

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:
In re:	: Chapter 11
	:
NAVILLUS TILE, INC., DBA NAVILLUS	: Case No. 17-13162 (SHL)
CONTRACTING	:
	:
Debtor.	:
	:
-----X	

**DISCLOSURE STATEMENT WITH RESPECT TO  
CHAPTER 11 PLAN OF REORGANIZATION OF  
NAVILLUS TILE, INC. D/B/A NAVILLUS CONTRACTING  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

Dated: May 29, 2018

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CLAIMS AGAINST OR EQUITY INTERESTS IN NAVILLUS IN THIS CASE. YOU SHOULD CONSULT YOUR PERSONAL COUNSEL OR TAX ADVISOR WITH RESPECT TO ANY QUESTIONS OR CONCERNS REGARDING TAX, SECURITIES, OR OTHER LEGAL CONSEQUENCES OF THE PLAN.

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Exhibit B	Pro Forma Financial Projections
Exhibit C	Liquidation Analysis

## I. INTRODUCTION

Navillus Tile, Inc., d/b/a Navillus Contracting, as debtor and debtor-in-possession (“Navillus” or the “Debtor”), submits this disclosure statement (the “Disclosure Statement”) pursuant to section 1125 of title 11 of the United States Code (the “Bankruptcy Code”), for use in the solicitation of votes on the Chapter 11 Plan of Reorganization of Navillus Tile, Inc. d/b/a Navillus Contracting Under Chapter 11 of the Bankruptcy Code, dated May 29, 2018 (the “Plan”). **A copy of the Plan is attached as Exhibit A to this Disclosure Statement. All capitalized terms used in this Disclosure Statement but not otherwise defined herein have the meanings ascribed to such terms in Article I of the Plan.**

This Disclosure Statement sets forth certain information regarding Navillus’ prepetition operating and financial history, its reasons for seeking protection and reorganization under chapter 11, significant events that have occurred during the Chapter 11 Case and the anticipated organization, operations, and financing of Navillus upon its successful emergence from chapter 11.

This Disclosure Statement also describes certain terms and provisions of the Plan, certain effects of confirmation of the Plan, certain risk factors associated with the Plan, and the manner in which Distributions will be made under the Plan. In addition, this Disclosure Statement discusses the confirmation process and the voting procedures that Holders of Claims entitled to vote under the Plan must follow for their votes to be counted.

**NAVILLUS BELIEVES THAT THE PLAN WILL ENABLE IT TO SUCCESSFULLY REORGANIZE AND ACCOMPLISH THE OBJECTIVES OF CHAPTER 11 AND THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTERESTS OF NAVILLUS AND ITS CREDITORS AND EQUITY HOLDERS. NAVILLUS URGES HOLDERS TO VOTE TO ACCEPT THE PLAN.**

## II. OVERVIEW OF THE PLAN

The following is a brief overview of the material provisions of the Plan and is qualified in its entirety by reference to the full text of the Plan. For a more detailed description of the terms and provisions of the Plan, see Article VII of this Disclosure Statement, entitled “Summary of the Plan of Reorganization.”

### A. General Structure of the Plan

The Plan is a plan of reorganization that provides for the reorganization of Navillus as a going concern with the support of Liberty for future operations. The Plan will be funded by one or more of the following sources: Cash on hand, the Exit Facility, the Reorganized Navillus Notes and/or the New Capital Contribution. Alternatively, Navillus reserves the right in its sole discretion to seek to fund Distributions under the Plan through the proceeds of the liquidation of its assets, either through (x) a sale of substantially all of its assets pursuant to section 363 of the Bankruptcy Code or (y) the wind-down of its construction operations and orderly liquidation of assets. The Plan divides Holders of Claims against and Equity Interests in Navillus into seven (7) separate Classes based on the nature of their legal rights, three (3) of which are Impaired, three (3) of which are

Unimpaired and one (1) with respect to which Impaired or Unimpaired status is contingent on the outcome of the Navillus Appeal and the Auction. The Plan also provides for Distributions to Holders of Claims in four (4) unclassified categories comprised of Administrative Claims, Professional Fee Claims, Priority Tax Claims and the Liberty DIP Loan Claim.

Distributions to certain Classes of Claims and Equity Interests will be contingent on the outcome of the pending Navillus Appeal and will be held in a Distribution Reserve until the Navillus Appeal is decided. The Navillus Appeal of the District Court Judgment is currently pending before the Second Circuit Court of Appeals, and Navillus strongly believes that it will prevail in the Navillus Appeal, thus resulting in the Disallowance of a substantial portion of the Claims pending against the Estate.

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

The Plan divides holders of Claims against and Equity Interests in Navillus into separate Classes based on the nature of the Claims and the legal rights related to each Claim. In addition, the Plan provides for payment of unclassified Administrative Claims, Professional Fee Claims, Priority Tax Claims and the Liberty DIP Loan Claim.

The table below summarizes the classification and treatment of the Claims and Equity Interests under the Plan, together with projected estimated recoveries for holders of Allowed Claims and Equity Interests. Estimated Claim amounts are calculated as of the Petition Date, subject to the outcome of the Claims allowance process to date. Estimated percentage recoveries are also set forth below for certain Classes of Claims. Estimated percentage recoveries have been calculated based upon a number of assumptions, including the estimated amount of Allowed Claims in each Class.

For certain Classes of Claims, the actual amounts of Allowed Claims could materially exceed or could be materially less than the estimated amounts shown in the table that follows. The amounts set forth herein as estimated recoveries on account of Claims and Equity Interests are based on known Claims, and to the extent any additional Claims are filed against Navillus consistent with the terms of the Plan, the estimated recoveries set forth herein could vary. Navillus has not yet fully reviewed and analyzed all Claims and Equity Interests. The deadline for filing proofs of Claims and Equity Interests was February 14, 2018. Estimated Claim amounts for each Class set forth below are based upon Navillus' review of its books and records, filed Proofs of Claim, the outcome of the Claims allowance process to date, and include estimates of a number of Claims that are contingent, disputed, and/or unliquidated.

DESCRIPTION AND AMOUNT OF CLAIMS OR EQUITY INTERESTS	SUMMARY OF TREATMENT
Unclassified: Administrative Claims	<ul style="list-style-type: none"> <li>• Unimpaired</li> <li>• Each Holder of an Allowed Administrative Claim shall receive, in full and complete settlement, release, and</li> </ul>

DESCRIPTION AND AMOUNT OF CLAIMS OR EQUITY INTERESTS	SUMMARY OF TREATMENT
<p>Current Aggregate Amount of Claims: \$65,647.10</p> <p>Estimated Aggregate Allowed amount of Administrative Claims: TBD</p>	<p>discharge of such Claim, Cash in an amount equal to the Allowed amount of its Administrative Claim on or as soon as reasonably practicable after the Effective Date, or receive such less favorable treatment as may be agreed by such Holder and Navillus; <u>provided, however</u>, that the Allowed Administrative Claims representing liabilities incurred in the ordinary course of business by Navillus shall be paid in full and performed by Navillus in the ordinary course of business according to normal and customary terms existing between the parties. Notwithstanding the immediately preceding sentence, Administrative Claims of the U.S. Trustee for fees pursuant to 28 U.S.C. § 1930(a)(6) shall be paid in accordance with the applicable schedule for payment of such fees.</p> <ul style="list-style-type: none"> <li>• Not entitled to vote on the Plan.</li> <li>• Estimated Recovery: 100%</li> </ul>
<p>Unclassified: Professional Fee Claims</p> <p>Current Aggregate Amount of Claims: N/A</p> <p>Estimated Aggregate Allowed amount of Professional Fee Claims: \$6,000,000</p>	<ul style="list-style-type: none"> <li>• Unimpaired</li> <li>• Each Holder of an Allowed Professional Fee Claim for services rendered through the Confirmation Date shall receive Cash in an amount equal to the Allowed amount of such Professional Fee Claim on or as soon as reasonably practicable after the later of (a) the Effective Date or (b) the date such Professional Fee Claim becomes Allowed, or shall receive such other less favorable treatment as may be agreed by such Holder and Navillus.</li> <li>• Not entitled to vote on the Plan.</li> <li>• Estimated Recovery: 100%</li> </ul>
<p>Unclassified: Priority Tax Claims</p> <p>Current Aggregate Amount of Claims: \$2,124,255.45</p>	<ul style="list-style-type: none"> <li>• Unimpaired</li> <li>• Unless otherwise agreed to by Navillus and the Holder of an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall receive, in the sole discretion of Navillus, and in full and complete settlement, release, and discharge of such Claim: (i) Cash in the amount equal to such Allowed Priority Tax Claim on or as soon as reasonably practicable after the later of (a) the</li> </ul>

DESCRIPTION AND AMOUNT OF CLAIMS OR EQUITY INTERESTS	SUMMARY OF TREATMENT
<p>Estimated Aggregate Allowed amount of Priority Tax Claims: \$1,681,462.56</p>	<p>Effective Date or (b) the date such Priority Tax Claim becomes Allowed; or (ii) Cash equal to the amount of such Allowed Priority Tax Claim, together with interest at the applicable rate under section 511 of the Bankruptcy Code (or such lesser rate as is agreed to by the Holder of such Allowed Priority Tax Claim), payable over a period ending no later than five (5) years from the Petition Date; <u>provided, however</u>, that Navillus reserves the right to prepay such amounts at any time under the latter option.</p> <ul style="list-style-type: none"> <li>• Not entitled to vote on the Plan.</li> <li>• Estimated Recovery: 100%</li> </ul>
<p>Unclassified: Liberty DIP Loan Claim</p> <p>Current Aggregate Amount of Claims: \$0.00</p> <p>Estimated Aggregate Allowed amount of Liberty DIP Loan Claim: TBD</p>	<ul style="list-style-type: none"> <li>• Unimpaired.</li> <li>• Unless otherwise agreed to by Navillus and Liberty, on or as soon as reasonably practicable after the Effective Date, Liberty shall be paid in full in Cash all outstanding DIP Obligations, if any, as of the Effective Date.</li> <li>• Not entitled to vote on the Plan.</li> <li>• Estimated Recovery: 100%</li> </ul>
<p>Class 1: Article 3A Claims</p> <p>Current Aggregate Amount of Claims: \$11,342,696.00</p> <p>Estimated Aggregate Allowed amount of Class 1 Claims: TBD following payment in ordinary course of business</p>	<ul style="list-style-type: none"> <li>• Unimpaired</li> <li>• Class 1 consists of Article 3A Claims against Navillus.</li> <li>• The legal, equitable and contractual rights of the Holders of Allowed Class 1 Claims will be unaltered by the Plan. On the Effective Date, each Holder of an Allowed Article 3A Claim shall receive in full, final and complete satisfaction, settlement, release, and discharge of such Claim, payment in full in Cash of the Allowed Article 3A Claim, or reinstatement and subsequent payment of such Allowed Article 3A Claim, in the ordinary course of business, each in accordance with the provisions of Article 3A and such agreements and terms as existing as of the Petition Date, which agreements will continue in full force and effect</li> </ul>

DESCRIPTION AND AMOUNT OF CLAIMS OR EQUITY INTERESTS	SUMMARY OF TREATMENT
	<ul style="list-style-type: none"> <li>• Not entitled to vote on the Plan.</li> <li>• Estimated Recovery: 100%</li> </ul>
<p>Class 2: Other Secured Claims</p> <p>Current Aggregate Amount of Claims: \$3,839,566.06</p> <p>Estimated Aggregate Allowed amount of Class 2 Claims: \$3,839,566.06</p>	<ul style="list-style-type: none"> <li>• Unimpaired</li> <li>• Class 2 consists of all Other Secured Claims against Navillus.</li> <li>• On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Other Secured Claim shall receive, in full, final and complete satisfaction, settlement, release, and discharge of such Claim, in the sole discretion of Navillus: (i) reinstatement and Unimpairment of its Allowed Other Secured Claim in accordance with section 1124(2) of the Bankruptcy Code, or (ii) in exchange for such Other Secured Claim, either (a) Cash in the full amount of such Allowed Other Secured Claim, including any reasonable postpetition interest accrued pursuant to section 506(b) of the Bankruptcy Code, (b) the proceeds of the sale or disposition of the collateral securing such Allowed Other Secured Claim to the extent of the value of the Holder's secured interest in such collateral, (c) the collateral securing such Allowed Other Secured Claim and any reasonable interest on such Allowed Other Secured Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, or (d) such other distribution as necessary to satisfy the requirements of section 1129 of the Bankruptcy Code. In the event Navillus sells or otherwise disposes of the collateral securing any Allowed Other Secured Claim, all expenses relating thereto, including but not limited to transportation, shipping and storage expenses, shall be borne by the Holder of the Class 2 Other Secured Claim.</li> <li>• Not entitled to vote on the Plan.</li> <li>• Estimated Recovery: 100%</li> </ul>
<p>Class 3: Other Priority Claims</p> <p>Current Aggregate Amount</p>	<ul style="list-style-type: none"> <li>• Unimpaired</li> <li>• Class 3 consists of nine (9) Other Priority Claims against Navillus. Five (5) of the Claims classified as Other Priority Claims are based on alter ego liability allegedly arising out of or relating to the District Court Judgment and are Disputed Claims that are subject to objection on</li> </ul>

DESCRIPTION AND AMOUNT OF CLAIMS OR EQUITY INTERESTS	SUMMARY OF TREATMENT
<p>of Claims: \$10,698,129.12</p> <p>Estimated Aggregate Allowed amount of Class 3 Claims: \$38,869.49</p>	<p>the grounds that such Other Priority Claims are incorrectly classified, among other things. The remaining four (4) Other Priority Claims assert direct Claims against Navillus not relating to the District Court Judgment.</p> <ul style="list-style-type: none"> <li>• With respect to the four (4) Class 3 Other Priority Claims that are not arising out of or relating to the District Court Judgment, on the Effective Date or as soon as reasonably practicable thereafter, each Holder of an Allowed Other Priority Claim shall receive, in full, final and complete satisfaction, settlement, release, and discharge of such Claim, Cash in the amount equal to such Allowed Other Priority Claim.</li> <li>• With respect to the remainder of the Class 3 Other Priority Claims, the treatment of such Claims shall be contingent on the resolution of pending objections to Claims and/or the outcome of the Navillus Appeal from the District Court Judgment, as follows: <ul style="list-style-type: none"> <li>i. In the event the Navillus Appeal results in the reversal of the District Court Judgment, there shall be no Allowed Claims in Class 3 arising out of or relating to the District Court Judgment and Union Funds Appeal.</li> <li>ii. In the event the Navillus Appeal results in either: (x) a remand to the District Court, or (y) the District Court Judgment being affirmed, each Holder of an Allowed Other Priority Claim shall receive, in the sole discretion of Navillus, in full, final and complete satisfaction, settlement, release, and discharge of such Claim, unless any Holder agrees to less favorable treatment of its Claim: (i) Cash in the amount equal to such Allowed Other Priority Claim on or as soon as practicable after the later of (a) the Appeal Determination Date or (b) the date such Claim becomes Allowed; or (ii) Cash equal to the amount of such Allowed Other Priority Claim, together with interest at the applicable statutory rate (or such lesser rate as is agreed to by the Holder of such Allowed Other Priority Claim), payable over a period ending no later than five (5) years from the Petition Date; <u>provided, however</u>, that Navillus reserves the right to prepay such amounts at any time under the latter option.</li> </ul> </li> </ul>

DESCRIPTION AND AMOUNT OF CLAIMS OR EQUITY INTERESTS	SUMMARY OF TREATMENT
	<ul style="list-style-type: none"> <li>• Not entitled to vote on the Plan.</li> <li>• Estimated Recovery: 100%</li> </ul>
<p>Class 4 Liberty Unsecured Bond Claim</p> <p>Current Aggregate Amount of Claims: \$802,086,194.28</p> <p>Estimated Aggregate Allowed amount of Class 4 Claims: \$907,792.88 non-Contingent \$801,149,367 Contingent</p>	<ul style="list-style-type: none"> <li>• Impaired</li> <li>• Class 4 consists of the Liberty Unsecured Bond Claim against Navillus.</li> <li>• The treatment of the Class 4 Liberty Unsecured Bond Claim shall be contingent on the outcome of the Navillus Appeal from the District Court Judgment, as follows: <ul style="list-style-type: none"> <li>i. In the event the Navillus Appeal results in the reversal of the District Court Judgment, Liberty shall receive payment in full of the non-Contingent portion of the Allowed amount of its Claim, either from Cash on hand and/or the Reorganized Navillus Notes from the Distribution Reserve. Distributions to the Holder of the Class 4 Claim will be made following the later of the Appeal Determination Date and when all objections to Claims are either resolved or ruled on by the Bankruptcy Court.</li> <li>ii. In the event the Navillus Appeal results in either: (x) a remand to the District Court, or (y) the District Court Judgment being affirmed, Liberty shall receive, on account of the non-Contingent portion of the Allowed amount of its Claim, its Pro Rata share of Reorganized Navillus Notes from the Distribution Reserve. Distributions to the Holder of the Class 4 Claim will be made following the later of the Appeal Determination Date and when all objections to Claims are either resolved or ruled on by the Bankruptcy Court.</li> </ul> </li> <li>• Entitled to vote to accept or reject the Plan.</li> <li>• Estimated Recovery: TBD</li> </ul>
<p>Class 5: General Unsecured Trade Claims</p> <p>Current Aggregate Amount</p>	<ul style="list-style-type: none"> <li>• Impaired</li> <li>• Class 5 consists of General Unsecured Trade Claims against Navillus.</li> <li>• The treatment of Class 5 General Unsecured Trade Claims</li> </ul>

DESCRIPTION AND AMOUNT OF CLAIMS OR EQUITY INTERESTS	SUMMARY OF TREATMENT
<p>of Claims: \$40,421,514.93</p> <p>Estimated Aggregate Allowed amount of Class 5 Claims: Approximately \$28,921,514.93</p>	<p>shall be contingent on the outcome of the Navillus Appeal from the District Court Judgment, as follows:</p> <ul style="list-style-type: none"> <li>i. In the event the Navillus Appeal results in the reversal of the District Court Judgment, each Holder of a General Unsecured Trade Claim shall receive payment in full the Allowed amount of its Claim, either from Cash on hand and/or the Reorganized Navillus Notes from the Distribution Reserve. Distributions will be made to Holders of General Unsecured Trade Claims following the later of the Appeal Determination Date and when all objections to Claims are either resolved or ruled on by the Bankruptcy Court.</li> <li>ii. In the event the Navillus Appeal results in either: (x) a remand to the District Court, or (y) the District Court Judgment being affirmed, each Holder of a General Unsecured Trade Claim shall receive its Pro Rata share of Reorganized Navillus Notes from the Distribution Reserve. Distributions will be made to Holders of General Unsecured Trade Claims following the later of the Appeal Determination Date and when all objections to Claims are either resolved or ruled on by the Bankruptcy Court.</li> </ul> <ul style="list-style-type: none"> <li>• Class 5 is Impaired, and Holders of Class 5 Claims will be entitled to vote to accept or reject the Plan.</li> <li>• Estimated Recovery: TBD</li> </ul>

DESCRIPTION AND AMOUNT OF CLAIMS OR EQUITY INTERESTS	SUMMARY OF TREATMENT
<p>Class 6: Pending Litigation Related Claims</p> <p>Current Aggregate Amount of Claims: \$164,776,585.93</p> <p>Estimated Aggregate Allowed amount of Class 6 Claims: Approximately \$0</p>	<ul style="list-style-type: none"> <li>• Impaired</li> <li>• Class 6 consists of Pending Litigation Related Claims against Navillus.</li> <li>• The treatment of Class 6 Pending Litigation Related Claims shall be contingent on the outcome of the Navillus Appeal from the District Court Judgment, as follows: <ul style="list-style-type: none"> <li>i. In the event the Navillus Appeal results in the reversal of the District Court Judgment, then there shall be no Allowed Claims in Class 6.</li> <li>ii. In the event the Navillus Appeal results in either: (x) a remand to the District Court, or (y) the District Court Judgment being affirmed, each Holder of a Pending Litigation Related Claim shall receive its Pro Rata share of Reorganized Navillus Notes from the Distribution Reserve. Distributions will be made to Holders of Pending Litigation Related Claims following the occurrence of the Appeal Determination Date and when all objections to Claims are either resolved or ruled on by the Bankruptcy Court.</li> </ul> </li> <li>• Class 6 is Impaired, and Holders of Class 6 Claims will be entitled to vote to accept or reject the Plan.</li> </ul>
<p>Class 7: Equity Interests</p> <p>Current Aggregate Amount of Equity Interests: N/A</p> <p>Estimated Aggregate Allowed amount of Class 7 Equity Interests: 100% or 0%</p>	<ul style="list-style-type: none"> <li>• Impaired</li> <li>• Class 7 consists of the Equity Interests in Navillus held by the Donal O'Sullivan Revocable Living Trust and Donal O'Sullivan IDGT II.</li> <li>• In the event the Navillus Appeal results in the reversal of the District Court Judgment, and <ul style="list-style-type: none"> <li>i. the current Holders (or beneficial Holders) of the Equity Interests are the New Value Sponsor following an Auction (or if no other Qualified Bids are received and the Auction is cancelled), then the current Holders of the Class 7 Equity Interests shall retain their Equity Interests in Navillus.</li> <li>ii. the current Holders (or beneficial Holders) of the Equity Interests are not the New Value Sponsor following an Auction, then the Equity Interests in</li> </ul> </li> </ul>

DESCRIPTION AND AMOUNT OF CLAIMS OR EQUITY INTERESTS	SUMMARY OF TREATMENT
	<p>Navillus shall be cancelled and new Equity Interests shall be issued to the New Value Sponsor for and in consideration of the New Capital Contribution.</p> <ul style="list-style-type: none"> <li>• In the event the Navillus Appeal results in either: (x) a remand to the District Court, or (y) the District Court Judgment being affirmed, then the Equity Interests in Navillus shall be treated as follows: <ul style="list-style-type: none"> <li>i. The Equity Interests in Navillus shall be cancelled and new Equity Interests shall be issued to the New Value Sponsor for and in consideration of the New Capital Contribution. In this instance, the current Holders (or beneficial Holders) of the Equity Interests shall receive no Distribution under the Plan on account of their cancelled Equity Interests.</li> </ul> </li> <li>• Potential impairment and voting of Class 7 is subject to the outcomes of the Auction of the Equity Interests and the Navillus Appeal: <ul style="list-style-type: none"> <li>i. If the current Holders (or beneficial Holders) of the Equity Interests are the New Value Sponsor following an Auction (or if no other Qualified Bids are received and the Auction is cancelled), Class 7 is Unimpaired, and the Holders of Class 7 Equity Interests shall be conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 7 Equity Interests shall not be entitled to vote to accept or reject the Plan.</li> <li>ii. If the current Holders (or beneficial Holders) of the Equity Interests are not the New Value Sponsor following an Auction, and/or if the Navillus Appeal results in either: (x) a remand to the District Court, or (y) the District Court Judgment being affirmed, Class 7 shall not receive or retain any property under the Plan, and the Holders of Class 7 Equity Interests shall be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, the Holders of Class 7 Equity Interests shall not be entitled to vote to accept or reject the Plan.</li> </ul> </li> </ul>

### **III. PLAN VOTING INSTRUCTIONS AND PROCEDURES**

#### **A. Notice to Holders of Claims and Equity Interests in Navillus**

Approval by the Bankruptcy Court of this Disclosure Statement means that the Bankruptcy Court has found that this Disclosure Statement contains information of a kind and in sufficient and adequate detail to enable Holders of Claims entitled to vote on the Plan to make an informed judgment about whether to accept or reject the Plan. THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE EITHER A GUARANTEE OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN OR AN ENDORSEMENT OF THE PLAN BY THE BANKRUPTCY COURT.

