did so by affirmatively electing to opt-in on the Ballot. The SN Opt-In was included in the Ballots, which were attached to the Confirmation Hearing Notices and sent to all creditors and Holders of Interests. Thus, the Holders of Claims and Interests who elected the SN Opt-In had notice of the

Chapter 11 Cases, the Plan, the Schwartz Settlement Agreement, the deadline to evaluate the Schwartz Settlement Agreement and/or object to confirmation of the Plan, and the effect that affirmatively choosing to SN Opt-In would have.

36. Pursuant to the above, I believe the Schwartz Nightingale Settlement is a fair, reasonable, and valid exercise of the Debtors' business judgment, and should be approved.

d. *The CrowdStreet Settlement*

37. The Plan also provides for the CrowdStreet Settlement. The CrowdStreet Settlement was negotiated at arms'-length and is wholly consensual. Each Holder of a Claim or Interest who elected to CS Opt-In did so affirmatively and provided their consent by doing so.

38. The CrowdStreet Settlement is an integral part of the Plan, and provides for the settlement of CrowdStreet claims against the Debtors (including the repayment of any DIP Loan or unsecured claims) as well as potentially providing additional funding to the Liquidating Trust, and releases of certain claims against CrowdStreet held by the Investors who elect the CS Opt-In. The release provisions of the Plan were negotiated at arms'-length, are wholly consensual, are necessary and are integral components of the Debtors' formulation and implementation of the Plan. The releases were disclosed and explained in the Court-approved Confirmation Hearing Notices and Ballots for Classes 4, 5, 6, and 7. Pursuant to the CrowdStreet Settlement, CrowdStreet will provide essential funding to the Liquidating Trust, if needed, and I believe it will appropriately provide reasonable protections to parties that participated constructively in the Chapter 11 Cases. Accordingly, for these reasons, the CrowdStreet Settlement should be approved.

39. In sum, I believe that both the Schwartz Nightingale Settlement and the CrowdStreet Settlement provide valuable consideration that would not otherwise be available to the Debtors' Estates, thereby benefitting the Debtors' creditors, Holders of Interest, and all parties

in interest. The terms of the Schwartz Nightingale Settlement and the CrowdStreet Settlement are fair, reasonable, a valid exercise of the Debtors' business judgment, and should be approved.

**CONCLUSION**

40. Based on the foregoing, I believe that the Plan satisfied the requirements of the Bankruptcy Code and the Bankruptcy Rules and should be confirmed, and the Schwartz Nightingale Settlement and the CrowdStreet Settlement should be approved.

Pursuant to section 1746 of title 28 of the United States Code, I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 11, 2023

*/s/ Anna Phillips*

Anna Phillips  
Independent Manager of ONH AFC  
and ONH 1601