IF THE PLAN IS APPROVED BY THE REQUISITE VOTE OF HOLDERS OF CLAIMS AND EQUITY INTERESTS ENTITLED TO VOTE AND IS SUBSEQUENTLY CONFIRMED BY THE BANKRUPTCY COURT, THE PLAN WILL BIND ALL HOLDERS OF CLAIMS AGAINST, AND EQUITY INTERESTS IN, NAVILLUS, WHETHER OR NOT THEY WERE ENTITLED TO VOTE OR DID VOTE ON THE PLAN AND WHETHER OR NOT THEY RECEIVE OR RETAIN ANY DISTRIBUTIONS OR PROPERTY UNDER THE PLAN. ADDITIONALLY, THE RELEASES SET FORTH IN SECTION 12.01(c) OF THE PLAN WILL BIND ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS WHO DO NOT TIMELY AND PROPERLY RETURN A BALLOT WITH THE APPLICABLE OPT OUT OF THE RELEASES MARKED, WHETHER OR NOT THEY WERE ENTITLED TO VOTE OR DID VOTE ON THE PLAN AND WHETHER OR NOT THEY RECEIVE OR RETAIN ANY DISTRIBUTIONS OR PROPERTY UNDER THE PLAN. ALL HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN NAVILLUS ENTITLED TO VOTE ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND ITS EXHIBITS CAREFULLY AND IN THEIR ENTIRETY BEFORE DECIDING TO VOTE EITHER TO ACCEPT OR REJECT THE PLAN.

THIS DISCLOSURE STATEMENT AND THE PLAN ARE THE ONLY DOCUMENTS AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES TO ACCEPT OR REJECT THE PLAN. No solicitation of votes may be made except after distribution of this Disclosure Statement, and no person has been authorized to distribute any information concerning Navillus other than the information contained herein.

#### **B. Voting Rights**

Pursuant to the Bankruptcy Code, only holders of allowed claims or equity interests in classes of claims or equity interests that are "impaired" and not deemed to have rejected a plan are entitled to vote to accept or reject the plan. Any claim or equity interest holder whose legal, contractual or equitable rights are altered, modified or changed by the proposed treatment under a plan or whose treatment under the Plan is not provided for in section 1124 of the Bankruptcy Code is considered "impaired."

Under the Plan, Holders of Allowed Claims in Classes 1, 2 and 3 are Unimpaired and deemed to have accepted the Plan. Holders of Claims and Equity Interests in Classes 4, 5 and 6 are Impaired and entitled to vote on the Plan (the “Voting Classes”). Holders of Equity Interest in Class 7 will be either Impaired or Unimpaired, subject to the outcome of the Navillus Appeal and the Auction. In either case, Holders of Equity Interests in Class 7 are not entitled to vote on the Plan because such Holders will be either deemed to accept or deemed to reject. The determination as to whether a Class of Claims or Equity Interests is Impaired is based on Navillus’ projected estimated recoveries and analysis of the legal nature of the treatment of the Claims and Equity Interests under the Plan.

The Bankruptcy Code defines “acceptance” of a plan by a class of claims as acceptance by creditors in that class that hold at least two-thirds in dollar amount and more than one-half in number of the allowed claims that cast ballots for acceptance of the plan. For a more detailed description of the requirements for confirmation of the Plan, see Article VIII – “Confirmation of the Plan”.

If a Class of Claims or Equity Interests entitled to vote on the Plan rejects the Plan or is deemed to have rejected the Plan, Navillus reserves the right to amend and revise the Plan or request confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code, or both. Section 1129(b) of the Bankruptcy Code enables the confirmation of a chapter 11 plan notwithstanding the rejection of a plan by one or more impaired classes of claims and equity interests. Under that section, a plan may be confirmed by a bankruptcy court if it complies with section 1129(a) of the Bankruptcy Code (except for 1129(a)(8)) and as to the rejecting class does not “discriminate unfairly” and is “fair and equitable” with respect to each rejecting class. For a more detailed description of the requirements for confirmation of a non-consensual plan, see Section VIII.E.

The date of entry of the Disclosure Statement Order is fixed as the “Voting Record Date.” Only Persons who hold Allowed Claims on the Voting Record Date are entitled to receive a copy of this Disclosure Statement and all of the related materials. Only Persons who hold Claims on that date that are Impaired under the Plan and are not deemed to reject the Plan are entitled to vote on the Plan.

### **C. Solicitation Materials**

In soliciting votes for the Plan pursuant to this Disclosure Statement, Navillus, through its voting agent, Garden City Group, LLC (the “Voting Agent”), will send to Holders of Claims who are entitled to vote copies of (a) this Disclosure Statement and the Plan (or notice of how to access such copies, to the extent approved by Order of the Bankruptcy Court), (b) the notice of, among other things, (i) the date, time, and place of the hearing to consider confirmation of the Plan and related matters and (ii) the deadline for filing objections to confirmation of the Plan (the “Confirmation Hearing Notice”), (c) one or more Ballots (and return envelopes) to be used in voting to accept or to reject the Plan, and (d) other materials as authorized by the Bankruptcy Court, as more fully set forth in the Disclosure Statement Order.

If you are the Holder of a Claim or Equity Interest who believes you are entitled to vote on the Plan, but you did not receive a Ballot or your Ballot is damaged or illegible, or if you have any questions concerning voting procedures, you should contact the Voting Agent:

**If by first class mail:**

Navillus Tile, Inc. Case Administration  
c/o GCG  
P.O. Box 10446  
Dublin, Ohio 43017-4046

**If by hand-delivery or overnight mail:**

Navillus Tile, Inc. Case Administration  
c/o GCG  
5151 Blazer Parkway, Suite A  
Dublin, Ohio 43017

**D. Voting Procedures, Ballots, and Voting Deadline**

After carefully reviewing the Plan, this Disclosure Statement, and the detailed instructions accompanying your Ballot, you are asked to indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the accompanying Ballot.

In voting to accept or reject the Plan, you must use only the Ballot(s) sent to you with this Disclosure Statement. IN ORDER FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE PROPERLY COMPLETED AS SET FORTH ABOVE AND IN ACCORDANCE WITH THE VOTING INSTRUCTIONS ON THE BALLOT AND RECEIVED BY THE VOTING AGENT NO LATER THAN [\_\_\_\_\_] EASTERN TIME (THE “VOTING DEADLINE”) AT THE FOLLOWING ADDRESS:

**If by first class mail:**

Navillus Tile, Inc. Case Administration  
c/o GCG  
P.O. Box 10446  
Dublin, Ohio 43017-4046

**If by hand-delivery or overnight mail:**

Navillus Tile, Inc. Case Administration  
c/o GCG  
5151 Blazer Parkway, Suite A  
Dublin, Ohio 43017

ANY BALLOTS RECEIVED AFTER THE VOTING DEADLINE WILL NOT BE COUNTED UNLESS OTHERWISE ORDERED BY THE BANKRUPTCY COURT. ANY BALLOTS CAST BY FACSIMILE, E-MAIL OR OTHER ELECTRONIC MEANS WILL NOT BE ACCEPTED UNLESS OTHERWISE ORDERED BY THE BANKRUPTCY COURT. BALLOTS THAT ARE RECEIVED BUT NOT SIGNED WILL NOT BE COUNTED. The Voting Agent will prepare and file with the Court a certification of the results of the balloting with respect to the Plan.

If you have any questions about (a) the procedure for voting your Claim or Equity Interest, (b) the packet of materials that you have received, or (c) the amount of your Claim, or if you wish to obtain, at your own expense (unless otherwise specifically required by Bankruptcy Rule 3017(d)), an additional copy of the Plan, this Disclosure Statement, the Plan Supplement (once filed), or any appendices or exhibits to such documents, please contact the Voting Agent the address specified above or the undersigned counsel to Navillus at (516) 357-3700.

For further information and general instructions on voting to accept or reject the Plan, see Article XII of this Disclosure Statement and the instructions accompanying your Ballot.

#### **E. Confirmation Hearing and Deadline for Objections to Confirmation**

Pursuant to section 1128 of the Bankruptcy Code and Bankruptcy Rule 3017(c), the Bankruptcy Court will hold the Confirmation Hearing commencing at \_\_:00 \_\_.m. (Eastern Time), on \_\_\_\_\_, 2018 at the United States Bankruptcy Court for the Southern District of New York, 1 Bowling Green, Courtroom 701, New York, New York 10004, before the Honorable Sean H. Lane, United States Bankruptcy Judge. The Confirmation Hearing may be adjourned from time to time without further notice. At the Confirmation Hearing, the Bankruptcy Court will (i) determine whether the requisite vote has been obtained from the Voting Classes, (ii) hear and determine objections, if any, to the Plan and to confirmation of the Plan that have not been previously disposed of, (iii) determine whether the Plan meets the confirmation requirements of the Bankruptcy Code, (iv) determine whether to confirm the Plan, and (v) grant such other and further relief as the Bankruptcy Court deems reasonable and appropriate.

Any objection to confirmation of the Plan must be in writing and filed with the Bankruptcy Court and served in a manner so as to be received on or before \_\_\_\_\_, 2018 at 5:00 p.m. Eastern Time by: (1) counsel to Navillus, Cullen and Dykman LLP, 100 Quentin Roosevelt Boulevard, Garden City, New York 11530, Attn: C. Nathan Dee, Esq. and Elizabeth M. Aboulafia, Esq.; (2) the Office of the United States Trustee for the Southern District of New York, Attn: Paul Schwartzberg, Esq., 201 Varick Street, Suite 1006, New York 10014; and (3) counsel to the Committee, Hahn & Hessen LLP, 488 Madison Avenue, New York, NY 10022, Attn: Mark T. Power, Esq. and Jeffrey Zawadzki, Esq.

#### **F. RECOMMENDATION**

**NAVILLUS BELIEVES THAT THE PLAN PROVIDES THE BEST RECOVERIES POSSIBLE FOR HOLDERS OF CLAIMS AND EQUITY INTERESTS IN**

**NAVILLUS AND STRONGLY RECOMMENDS THAT YOU VOTE TO ACCEPT THE PLAN.**

**IV. GENERAL INFORMATION CONCERNING NAVILLUS**

**A. Overview of Navillus' Corporate History**

Navillus is one of New York City's largest union contractors. Navillus serves primarily as a masonry subcontractor doing masonry, concrete, stone, tile, steel, restoration, repointing, roofing, carpentry, plastering and fireproofing on large union construction projects. In addition, Navillus works as a prime and general contractor on public restoration projects where it self-performs the majority of the work. Navillus works closely with many of New York's most prominent architects, builders, owners, government agencies and institutions and is pre-qualified by numerous commercial and government agencies.

As of the Petition Date, Navillus employed over seven hundred (700) individuals, including approximately six hundred forty (640) individuals to provide labor in connection with approximately sixty eight (68) open construction projects and approximately sixty five (65) individuals at the management level and to provide home office support. The level of field labor varies depending on the volume of open construction projects, and Navillus employs up to approximately one thousand six hundred (1,600) field laborers during peak times.

Navillus operates its business from a midtown Manhattan headquarters which it has leased since 2015. Navillus also leases yard space in Long Island City, Queens where it stores construction equipment and its fleet of vehicles. On average, Navillus has gross annual income of approximately \$180 million. In the 2016 calendar year, Navillus had gross contract revenues of approximately \$240 million.

Navillus is obligated to approximately twenty (20) trade unions through collective bargaining agreements ("CBAs") with the Building Contractors Association ("BCA"), Project Labor Agreements ("PLAs"), and/or independent CBAs. Navillus is one of the largest contributors to union funds in the New York metropolitan area, having contributed more than \$172 million to the New York union funds in the last five (5) years alone.

**B. Navillus' Equity Structure**

Navillus was formed in 1987 as a New York corporation. Navillus has become, largely under the direction of Donal O'Sullivan ("DOS"), one of the largest diversified union construction firms in New York City. In or around March 2017, DOS transferred his ownership interests to the Donal O'Sullivan Revocable Living Trust and Donal O'Sullivan IDGT II. The Donal O'Sullivan Revocable Living Trust, of which DOS is the trustee, owns 2 voting shares and 99 non-voting shares in Navillus. The Donal O'Sullivan IDGT II, of which Helen O'Sullivan is the trustee, owns 99 non-voting shares in Navillus.

DOS remains the sole director, President and Chief Executive Officer of Navillus.

## **C. Navillus' Prepetition Capital Structure**

### **1. *The Liberty Indemnity Agreements***

Prior to the Petition Date, on or around October 24, 1995, December 12, 2006 and March 15, 2007, Navillus, Donal O'Sullivan, individually and Kathleen O'Sullivan, individually, and certain other individuals and non-debtor entities executed General Agreements of Indemnity (collectively, the "Indemnity Agreements") in favor of Liberty and for the purpose of obtaining bonding for Navillus' construction operations.

In the Indemnity Agreements, the Indemnitors agreed, among other things, to exonerate, hold harmless and indemnify Liberty from and against any and all liability for losses, fees, costs and expenses incurred by Liberty, *inter alia*, as a result of executing certain surety bonds to guarantee (i) the performance of various contracts (the "Bonded Contracts") and (ii) the payment of certain obligations of Navillus with respect to the Bonded Contracts (the "Bonds").

### **2. *The Signature Pre-Petition Credit Facility and Signature Financial Equipment Loans***

Prior to the Petition Date, Navillus had a thirteen million (\$13,000,000) dollar line of credit (the "LOC") with Signature Bank, N.A. ("Signature") which was secured by all personal property assets of Navillus. Following entry of the District Court Judgment and the Union Funds' commencement of enforcement action, Signature froze Navillus' access to the LOC and, as a result, Navillus no longer had any ability to borrow from Signature under the LOC. As of the Petition Date, there were no amounts outstanding under the LOC, and the LOC expired by its terms on November 29, 2017.

Prior to the Petition Date, Navillus entered into equipment loans with Signature Financial LLC ("Signature Financial") secured by a 2015 Toyota 8FDU25 Forklift and a 2014 Kenworth T800 truck (the "Equipment"). As of the Petition Date, approximately \$68,080 remained due and owing Signature Financial on account of the loans secured by the Equipment.

## **D. The Union Funds Litigation**

In October 2014, Navillus was named as a defendant in a lawsuit (the "District Court Action") in the United States District Court for the Southern District of New York (the "District Court") brought by five union pension and welfare benefit funds (the "Union Funds")<sup>1</sup> against

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<sup>1</sup> The Union Funds which brought the action in the District Court are: (1) Metal Lathers Local 46 Pension Fund, Metal Lathers Local 46 Trust Fund, Metal Lathers Local 46 Annuity Fund, Metal Lathers Local 46 Vacation Fund, Metal Lathers Local 46 Apprenticeship Fund, and Metal Lathers Local 46 Scholarship Fund (collectively, "Local 46 Funds"), which are sponsored by Metallic Lathers and Reinforcing Ironworks Local 46 ("Local 46"); (2) Cement & Concrete Workers Pension Trust Fund, Cement and Workers Welfare Trust Fund, Cement & Concrete Workers Annuity Trust Fund, Cement & Concrete Workers Scholarship Trust Fund, and Cement & Concrete Workers Training and Education Trust Fund (collectively, the "Cement Workers Funds"), which are sponsored by Cement and Concrete Workers District and its Affiliated Local Unions 6A, 18A and 20 (the "Cement Workers"); (3) Cement Mason' Local 780 Trust Fund, Cement Masons' Local 780 Pension Fund, Cement Masons' Local 780 Pension

Navillus and Advanced Contracting Solutions LLC (“ACS”), Times Square Construction (“TSC”), HDK Construction (“HDK”), Donal O’Sullivan, Kevin O’Sullivan and Helen O’Sullivan in the consolidated action styled as *Moore, et al. v. Navillus Tile, Inc., et al.* and *Gesualdi, et al. v. Navillus Tile, Inc., et al.* (Lead Case No. 14-cv-08326). On September 22, 2017, judgment was entered against Navillus in the District Court Action in the amount of \$76,222,733.32 (the “District Court Judgment”). The liability basis for the District Court Judgment was, in relevant part, a finding that ACS and TSC (for one project only) and HDK (for one project only) were alter egos of Navillus. On that basis, the District Court awarded the District Court Judgment to the Union Funds for damages arising out of allegedly unpaid fringe benefit contributions relating to hours worked by non-union employees on ASC and TSC’s construction projects during the period from July 1, 2013 through June 21, 2016.

Navillus strongly believes that the Judgment was wrongly decided and, on September 26, 2017, Navillus timely filed a notice of appeal (the “Navillus Appeal”) of the District Court Judgment to the United States Court of Appeals for the Second Circuit (the “Second Circuit”) where it is presently pursuing appellate remedies to overturn or, at the very least, substantially reduce, the District Court Judgment. (Docket Nos. 17-2985(L), 17-3028(Con.), 17-3182(Con.)).

#### **E. Events Leading to the Filing of the Chapter 11 Case**

Navillus’ chapter 11 filing was precipitated by the District Court Judgment and related enforcement action taken by the Union Funds, as well as the operational impacts stemming from the District Court Judgment. Outside of chapter 11 and after the Second Circuit denied Navillus’ request for a stay of execution of the District Court Judgment pending appeal, the Union Funds commenced with execution on the District Court Judgment including through serving restraining notices and a levy, resulting in the freezing of Navillus’ bank accounts and bringing operations to a halt.

Entry of the District Court Judgment also led to numerous issues on Navillus’ two largest open construction projects. On October 3, 2017 and October 5, 2017, Tishman Construction Company of New York, Inc. (“Tishman”), in its capacity as construction manager on Navillus’ two largest construction projects – One Vanderbilt Avenue (“the “OVA Project”) and Manhattan West – Northeast Tower (the “MW Project” and, together with the OVA Project, the “Tishman Projects”), respectively, issued notices of default and termination to Navillus, which Navillus ahs

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Fund, Cement Masons’ Local 780 Annuity Fund, Cement Masons’ Local 780 Vacation Fund and Cement Masons’ Local 780 Apprenticeship Fund (collectively, “Local 780 Funds”), which are sponsored by United Cement Masons’ Union Local 780 (“Local 780”); (4) New York City District Council of Carpenters Pension Fund, New York City District Council of Carpenters Welfare Fund, New York City District Council of Carpenters Apprenticeship Journeyman Retraining, Education and Industry Fund (collectively, the “Carpenters Funds”), which are sponsored by NYC District Council of Carpenters Locals 157 and 1556 (the “Carpenters”); and (5) the Trustees and Fiduciaries of the Local 282 Welfare Trust Fund, the Local 282 Pension Trust Fund, the Local 282 Annuity Trust Fund, the Local 282 Job Training Trust Fund, and the Local 282 Vacation and Sick Leave Trust Fund (the “Local 282 Funds”), which are sponsored by the Building Material Teamsters Local 282 (“Local 282”). Local 46, the Cement Workers, Local 780, the Carpenters and Local 282 are collectively referred to herein as the “Sponsoring Unions” and, together with the Union Funds, the “Union Parties”.

disputed. The Tishman Projects, with a combined contract value of over \$279 million and over \$190 million in work in progress remaining as of the Petition Date, accounted for approximately 40% of Navillus' work in progress as of the Petition Date.

Accordingly, Navillus determined that, given the size of the District Court Judgment, absent the protections of chapter 11, it was at risk of having its assets depleted and losing the contracts that comprise its sole source of revenues. In the exercise of its sound business judgment, Navillus filed this Chapter 11 Case to protect the value of Navillus' business for all of its constituencies.

As part of its reorganization strategy, Navillus determined that it would be in the best interest of the company and its Estate to employ Teneo Capital, LLC ("Teneo") to provide a chief restructuring officer and related support to Navillus to assist it with its reorganization strategy. Accordingly, on November 22, 2017, Navillus retained Teneo and Christopher K. Wu has been designated as Navillus' chief restructuring officer.

#### **F. Anticipated Future of Navillus**

As of the Petition Date, Navillus continued to perform work on sixty eight (68) construction projects with approximately five hundred forty three million (\$543,000,000) dollars' worth of remaining work in progress to be performed. During this Chapter 11 Case, Navillus has continued operating, including continuing to bid on new construction projects, and has remained current with payment of its operational liabilities in the ordinary course of business.

Navillus intends to reorganize pursuant to the Plan so that it may continue working on its backlog of future construction projects, bidding for new work and serving as a significant union employer in the New York construction market. With the New Bonding Facility and under the leadership of DOS, Navillus submits that Reorganized Navillus will be well poised to ramp up its construction operations during the post-Effective Date period. However, because the outcome of this Chapter 11 Case and the resolution of Claims is contingent on the Navillus Appeal, in the event the District Court Judgment is affirmed at the conclusion of the Navillus Appeal, Navillus reserves the right to modify the Plan to provide for the liquidation of substantially all of its assets, either through a sale pursuant to section 363 of the Bankruptcy Code or a staged wind-down of operations and orderly liquidation of assets.

### **V. THE CHAPTER 11 CASE**

#### **A. Commencement of the Case**

On November 8, 2017, Navillus commenced the Chapter 11 Case by filing a voluntary petition for relief Chapter 11 of the Bankruptcy Code in the Bankruptcy Court. Since the Petition Date, Navillus has continued to operate as a debtor in possession subject to the supervision of the Bankruptcy Court and in accordance with the Bankruptcy Code. Navillus is authorized to operate its business and manage its property in the ordinary course, with transactions outside of the ordinary course of business requiring Bankruptcy Court approval.

An immediate effect of the filing of Navillus' bankruptcy petition was the imposition of the automatic stay under the Bankruptcy Code which, with limited exceptions, enjoins the commencement or continuation of all collection efforts by creditors, the enforcement of liens against property of Navillus, and the continuation of litigation against Navillus. The relief provides Navillus with the "breathing room" necessary to assess and reorganize its business and prevents creditors from obtaining an unfair recovery advantage while the Chapter 11 Case is ongoing.

## **B. First Day Orders**

The first day hearing was held in the Chapter 11 Case before the Bankruptcy Court on November 9, 2017. At the hearings held on November 9, 2017 and during the succeeding weeks, the Bankruptcy Court considered certain requests for immediate relief filed by Navillus to facilitate the transition between Navillus' prepetition and postpetition business operations, and related objections, and entered the following orders:

- Interim and Final Orders (I) Authorizing the Debtor to Pay (A) Certain Prepetition Employee Obligations and (B) Prepetition Withholding Obligations, (II) Authorizing the Debtor to Continue Performing Under the Collective Bargaining Agreements (III) Authorizing the Debtor to Continue to Provide Employee Benefit Programs to Non-Union Employees; (IV) Directing Banks to Honor Related Prepetition Transfers; and (V) Granting Related Relief [Dkt. Nos. 31, 81]
- Interim and Final Orders (A) Authorizing the Debtor to (I) Continue its Cash Management System; (II) Maintain Existing Bank Accounts; (III) Receive a Waiver of Certain Operating Guidelines Relating to Bank Accounts, (IV) Receive a Waiver of the Requirements of 11 U.S.C. § 345; and (B) Immediately Vacating Certain Restraining Notices and Levy [Dkt. Nos. 30, 84]
- Interim and Final Orders (I) Prohibiting Utility Providers From Altering, Refusing, Or Discontinuing Utility Services, (II) Determining Adequate Assurance Of Payment For Future Utility Services, (III) Establishing Procedures For Determining Adequate Assurance Of Payment, And (IV) Granting Related Relief [Dkt. Nos. 66, 162]
- Interim and Final Orders (I) Authorizing the Debtor to (A) Continue to Maintain Prepetition Insurance Programs and (B) Pay or Honor Prepetition Obligations Arising Thereunder and (II) Granting Related Relief [Dkt. Nos. 82, 161]
- Order Extending Time To File Schedules Of Assets And Liabilities, Schedules Of Current Income And Expenditures, Schedules Of Executory

Contracts And Unexpired Leases, And Statement Of Financial Affairs, And (II) Granting Related Relief [Dkt. No. 67]

- Order Signed On 12/1/2017, Establishing Notice Procedures And A Master Service List [Dkt. No. 83]

### **C. Retention of Professionals**

During the Chapter 11 Case, the Bankruptcy Court has authorized the retention of various professionals by Navillus, including:

- Cullen and Dykman LLP, as bankruptcy counsel [Dkt. No. 153];
- Otterbourg, P.C., as special litigation and conflicts counsel [Dkt. No. 193];
- Jones Day, as special litigation and labor counsel [Dkt. No. 169];
- Grassi & Co., as financial advisors [Dkt. No. 189];
- Garden City Group, LLC, as claims and noticing agent Dkt. No. 190];
- Garden City Group, LLC, as administrative advisor [Dkt. No. 191];
- Mercer (US) Inc., as compensation consultant [Dkt. No. 374]; and
- Ordinary Course Professionals [Dkt. No. 217].

The fees and expenses of the professionals retained by Navillus are entitled to be paid by Navillus subject to approval by the Bankruptcy Court and in accordance with the *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals and (II) Granting Related Relief* [Dkt. No. 218]. In addition, by order of the Bankruptcy Court dated January 9, 2018, the Bankruptcy Court approved the retention of Teneo to provide Christopher K. Wu as chief restructuring officer of Navillus [Dkt. No. 178]. Pursuant to a stipulated order submitted by Navillus, the Committee and the U.S. Trustee, a fee examiner is to be appointed to act as special consultant to the Bankruptcy Court for professional fee and expense review [Dkt. No. 416].

### **D. Committee of Unsecured Creditors**

On November 28, 2017, the Office of the U.S. Trustee appointed the following three (3) alleged creditors to serve as members of the Committee: (i) NYC District Council of Carpenters Benefit Funds, (ii) Cement and Concrete Workers District Council Funds, and (iii) District Council of New York City & Vicinity of the United Brotherhood of Carpenters.

The Committee selected Hahn & Hessen LLP (“H&H”) to serve as its counsel and FTI Consulting, Inc. (“FTI”) as its financial advisors and, by orders of the Court dated January 19,

2018 and January 26, 2018, respectively, H&H and FTI were retained by the Committee. [Dkt. Nos. 200, 214]. Since the appointment of the Committee, Navillus has consulted with the Committee concerning the administration of the Chapter 11 Case.

## **E. DIP Financing**

Although Navillus had sufficient liquidity as of the Petition Date to maintain its ongoing operations, Tishman requested that Liberty provide Navillus with backstop financing to ensure its continued progress on the Tishman Projects, and multiple other project owners raised similar concerns regarding Navillus' liquidity and ability to complete work in light of the chapter 11 filing. On November 21, 2017, Navillus filed a motion (the "DIP Motion" at Dkt. No. 57) seeking authority to obtain secured post-petition financing on a superpriority basis up to the aggregate amount of \$135,000,000 (the "DIP Facility") pursuant to the terms and conditions of the DIP Financing Agreement, by and among Navillus and the non-debtor Indemnitors as borrowers and Liberty, as lender. To secure the DIP Obligations, Navillus granted Liberty a first priority lien on and security interest in all of Navillus' assets directly related to the Bonded Contracts, except for the Equipment subject to Signature Financial's security interest, and a superpriority claim for post-petition borrowings and losses and certain prepetition unreimbursed losses on the Tishman Projects. Pursuant to the DIP Order entered on December 21, 2017, the DIP Facility was approved on a final basis for use by Navillus to the extent necessary to ensure adequate liquidity after taking into account existing cash balances (Dkt. No. 156).

As of the date of this Disclosure Statement, Navillus has not borrowed any amounts under the DIP Facility and reserves the right to borrow based on its operational needs.

## **F. Claims Administration**

### **1. *Claims Process***

#### **a. Schedules and Statements of Financial Affairs**

Navillus filed its Schedules on January 7, 2018 (Dkt. Nos. 174-175) that, among other things, set forth the Claims of known creditors against Navillus as of the Petition Date, based upon Navillus' books and records. Navillus thereafter amended its Schedules on February 7, 2018 and May 10, 2018 (Dkt. Nos. 222, 384). The Schedules list approximately three hundred forty two (342) Claims, some of which are disputed, contingent and/or unliquidated in nature.

#### **b. Bar Date**

On January 3, 2018, the Bankruptcy Court entered an order (the "Bar Date Order") fixing February 14, 2018, at 5:00 p.m. (the "Bar Date") as the last day for filing Proofs of Claim in this Chapter 11 Case for all Claims against Navillus arising prior to the Petition Date and May 7, 2018 as the deadline for all governmental units to file Proofs of Claim against Navillus' Estate. Approximately one hundred eight (108) Proofs of Claim have been filed against Navillus' Estate. Of the Proofs of Claim filed against the Estate, approximately twenty five (25) have been filed on behalf of the Union Parties and other unions and union benefit funds asserting claims against

Navillus based on their direct relationship with Navillus, and the remaining approximately eighty three (83) Proofs of Claim have been filed by a wide variety of other constituents including, without limitation, project owners, trade creditors, personal injury claimants and secured equipment lessors, to name a few.

## **2. *Omnibus Claim Objections and Status of Claims***

On March 9, 2018, the Court entered an order setting forth certain procedures for the filing of omnibus objections to claims on grounds other than those set forth in Bankruptcy Rule 3007(d) (Dkt. No. 270). Navillus subsequently filed five (5) omnibus claim objections to approximately two hundred fifteen (215) Claims scheduled or asserted against the Estate. On April 20, 2018, the Bankruptcy Court entered orders pursuant to which the Claims subject to the second and third omnibus claims objections were reduced, disallowed and/or expunged, as applicable (Dkt. Nos. 345-46). Hearing on the fourth and fifth omnibus claims objections was held on May 23, 2018 at which time the Bankruptcy Court granted the fourth omnibus objection and heard oral argument regarding the legal issues presented by the fifth omnibus objection. As discussed more fully in Section VI(C) herein, at the May 23, 2018 hearing, the Bankruptcy Court issued a bench decision granting the first omnibus claims objection and reclassifying the Union Wage Claims (defined herein) to general unsecured claims in their entirety. To date, \$4,410,628.28 in filed and scheduled Claims have been Disallowed against the Estate as a result of claims objections.

Taking into account the Claims that have been Disallowed, there are currently outstanding Claims against the Estate in the amount of \$1,035,354,588.87, inclusive of the \$175,435,845.56 in Claims that are contingent on the outcome of the Navillus Appeal. Without taking into account the Contingent portion of the Liberty Unsecured Bond Claim, the total Claims that have not been Disallowed total to \$233,268,394.59. Navillus intends to file additional omnibus claims objections as it completes its review of the Claims filed against the Estate, and the Plan provides for the reservation of Navillus' right to file objections to Claims for a period of time following the Effective Date.

For a description of the treatment of Allowed Claims, see Section VI(IA) below.

## **G. *Other Matters Addressed During the Chapter 11 Case***

In addition to the first day relief sought in the Chapter 11 Case, Navillus has sought authority with respect to matters designed to assist in the administration of the Chapter 11 Case, maximize the value of Navillus' Estate, and provide the foundation for Navillus' emergence from Chapter 11. Set forth below is a brief summary of certain of the principal motions Navillus has filed during the pendency of the Chapter 11 Case.

### **1. *Motion to Approve Performance Bonus Program and Related Matters***

On December 8, 2017, Navillus filed the *Motion of Navillus Tile, Inc. for an Order (I) Authorizing the Debtor to Make Payments to Eligible Employees under the Performance Bonus Program and (B) Continue the Performance Bonus Program in the Ordinary Course of*

*Business; (II) Approving the Key Employee Incentive Program; and (III) Granting Related Relief* (the “Bonus Motion” at Dkt. No. 100). Pursuant to the Bonus Motion, Navillus sought authority to (i) make payments to certain salaried field and office employees under its pre-petition performance incentive bonus program (the “Performance Bonus Program”) for the performance period from April 1, 2016 to March 31, 2017 and continue the Performance Bonus Program in the ordinary course of business on an ongoing basis; (ii) approve the Performance Bonus Program as a key employee incentive program (the “KEIP”) for certain employees including Navillus’ senior management. The Performance Bonus Program and KEIP did not include DOS.

Following hearings held on December 21, 2017 and February 28, 2018, payment of pre-petition bonuses due to substantially all eligible employees and the continuation of the Performance Bonus Program were approved by orders of the Bankruptcy Court (Dkt. Nos. 155, 376). The U.S. Trustee, the Committee and another creditor raised objections to the Bonus Motion to the extent it sought approval to pay pre-petition bonuses or approve the KEIP as to Navillus’ senior management (Dkt. Nos. 113, 132, 256).

In response to these objections and to ensure that Navillus’ senior management team continued to remain actively engaged and motivated to perform at the highest levels in their respective roles, Navillus retained Mercer (US) Inc. as compensation consultant to design a program for senior management and DOS that would enable these individuals to be compensated for exceptional service to Navillus. Following an objection by the Committee to Mercer’s retention, Navillus and the Committee engaged in further negotiations regarding the KEIP proposed for Navillus’ senior management and ultimately reached an agreement that would, among other things, grant the senior management employees an Allowed Claim for their unpaid pre-petition bonuses and provide for an advance on bonuses duly earned and payable for the performance period from April 1, 2017 through March 31, 2018. With the approval of the Committee and the U.S. Trustee, this resolution was approved by Order of the Bankruptcy Court (Dkt. No. 377).

## **2. Motion to Approve Completion Agreement**

On January 7, 2018, Navillus filed the *Motion of Navillus Tile, Inc. for Entry of an Order (A) Authorizing Debtor to Enter into Completion Agreement With Liberty Mutual Insurance Company and (B) Granting Related Relief* (Dkt. No. 176) seeking an order authorizing Navillus to enter into a completion agreement with Liberty to enable Navillus to become the completion subcontractor for Liberty on the OVA Project with the consent of the Tishman and the owner of the OVA Project. The OVA Project, a construction project with an original contract price of \$135,926,646, represents Navillus’ single largest asset and is critical to a successful reorganization of its Estate. The completion agreement and this motion were the product of months of negotiations among Navillus, Liberty, Tishman and the OVA Project’s owner regarding the best path to enable Navillus to continue work on the OVA Project while mitigating any risk associated with Navillus’ pending Chapter 11 Case. On February 8, 2018, the Bankruptcy Court entered an order authorizing Navillus to enter into a completion agreement with Liberty for the OVA Project (Dkt. No. 224).

### **3. Adversary Proceedings**

Navillus has filed two (2) adversary proceedings for breach of contract seeking to recover amounts due and owing for the benefit of the estate.

#### **a. CNY Construction 701 LLC**

On December 21, 2017, Navillus filed the adversary proceeding styled as *Navillus Tile, Inc. dba Navillus Contracting v. CNY Construction 701 LLC* (Adv. Proc. No. 17-01245), as thereafter amended on February 26, 2018, seeking to recover \$1,570,586.36 for breach of contract by CNY Construction 701 LLC (“CNY”) in connection with the project known as 701 Seventh Avenue, together with \$445,000 for the reasonable value of work performed, and attorneys’ fees, interest and costs thereon. CNY filed an answer and counterclaim against Navillus together with a third party complaint against the project’s owner, 701 Seventh Property Owner LLC, on February 26, 2018 and, on March 16, 2018, an answer to Navillus’ amended complaint. On March 30, 2018, Navillus filed an answer to CNY’s counterclaim. The parties have engaged in discussions in an effort to resolve the disputes in this action, and following a pre-trial conference held on May 23, 2018, the parties agreed to establish a discovery schedule in order to advance the resolution of the disputes.

#### **b. MLB Door Group, Inc.**

On March 28, 2018, Navillus filed the adversary proceeding styled as *Navillus Tile, Inc. dba Navillus Contracting v. MLB Door Group, Inc.* (Adv. Proc. No. 18-01040) seeking to recover \$87,116.24 for failure to perform and not less than \$56,000 for damages for breach of contract arising out of certain construction projects, together with attorneys’ fees, interest and costs thereon. MLB Door Group, Inc. has failed to timely answer the complaint or appear at pre-trial conference held on May 23, 2018. Navillus intends to seek entry of a default judgment in this matter.

### **4. Other Motions**

#### **a. Motion to Extend Exclusive Periods**

On February 7, 2018, Navillus filed the *Motion To Extend Exclusivity Period For Filing A Chapter 11 Plan And Disclosure Statement* [Dkt. No. 219], and following a hearing held on February 28, 2018, the Bankruptcy Court entered an order extending Navillus’ exclusive period to file a plan of reorganization through June 6, 2018 and the period within which only Navillus may solicit acceptances of such plan through August 6, 2018 (Dkt. No. 268).

#### **b. Motion to Extend Time to Assume or Reject Leases**

On February 7, 2018, Navillus filed the *Motion to Extend Time to Assume or Reject Non-Residential Real Property Leases Under 11 U.S.C. 365(d)(4)* [Docket No. 220], and following a hearing held on February 28, 2018, the Bankruptcy Court entered an order extending Navillus’

deadline to assume or reject non-residential real property leases through July 6, 2018 (Dkt. No. 269).

## **H. Liberty Global Settlement**

Navillus has continued its efforts to secure new work during the pendency of the Chapter 11 Case, however these efforts have been largely unsuccessful to date. Prior to the Petition Date, on September 26, 2017, Liberty placed Navillus' account on hold as a result of the District Court Judgment. Liberty thereafter indicated that it would not issue any additional bonds to Navillus for any new bidding opportunities during the pendency of the Chapter 11 Case and has declined all of Navillus' requests for additional bonding to bid for new work, with the exception of one request, during the post-petition period.

On February 13, 2018, Liberty filed the Liberty Unsecured Bond Claim as Proof of Claim No. 82 asserting a secured claim in the total aggregate amount of \$802,096,194.28, of which \$907,792.88 is liquidated and non-contingent, based on certain legal and consulting costs incurred under the Bonds and related Indemnity Agreements and unpaid bond premium due on account of Navillus' Bonds and bonds for non-debtor co-indemnitor, TSC. The balance of the Liberty Unsecured Bond Claim in the amount of \$801,149,367 represents a Contingent Claim for Liberty's potential exposure under the Bonds. In the attachment to its Proof of Claim, Liberty expressly reserved the right to treat these amounts as secured and/or superpriority claims under the DIP Order.

Following discussions occurring over a period of months regarding Navillus' future bonding and Liberty's exposure under the Bonds as set forth in its Proof of Claim, Navillus and Liberty have negotiated a global resolution of all outstanding issues between the parties. The Plan represents Navillus' motion to approve a settlement (the "Liberty Global Settlement") of Liberty's Claims against the Estate that will enable Navillus to reorganize as a going concern with Liberty's support for ongoing operations. The Liberty Global Settlement contains the following key features, all of which remain subject to further negotiation and documentation in a form satisfactory to both Navillus and Liberty:

- Recognizing that Navillus requires the Bonds to complete its open construction projects, Liberty consents to Navillus' assumption of the Bonds under the Plan notwithstanding the status of the Bonds as financial accommodations contracts.
- Liberty consents to treatment of any and all cure amounts due and owing as a result of the assumption of the Bonds, including the amounts set forth in the Liberty Unsecured Bond Claim, as an unsecured Claim payable on the terms set forth in the Plan. Liberty also agrees to waive its right to collect any such amounts from the non-debtor Indemnitors.
- Provided that Donal O'Sullivan is the New Value Sponsor following the Auction, Navillus and Donal O'Sullivan shall reaffirm any and all obligations under the Indemnity Agreements; in the event Donal O'Sullivan is not the

New Value Sponsor following the Auction, then (i) Donal O'Sullivan shall be released from all obligations to Navillus (but not Liberty) in respect of the Bonds, and (ii) (A) the party that is the New Value Sponsor shall be required to indemnify Donal O'Sullivan for the obligations under the Indemnity Agreements, or (B) in the event the New Value Sponsor provides evidence of its financial wherewithal to Liberty, and other information that Liberty may request that is sufficient, in Liberty's sole discretion, to cause Liberty to allow a substitution of the New Value Sponsor (and/or others as may be acceptable to Liberty) as indemnitors for bonds already executed on behalf of Navillus and that may be executed in the future on behalf of Navillus, in place of the Indemnitors, and the New Value Sponsor (and/or others as may be acceptable to Liberty) provide Liberty with a duly-executed Agreement of Indemnity on Liberty's standard form, Liberty shall consider, in good faith, terminating the Indemnity Agreements and releasing the Indemnitors from any and all obligations thereunder.

- Provided that Donal O'Sullivan is the New Value Sponsor following the Auction, Liberty will issue the New Bonding Facility to Navillus on the terms set forth in the New Bonding Agreement in exchange for the Navillus' reaffirmation of its obligations under the Indemnity Agreements and the provision by Navillus and/or the non-debtor Indemnitors of such other collateral security as is agreed by the parties.
- Liberty may, at its sole option, convert the DIP Facility into an Exit Facility or elect to continue to provide Navillus with post-confirmation liquidity through an alternative Exit Facility.
- Liberty will consent to the reaffirmation of the obligations under the Indemnity Agreements and the collateral security provided for the New Bonding Facility as adequate and sufficient reserve for the portion of the Liberty Unsecured Bond Claim that is a Contingent Claim.
- Liberty will receive releases and exculpations under the Plan.

Navillus believes that the Liberty Global Settlement represents a fair and equitable resolution of Liberty's Claims that provides significant benefits to the Estate through, among other things, the continued ability to complete its open construction projects with continuity of bonding and a commitment to provide the New Bonding Facility upon Navillus' successful emergence from chapter 11 protection. Absent the Liberty Global Settlement, Navillus would be unable to complete its current projects or secure new work unless another surety would be willing to step into Liberty's shoes on the existing Bonds and provide bonding to Reorganized Navillus, both of which Navillus believes to be unlikely.

#### **I. Informal Discovery With the Committee**

Shortly after their retention, H&H and FTI provided Navillus with information requests

to enable them to investigate Navillus' financial condition. Navillus has responded with thousands of pages of documents on a rolling basis and has informed the Committee of its objections to the production of certain requested information, primarily due to the necessity of such information and/or undue burden on the Estate. In March 2018, Navillus participated in an in-person meeting attended by a representative of Navillus' management and the Committee's professionals to discuss the status of the business and other related matters.

On May 15, 2018, the Committee provided Navillus with an information request focused primarily on certain Insiders or potentially related entities, and Navillus and the Committee have agreed on a preliminary basis to a discovery protocol relating to these information requests, which the parties intend to memorialize into a stipulated order.

## **J. Avoidance Actions**

As part of the Schedules, Navillus filed various lists of payments made by Navillus within the 90-day and one-year periods prior to the Petition Date. Under applicable bankruptcy law, depending on the facts and circumstances surrounding such transfers, certain of these transfers may be subject to avoidance. The overwhelming majority of transfers during these time periods are transfers of direct project related payments to Article 3A creditors who are beneficiaries of the trust fund provisions of Article 3A. Accordingly, because Article 3A funds are trust funds that are not property of the estate, these transfers are not properly subject to avoidance. As to the remaining transfers, Navillus has determined as follows:

### **1. *Potential Preference Claims***

Navillus conducted a preliminary analysis of potential preference claims against certain parties that will be provided in the Plan Supplement and shared with the Committee.

### **2. *Potential Fraudulent Conveyance Claims***

Navillus conducted a preliminary analysis of potential fraudulent conveyance claims against certain parties that will be provided in the Plan Supplement and shared with the Committee.

### **3. *Pursuit of Avoidance Actions***

Except for the Claims and Causes of Action held against the Released Parties and proposed to be released under the Plan, Navillus proposes to retain all Causes of Action including Avoidance Actions under the Plan and intends to evaluate all potential sources of recovery for Plan payments upon a determination of the universe of Allowed Claims. However, given that the Plan may provide a complete recovery to holders of Allowed Claims depending on the outcome of the Navillus Appeal, Navillus has determined that it would be an inefficient expenditure of Estate resources to undertake a costly litigation to initiate Avoidance Actions at this time. Rather, subject to applicable statutes of limitations, Navillus intends to complete its investigation of potential Avoidance Actions and determine as of the Appeal Determination Date whether to commence post-confirmation Avoidance Actions to increase the funds available for

Distribution to creditors of the Estate.

With respect to the Avoidance Actions proposed to be released under the Plan, Navillus submits that such releases are warranted, either because of the consideration provided by each Released Party under the Plan or due to the Article 3A status of the majority of such transfers. Specifically as to DOS who received certain transfers during the years preceding the Petition Date, Navillus submits that the release of Avoidance Actions is justified based on, among other things, DOS' agreement to act as the "stalking horse" New Value Sponsor and undertake the following in such capacity: (i) the New Capital Contribution proposed to be made by DOS as the New Value Sponsor, (ii) the terms of the DOS Employment Agreement to be entered into between Navillus and DOS as of the Effective Date, (iii) DOS' commitment of personal collateral to secure certain obligations to Liberty under the Indemnity Agreements which provide significant benefits to the Estate, and (iv) DOS' critical importance to the continued successful operation of Navillus' business. The release of Avoidance Actions against DOS represents a key component of the consideration bargained for when negotiating the New Value Contribution to be made pursuant to the Stock Purchase Agreement, the terms of the DOS Employment Agreement and the collateral requirements under the New Bonding Agreement.

#### **K. Financial Performance During the Chapter 11 Case**

Since the Petition Date, Navillus has managed its business as a debtor-in-possession and continued operating on its open construction projects in the ordinary course of business. Navillus has remained current on its ordinary course trade payables as well as the payment of amounts authorized by orders of this Bankruptcy Court.

Navillus has earned gross revenues of \$121,445,943 from the period from the Petition Date through April 30, 2018. As of April 30, 2018, Navillus had cash on hand in the amount of \$2,996,115. Navillus has completed work on a number of its open construction projects and, as of March 31, 2018, has fifty two (52) remaining projects of significant size in progress with approximately \$385,000,000 worth of work remaining to be performed.

In addition to completing work on a number of projects, Navillus has significantly progressed the work on the Tishman Projects. Navillus continues to perform on the OVA Project as a completion contractor pursuant to the Bankruptcy Court-approved completion agreement with Liberty, and Navillus has been performing on the MW Project under weekly transition work agreements since October 2017. The parties are negotiating the reinstatement of the contract and release of certain retainage which, once released, Navillus will be able to use to fund its working capital requirements.

At the conclusion of this Chapter 11 Case, Navillus intends to emerge from chapter 11 bankruptcy protection as a going concern and continue successfully prosecuting its construction operations in the same manner as it did prior to the Petition Date.

## **VI. SUMMARY OF ISSUES INVOLVING NAVILLUS AND THE UNION PARTIES DURING THE CHAPTER 11 CASE**

As set forth above, entry of the District Court Judgment and the Union Funds' commencement of enforcement action thereunder was a significant driver of the filing of this Chapter 11 Case. During the approximately six-week period between entry of the District Court Judgment and the filing of this Chapter 11 Case, Navillus pursued all of its available options, however it was unable to obtain either bonding to post a supersedeas bond in excess of \$76 million, a stay of enforcement pending the Navillus Appeal, or authority to post a bond in a reduced amount. It was also unable to negotiate a settlement with the Union Funds. Accordingly, in the absence of any viable options that would permit Navillus to preserve the value of its business, it filed the Chapter 11 Case on the Petition Date.

### **A. The Navillus Appeal**

Navillus filed its notice of appeal from the District Court Judgment to the Second Circuit prior to the Petition Date and, shortly after the Petition Date, Navillus and the Union Funds entered into a *Stipulated and Agreed Order Granting Relief From the Automatic Stay* (Dkt. No. 60) to enable the parties to pursue the Navillus Appeal during the Chapter 11 Case. On January 5, 2018, Navillus and the other appellants filed their opening appellate briefs, and opposition and reply briefs have been filed with the Second Circuit. As of April 27, 2018, the briefing was fully submitted to the Second Circuit and the parties are awaiting a date for oral argument. It is presently anticipated that oral argument will be scheduled for a date in the near future.

In the Navillus Appeal, Navillus asserts that the District Court Judgment should be overturned because the evidence presented at trial in the District Court Action does not support the District Court's finding that ACS and TSC were alter egos of Navillus. Navillus argues, among other things, that is improper to award damages to the Union Funds based on hours of non-union work performed by ACS and TSC with no evidence that a single hour of such non-union work could have been performed by a union employer such as Navillus given that the New York construction industry is divided into union and non-union work. Accordingly, the District Court Judgment is a multi-million dollar windfall for non-union work performed by non-union labor that, but for the District Court Judgment, would never have resulted in any contributions to union funds. Moreover, Navillus maintains that the District Court erred in applying the alter ego doctrine's multi-factor test, and that such erroneous findings should be overturned by the Second Circuit. Finally, Navillus asserts that the calculation of damages is grossly overstated because the District Court awarded damages for work performed by ACS on the basis of approximately twenty (20) projects for which the Union Funds presented no evidence at trial.

Navillus strongly believes that the District Court Judgment should be overturned through the Navillus Appeal. At a bare minimum, Navillus is confident that the overstated and improper damages calculation will be reduced given the lack of evidence to support the majority of the damages award.

Given the pendency of the Navillus Appeal during this Chapter 11 Case, Navillus has been presented with the challenge of addressing the \$175,435,845.56 in Claims filed by the

Union Parties and other union funds who had no involvement whatsoever in the District Court Action that are premised on the District Court's alter ego finding. The Allowance or Disallowance of these Claims on a liability basis alone will have a significant impact on the recoveries to creditors in this Chapter 11 Case. If the District Court Judgment is reversed on appeal, the Plan will provide for a one hundred (100%) percent recovery to Holders of Allowed Claims and Equity Interests.

Moreover, even if the alter ego liability was to be affirmed, the Union Parties themselves admit that, other than the Claims for payment of the District Court Judgment, the amounts set forth in the Union Parties' Proofs of Claim are mere estimates extrapolated from the District Court Judgment. Navillus believes that the damages claimed in the Union Parties' Proofs of Claim are grossly overstated due to, among other reasons, a reduction in the number of ACS projects (and therefore non-union hours worked) from June 22, 2016 through November 6, 2017 and the Union Parties' failure to properly account for various reductions and/or offsets against the amounts claimed.

## **B. ACS Sale Trial**

Although ACS' chapter 11 case is entirely separate from Navillus' Chapter 11 Case, involving separate counsel and generally separate creditors (except for the Union Funds), Navillus was forced to intervene in ACS' chapter 11 case in connection with a contested sale transaction in which the Union Funds argued that the proposed sale violated section 1113 of the Bankruptcy Code. According to the Union Funds, because ACS was deemed a signatory to Navillus' CBAs as a consequence of the alter ego finding in the District Court Judgment, it could not sell its assets free and clear of the CBAs which contain successorship provisions, and any attempt to do so would violate section 1113 of the Bankruptcy Code. The Union Funds also alleged that the proposed purchaser of ACS' assets – Trident General Contracting, LLC ("Trident") – was not entitled to the good faith purchaser finding under section 363(m) of the Bankruptcy Code based on alleged connections to DOS.

Navillus determined that the issue of whether ACS was found to be an alter ego of Navillus as of November 6, 2017 would have a significant impact on Navillus' Estate, particularly in light of the multi-million dollar administrative claims the Union Parties were preparing to file based on their theory of ongoing liability. Moreover, Navillus' Estate would experience irreparable harm if Navillus' CBAs were rejected or modified without its consent. Accordingly, Navillus intervened in the ACS sale proceeding on January 24, 2018 and filed certain responses regarding the sale transaction and ACS' motion filed under section 1113 of the Bankruptcy Code to explain the potential impact of these matters on the Navillus Estate.

Ultimately, following an expedited discovery process and a two-day trial, on January 31, 2018, the Bankruptcy Court issued a decision approving the sale of substantially all of ACS' assets to Trident, free and clear of all liens, claims and encumbrances, including without limitation any obligations under the CBAs to which Navillus is a party. The Bankruptcy Court also granted "good faith purchaser" status to Trident over the Union Funds' objection. As part of this ruling, Judge Lane determined that ACS and Navillus were not alter egos at least as of November 6, 2017 – the date of ACS' bankruptcy filing. Accordingly, the Union Parties' ability

to flood Navillus' Estate with Claims alleging alter ego liability was cut off as of November 6, 2017.

The Union Funds appealed directly to the Second Circuit from the Bankruptcy Court's order approving the sale of ACS to Trident. On April 4, 2018, the Second Circuit dismissed the appeal.

### **C. Priority Claim Objections**

As stated in Section VI.A above, in addition to filing Proofs of Claim based on the District Court Judgment, the Union Funds asserted Priority Claims for damages for the time period from June 22, 2016 through the Petition Date, including \$10,659,259.63 million in Claims seeking priority under section 507(a)(5) of the Bankruptcy Code for alleged contributions to employee benefit plans arising from services rendered during the 180-day period preceding the Petition Date. The Proofs of Claim filed by the Union Funds (the "Union Fund Claims") total to \$85,488,028.37.

Moreover, the Sponsoring Unions, who were not party to the District Court Action and did not assert alter ego based claims prior to the Petition Date, filed an additional \$91,628,958.43 in Proofs of Claim (the "Union Wage Claims") for wages allegedly due and owing the Unions based on the hours worked by non-union ACS employees that, according to the Unions, should have been worked by members of the Sponsoring Unions. The Union Wage Claims include approximately \$13,630,616.89 in Claims seeking priority under section 507(a)(4) of the Bankruptcy Code for unpaid wages earned by an individual during the 180-day period preceding the Petition Date.

In addition, certain other union benefits funds have filed approximately \$11 million in Proofs of Claim based on contributions allegedly due for hours worked by non-union ACS employees prior to the Petition Date. Navillus disputes any and all Claims based on alter ego liability in their entirety and these Claims have been, or will be, subject to objection. Moreover, Navillus submits that each of these Claims will be Disallowed in their entirety upon the final resolution of the Navillus Appeal.

On March 12, 2018, Navillus filed an omnibus objection to the Union Wage Claims. On April 11, 2018, the Sponsoring Unions filed an omnibus response to which Navillus filed a reply on April 16, 2018. Oral argument was held on these objections on April 25, 2018. On May 23, 2018, the Bankruptcy Court issued a bench decision granting Navillus' objection to the priority classification of the Union Wage Claims and ordering that the \$13,360,616.89 that the Sponsoring Unions allege was entitled to priority under section 507(a)(4) of the Bankruptcy Code be reclassified as general unsecured claims.

Navillus filed its fifth omnibus claims objection to the Union Fund Claims on April 20, 2018 on the grounds that, among other things, the claims incorrectly asserted a claim for priority which the Union Funds were not entitled to. The Union Funds filed an omnibus response on May 11, 2018 to which Navillus filed a reply on May 21, 2018. The Bankruptcy Court heard

oral argument on May 23, 2018 and Navillus expects a decision to be issued prior to confirmation of the Plan.

#### **D. Case-Wide Mediation**

As set forth in Section VII.B above, one month into this Chapter 11 Case, Navillus filed a motion seeking to compel mediation with the Union Funds [Dkt. No. 102]. Thereafter, based on, among other things, the Union Parties' conduct in the Chapter 11 Case including during the ACS sale transaction and through the filing of approximately \$100 million in Claims in excess of the amount of the District Court Judgment, Navillus questioned whether a mediated resolution was possible with the Union Parties. On March 26, 2018, the Committee filed a cross-motion (the "Committee Mediation Motion" at Dkt. No. 303) requesting that the Bankruptcy Court compel Navillus and the Union Parties to submit to case-wide mediation to resolve the disputed issues in this Chapter 11 Case. Navillus filed a limited response to the Committee Mediation Motion to highlight that the creditor constituencies in this Chapter 11 Case include more than just the Union Parties and to request cost-sharing by the Union Parties. (Dkt. No. 325).

Navillus and the Committee have been engaged in negotiations regarding the terms of a stipulated mediation order that provides a schedule for pre-mediation discovery and certain other deadlines for filing the Plan and this Disclosure Statement, among other things. Navillus and the Committee are in the final stages of selecting a mediator and anticipate submitting the proposed mediation to the Bankruptcy Court for consideration in the near term.

Given the critical importance of Navillus' emergence from chapter 11 as quickly as possible, Navillus is pursuing a dual-track process by filing the Plan and Disclosure Statement prior to mediation. To the extent the mediation results in a consensual resolution of the disputed issues in this Chapter 11 Case, the Plan will be amended to incorporate any such resolution. In the event the mediation is not successful, Navillus will proceed towards confirmation of the Plan.

### **VII. SUMMARY OF THE PLAN OF REORGANIZATION**

THIS SECTION PROVIDES A SUMMARY OF CERTAIN OF THE MATTERS CONTEMPLATED TO OCCUR EITHER PURSUANT TO OR IN CONNECTION WITH CONFIRMATION OF THE PLAN. THIS SUMMARY HIGHLIGHTS THE SUBSTANTIVE PROVISIONS OF THE PLAN AND IS NOT, NOR IS IT INTENDED TO BE, A COMPLETE DESCRIPTION OR A SUBSTITUTE FOR A FULL AND CAREFUL READING OF THE PLAN. STATEMENTS REGARDING PROJECTED AMOUNTS OF CLAIMS OR DISTRIBUTIONS (OR THE VALUE OF SUCH DISTRIBUTIONS) ARE ESTIMATES BY NAVILLUS BASED ON AVAILABLE INFORMATION AND ARE NOT A REPRESENTATION AS TO THE ACCURACY OF THESE AMOUNTS.

#### **A. Treatment of Claims and Equity Interests Under Plan**

The Plan divides Holders of Claims against and Equity Interests in Navillus into seven (7) separate Classes based on the nature of their legal rights, three (3) of which are Impaired, three (3) of which are Unimpaired and one (1) with respect to which Impaired or

Unimpaired status is contingent on the outcome of the Navillus Appeal and the Auction. The Plan also provides for Distributions to Holders of Claims in four (4) unclassified categories comprised of Administrative Claims, Professional Fee Claims, Priority Tax Claims and the Liberty DIP Loan Claim. Distributions to certain Classes of Claims and Equity Interests will be contingent on the outcome of the pending Union Funds Appeal and will be held in a Distribution Reserve until the Navillus Appeal is decided.

The Claims asserted against Navillus and Equity Interests in Navillus are separated into Classes based on the nature of the Claims and the legal rights related to each Claim. A Claim or Equity Interest is placed in a particular Class only to the extent that the Claim or Equity Interest falls within the description of that Class, and is classified in another Class to the extent that any portion of the Claim or Equity Interest falls within the description of such Class. A Claim is also placed in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, or otherwise settled prior to the Effective Date.

Each holder of a Claim or Equity Interest should refer to Articles III, IV and V of the Plan for a full description of the classification and treatment of Claims and Equity Interests provided under the Plan.

**1. *Administrative Claims – Not Classified***

Administrative Claims are Claims (other than a Professional Fee Claim or Liberty DIP Loan Claim) for payment of costs or expenses of administration specified in sections 503(b) and 507(a)(2) of the Bankruptcy Code including, without express or implied limitation: (a) any actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate and operating the business of Navillus; (b) any payment to be made under the Plan to cure a default on an assumed Executory Contract or assumed Unexpired Lease; (c) any postpetition cost, indebtedness or contractual obligation duly and validly incurred or assumed by Navillus in the ordinary course of its business; and (d) any fees and charges assessed against the Estate under chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911-1930.

Each Holder of an Allowed Administrative Claim shall receive, in full and complete settlement, release, and discharge of such Claim, Cash in an amount equal to the Allowed amount of its Administrative Claim on or as soon as reasonably practicable after the Effective Date, or receive such less favorable treatment as may be agreed by such Holder and Navillus; provided, however, that the Allowed Administrative Claims representing liabilities incurred in the ordinary course of business by Navillus shall be paid in full and performed by Navillus in the ordinary course of business according to normal and customary terms existing between the parties. Notwithstanding the immediately preceding sentence, Administrative Claims of the U.S. Trustee for fees pursuant to 28 U.S.C. § 1930(a)(6) shall be paid in accordance with the applicable schedule for payment of such fees.

According to Navillus' monthly operating report for April 2018, Navillus is current on post-petition liabilities except for ordinary course liabilities paid according to normal business terms.

*Estimated Percentage Recovery: 100%*

**2. Professional Fee Claims – Not Classified**

Each Holder of an Allowed Professional Fee Claim for services rendered through the Confirmation Date shall receive Cash in an amount equal to the Allowed amount of such Professional Fee Claim on or as soon as reasonably practicable after the later of (a) the Effective Date or (b) the date such Professional Fee Claim becomes Allowed, or receive such other less favorable treatment as may be agreed by such Holder and Navillus.

The total amount of Professional Fee Claims will be determined after the Professional Fee Claims Bar Date.

*Estimated Percentage Recovery: 100%*

**3. Priority Tax Claims – Not Classified**

A Priority Tax Claim is a Claim entitled to priority under section 507(a)(8) of the Bankruptcy Code.

Unless otherwise agreed to by Navillus and the Holder of an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall receive, in the sole discretion of Navillus, and in full and complete settlement, release, and discharge of such Claim: (i) Cash in the amount equal to such Allowed Priority Tax Claim on or as soon as reasonably practicable after the later of (a) the Effective Date or (b) the date such Priority Tax Claim becomes Allowed; or (ii) Cash equal to the amount of such Allowed Priority Tax Claim, together with interest at the applicable rate under section 511 of the Bankruptcy Code (or such lesser rate as is agreed to by the Holder of such Allowed Priority Tax Claim), payable over a period ending no later than five (5) years from the Petition Date; provided, however, that Navillus reserves the right to prepay such amounts at any time under the latter option.

One Priority Tax Claim has been filed against the Estate by the New York City Department of Finance in the amount of \$2,124,155.45. Navillus believes that most of this Claim is invalid and is in the process of exchanging information with the Holder of this Claim in an effort to resolve on an informal basis.

*Estimated Percentage Recovery: 100%*

**4. Liberty DIP Loan Claim – Not Classified**

Unless otherwise agreed to by Navillus and Liberty, on or as soon as reasonably practicable after the Effective Date, Liberty shall be paid in full in Cash all outstanding DIP Obligations, if any, as of the Effective Date.

As of the date of this Disclosure Statement, Navillus has not borrowed any sums under the DIP Facility, but reserve the right to do so based on operational needs during the pendency of this Chapter 11 Case.

*Estimated Recovery Percentage: 100%*

**5. Class 1 – Article 3A Claims – Unimpaired/Not Entitled to Vote/Deemed to Accept**

On the Effective Date, each Holder of an Allowed Article 3A Claim shall receive in full, final and complete satisfaction, settlement, release, and discharge of such Claim, payment in full in Cash of the Allowed Article 3A Claim, or reinstatement and subsequent payment of such Allowed Article 3A Claim, in the ordinary course of business, each in accordance with the provisions of Article 3A and such agreements and terms as existing as of the Petition Date, which agreements will continue in full force and effect.

Navillus continues to pay valid Article 3A Claims that were outstanding on the Petition Date in the ordinary course of business pursuant to the business terms in effect between the parties. Many of the Article 3A Claims that remain unpaid represent retainage under construction contracts that will be paid upon release pursuant to contract terms.

*Estimated Recovery Percentage: 100%*

**6. Class 2 – Other Secured Claims – Unimpaired/Not Entitled to Vote/Deemed to Accept**

On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Other Secured Claim shall receive, in full, final and complete satisfaction, settlement, release, and discharge of such Claim, in the sole discretion of Navillus: (i) reinstatement and Unimpairment of its Allowed Other Secured Claim in accordance with section 1124(2) of the Bankruptcy Code, or (ii) in exchange for such Other Secured Claim, either (a) Cash in the full amount of such Allowed Other Secured Claim, including any reasonable postpetition interest accrued pursuant to section 506(b) of the Bankruptcy Code, (b) the proceeds of the sale or disposition of the collateral securing such Allowed Other Secured Claim to the extent of the value of the Holder's secured interest in such collateral, (c) the collateral securing such Allowed Other Secured Claim and any reasonable interest on such Allowed Other Secured Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, or (d) such other distribution as necessary to satisfy the requirements of section 1129 of the Bankruptcy Code. In the event Navillus sells or otherwise disposes of the collateral securing any Allowed Other Secured Claim, all expenses relating thereto, including but not limited to transportation, shipping and storage expenses, shall be borne by the Holder of the Class 2 Other Secured Claim.

*Estimated Recovery Percentage: 100%*

**7. Class 3 – Other Priority Claims – Unimpaired/ Not Entitled to Vote/Deemed to Accept**

With respect to the four (4) Class 3 Other Priority Claims that are not arising out of or relating to the District Court Judgment, on the Effective Date or as soon as reasonably practicable thereafter, each Holder of an Allowed Other Priority Claim shall receive, in full, final and complete satisfaction, settlement, release, and discharge of such Claim, Cash in the amount equal to such Allowed Other Priority Claim.

With respect to the remainder of the Class 3 Other Priority Claims, the treatment of such Claims shall be contingent on the resolution of pending objections to Claims and/or the outcome of the Navillus Appeal from the District Court Judgment, as follows:

- i. In the event the Navillus Appeal results in the reversal of the District Court Judgment, there shall be no Allowed Claims in Class 3 arising out of or relating to the District Court Judgment and Union Funds Appeal.
- ii. In the event the Navillus Appeal results in either: (x) a remand to the District Court, or (y) the District Court Judgment being affirmed, each Holder of an Allowed Other Priority Claim shall receive, in the sole discretion of Navillus, in full, final and complete satisfaction, settlement, release, and discharge of such Claim, unless any Holder agrees to less favorable treatment of its Claim: (i) Cash in the amount equal to such Allowed Other Priority Claim on or as soon as practicable after the later of (a) the Appeal Determination Date or (b) the date such Claim becomes Allowed; or (ii) Cash equal to the amount of such Allowed Other Priority Claim, together with interest at the applicable statutory rate (or such lesser rate as is agreed to by the Holder of such Allowed Other Priority Claim), payable over a period ending no later than five (5) years from the Petition Date; provided, however, that Navillus reserves the right to prepay such amounts at any time under the latter option.

The Other Priority Claims are comprised of: (i) four (4) claims asserted by union funds based on additional contributions determined to be owed following a routine audit of Navillus' books and records; and (ii) a portion of the Union Fund Claims. While Navillus does not dispute liability with respect to the first category of claims, the Claims in the second category are subject to pending objections and contingent on the outcome of the Navillus Appeal.

*Estimated Recovery Percentage: 100%*

**8. Class 4 – Liberty Unsecured Bond Claim – Impaired/Entitled to Vote**

The Liberty Unsecured Bond Claim shall be Allowed in the amount of \$907,792.88, comprised of: (i) \$243,509.41 in legal and consulting fees; and (ii) \$664,283.47 in unpaid bond premiums. Liberty also holds a Contingent Claim in the amount of \$801,149,367.00 based on Liberty's potential exposure under the Bonds. As part of the Liberty Global Settlement, Liberty has agreed to less favorable treatment of the Liberty Unsecured Bond Claim.

The treatment of the Class 4 Liberty Unsecured Bond Claim shall be contingent on the outcome of the Navillus Appeal from the District Court Judgment, as follows:

- i. In the event the Navillus Appeal results in the reversal of the District Court Judgment, Liberty shall receive payment in full of the non-Contingent portion of the Allowed amount of its Claim, either from Cash on hand and/or the Reorganized Navillus Notes from the Distribution

Reserve. Distributions to the Holder of the Class 4 Claim will be made following the later of the Appeal Determination Date and when all objections to Claims are either resolved or ruled on by the Bankruptcy Court.

- ii. In the event the Navillus Appeal results in either: (x) a remand to the District Court, or (y) the District Court Judgment being affirmed, Liberty shall receive, on account of the non-Contingent portion of the Allowed amount of its Claim, its Pro Rata share of Reorganized Navillus Notes from the Distribution Reserve. Distributions to the Holder of the Class 4 Claim will be made following the later of the Appeal Determination Date and when all objections to Claims are either resolved or ruled on by the Bankruptcy Court.

*Estimated Recovery Percentage: TBD*

**9. Class 5 – General Unsecured Trade Claims – Impaired/Entitled to Vote**

The treatment of Class 5 General Unsecured Trade Claims shall be contingent on the outcome of the Navillus Appeal from the District Court Judgment, as follows:

- i. In the event the Navillus Appeal results in the reversal of the District Court Judgment, each Holder of a General Unsecured Trade Claim shall receive payment in full the Allowed amount of its Claim, either from Cash on hand and/or the Reorganized Navillus Notes from the Distribution Reserve. Distributions will be made to Holders of General Unsecured Trade Claims following the later of the Appeal Determination Date and when all objections to Claims are either resolved or ruled on by the Bankruptcy Court.
- ii. In the event the Navillus Appeal results in either: (x) a remand to the District Court, or (y) the District Court Judgment being affirmed, each Holder of a General Unsecured Trade Claim shall receive its Pro Rata share of Reorganized Navillus Notes from the Distribution Reserve. Distributions will be made to Holders of General Unsecured Trade Claims following the later of the Appeal Determination Date and when all objections to Claims are either resolved or ruled on by the Bankruptcy Court.

*Estimated Recovery Percentage: TBD*

**10. Class 6 – Pending Litigation Related Claims – Impaired/Entitled to Vote**

The treatment of Class 6 Pending Litigation Related Claims shall be contingent on the outcome of the Navillus Appeal from the District Court Judgment or the resolution of any objections to Claims, as follows:

- i. In the event the Navillus Appeal results in the reversal of the District Court Judgment, then there shall be no Allowed Claims in Class 6.
- ii. In the event the Navillus Appeal results in either: (x) a remand to the District Court, or (y) the District Court Judgment being affirmed, each Holder of a Pending Litigation Related Claim shall receive its Pro Rata share of Reorganized Navillus Notes from the Distribution Reserve. Distributions will be made to Holders of Pending Litigation Related Claims following the occurrence of the Appeal Determination Date and when all objections to Claims are either resolved or ruled on by the Bankruptcy Court.

The Class 6 Pending Litigation Related Claims are comprised of unsecured Claims that are based on the District Court Judgment and assert as a basis for liability the alter ego finding made by the District Court in the District Court Action. For each of these Claims, the outcome of the Navillus Appeal will determine whether Navillus has any potential liability for the amounts claimed to be due, and therefore the Pending Litigation Related Claims are contingent on the outcome of a pending action in their entirety.

*Estimated Recovery Percentage: 0%*

**11. Class 7 – Equity Interests – Potentially Impaired/Potentially Unimpaired/Not Entitled to Vote**

The treatment of Class 7 Equity Interests shall be contingent on the outcomes of the Navillus Appeal from the District Court Judgment and the Auction, as follows:

- i. In the event the Navillus Appeal results in the reversal of the District Court Judgment, and
  - a. the current Holders (or beneficial Holders) of the Equity Interests are the New Value Sponsor following an Auction (or if no other Qualified Bids are received and the Auction is cancelled), then the current Holders of the Class 7 Equity Interests shall retain their Equity Interests in Navillus.
  - b. the current Holders (or beneficial Holders) of the Equity Interests are not the New Value Sponsor following an Auction, then the Equity Interests in Navillus shall be cancelled and new Equity Interests shall be issued to the New Value Sponsor for and in consideration of the New Capital Contribution.

- ii. In the event the Navillus Appeal results in either: (x) a remand to the District Court, or (y) the District Court Judgment being affirmed, then the Equity Interests in Navillus shall be treated as follows:
  - a. The Equity Interests in Navillus shall be cancelled and new Equity Interests shall be issued to the New Value Sponsor for and in consideration of the New Capital Contribution. In this instance, the current Holders (or beneficial Holders) of the Equity Interests shall receive no Distribution under the Plan on account of their cancelled Equity Interests.

The holder of the Equity Interests in Reorganized Navillus will be determined following the Auction based on which potential bidder contributes a New Capital Contribution determined to be of the greatest value to the Estate. The proposed Auction is discussed more fully in Section D herein.

*Estimated Recovery Percentage: 100% or 0%*

## **B. Means for Implementation of Plan**

### **1. Reorganization of Navillus**

On the Effective Date, Navillus will be reorganized pursuant to the Plan, the Indenture, the Stock Purchase Agreement and other applicable governance, corporate and other documents to be included in the Plan Supplement.

- a. Vesting of Assets. On the Effective Date, with the exception of any Claims and Causes of Action released pursuant to Article XII of the Plan, all right, title and interest in and to the property and assets of the Estate will vest fully in Reorganized Navillus, free and clear of all liens, encumbrances and other liabilities including, without express or implied limitation, Claims against or Equity Interests in Navillus. All Claims against and Equity Interests in Navillus will be classified and treated pursuant to the terms of the Plan.
- b. Sources of Plan Funding. On the Effective Date, the Distributions required to be made to Holders of Claims under the Plan shall be funded by one or more of: (a) Cash on hand, (b) the Exit Facility, or (c) Reorganized Navillus Notes. Alternatively, Navillus reserves the right to fund Distributions under the Plan through the proceeds of the liquidation of its assets, either through (x) the sale of substantially all of its assets pursuant to section 363 of the Bankruptcy Code, or (y) the wind-down of its construction operations and orderly liquidation of assets.

### **2. Recovery Contingent on Union Funds Appeal**

The treatment of Claims and Equity Interests in Classes 4 through 7 will be contingent on the outcome of the Navillus Appeal, and the Plan proposes alternative treatment scenarios for each affected Class based on whether the District Court Judgment is reversed, affirmed, or

remanded following the conclusion of the Navillus Appeal. For Holders of Claims whose recovery is not contingent on the Navillus Appeal, Distributions under the Plan shall be made on or as soon as reasonably practicable after the Effective Date. For Holders of Claims and Equity Interests whose Distributions under the Plan are contingent on the outcome of the Navillus Appeal, Distributions under the Plan shall be made following the later of the Appeal Determination Date and when all objections to Disputed Claims are either resolved or ruled on by the Bankruptcy Court.

In the event the District Court Judgment is reversed following the conclusion of the Navillus Appeal, all Claims in Class 6 shall be Disallowed in their entirety and the Plan will provide for payment of one hundred (100%) percent of the Allowed amount of Claims in Classes 1 through 5 and the retention of Equity Interests in Class 7 if the current Holder (or beneficial Holder) of the Equity Interests is the New Value Sponsor following an Auction (or if no other Qualified Bids are received and the Auction is cancelled). In the event the District Court Judgment is affirmed following the conclusion of the Navillus Appeal, or the District Court Judgment is remanded to the District Court for any purpose, Distributions to Holders of Claims in Classes 4 through 6 will be held in the Distribution Reserve through the later of the Appeal Determination Date and pending entry of a Final Order or other determination with respect to the allowance or disallowance of Claims in Classes 4 through 6.

### **3. *Effective Date Transactions.***

On the Effective Date, the following transactions will occur:

- a. Navillus shall be authorized to consummate the Exit Facility (if obtained) on the terms to be set forth in the Plan Supplement.
- b. Navillus shall be authorized to and shall issue the Reorganized Navillus Notes on the terms set forth in the Indenture, a copy of which will be included in the Plan Supplement.
- c. Navillus shall be authorized to enter into the New Bonding Facility with Liberty on the terms and conditions set forth in the New Bonding Agreement, a copy of which will be included in the Plan Supplement.
- d. The New Capital Contribution shall be made by the New Value Sponsor and deposited into the New Capital Contribution Reserve.
- e. Navillus shall be authorized to enter into the Stock Purchase Agreement with the New Value Sponsor, a copy of which will be included in the Plan Supplement.

### **4. *Reorganized Navillus Notes***

On the Effective Date, pursuant to the Indenture, Navillus shall issue the Reorganized Navillus Notes in an aggregate principal amount equal to the lesser of: (a) six million (\$6,000,000) dollars; or (b) the remainder of (x) the midpoint of Navillus' enterprise value,

measured as of the date of the Confirmation Hearing, plus (y) Cash on hand less any outstanding DIP Obligations as of the Effective Date, less: (i) Minimum Working Capital; (ii) the aggregate amount of Allowed Administrative Claims; (iii) the aggregate amount of Allowed Professional Fee Claims; (iii) the aggregate amount of Allowed Priority Tax Claims; and (iv) the aggregate amount of Allowed Class 3 Other Priority Claims.

Certain salient terms of the Reorganized Navillus Notes are summarized herein, and the Plan Supplement will contain a copy of the Indenture and the form of Reorganized Navillus Note setting forth the complete terms and conditions of such Reorganized Navillus Notes. The Reorganized Navillus Notes shall have a maturity date that is five (5) years after the Effective Date and shall bear interest at a six (6%) percent payment-in-kind contract rate. Distributions under the Reorganized Navillus Notes shall be made through annual cash flow sweeps payable on or around July 1st of each year, calculated based on the lesser of: (i) Cash on hand in excess Minimum Working Capital; and (ii) the outstanding principal amount of the Reorganized Navillus Notes, with a maximum annual cash flow sweep as set forth in the Indenture.

Following issuance, the Reorganized Navillus Notes shall be held in the Distribution Reserve pending Distribution to Holders of Allowed Claims as set forth in Section 9.06 of the Plan.

#### **5. *Exit Facility***

On the Effective Date, Navillus shall be authorized to either convert the DIP Facility into an Exit Facility or enter into an alternative Exit Facility. Confirmation of the Plan shall constitute an approval of the transactions contemplated thereby and all of the actions to be taken and obligations to be incurred by Reorganized Navillus in connection therewith without the need for any further corporate action or further order of the Bankruptcy Court. The proceeds of the Exit Facility (if obtained) will be available, among other things, for any purpose permitted by the governing documents, including the funding of obligations under the Plan and the satisfaction of Minimum Working Capital requirements on an after the Effective Date. The terms of any Exit Facility (if obtained) will be included in the Plan Supplement.

#### **6. *New Capital Contribution***

Pursuant to and subject to the terms and conditions of the Stock Purchase Agreement, on the Effective Date, the New Value Sponsor will purchase one hundred (100%) percent of the Equity Interests in Reorganized Navillus in exchange for New Capital Contribution. The New Capital Contribution will be utilized by Reorganized Navillus to fund obligations under the Plan and to satisfy Reorganized Navillus' Minimum Working Capital requirements on and after the Effective Date. Reorganized Navillus is hereby authorized to take all such actions and execute any agreements that will be necessary to consummate and give effect to the Stock Purchase Agreement without further order of the Bankruptcy Court.

The New Capital Contribution shall be deposited into a separate reserve (the "New Capital Contribution Reserve") on the Effective Date and shall be released to Reorganized Navillus as soon as practicable following the Appeal Determination Date; provided, however,

that in the event that the District Court Judgment is reversed upon determination of the Navillus Appeal and the current Holder (or beneficial Holder) of the Equity Interests is the New Value Sponsor following an Auction, the New Capital Contribution shall be returned to the New Value Sponsor. The Auction is described more fully in Section VII.D below.

## **7. *Liberty Global Settlement***

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, the Plan incorporates a proposed compromise and settlement of numerous issues outstanding between Navillus and Liberty designed to achieve an economic settlement (the “Liberty Global Settlement”) of Liberty’s Claims against the Estate and enable Navillus to reorganize as a going concern with Liberty’s support for ongoing operations. The Plan constitutes a motion to approve the Liberty Global Settlement which will be implemented through the Plan as follows:

- a. Liberty shall consent to the assumption of the Bonds pursuant to Section 7.01 of the Plan notwithstanding the status of the Bonds as financial accommodations contracts;
- b. Liberty shall consent to treatment of any and all cure amounts due and owing as a result of the assumption of the Bonds, including the amounts set forth in the Liberty Unsecured Bond Claim, as an Unsecured Claim payable on the terms set forth in Section 4.04 of the Plan and shall waive its right to collect any such amounts from the non-debtor Indemnitors;
- c. Provided that Donal O’Sullivan is the New Value Sponsor following the Auction, Navillus and Donal O’Sullivan shall reaffirm any and all obligations under the Indemnity Agreements; in the event Donal O’Sullivan is not the New Value Sponsor following the Auction, then (i) Donal O’Sullivan shall be released from all obligations to Navillus (but not Liberty) in respect of the Bonds, and (ii) (A) the party that is the New Value Sponsor shall be required to indemnify Donal O’Sullivan for the obligations under the Indemnity Agreements, or (B) in the event the New Value Sponsor provides evidence of its financial wherewithal to Liberty, and other information that Liberty may request that is sufficient, in Liberty’s sole discretion, to cause Liberty to allow a substitution of the New Value Sponsor (and/or others as may be acceptable to Liberty) as indemnitors for bonds already executed on behalf of Navillus and that may be executed in the future on behalf of Navillus, in place of the Indemnitors, and the New Value Sponsor (and/or others as may be acceptable Liberty) provide Liberty with a duly-executed Agreement of Indemnity on Liberty’s standard form, Liberty shall consider, in good faith, terminating the Indemnity Agreements and releasing the Indemnitors from any and all obligations thereunder;
- d. Provided that Donal O’Sullivan is the New Value Sponsor following the Auction, Liberty shall issue the New Bonding Facility to Navillus on the terms set forth in the New Bonding Agreement, a copy of which is contained in the Plan Supplement, in exchange for the Navillus’ reaffirmation of its obligations under

the Indemnity Agreements and the provision by Navillus and/or the non-debtor Indemnitors of such other collateral security as is agreed by the parties and set forth in the New Bonding Agreement;

- e. Liberty may, at its sole option, convert the DIP Facility into an Exit Facility or elect to continue to provide Navillus with post-confirmation liquidity through an alternative Exit Facility;
- f. Liberty shall consent to the reaffirmation of the obligations under the Indemnity Agreements and the collateral security provided for the New Bonding Facility as adequate and sufficient reserve for the portion of the Liberty Unsecured Bond Claim that is a Contingent Claim; and
- g. Liberty shall receive the releases and exculpations set forth in Article XII of the Plan.

#### **8. *General Corporate Actions***

The entry of the Confirmation Order shall constitute authorization for Navillus and Reorganized Navillus to take or cause to be taken all corporate or other actions necessary or appropriate to consummate and implement the provisions of the Plan prior to, on, and after the Effective Date, and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court. All such actions shall be deemed to have occurred and shall be in effect pursuant to applicable non-bankruptcy law and the Bankruptcy Code, without any requirement of further action by the shareholders or directors of Navillus or Reorganized Navillus.

#### **9. *Continued Corporate Existence***

After the Effective Date, Reorganized Navillus may operate its business and use, acquire, dispose of property and settle and compromise Claims or Equity Interests without the supervision of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, subject to the terms of the Plan and the Plan Supplement, and all documents and exhibits thereto implementing the provisions of the Plan.

#### **10. *Board of Directors of Reorganized Navillus***

Provided that DOS is the New Value Sponsor following the Auction, the board of directors of Reorganized Navillus will consist of those individuals constituting the current board of directors of Navillus. Otherwise, the board of directors of Reorganized Navillus will be identified in the Plan Supplement or the order of the Bankruptcy Court approving the sale of the Equity Interests to the New Value Sponsor at the Auction.

#### **11. *Officers of Reorganized Navillus***

Provided that DOS is the New Value Sponsor following the Auction, (a) the officers of Navillus immediately prior to the Effective Date shall serve as the officers of Reorganized

Navillus on and after the Effective Date, and (b) DOS shall continue to serve as President and Chief Executive Officer of Reorganized Navillus on terms that will be set forth in the DOS Employment Agreement, a copy of which will be included in the Plan Supplement. Otherwise, the officers of Reorganized Navillus will be identified in the Plan Supplement or the order of the Bankruptcy Court approving the sale of the Equity Interests to the New Value Sponsor at the Auction.

## **12. *Preservation of Causes of Action***

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code and to the fullest extent possible under applicable law, on the Effective Date, Reorganized Navillus shall retain the right to pursue, prosecute and enforce any Claims, demands, rights, and Causes of Action that Navillus may hold against any Entity including, without limitation, (i) any and all Avoidance Actions that belonged to Navillus prior to the Confirmation Date, other than any Avoidance Actions released pursuant to Article XII of the Plan; (ii) any and all Claims against any Entity, to the extent such Entity asserts a crossclaim, counterclaim and/or Claim for setoff that seeks affirmative relief against Navillus; (iii) any and all Claims and Causes of Action for turnover of any property of Navillus' estate; (iv) any and all Claims and Causes of Action that are subject to pending litigation in either the Bankruptcy Court or a non-bankruptcy forum as of the Effective Date; (v) any and all Claims and Causes of Action that are listed on Navillus' Schedules; and (vi) any and all breach of contract and other Claims and Causes of Action arising out of or relating to the construction projects on which Navillus has performed or presently performs including, without limitation those potential Claims described below. On the Effective Date, Navillus' right to pursue, prosecute and enforce the such Claims, demands, rights and Causes of Action shall transfer to Reorganized Navillus, which on and after the Effective Date shall have the exclusive right to pursue, prosecute and enforce such actions. Nothing in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights or Causes of Action that Navillus or Reorganized Navillus may have.

Navillus may hold certain breach of contract or other Claims arising out of construction projects that it is currently performing. In particular, Navillus submits that it may hold Claims and Causes of Action against Tishman in connection with the MW Project described above based on the Claims for backcharges and delays set forth in Tishman's Proof of Claim as well as the approximately \$12 million in excess retainage under the MW Contract. Moreover, the resolution of the wrongful pre-petition termination of the MW Contract has yet to be completed. Additionally, Navillus may hold Claims and Causes of Action against Hunter Roberts Construction, LLC, Pavarini McGovern, Oliveira Contracting, Inc. and Plaza Construction, LLC based on the Claims and other matters described in the attachments to their respective Proofs of Claim or any *ex parte* motions for Rule 2004 examinations filed with the Bankruptcy Court on May 24, 2018. Navillus also holds potential Claims or Causes of Action relating to its work on the NYCHA Rapid Repair projects sponsored by the City of New York. Navillus may file additional requests for Bankruptcy Rule 2004 examinations with respect to certain potential Claims and Causes of Action and reserves the right to assert subsequent Causes of Action based on the results of such examination.

**C. Auction of Equity Interests Pursuant to Plan**

The identity of the New Value Sponsor and the value of the New Capital Contribution will be determined following an Auction of the Equity Interests pursuant to sale procedures to be submitted to the Bankruptcy Court for approval. DOS, the beneficial holder of the current Equity Interests in Navillus, will make an initial offer to purchase the Equity Interests in exchange for the New Capital Contribution on the terms to be set forth in the Stock Purchase Agreement, which will be included in the Plan Supplement. Navillus anticipates that DOS' offer will serve as the "stalking horse" bid for the Equity Interests in Reorganized Navillus which will be subject to a market test through the Auction. Navillus intends to commence with the marketing process and seek approval of bid procedures shortly following the filing of the Disclosure Statement. The Chief Restructuring Officer will be the responsible person to oversee the bidding and sale process. Decisions to be made by Navillus as set forth herein shall be made by such responsible person. The sale procedures will include the following features, as will be set forth more fully in a motion to approve the sale procedures:

- a. DOS, or his designee, will serve as the "stalking horse" New Value Sponsor for a transaction for the Equity Interests of Reorganized Navillus pursuant to the terms of the Stock Purchase Agreement to be filed with the motion seeking approval of bidding and sale procedures and as part of the Plan Supplement. His bid shall be deemed to be a Qualified Bid.
- b. Navillus will file a motion seeking to approve a bidding and sale procedures set forth herein and reserves the right to seek certain bid protections for the "stalking horse" New Value Sponsor.
- c. Navillus will commence a marketing process and, following the execution of a confidentiality agreement, potential bidders may access a due diligence data room and conduct other due diligence.
- d. Navillus, in consultation with Liberty and the Committee, will evaluate bids timely submitted and determine which, if any, bids are Qualified Bids (see below).
- e. In order for a bid to be a "Qualified Bid", such bid must contain at a minimum the following items: (i) proof of potential bidder's financial wherewithal to consummate the proposed transaction, which must include the potential bidder's ability to satisfy the payments required to be made on the Effective Date of the Plan and to replace Liberty as a source of bonding for Navillus' Bonded Contracts or proof of affirmative assent by Liberty to the proposed transfer of the bonding to the potential bidder, each with no negative financial consequences to the Estate, (ii) a description of any contingencies to such bid, (iii) a statement that the bid is not subject to any further due diligence, (iv) a deposit in the form of a letter of credit or cash in an amount equal to ten percent (10%) of the face amount of such bid, (v) a markup of the Stock Purchase Agreement which proposes a transaction with no greater adverse financial consequences or business risk than "stalking

horse” Stock Purchase Agreement, and (vi) other customary and usual terms and items.

- f. If more than one Qualified Bid is timely received by Navillus, then Navillus, in consultation with Liberty and the Committee, will evaluate the Qualified Bids submitted and will determine if/ when an auction (the “Auction”) is necessary or appropriate.
- g. If an Auction is not held, DOS will be declared the winning bidder and will serve as the New Value Sponsor on the terms for the New Capital Contribution set forth in the “stalking horse” Stock Purchase Agreement.
- h. If an Auction is held, following conclusion of the Auction, Navillus, in consultation with Liberty and the Committee, will determine the winning bid (with the runner up to hold its bid open pending closing).
- i. The hearing to approve the transaction with the winning bidder will be held within three (3) days of the date that a winning bidder is determined, or may be consolidated with the Confirmation Hearing at the discretion of Navillus.
- j. The purchase price under the Stock Purchase Agreement will be transferred to the New Capital Contribution Reserve pending the Appeal Determination Date.

#### **D. Treatment of Executory Contracts and Unexpired Leases**

##### **1. *General Assumption of Executory Contracts and Unexpired Leases***

**General Assumption.** Except as otherwise specifically provided in the Plan or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan, as of the Effective Date, all prepetition Executory Contracts and Unexpired Leases are hereby assumed except for an Executory Contract or Unexpired Lease that (i) was previously assumed or rejected by Navillus pursuant to an order of the Bankruptcy Court entered on or prior to the Confirmation Date, (ii) previously expired or was terminated pursuant to its own terms, which termination has not been disputed by Navillus in writing, or (iii) is the subject of a motion to assume or reject filed by Navillus on or before the Confirmation Date. The Confirmation Order shall constitute an order of the Bankruptcy Court under section 365 of the Bankruptcy Code approving the assumption of Executory Contracts and Unexpired Leases described above, as of the Effective Date.

**Assumption and Cure Schedule.** The Plan Supplement shall contain a schedule of Executory Contracts and Unexpired Leases (the “Assumption and Cure Schedule”) designating each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan and the cure amount, if any, related to such proposed assumption; provided, however, that Navillus reserves the right, on or prior to the Confirmation Date, to amend the Assumption and Cure Schedule. Navillus shall provide notice of any amendments to the Assumption and Cure Schedule to the parties affected thereby. The listing of a document on the Assumption and Cure Schedule shall

not constitute an admission by Navillus that such document is an Executory Contract or an Unexpired Lease or that Navillus has any liability thereunder. If no cure amount for an assumed Executory Contract or Unexpired Lease is listed in the Assumption and Cure Schedule, the cure amount shall be deemed to be \$0.

**Inclusiveness.** Unless otherwise specified on the Assumption and Cure Schedule, each Executory Contract and Unexpired Lease listed thereon shall include any and all modifications, amendments, supplements, restatements or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects the Executory Contract or Unexpired Lease, without regard to whether such agreement, instrument or other document is listed on the Assumption and Cure Schedule.

**2. *Payment of Cure Amounts Relating to Assumption of Executory Contract and Unexpired Leases***

**Assumption and Cure Schedule.** Navillus shall file the Assumption and Cure Schedule with the Bankruptcy Court and serve such schedule by first class mail on each non-debtor counterparty to the Executory Contracts and Unexpired Leases listed thereon at least twenty (20) days prior to the Confirmation Hearing. The Assumption and Cure Schedule shall list the cure amount as to each Executory Contract or Unexpired Lease to be assumed under the Plan. The counterparties to such Executory Contracts and Unexpired Leases to be assumed by Navillus shall have ten (10) days from the date of service of the Assumption and Cure Schedule (or the date of service of any amendment to the Assumption and Cure Schedule) to file and serve any objection to either the cure amount listed by Navillus or the assumption of such Executory Contract or Unexpired Lease. If there are objections filed, the Bankruptcy Court may either schedule such objection to be heard at the Confirmation Hearing or at a later hearing on a date to be set by the Bankruptcy Court. Notwithstanding anything to the contrary in the Plan, Navillus or Reorganized Navillus, as applicable, shall be authorized to reject any Executory Contract or Unexpired Lease that is subject to a dispute concerning amounts necessary to cure any defaults through the Effective Date. Each counterparty to an Executory Contract or Unexpired Lease that does not file an objection to the Assumption and Cure Schedule on or before the objection deadline set forth therein will be deemed to consent to the assumption of such Executory Contract or Unexpired Lease and the proposed cure amount (if any) with respect to such agreement.

**Treatment of Cure Claims.** All Allowed Claims for cure amounts arising from the assumption of any Executory Contract or Unexpired Lease shall be treated as Administrative Claims pursuant to Section 3.01 of the Plan, except with respect to the cure costs incurred by Liberty which, pursuant to the Liberty Global Settlement, shall receive the treatment of the Liberty Unsecured Bond Claim as set forth in Section 4.04 of the Plan. Except as may otherwise be agreed to by the counterparty to the Executory Contract or Unexpired Lease, as soon as practicable after the Effective Date, Reorganized Navillus shall pay all undisputed cure amounts. All disputed defaults that are required to be cured shall be cured either within thirty (30) days of the entry of a Final Order determining the amount, if any, of Navillus' liability with respect to such cure amount, or as may otherwise be agreed to with the counterparty to such Executory Contract or Unexpired Lease.

### **3. *Rejection Damages Bar Date***

**If the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan results in a Claim, then such Claim must be filed with the Claims Agent and served upon counsel to Reorganized Navillus on or before the Rejection Damages Bar Date, and upon the failure of any Entity to file such Claim on or before such date, such Entity shall be forever barred from asserting a Claim on account of the rejection of such Executory Contract or Unexpired Lease, but shall nevertheless be bound by the provisions of the Plan. The foregoing applies only to Claims arising from the rejection of an Executory Contract or Unexpired Lease; any other Claims held by a party to a rejected contract or lease shall have been evidenced by a Proof of Claim filed by the applicable Bar Date or shall be barred and unenforceable. Nothing in this Section 7.03 will extend any prior Bar Date set by prior order of the Bankruptcy Court.**

All Allowed Claims arising from the rejection of an Executory Contract or Unexpired Lease shall be treated, to the extent applicable, as General Unsecured Trade Claims, unless otherwise ordered by Final Order of the Bankruptcy Court. There shall be no restriction on the right of Reorganized Navillus to object to any Claims relating to the rejection of Executory Contracts or Unexpired Leases, or to assert any defense or counterclaim to any such Claim, notwithstanding that such defenses or counterclaims may not have otherwise been identified in the Plan, Disclosure Statement or otherwise.

### **4. *Postpetition Contracts and Leases***

Navillus shall not be required to assume or reject any contract or lease entered into by Navillus after the Petition Date. Any such contract or lease shall continue in effect in accordance with its terms after the Effective Date as set forth in the Plan, unless Reorganized Navillus has obtained a Final Order of the Bankruptcy Court approving termination of such contract or lease. Contracts or leases entered into after the Petition Date will be performed by Reorganized Navillus in the ordinary course of its business.

### **5. *Compensation and Benefit Programs***

All compensation and benefit plans, policies and programs of Navillus applicable to its present and former employees, including, without express or implied limitation, all savings plans, retirement plans, health and welfare plans, performance-based incentive plans, retention plans, reimbursement plans, disability plans, severance benefit plans, paid time off plans and life, accidental death and dismemberment insurance plans, including, without express or implied limitation, and the Performance Bonus Program and KEIP, will be deemed to be, and will be treated as though they are, Executory Contracts and will, on the Effective Date, be deemed assumed under the Plan by Reorganized Navillus in accordance with sections 365(a) and 1123(b)(2) of the Bankruptcy Code, and Reorganized Navillus' obligations under such plans, policies and programs will survive confirmation of the Plan, remain unaffected thereby and not be discharged in accordance with section 1141 of the Bankruptcy Code.

## **6. *Special Provisions Regarding Insured Claims***

**Limitations on Distributions to Holders of Allowed Insured Claims.** All prepetition Insured Claims not previously Allowed by Final Order shall be deemed Disputed Claims. Distributions under the Plan to each Holder of an Allowed Insured Claim will be in accordance with the treatment provided for under the Plan for the Class in which such Allowed Insured Claim is classified, but solely to the extent that such Allowed Insured Claim is not satisfied from Navillus' deductible under the Insurance Policy Documents or the proceeds of insurance payable to the Holder of such Allowed Claim under Navillus' Insurance Policy Documents or applicable law. Holders of Insured Claims that are eligible to be satisfied, in whole or in part, through insurance policies will be obligated, as a condition to receiving any Distributions under the Plan, to seek recovery or assist Navillus or Reorganized Navillus in seeking recovery under such insurance policies with regard to such Insured Claims.

**Assumption and Continuation of Insurance Policies.** Each insurance policy and any agreements, documents or instruments relating thereto (collectively, the "Insurance Policy Documents") under which the insurer has a continuing obligation to pay Navillus or a third party on behalf of Navillus shall be either deemed assumed by Navillus pursuant to section 365 of the Bankruptcy Code and Section 7.01 of the Plan or continued in accordance with its terms such that each of the parties' contractual, legal and equitable rights under the Insurance Policy Documents shall remain unaltered, and the parties to Insurance Policy Documents will continue to be bound by such Insurance Policy Documents as if the Chapter 11 Case had not occurred. Nothing in the Plan shall affect, impair or prejudice the rights and defenses of any insurer or Reorganized Navillus under the Insurance Policy Documents in any manner, and such insurers and Reorganized Navillus shall retain all rights and defenses under the Insurance Policy Documents, and the Insurance Policy Documents shall apply to, and be enforceable by and against, Reorganized Navillus and the applicable insurers as if the Chapter 11 Case had not occurred. The rights and obligations of Navillus, Reorganized Navillus and insurers shall be determined under the Insurance Policy Documents and under applicable non-bankruptcy law. Regardless of whether the Insurance Policy Documents are executory, Reorganized Navillus will perform Navillus' obligations thereunder, including any that remain unperformed as of the Effective Date.

## **7. *Continuing Obligations Owed to Navillus***

Any indemnity agreement entered into between Navillus and any other Person requiring the supplier of indemnity to provide insurance in favor of Navillus, to warrant or guarantee such supplier's goods or services, or to indemnify Navillus for claims arising from the goods or services shall be deemed to be, and shall be treated as though it is, an Executory Contract that is assumed pursuant to section 365 of the Bankruptcy Code and Section 7.01 of the Plan; provided, however, that if any party thereto asserts any cure amount, at the election of Navillus, such agreement may not be deemed assumed, and Navillus instead reserves the right to reject such agreement pursuant to section 365 of the Bankruptcy Code under the Plan.

Continuing obligations of third parties to Navillus under the Insurance Policy Documents and other contracts or leases that have ceased to be executory or have otherwise expired on or

prior to the Effective Date, including, without limitation, continuing obligations to pay Insured Claims, to defend against and process claims, to refund premiums or overpayments, to provide indemnification, contribution or reimbursement, to grant rights of first refusal, to maintain confidentiality, or to honor releases, shall continue and shall be binding on such third parties unless otherwise specifically terminated by Navillus, under the Plan or otherwise by order of the Bankruptcy Court.

**E. Provisions Governing Distributions and Disputed Claims**

**1. *Distributions on the Effective Date***

Except as otherwise provided in the Plan or as ordered by the Bankruptcy Court, all Distributions to Holders of Allowed Claims as of the Effective Date that are unclassified Claims as described in Article III of the Plan and Classes 1 and 2 shall be made on or as soon as practicable after the Effective Date. Distributions to Holders of Allowed Claims in Classes 3, 4, 5, 6 and 7 (if applicable) shall be made as soon as practicable after the later of (x) the Appeal Determination Date or (y) the date such Claim becomes Allowed. Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to Section 8.02 of the Plan.

**2. *Distributions After the Effective Date***

Distributions made after the Effective Date to Holders of Allowed Claims that are Disputed Claims as of the Effective Date will be deemed to have been made on the Effective Date. No interest will accrue or be payable on such Claims or any Distributions.

**3. *Interest on Claims***

Unless otherwise specifically provided for in the Plan or the Confirmation Order, postpetition interest shall not accrue or be paid on Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim.

**4. *Distribution Agent***

All Distributions under the Plan shall be made by the Distribution Agent. The Distribution Agent shall be empowered to (i) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan, (ii) make all Distributions contemplated by the Plan, and (iii) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions of the Plan. If a Distribution Agent is an independent third party designated to serve in such capacity, such Distribution Agent shall receive, without further approval from the Bankruptcy Court, reasonable compensation for distribution services rendered pursuant to the Plan and reimbursement of reasonable out of pocket expenses incurred in connection with such services from Reorganized Navillus.

**5. *Claims Filed After Bar Date***

Any Claim, including without limitation any Claim for alleged withdrawal liability, filed after the Bar Date shall, unless such Claim properly amends a Claim filed before the Bar Date or unless the Bankruptcy Court otherwise directs, be deemed Disallowed in full and expunged without further order of the Bankruptcy Court. Filed or Scheduled Claims may be amended or reconsidered only as provided in the Bankruptcy Code and Bankruptcy Rules. A Claim may be amended prior to the Confirmation Date only as agreed upon by Navillus and the Holder of such Claim, or as otherwise permitted by the Bankruptcy Court, the Bankruptcy Rules or applicable law. After the Confirmation Date, except as otherwise specifically set forth in the Plan, a Claim may not be filed or amended without the authorization of the Bankruptcy Court or consent of Reorganized Navillus.

**6. *Transmittal of Distributions and Notices***

Any property or notice which a Person is or becomes entitled to receive pursuant to the Plan may be delivered by first class mail, postage prepaid, in an envelope addressed to that Person or authorized agent at the address indicated on the latest notice of appearance or the latest Proof of Claim or other paper filed by that Person or its authorized agent. Absent any of the foregoing, the address set forth in the relevant Schedule for that Person may be used. Property distributed in accordance with this Section shall be deemed delivered to such Person regardless of whether such property is actually received by that Person. Notwithstanding anything in the Plan to the contrary, the Distribution Agent shall not have any obligation to attempt to locate any Person who is or becomes entitled to receive any Distribution under the Plan with regard to any undeliverable or uncashed Distributions.

A Holder of a Claim or Equity Interest may designate a different address for notices and Distributions by notifying Navillus and the Distribution Agent of that address in writing. Any change of address of a party entitled to receive Distributions hereunder must be provided by registered mail to the address for notices set forth in Section 13.07 of the Plan in order to be effective. Such notification shall be effective upon receipt.

If any Distribution to a Holder of a Claim or Equity Interest is returned as undeliverable (e.g., “forwarding time expired, “addressee unknown”, etc.), no further Distributions to such Holder shall be made unless and until the Distribution Agent is timely notified within ninety (90) days following the Distribution Date with respect to such Holder of a Claim, in writing, of such Holder’s then current address, at which time all missed Distributions shall be made to such Holder without interest.

**7. *Unclaimed Property***

If any Distribution remains unclaimed for a period of ninety (90) days following a Distribution Date to the Holder of an Allowed Claim or Equity Interest entitled thereto, the Distribution shall constitute Unclaimed Property and the Holder shall no longer be entitled to such Distribution. All such property shall be retained by the Distribution Agent in the Distribution Reserve for Distribution pursuant to the terms of the Plan, subject, however, to the

Distribution Agent's sole discretion to distribute Unclaimed Property to Holders entitled thereto if such Holders are subsequently located.

**8. *Withholding Taxes and Expenses of Distribution***

In connection with the Plan and all Distributions under the Plan, Reorganized Navillus and the Distribution Agent shall, to the extent applicable, comply with all tax withholding, payment, and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority, and all Distributions under the Plan shall be subject to any such withholding, payment, and reporting requirements. Reorganized Navillus and the Distribution Agent shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting requirements. Notwithstanding any other provision of the Plan, each Holder of an Allowed Claim that is to receive a Distribution of Cash or Reorganized Navillus Notes pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such Distribution, and including, in the case of any Holder of a Disputed Claim that has become an Allowed Claim, any tax obligation that would be imposed upon Reorganized Navillus in connection with such Distribution, and no Distribution of Cash or Reorganized Navillus Notes shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to Reorganized Navillus and the Distribution Agent for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon Reorganized Navillus in connection with such Distribution. If such information is not received within ninety (90) days after the Distribution Date by the Distribution Agent, such Distribution shall be treated as Unclaimed Property.

**9. *Fractional Distributions***

Notwithstanding any other provision of the Plan to the contrary, no Cash payments or Distributions of Reorganized Navillus Notes of fractions of cents will be made. Whenever any payment of a fraction of a dollar would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar.

**10. *De Minimis Distributions***

Notwithstanding anything to the contrary contained in the Plan, the Distribution Agent shall not be required to distribute, and shall not distribute, Cash, Reorganized Navillus Notes or other property to the Holder of any Allowed Claim if the amount of Cash, Reorganized Navillus Notes or other property to be distributed on account of such Claim is less than \$50. Any Holder of an Allowed Claim on account of which the amount of Cash or other property to be distributed is less than such amount shall have such Claim discharged and shall be forever barred from asserting such Claim against Navillus, Reorganized Navillus or their respective property. Any Cash, Reorganized Navillus Notes or other property not distributed pursuant to this provision shall be the property of Reorganized Navillus, free of any restrictions thereon.

#### **11. *Setoffs and Recoupments***

Except as otherwise provided in the Plan, the Confirmation Order or in agreements previously approved by Final Order of the Court, Navillus may, pursuant to applicable law, setoff or recoup against any Claim (for purposes of determining the Allowed amount of such Claim on which Distribution shall be made and before any Distribution is made on account of such Claim), any and all of the Claims, rights and Causes of Action of any nature that Navillus or the Estate may hold against the Holder of such Claim.

Neither the failure to affect such a setoff or recoupment, the allowance of any Claim hereunder, any other act or omission of Navillus, nor any provision of the Plan, shall constitute a waiver or release by Navillus of any such Claims, rights and Causes of Action that Navillus may possess against such Holder. To the extent Navillus fails to setoff or recoup against a creditor and seeks to collect a Claim from such creditor after a Distribution to such creditor pursuant to the Plan, Navillus, if successful in asserting such Claim, shall be entitled to full recovery against such creditor. Navillus may seek periodic Bankruptcy Court approval for any such setoffs or recoupments.

#### **12. *Pre-Payment***

Except as otherwise provided in the Plan, the Plan Supplement, any ancillary documents entered into in connection therewith, or the Confirmation Order, Reorganized Navillus shall have the right to pre-pay, without penalty, all or any portion of an Allowed Claim entitled to payment in Cash or a Distribution on account of Reorganized Navillus Notes at any time; provided, however, that any such prepayment shall not be violative to or otherwise prejudice the relative priorities and parities among the Classes of Claims.

#### **13. *No Distribution in Excess of Allowed Amounts***

Notwithstanding anything to the contrary herein, no Holder of an Allowed Claim shall receive in respect of such Claim any Distribution of a value as of the Effective Date in excess of the Allowed amount of such Claim (excluding payments on account of interest due and payable from and after the Petition Date pursuant to the Plan, if any).

#### **14. *Disposition of Excess Funds***

If, after ninety (90) days following the final Distribution Date, any Unclaimed Property remains, or Cash of inconsequential value to the Estate remains in the possession or under the control of Reorganized Navillus or the Distribution Agent, and the Distribution Agent has satisfied and discharged all the expenses intended to be paid on behalf of the Estate, the Distribution Agent shall, at the sole option of Reorganized Navillus, either apply remaining Cash or Unclaimed Property for further Distribution in accordance with the Plan or abandon such funds in a commercially reasonable manner, including to a charitable organization.

**F. Procedures For Resolving Disputed, Contingent, And Unliquidated Claims And Distributions With Respect Thereto**

**1. *Prosecution of Objections to Claims.***

From and after the Effective Date, Reorganized Navillus shall have the right to object to the allowance of any Claim and may file with the Bankruptcy Court any appropriate motion or adversary proceeding with respect thereto on or before the Claims Objection Bar Date. All Claim objections may be litigated to Final Order; provided, however, that Reorganized Navillus may compromise and settle, withdraw, or resolve by any other method approved by the Bankruptcy Court, any objections to any Claim. To the extent any Claims or Causes of Actions are pending before the Bankruptcy Court pursuant to filings made during the pendency of the Chapter 11 Case, Navillus shall be required to obtain an appropriate order of the Bankruptcy Court concluding any such filings.

**2. *Estimation of Claims***

Navillus may at any time request that the Bankruptcy Court estimate any Contingent Claim, unliquidated Claim or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether Navillus has previously objected to such Claim, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time, including during litigation concerning any objection to such Claim. On and after the Confirmation Date, subject to the Effective Date, Claims which have been estimated subsequently may be compromised, settled, withdrawn or otherwise resolved without further order of the Bankruptcy Court as provided in Section 9.01 of the Plan.

**3. *Resolution of Disputed Insured Claims***

**ADR Procedures.** Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, the Plan incorporates a request to approve alternative dispute resolution procedures (the “ADR Procedures”) to promote the resolution of prepetition Insured Claims that remain unliquidated or are Disputed Claims as of the Voting Record Date. A summary of the ADR Procedures is set forth below, and a copy of the ADR Procedures in their entirety will be included in the Plan Supplement.

Offer Exchange Procedures. The first stage of the ADR Procedures is an offer exchange process (the “Offer Exchange Procedure”) requiring the parties to exchange settlement offers and thereby providing the opportunity to resolve the Disputed Insured Claims on a consensual basis without any further litigation.

Mediation Procedure. If the Offer Exchange Procedure does not result in settlement of a Disputed Insured Claim, the next step is mediation before a mediator chosen from a pre-selected list. Following the selection of a mediator and the preparation of mediation statements, and within thirty (30) days of the appointment of a mediator, a mediation conference will be held during which the mediator will work with the parties to resolve the Disputed Insured Claim.

Claims not resolved through mediation will proceed to litigation as set forth in Section 9.03(b) of the Plan.

**Disputed Insured Claims Not Resolved Through ADR Procedures.** After the Effective Date, at Reorganized Navillus' option, any Disputed Insured Claim (as to which a Proof of Claim was timely filed in the Chapter 11 Case) not resolved through the ADR Procedures or a Final Order of the Bankruptcy Court will be determined in the administrative or judicial tribunal in which it is pending on the Effective Date or, if no action was pending on the Effective Date, in any administrative or judicial tribunal of appropriate jurisdiction. Reorganized Navillus may exercise this option by service upon the Holder of the applicable Insured Claim of a notice informing the Holder of such Insured Claim that Reorganized Navillus has exercised such option. Upon Reorganized Navillus' service of such a notice, the discharge injunction provided for in Section 12.02 of the Plan will be deemed modified, without the necessity for further Bankruptcy Court approval, solely to the extent necessary to allow the parties to determine the Disputed Insured Claim in the applicable administrative or judicial tribunal. Notwithstanding the foregoing, at all times prior to and after the Effective Date, the Bankruptcy Court will retain jurisdiction relating to the Insured Claims, including Navillus and Reorganized Navillus' right to have such Claims determined in the Bankruptcy Court (or the United States District Court for the Southern District of New York) pursuant to section 157(b)(2)(B) of title 28 of the United States Code, as may be applicable.

**Treatment of Insured Claims Upon Final Resolution.** Any Insured Claim determined pursuant to the ADR Procedures or a judgment obtained in accordance with this Section 9.03 of the Plan and applicable non-bankruptcy law will be deemed an Allowed Claim in the amount so determined, provided that only the amount of such Allowed Claim that is not satisfied from Navillus' deductible under the Insurance Policy Documents or the proceeds of insurance payable to the Holder of such Allowed Claim under Navillus' Insurance Policy Documents will be treated as an Allowed Claim for purposes of Distributions under the Plan. In no event will a Distribution be made under the Plan to the Holder of an Insured Claim on account of any portion of an Insured Claim in excess of Navillus' deductible under any applicable Insurance Policy Documents. In the event an Insured Claim is determined pursuant to a judgment obtained in accordance with this Section 9.03 of the Plan and applicable non-bankruptcy law provides for no recovery against Navillus, such Insured Claim will be deemed Disallowed and expunged without the necessity for further Bankruptcy Court approval upon Navillus or Reorganized Navillus' service of a copy of such judgment or Final Order upon the Holder of such Insured Claim. All Claims, demands, rights, defenses and Causes of Action that Navillus or Reorganized Navillus may have against any Person or Entity in connection with or arising out of any Insured Claim are expressly retained and preserved.

The resolution of Disputed Insured Claims pursuant to this Section 9.03 of the Plan shall be subject to the provisions of Section 7.06 of the Plan.

**4. *No Distribution Pending Allowance***

No Distributions shall be made on account of a Disputed Claim or, if less than the entire Claim is a Disputed Claim, the portion of a Claim that is Disputed, until such Claim becomes an Allowed Claim. In lieu of making a Distribution to a Holder of a Disputed Claim, any Distribution to which such Holder would be entitled if that Claim had been Allowed in full shall be placed in the Distribution Reserve until the disposition thereof shall be determined by a Final Order or by written agreement between the Holder of the Claim and Navillus.

**5. *Distributions on Account of Disputed Claims Once They are Allowed***

The Distribution Agent shall, following the Appeal Determination Date and on any subsequent Distribution Date, make Distributions on account of any Disputed Claim that has become an Allowed Claim. Such Distributions shall be made pursuant to the provisions of the Plan governing the applicable Class. Such Distributions shall be based upon the Distributions that would have been made to the Holder of such Claim under the Plan if the Disputed Claim had been an Allowed Claim on the Effective Date in the amount ultimately Allowed.

**6. *Reserves for Plan Distributions***

Navillus or Reorganized Navillus may establish any reserves that they deem necessary or advisable to make Distributions to Holders of Allowed Claims and Equity Interests or otherwise to satisfy their obligations under the Plan.

**Distribution Reserve.** On the Effective Date and on each subsequent Distribution Date, Navillus or Reorganized Navillus shall withhold on a Pro Rata basis from property that would otherwise be distributed to Classes of Claims entitled to Distributions under the Plan on such date, in the Distribution Reserve, an amount or property sufficient to make the Distributions to which Holders of such Disputed Claims would be entitled under the Plan if such Disputed Claims were Allowed as of the Effective Date. Navillus or Reorganized Navillus may request, if necessary, estimation of any Disputed Claim that is contingent or unliquidated, or for which Navillus or Reorganized Navillus determine to reserve less than the amount of the Disputed Claim. Navillus or Reorganized Navillus shall withhold the applicable portion of the Distribution Reserve with respect to such Claims based upon the estimated amount of each such Claim as estimated by the Bankruptcy Court. If Navillus or Reorganized Navillus elect not to request such an estimation from the Bankruptcy Court with respect to a Disputed Claim that is contingent or unliquidated, Navillus or Reorganized Navillus shall withhold the applicable amount of the Disputed Claim based upon the good faith estimate of the amount of such Claim by Navillus or Reorganized Navillus.

**Insured Claims Reserve.** On the Effective Date, the Distribution Agent shall reserve from Available Cash the amount of \$205,000 to fund any deductible costs incurred under the Insurance Policy Documents in connection with each Insured Claim.

**New Capital Contribution Reserve.** As of the Effective Date, the New Value Sponsor shall deposit the New Capital Contribution into the New Capital Contribution Reserve. The New

Capital Contribution shall be held in the New Capital Contribution Reserve until the Appeal Determination Date. As soon as practicable following the Appeal Determination Date, the New Capital Contribution shall be released to Reorganized Navillus as provided in Section 4.07 hereof.

#### **G. Retention of Jurisdiction**

Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, and except as otherwise ordered by the Bankruptcy Court, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Case and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured, or unsecured status of any Claim or Equity Interest not otherwise Allowed under the Plan (other than personal injury or wrongful death Claims, unless agreed by the Holder), including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims or Equity Interests in Navillus;
- hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 327, 328, 330, 331, 503(b), 1103, and 1129(a)(4) of the Bankruptcy Code; provided, however, that from and after the Confirmation Date, the payment of the fees and expenses of the Professionals of Reorganized Navillus shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;
- hear and determine all matters with respect to the assumption or rejection of any Executory Contract or Unexpired Lease to which Navillus is a party or with respect to which Navillus may be liable, including, if necessary, the nature or amount of any required cure or the liquidation or allowance of any Claims arising therefrom;
- effectuate performance of and payments under the provisions of the Plan and enforce remedies upon any default under the Plan;
- hear and determine any and all adversary proceedings, motions, applications, and contested or litigated matters arising out of, under, or related to, the Chapter 11 Case or the Plan, including without limitation the enforcement of the injunction provisions contained in Article XII of the Plan and any potential Claims or Causes of Action disclosed in Section VII.B.12 of this Disclosure Statement;
- enter such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, the Plan Supplement, the Disclosure Statement, or the Confirmation Order;

- hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;
- consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
- issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with the implementation, consummation, or enforcement of the Plan or the Confirmation Order;
- enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified, or vacated;
- hear and determine any matters arising in connection with or relating to the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Plan Supplement, the Disclosure Statement, or the Confirmation Order;
- enforce, interpret, and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Case (whether or not the Chapter 11 Case has been closed);
- except as otherwise limited herein, recover all assets of Navillus and property of the Estate, wherever located;
- hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;
- hear and determine all disputes involving the existence, nature, or scope of Navillus' discharge;
- hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, the provisions of the Bankruptcy Code; and
- enter a final decree closing the Chapter 11 Case.

## **H. Release, Discharge, Injunction and Exculpation**

### **1. *Releases and Related Matters***

#### **a. Released Parties**

For purposes of this section, “Released Parties” means (i) Navillus, (ii) Reorganized Navillus, (iii) the Estate, (iv) the New Value Sponsor, (v) each direct or indirect and actual or beneficial Holder of Equity Interests in Navillus, including, without limitation, Donal O’Sullivan, the Donal O’Sullivan Revocable Living Trust, and Donal O’Sullivan IDGT II, (vi) Liberty, (vii) the Indemnitors, and (viii) with respect to the foregoing, each of their respective current and former officers and directors, managers, members, employees, agents, representatives, financial advisors, professionals, accountants, attorneys, affiliates, and each of their predecessors, successors and assigns.

#### **b. Releases by Navillus and Reorganized Navillus**

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, Navillus, Reorganized Navillus, and any Person or Entity seeking to exercise the rights of Navillus’ Estate, shall be deemed to forever release, waive, and discharge each of the Released Parties from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action (including Avoidance Actions), and liabilities whatsoever in connection with or in any way relating to (a) Navillus, (b) the conduct of Navillus’ business, (c) the Chapter 11 Case, (d) the Disclosure Statement or the Plan, (e) any agreement, understanding, contract, instrument or other document which existed prior to the Effective Date relating in any way to the foregoing, and (f) any transaction, event, circumstance, action, failure to act or occurrence of any kind or nature which occurred, existed, was taken, permitted or begun at any time prior to the Effective Date relating in any way to Navillus, the conduct of Navillus’ business, the Chapter 11 Case, the Disclosure Statement or the Plan, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise, that are based in whole or part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date. Notwithstanding the foregoing, the obligations under the Plan are not released.

#### **c. Releases by Holders of Claims and Equity Interests**

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, each Holder of a Claim against or Equity Interest in Navillus and Reorganized Navillus shall be deemed to forever release, waive, and discharge each of the Released Parties from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action (including Avoidance Actions), and liabilities whatsoever in connection with or in any way relating to (a) Navillus, (b) the conduct of Navillus’ business, (c) the Chapter 11 Case, (d) the Disclosure Statement or the Plan, (e) any agreement, understanding, contract, instrument or other document which existed prior

to the Effective Date relating in any way to the foregoing, and (f) any transaction, event, circumstance, action, failure to act or occurrence of any kind or nature which occurred, existed, was taken, permitted or begun at any time prior to the Effective Date relating in any way to Navillus, the conduct of Navillus' business, the Chapter 11 Case, the Disclosure Statement or the Plan, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise, that are based in whole or part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date; provided, however, that nothing in this Section 12.01(c) shall operate as a release, waiver or discharge of any Causes of Action or liabilities unknown to such Person as of the Petition Date arising out of willful misconduct, gross negligence, fraud or criminal acts of any such Released Party as determined by a Final Order. Notwithstanding the foregoing, the obligations under the Plan are not released. Without limitation of the exculpation or other provisions of the Plan and the Confirmation Order, and for purposes of the release set forth in this Section 12.01(c) of the Plan only, such release will not apply to release the Released Parties from any Claims held by Holders of Claims or Equity Interests who (i) voted to reject the Plan; (ii) voted to accept the Plan but opted out of the foregoing release; or (iii) abstained from voting on the Plan but opted out of the foregoing release, all in accordance with the Disclosure Statement Order.

## **2. *Discharge of Claims and Equity Interests***

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise provided herein, all consideration distributed under the Plan shall be in exchange for, and in complete satisfaction, settlement, discharge, and release, effective as of the Effective Date, of all Claims, Equity Interests and Causes of Action that arose before the Effective Date, and all debts of the kind specified in section 502 of the Bankruptcy Code, whether or not (i) a Proof of Claim based upon such debt is filed or deemed filed under section 501 of the Bankruptcy Code, (ii) a Claim based upon such debt is Allowed under section 502 of the Bankruptcy Code, (iii) a Claim based upon such debt is or has been Disallowed by order of the Bankruptcy Court, or (iv) the Holder of a Claim based upon such debt accepted the Plan. The Plan shall bind all Holders of Claims and Equity Interests, notwithstanding whether any such Holders failed to vote to accept or reject the Plan or voted to reject the Plan.

As of the Effective Date, the Confirmation Order shall be a judicial determination of discharge of all such Claims and other debts and liabilities against Navillus and termination of all Equity Interests, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment obtained against Navillus at any time, to the extent that such judgment relates to a discharged Claim or terminated Equity Interest.

## **3. *Injunction***

Except as otherwise set forth herein, all Persons who have held, hold or may hold Claims, Causes of Action or Equity Interests and their successors and assigns, and all other parties in interest, along with their respective present or former directors, officers,

principals, employees, agents, professionals, representatives and affiliates shall be permanently enjoined, from and after the Effective Date, from: (a) commencing or continuing in any manner any action or proceeding of any kind with respect to any such Claims, Causes of Action or Equity Interests against Navillus, Reorganized Navillus, the Estate or the Released Parties, (b) the enforcement, attachment, collection or recovery by any manner or means of a judgment, award, decree or order against Navillus, Reorganized Navillus, the Estate or the Released Parties on account of such Claims, Causes of Action or Equity Interests, (c) creating, perfecting or enforcing any encumbrance of any kind against Navillus, Reorganized Navillus, the Estate or the Released Parties or against the property or interests in the property of Navillus, Reorganized Navillus, the Estate or the Released Parties on account of any such Claims, Causes of Action or Equity Interests, (d) taking any action against, or interfering in any respect with, the Cash or property being distributed in accordance with the Plan or the Distributions being effectuated through the Plan (other than actions to enforce any rights or obligations under the Plan); (e) asserting any right of setoff or recoupment of any kind, directly or indirectly, against any obligation due Navillus, Reorganized Navillus, the Estate or the Released Parties, except as contemplated or allowed by the Plan; and (f) prosecuting or otherwise asserting any Claim, Cause of Action, right or interest that has been extinguished, discharged, released, settled or exculpated pursuant to the Plan or the Confirmation Order. Such injunction shall extend to all Persons protected by the discharge, release and exculpation provisions of the Plan and the Confirmation Order, as well as to the successors of such Persons and to the respective property and interests in property of such Persons.

Without limiting the effect of the foregoing provisions of this Section 12.03 upon any Person, by accepting Distributions pursuant to the Plan, each Holder of an Allowed Claim or Equity Interest receiving a Distribution pursuant to the Plan shall be deemed to have specifically consented to the injunctions set forth in this Section 12.03.

#### **4. *Exculpation and Limitations of Liability***

For purposes of this section, “Exculpated Parties” means (i) Navillus, (ii) Reorganized Navillus, (iii) the Estate, (iv) the New Value Sponsor, (v) each direct or indirect and actual or beneficial Holder of Equity Interests in Navillus, including, without limitation, Donal O’Sullivan, the Donal O’Sullivan Revocable Living Trust, and Donal O’Sullivan IDGT II, (vi) Liberty, (vii) the Indemnitors, and (viii) with respect to the foregoing, each of their respective current and former officers and directors, managers, members, employees, agents, representatives, financial advisors, Professionals, accountants, attorneys, affiliates, and each of their predecessors, successors and assigns.

The Exculpated Parties who provided services to the Estate during this Chapter 11 Case will not have or incur any liability to any Person for any act taken or omission occurring on or after the Petition Date in connection with or related to the Estate, including but not limited to (i) the commencement and administration of the Chapter 11 Case, (ii) the operation of Navillus during the pendency of the Chapter 11 Case, (iii) formulating, preparing, disseminating, implementing, confirming, consummating or administering the Plan (including soliciting acceptances or rejections thereof); (iv) the Disclosure Statement

or any contract, instrument, release or other agreement or document entered into or any action taken or omitted to be taken during the administration of the Chapter 11 Case or in connection with the Plan or Plan Supplement; or (v) any Distributions made pursuant to the Plan. Nothing in this section shall (i) be construed as a release of such Person's fraud, gross negligence, malpractice or willful misconduct with respect to the matters set forth in this Section 12.04(b), or (ii) limit the liability of Navillus' Professionals to their respective clients pursuant to DR 6-102 of the Code of Professional Responsibility. The Exculpated Parties are entitled to rely on, and act or refrain from acting on, all information provided by other Exculpated Parties without any duty to investigate the veracity or accuracy of such information.

## **VIII. VOTING ON AND CONFIRMATION OF PLAN**

### **A. General Requirements for Confirmation**

The Bankruptcy Code requires the Bankruptcy Court to determine whether a plan of reorganization complies with the technical requirements of chapter 11 of the Bankruptcy Code. It further requires that a debtor or plan proponent's disclosures concerning such plan have been adequate and have included information concerning all payments made or promised in connection with the plan.

To confirm the Plan, the Bankruptcy Code requires that the Bankruptcy Court make a series of determinations regarding the Plan, including that (i) the Plan has classified all Claims and Equity Interests in a permissible manner; (ii) the Plan complies with the technical requirements of chapter 11 of the Bankruptcy Code; and (iii) the proponent's disclosures as required by chapter 11 of the Bankruptcy Code have been adequate. Navillus believes that all of these requirements will have been met by the date of the Confirmation Hearing and will seek rulings of the Bankruptcy Court to that effect at that hearing.

Section 1129(a) of the Bankruptcy Code requires that, among other things, for a plan to be confirmed:

- The plan complies with the applicable provisions of the Bankruptcy Code.
- The debtor has complied with the applicable provisions of the Bankruptcy Code.
- The plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or to be made by the debtor under the plan for services or for costs and expenses in, or in connection with, the chapter 11 case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.
- The debtor has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in the plan with the debtor, or a successor to the debtor under the plan. The appointment to, or continuance in, such office of such individual, must be consistent with the interests of creditors and equity security holders and with public policy and Navillus must have

disclosed the identity of any insider that the reorganized debtor will employ or retain, and the nature of any compensation for such insider.

- Each class of claims or interests has either accepted the plan, is not impaired under the plan or if impaired, with respect to each class of impaired claims or interests, either each holder of a claim or interest of such class has accepted the plan, or will receive or retain under the plan on account of such claim or interest, property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtor were liquidated on such date under chapter 7 of the Bankruptcy Code.
- Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that allowed administrative expenses and priority claims (other than tax claims) will be paid in full on the effective date and that priority tax claims will receive on account of such claims deferred cash payments, over a period not exceeding five (5) years after the order for relief in a case, of a value, as of the effective date, equal to the allowed amount of such claim.
- If a class of claims is impaired, at least one (1) impaired class of claims has accepted the plan, determined without including any acceptance of the plan by any insider holding a claim in such class.
- Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan (unless such liquidation or reorganization is proposed in the plan).

The Bankruptcy Code also requires that (i) the Plan will have been accepted by the requisite votes of creditors (except to the extent that “cram down” is available under section 1129(b) of the Bankruptcy Code); (ii) the Plan be feasible (that is, confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization); and (iii) the Plan be in the “best interests” of all Impaired creditors that do not vote to accept the Plan (that is, that Impaired creditors which do not vote to accept the Plan will receive pursuant to the Plan value at least equal to the value that they would receive in a liquidation under chapter 7 of the Bankruptcy Code). To confirm the Plan, the Bankruptcy Court must find that all of these requirements are met.

Thus, even if the Plan is accepted by the requisite votes, the Bankruptcy Court must make independent findings respecting the Plan’s feasibility and whether it is in the best interests of Impaired dissenting creditors before it may confirm the Plan. These statutory conditions are discussed below.

## **B. Voting Procedures and Standards**

### **1. *Classes Entitled to Vote to Accept or Reject the Plan***

Each Impaired Class of Claims that is receiving a Distribution under the Plan is entitled to vote separately to accept or reject the Plan. Accordingly, Holders of Claims in Classes 4 - 6

are entitled to vote to accept or reject the Plan. By operation of law, each Unimpaired Class of Claims is deemed to have accepted the Plan and, therefore, the Holders of Claims or Equity Interests in such Classes are not entitled to vote to accept or reject the Plan. Consequently, Classes 1- 3 are deemed to have accepted the Plan and, therefore, none of the Holders of Claims in Classes 1 - 3 are entitled to vote to accept or reject the Plan. Whether or not the Holders of Equity Interests in Class 7 are Impaired or Unimpaired is dependent on the outcome of the Navillus Appeal, but in either case the Holders of Class 7 Equity Interests will not vote on the Plan.

## **2. *Voting Procedures and Standards***

The following procedures for allowance of Claims for purposes of voting on the Plan shall apply to votes upon the Plan:

a. **Disputed Filed Claims.** With regard to a Claim that is the subject of an objection filed at least twenty-five (25) days prior to the Voting Deadline, such Claim will be Disallowed provisionally for voting purposes, except to the extent and in the manner that (i) Navillus agrees that the Claim should be allowed for voting purposes in its objection to such Claim; or (ii) such Claim is allowed temporarily for voting purposes in accordance with Bankruptcy Rule 3018 pursuant to a motion filed at least twenty (20) days prior to the Voting Deadline.

b. **Claims Estimated for Voting Purposes.** With respect to a Claim that has been estimated or otherwise allowed for voting purposes by order of the Bankruptcy Court, the amount and classification of such Claim will be that set by the Court.

c. **Wholly Unliquidated Claims.** A Claim filed as wholly unliquidated, contingent and/or undetermined will be accorded one vote, valued at one dollar, for the purposes of section 1126(c) of the Bankruptcy Code, unless the Claim is disputed as set forth in (a) above.

d. **Late Claims.** With respect to a Claim as to which a Proof of Claim has not been timely filed (i.e., was filed after the Bar Date), the voting amount of such Claim (subject to any applicable limitations set forth below) will be equal to the amount listed, if any, in respect of such Claim in the Schedules, to the extent such Claim is not listed as Contingent, unliquidated, or Disputed, unless the Claim is disputed as set forth in (a) above. If such Claim is either not listed in the Schedules, or is listed as Contingent, unliquidated or Disputed, then the Claim respecting such Proof of Claim will be Disallowed provisionally for voting purposes.

e. **Duplicate Claims.** A creditor will not be entitled to vote its Claim to the extent such Claim duplicates or has been superseded by another Claim of such creditor.

f. **Undisputed Scheduled Claims.** With respect to a Claim that appears on the Schedules as undisputed, noncontingent and liquidated, and as to which no objection has been filed at least twenty five (25) days prior to the Voting Deadline, the amount

and classification of such Claim shall be that specified in the Schedules unless superseded by an undisputed Proof of Claim.

g. **Bankruptcy Court Determined Claims.** With respect to a Claim for which an order has been entered reducing, reclassifying or allowing, the amount and classification of the Claim shall be that specified in such order.

### **3. *Tabulation Procedures***

The Ballots of creditors will be tabulated in accordance with the following procedures:

a. For the purpose of voting on the Plan, the Voting Agent will be deemed to be in constructive receipt of any Ballot timely delivered to the address designated for the receipt of Ballots cast on the Plan;

b. Any Ballot received by the Voting Agent after the Voting Deadline shall not be counted;

c. Pursuant to Bankruptcy Rule 3018(a), whenever a holder of a Claim submits more than one Ballot voting the same Claim prior to the Voting Deadline, the last such Ballot sent and received shall count unless such holder has sufficient cause within the meaning of Bankruptcy Rule 3018(a) to submit, or Navillus consents to the submission of, a superseding Ballot;

d. If a Ballot does not include a Claim amount, the Ballot shall be deemed filed in the amount of a filed Claim, and if no Claim has been filed, in the amount of the Claim as specified in the Schedules, as long as the Claim is listed in the Schedules as undisputed, non-contingent or liquidated; otherwise, the Ballot shall not be counted;

e. If a holder of a Claim casts simultaneous duplicative Ballots voted inconsistently, then such Ballots shall not be counted;

f. The authority of the signatory of each Ballot to complete and execute the Ballot shall be presumed;

g. Any Ballot that is not signed shall not be counted;

h. Any Ballot received timely by the Voting Agent by electronic communication (i.e. email) or facsimile will not be counted;

i. A holder of a Claim must vote all of its Claims within a particular Class under the Plan either to accept or reject the Plan and may not split its vote. Accordingly, a Ballot that partially rejects and partially accepts the Plan, or that indicates both a vote for and against the Plan, will not be counted; and

j. Any Ballot that is timely received and executed but does not indicate whether the holder of the relevant Claim is voting for or against the Plan shall not be counted.

**IF A BALLOT IS DAMAGED OR LOST OR IF YOU HAVE ANY QUESTIONS CONCERNING VOTING PROCEDURES, YOU MAY CONTACT THE VOTING AGENT.**

Any Impaired Class of Claims that fails to achieve the requisite “accepted” vote will be deemed to have rejected the Plan.

**C. Acceptance By Impaired Classes**

As a condition to confirmation, the Bankruptcy Code requires that each Class of Impaired Claims vote to accept the Plan, except to the extent that “cram down” is available under section 1129(b) of the Bankruptcy Code (as described in the following section).

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of claims in that class, but for that purpose counts only those who actually timely and properly vote to accept or to reject the Plan.

A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

**D. Confirmation Without Acceptance by All Impaired Classes (“Cram Down”)**

**NAVILLUS RESERVES THE RIGHT TO CRAM DOWN THE PLAN AGAINST NON-ACCEPTING CLASSES OF HOLDERS OF CLAIMS OR EQUITY INTERESTS.**

The Bankruptcy Code contains provisions for confirmation of a plan even if the plan is not accepted by all impaired classes, as long as at least one impaired class of claims has accepted the plan. The “cram down” provisions of the Bankruptcy Code are set forth in section 1129(b) of the Bankruptcy Code. Under the “cram down” provisions, upon the request of a plan proponent the Court will confirm a plan despite the lack of acceptance by an impaired class or classes if the Court finds that (i) the plan does not discriminate unfairly with respect to each non-accepting impaired class, (ii) the plan is fair and equitable with respect to each non-accepting impaired class, and (iii) at least one impaired class has accepted the plan. As detailed below, these standards ensure that holders of junior interests, such as stockholders, cannot retain any interest in the debtor under a plan of reorganization that has been rejected by a senior class of impaired claims or interests unless such impaired claims or interests are paid in full or such junior class contributes money or something of new value related to the Plan. If a junior class contributes new value, then the “new value” exception to the “absolute priority” rule may be applied to evaluate whether the “fair and equitable” standard has been met.

As used by the Bankruptcy Code, the phrases “discriminate unfairly” and “fair and equitable” have narrow and specific meanings unique to bankruptcy law. A plan does not discriminate unfairly if claims or interests in different classes but with similar priorities and characteristics receive or retain property of similar value under a plan. By establishing separate Classes for the holders of each type of Claim and by treating each holder of a Claim in each Class substantially the same, the Plan has been structured so as to meet the “unfair discrimination” test of section 1129(b) of the Bankruptcy Code.

The Bankruptcy Code sets forth different standards for establishing that a plan is “fair and equitable” with respect to a dissenting class, depending on whether the class is comprised of secured or unsecured claims or interests. In general, section 1129(b) of the Bankruptcy Code permits confirmation notwithstanding non-acceptance by an impaired class if that class and all junior classes are treated in accordance with the “absolute priority” rule, which requires that the dissenting class be paid in full before any junior class may receive anything under the plan. In addition, case law surrounding section 1129(b) requires that no class senior to a non-accepting impaired class receives more than payment in full on its claims.

With respect to a class of unsecured claims that does not accept the Plan, either (i) each holder of an unsecured claim in the dissenting class receives or retains under such plan property of a value equal to the allowed amount of its unsecured claim, or (ii) the holders of claims or holders of interests that are junior to the claims of the holders of such unsecured claims will not receive or retain any property under the plan. Additionally, the holders of claims that are senior to the claims of the dissenting class of unsecured claims receive no more than payment in full on their claims under the plan. The Plan is designed to satisfy these standards through satisfaction of the “new value” exception to the absolute priority rule to the extent that Class 7 retains its Equity Interests.

Navillus believes that the Plan will be fair and equitable with respect to all Classes because the New Capital Contribution proposed by the New Value Sponsor is substantial and indispensable to the reorganization. The New Capital Contribution will inure to the benefit of all creditors of Navillus’ estate and maximize the Distributions to such creditors under the Plan.

If all the applicable requirements for confirmation of the Plan are met as set forth in sections 1129(a)(1) through (13) of the Bankruptcy Code, except that one or more of Classes of Impaired Claims or Equity Interests have failed to accept the Plan pursuant to section 1129(a)(8) of the Bankruptcy Code, Navillus will request that the Bankruptcy Court confirm the Plan over the dissenting votes of such Classes in accordance with section 1129(b) of the Bankruptcy Code. Navillus believes that the Plan satisfies the “cram down” requirements of the Bankruptcy Code. Navillus may seek confirmation of the Plan over the objection of dissenting Classes, as well as over the objection of individual holders of Claims or Equity Interests who are members of an accepting Class.

**E. New Capital Contribution to Satisfy New Value Requirement in a Cram Down**

As noted above, if one or more Impaired Classes does not vote to accept the Plan and Navillus is required to seek confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code, Navillus believes that the “fair and equitable” requirement will be satisfied based on what is known as the “new value” exception to the “absolute priority” rule. Pursuant to the “new value” exception, equity holders may be able to keep their ownership interests in a debtor even though unsecured creditors do not receive full payment of their claims, provided that equity holders contribute new capital to the reorganized debtor in an amount reasonably equivalent to the value of their retained interest in the debtor.

Navillus believes that the New Capital Contribution to be proposed by DOS in his capacity as the beneficial holder of all Equity Interests in Navillus will satisfy the applicable legal requirements that “the capital contribution by old equity is: ‘(1) new, (2) substantial, (3) money or money’s worth, (4) necessary for a successful reorganization, and (5) reasonably equivalent to the property that old equity is retaining or receiving.’” In re RAMZ Real Estate Co., LLC, 510 B.R. 712, 718 (Bankr. S.D.N.Y. 2014).

Moreover, in recognition of the Supreme Court’s holding that a cram down plan providing for a new capital contribution made without the benefit of market valuation to test the adequacy of the contribution is not confirmable under the absolute priority rule, Bank of Am. Nat. Tr. & Sav. Ass’n v. 203 N. LaSalle St. P’ship, 526 U.S. 434, 458 (1999), Navillus has proposed to subject the New Capital Contribution to a marketing and competitive Auction process to ensure that the Estate receives the most valuable New Capital Contribution in exchange for the purchase of the Equity Interests in Reorganized Navillus pursuant to the Stock Purchase Agreement. Accordingly, Navillus submits that even if it is forced to pursue confirmation through the “cram down” provisions of the Bankruptcy Code, the Plan can be confirmed based on the New Capital Contribution proposed by the New Value Sponsor, which contribution is being subject to a thorough market test through the Auction.

**F. Best Interest of Creditors/Liquidation Analysis**

As noted above, even if a plan is accepted by each class of Claims and Equity Interests, the Bankruptcy Code requires a bankruptcy court to determine that the plan is in the best interests of all holders of Claims or Equity Interests that are impaired by the plan and that have not accepted the plan. The “best interests” test, as set forth in section 1129(a)(7) of the Bankruptcy Code, requires a bankruptcy court to find either that all members of an impaired class of Claims or Equity Interests have accepted the plan or that the plan will provide a member who has not accepted the plan with a recovery of property of a value, as of the effective date of the plan, that is not less than the amount that such Holder would recover if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

To calculate the probable distribution to holders of each impaired class of claims and interests if a debtor were liquidated under chapter 7, a bankruptcy court must first determine the aggregate dollar amount that would be generated from the debtor’s assets if its chapter 11 cases

were converted to a chapter 7 case under the Bankruptcy Code. This “liquidation value” would consist primarily of the proceeds from a forced sale of the debtor’s assets by a chapter 7 trustee.

The amount of liquidation value available to unsecured creditors would be reduced first, by any amounts due to holders of Article 3A Claims and the claims of secured creditors to the extent of the value of their collateral and, second, by the costs and expenses of liquidation, as well as by other administrative expenses and costs of both the chapter 7 case and the chapter 11 case. Costs of liquidation under chapter 7 of the Bankruptcy Code would include the compensation of a trustee, as well as of counsel and other professionals retained by the trustee, asset disposition expenses, all unpaid expenses incurred by the debtor in its chapter 11 case (such as compensation of attorneys, financial advisors, and accountants) that are allowed in the chapter 7 cases, litigation costs, and claims arising from the operations of the debtor during the pendency of the chapter 11 case. The liquidation would also prompt the rejection of a large number of executory contracts and unexpired leases and thereby significantly enlarge the total pool of unsecured claims by reason of resulting rejection damages claims. Moreover, the liquidation would cause Liberty to experience significant losses under the Bonded Contracts which would be treated as superpriority administrative claims under the DIP Order, thereby depleting any potential recovery to unsecured creditors.

Once the bankruptcy court ascertains the recoveries in liquidation of secured creditors and priority claimants, it must determine the probable distribution to general unsecured creditors and equity security holders from the remaining available proceeds in liquidation. If such probable distribution has a value greater than the distributions to be received by such creditors and equity security holders under the plan, then the plan is not in the best interests of creditors and equity security holders.

To support its belief that the Plan satisfies the best interests test, and in order to determine the amount of liquidation value that would be available to creditors, Navillus prepared a liquidation analysis (the “Liquidation Analysis”), which concludes that in a chapter 7 liquidation, Holders of prepetition Unsecured Claims would receive less of a recovery than the recovery they would receive under the Plan. This conclusion is premised upon the assumptions set forth in the Liquidation Analysis, which Navillus believe are reasonable. However, these assumptions are inherently subject to significant economic and competitive uncertainties beyond the control of Navillus. The Liquidation Analysis is also based on assumptions with regard to liquidation decisions that are subject to change. Accordingly, there can be no assurance that the values reflected in the Liquidation Analysis would be realized if Navillus was, in fact, to undergo such a liquidation.

The full Liquidation Analysis is annexed as Exhibit C to this Disclosure Statement.

#### **G. Feasibility**

In connection with confirmation of the Plan, the Bankruptcy Court will be required to determine that the Plan is feasible pursuant to section 1129(a)(11) of the Bankruptcy Code, which means that the confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor.

To support its belief in the feasibility of the Plan, Navillus has relied upon the financial projections (the “Projections”), which are annexed to this Disclosure Statement as Exhibit B. The Projections are reasonable, credible as of dates analyses were prepared, utilize reasonable assumptions and establish the Plan is feasible.

The Projections indicate that Reorganized Navillus should have sufficient cash flow to fund its operations and fund Distributions. Accordingly, Navillus believes that the Plan complies with the financial feasibility standard of section 1129(a)(11) of the Bankruptcy Code.

The Projections are based on numerous assumptions, including confirmation and consummation of the Plan in accordance with its terms; realization of the operating strategy of Reorganized Navillus; industry performance; no material adverse changes in general business and economic conditions; no material adverse changes in competition; Reorganized Navillus’ retention of key management and other key employees; the absence of material contingent or unliquidated litigation, indemnity, or other claims; and other matters, many of which will be beyond the control of Reorganized Navillus and some or all of which may not materialize.

To the extent that the assumptions inherent in the Projections are based upon future business decisions and objectives, they are subject to change. In addition, although they are presented with numerical specificity and are based on assumptions considered reasonable by Navillus, the assumptions and estimates underlying the Projections are subject to significant business, economic, and competitive uncertainties and contingencies, many of which will be beyond the control of Reorganized Navillus. Accordingly, the Projections are only estimates and are necessarily speculative in nature. It can be expected that some or all of the assumptions in the Projections will not be realized and that actual results will vary from the Projections, which variations may be material and are likely to increase over time.

The Projections should be read together with the information in Article IX of this Disclosure Statement entitled “Certain Risk Factors to be Considered,” which sets forth important factors that could cause actual results to differ from those in the Projections.

#### **H. Further Information; Additional Copies**

If you have any questions or require further information about the voting procedures for voting your Claim or about the packet of material you received, or if you wish to obtain an additional copy of the Plan, this Disclosure Statement, the Plan Supplement (once filed) or any exhibits or appendices to such documents (at your own expense, unless otherwise specifically required by Bankruptcy Rule 3017(d) or the Disclosure Statement Order), please contact the Voting Agent at:

Navillus Tile, Inc. Case Administration  
c/o GCG  
P.O. Box 10446  
Dublin, Ohio 43017-4046  
<http://cases.gardencitygroup.com/nvs>

## **IX. CERTAIN RISK FACTORS TO BE CONSIDERED**

THE IMPLEMENTATION OF THE PLAN IS SUBJECT TO A NUMBER OF MATERIAL RISKS, INCLUDING THOSE ENUMERATED BELOW. IN EVALUATING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN, HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN NAVILLUS SHOULD READ AND CAREFULLY CONSIDER THE RISK FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT (AND THE DOCUMENTS DELIVERED TOGETHER HERewith AND/OR INCORPORATED BY REFERENCE HEREIN), BEFORE DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. THESE RISK FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS ASSOCIATED WITH THE PLAN AND ITS IMPLEMENTATION, OR ALTERNATIVES TO THE PLAN.

### **A. Certain Business Considerations**

#### **1. *Projected Financial Information***

The Projections annexed as Exhibit B to this Disclosure Statement are dependent upon the successful implementation of the business plan and the validity of the other assumptions contained therein. These Projections prepared by Navillus' management, including its Chief Restructuring Officer, reflect numerous assumptions, including confirmation and consummation of the Plan in accordance with its terms, Navillus' anticipated future performance, industry performance, general business and economic conditions, and other matters, many of which will be beyond the control of Reorganized Navillus. In addition, unanticipated events and circumstances occurring subsequent to the preparation of the Projections may affect the actual financial results of Reorganized Navillus. Although Navillus believe that the Projections are reasonably attainable, variations between the actual financial results and those projected may occur and may be material.

Finally, the Projections were not prepared with a view toward public disclosure or with a view toward complying with the guidelines established by the American Institute of Certified Public Accountants with respect to prospective financial information. Rather, the Projections were developed in connection with the planning, negotiation and development of the Plan. Neither Navillus nor Reorganized Navillus undertake any obligation to update or otherwise revise the Projections to reflect events or circumstances existing or arising after the date of this Disclosure Statement or to reflect the occurrence of unanticipated events. In management's view, however, the Projections were prepared on a reasonable basis and represent a reasonable view of the expected future financial performance of Reorganized Navillus after the Effective Date. Nevertheless, the Projections should not be regarded as a representation, guaranty or other assurance by Navillus, Reorganized Navillus, or any other person that the Projections will be achieved and Holders are therefore cautioned not to place undue reliance on the projected financial information contained in this Disclosure Statement.

## **2. *Historical Financial Information May Not Be Comparable***

The financial condition and results of operations of Reorganized Navillus from and after the Effective Date may not be comparable to the financial condition or results of operations reflected in Navillus' historical financial statements.

## **3. *Litigation***

Reorganized Navillus will be subject to various Claims and legal actions arising in the ordinary course of its business. Navillus is not able to predict the nature and extent of any such Claims and actions and cannot guarantee that the ultimate resolution of such Claims and legal actions will not have a material adverse effect on the Reorganized Debtor.

Moreover, Distributions under the Plan are contingent on the outcome of the Navillus Appeal. In the event the District Court Judgment is affirmed following the conclusion of the Navillus Appeal, recoveries under the Plan will be significantly less.

## **B. *Certain Bankruptcy Considerations***

Reorganized Navillus' future results are dependent upon the successful confirmation and implementation of a plan of reorganization. Failure to obtain this approval in a timely manner could adversely affect Navillus' operating results, as Navillus' ability to obtain financing to fund its operations may be harmed by protracted bankruptcy proceedings. Furthermore, Navillus cannot predict the ultimate amount of all settlement terms for its liabilities that will be subject to a plan of reorganization.

### **1. *Non-Confirmation or Delay of Confirmation of the Plan***

The Bankruptcy Court, which sits as a court of equity, may exercise substantial discretion. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things, that the confirmation of the Plan not be followed by a need for further financial reorganization and that the value of Distributions to dissenting creditors and interest holders not be less than the value of Distributions such creditors and interest holders would receive if Navillus was liquidated under chapter 7 of the Bankruptcy Code.

Although Navillus believes that the Plan will satisfy all requirements for confirmation under the Bankruptcy Code, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Moreover, there can be no assurance that modifications to the Plan will not be required for confirmation or that such modifications would not be sufficiently material as to necessitate the resolicitation of votes on the Plan.

In the event that any Class of Claims entitled to vote fails to accept the Plan in accordance with section 1126(c) and 1129(a)(8) of the Bankruptcy Code, Navillus reserves the right: (a) to request that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code; and/or (b) to modify the Plan in accordance with the terms thereof. While Navillus believes that the Plan satisfies the requirements for non-consensual confirmation under section 1129(b) of the Bankruptcy Code because it does not "discriminate

unfairly” and is “fair and equitable” with respect to the Classes that reject or are deemed to reject the Plan and/or satisfies the “new value” exception, there can be no assurance that the Bankruptcy Court will reach the same conclusion. There can be no assurance that any such challenge to the requirements for non-consensual confirmation will not delay Navillus’ emergence from chapter 11 or prevent confirmation of the Plan.

Moreover, there can be no assurance with respect to timing of the Effective Date. The occurrence of the Effective Date is also subject to certain conditions precedent as described in Article X of the Plan. Failure to meet any of these conditions could result in the Plan not being consummated.

If the Plan is not confirmed, or if the Effective Date does not occur, there can be no assurance that the Chapter 11 Case will continue rather than be converted to a chapter 7 liquidation case or that any alternative plan of reorganization would be on terms as favorable to the Holders of Claims against and Equity Interests in Navillus as the terms of the Plan. If a liquidation or protracted reorganization of Navillus’ Estate was to occur, there is a substantial risk that Navillus’ going concern value would be substantially eroded to the detriment of all stakeholders.

## **2. *Classification and Treatment of Claims and Equity Interests***

Section 1122 of the Bankruptcy Code requires that a plan classify claims against, and interests in, a debtor. The Bankruptcy Code also provides that a plan may place a Claim or Equity Interest in a particular class only if such Claim or Equity Interest is substantially similar to the other Claims or Equity Interests of such class. Navillus believes that all Claims and Equity Interests in Navillus have been appropriately classified in the Plan. However, there can be no assurance that the Bankruptcy Court would reach the same conclusion. Navillus reserves the right to mitigate against this risk by filing a motion pursuant to Bankruptcy Rule 3013 to confirm the validity of the classification structure set forth in the Plan.

The Bankruptcy Code also requires that a plan provide the same treatment for each Claim or Equity Interest of a particular class unless the holder of a particular Claim or Equity Interest agrees to a less favorable treatment of its Claim or Equity Interest. Navillus believes that the Plan meets this requirement of equal treatment. To the extent that the Bankruptcy Court finds that the Plan does not satisfy such requirement, the Bankruptcy Court could deny confirmation of the Plan.

Issues or disputes relating to classification and/or treatment could result in a delay in the confirmation and consummation of the Plan and could increase the risk that the Plan will not be consummated.

## **3. *Risk That Distributions Will be Less Than Estimated***

Navillus reserves the right to object to the amount or classification of any Claim or Equity Interest except any such Claim or Equity Interest that is deemed Allowed under the Plan or except as otherwise provided in the Plan. There can be no assurance that any estimated Claim

amounts set forth in this Disclosure Statement are correct. The projected Distributions and recoveries set forth in this Disclosure Statement are based on Navillus' estimate of Allowed Claims. There can be no assurance that the estimates will prove accurate. The actual Allowed amount of Claims likely will differ in some respect from the estimates. The estimated amounts are subject to certain risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties materialize, or should the underlying assumptions prove incorrect, the actual Allowed amount of Claims may vary from those estimated herein.

#### **C. Risks to Creditors Who Will Receive Securities**

The ultimate recoveries under the Plan to any Holders of Claims that will receive securities will depend on the realizable value of the securities. There is no currently existing market for the securities to be issued under the Plan and there can be no assurance that an active trading market will develop. There can also be no assurance as to the degree of price volatility in any such particular market and no assurance as to the prices at which such securities might be traded. Accordingly, no assurance can be given that a Holder of securities issued pursuant to the Plan will be able to sell such securities in the future or the price at which any such sale may occur. If such market were to exist, the liquidity of the market for such securities and the prices at which such securities will trade will depend upon many factors, including the number of holders, investor expectations for Reorganized Navillus, and other factors beyond Reorganized Navillus' control.

#### **D. Certain Tax Considerations**

There are a number of income tax considerations, risks, and uncertainties associated with consummation of the Plan. Interested parties should read carefully the discussions set forth in Article X of this Disclosure Statement regarding certain U.S. federal income tax consequences of the transactions proposed by the Plan to Navillus and Reorganized Navillus and to certain Holders of Claims and Equity Interests in Navillus who are entitled to vote to accept or reject the Plan.

### **X. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

The following discussion summarizes certain anticipated U.S. federal income tax consequences of the Plan to Navillus and Holders of Claims in Classes 2, 3, 4, 5 and 6. This summary is provided for information purposes only and is based on the Internal Revenue Code of 1986, as amended (the "Tax Code"), Treasury regulations promulgated thereunder, judicial authorities, and current administrative rulings and practice, all as in effect as of the date hereof, and all of which are subject to change, possibly with retroactive effect, that could adversely affect the U.S. federal income tax consequences described below.

This summary does not address all aspects of U.S. federal income taxation that may be relevant to a particular Holder of a Claim or Equity Interest in light of its particular facts and circumstances or to certain types of Holders of Claims or Equity Interests subject to special treatment under the Tax Code. In addition, this summary does not discuss any aspects of state, local, or non-U.S. taxation and does not address the U.S. federal income tax consequences to

Holders of Claims or Equity Interests that are Unimpaired under the Plan or Holders of Claims or Equity Interests that are not entitled to receive or retain any property under the Plan.

A substantial amount of time may elapse between the date of this Disclosure Statement and the receipt of a final Distribution under the Plan. Events occurring after the date of this Disclosure Statement, such as additional tax legislation, court decisions, or administrative changes, could affect the U.S. federal income tax consequences of the Plan and the transactions contemplated thereunder. There can be no assurance that the Internal Revenue Service (the “IRS”) will not take a contrary view with respect to one or more of the issues discussed below. No ruling will be sought from the IRS with respect to any of the tax aspects of the Plan, and no opinion of counsel has been or will be obtained by Navillus with respect thereto.

Accordingly, the following summary of certain U.S. federal income tax consequences is for informational purposes only and is not a substitute for careful tax planning and advice based upon the individual circumstances pertaining to a Holder of a Claim. All Holders of Claims are urged to consult their own tax advisors for the federal, state, local and other tax consequences applicable to them under the Plan.

**TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, EACH HOLDER IS HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY ANY HOLDER FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON A HOLDER UNDER THE TAX CODE; (B) SUCH DISCUSSION IS INCLUDED HEREBY BY NAVILLUS IN CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY NAVILLUS OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) EACH HOLDER SHOULD SEEK ADVICE BASED ON ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

**A. U.S. Federal Income Tax Consequences to the Debtor**

**1. *Conversion of the Debtor***

The formation of Reorganized Navillus as a corporation organized under New York law on or before the Effective Date is a taxable event for both Navillus and its shareholders. In general, Navillus will recognize gain or loss (subject to certain limitations) in an amount equal to the difference, if any, between the fair market value of Navillus’ assets and the adjusted basis of such assets. In general, if Navillus has net operating loss (“NOL”) carryforwards, those carryforwards may be used against any recognized gains. Unlike subchapter C corporations, which may be subject to two levels of tax (once at the corporate level and then again when distributions are made to the shareholders), a S corporation is not subject to federal income tax. Instead, items of income, gain, loss, deduction and credit of the limited liability company are allocated to the shareholders, who report such items on their respective tax returns.

## **2. *Cancellation of Indebtedness Income***

Under the Tax Code, a U.S. taxpayer generally must include in gross income the amount of any cancellation of indebtedness (“COD”) income recognized during the taxable year. In the present case, the Plan likely may discharge material indebtedness of the Debtor depending on the outcome of the Navillus Appeal. Therefore, Navillus may have COD income pursuant to the Plan. COD income generally equals the excess of the adjusted issue price of the indebtedness discharged over the sum of (i) the amount of cash and (ii) the fair market value of any property (including equity interests) transferred by the debtor in satisfaction of such discharged indebtedness. COD income also includes any interest that has been previously accrued and deducted but remains unpaid at the time the indebtedness is discharged. The Tax Code permits a debtor in bankruptcy to exclude its COD income from gross income, but requires the debtor to reduce its tax attributes – such as NOL carryforwards, current year NOLs, tax credits, and tax basis in assets (collectively, “Tax Attributes”) – by the amount of the excluded COD income. The reduction in Tax Attributes generally occurs after the calculation of a debtor’s tax for the year in which the debt is discharged.

Under the Tax Code, a debtor that recognizes excluded COD income may elect to reduce its basis in depreciable assets prior to the reduction of other Tax Attributes, with any excess COD income applied next to reduce NOLs and other Tax Attributes in the prescribed statutory order.

Navillus will not be required to include COD income in gross income if the indebtedness will be discharged while Navillus is under the jurisdiction of the Bankruptcy Court. Instead, Navillus will be required to reduce Tax Attributes by the amount of the COD income recognized in the manner described above. Navillus has not yet determined whether it will have COD income and if it does whether it would be beneficial to elect to reduce the basis of its depreciable property prior to any reduction of NOLs or other Tax Attributes. The extent to which NOLs and other Tax Attributes remain following Tax Attribute reduction will depend upon the amount of the COD income.

### **B. U.S. Federal Income Tax Consequences to the Holders of Claims**

The U.S. federal income tax consequences to Holders of Allowed Claims arising from the Distributions to be made in satisfaction of their Claims pursuant to the Plan may vary, depending upon, among other things: (a) the type of consideration received by the Holder of a Claim in exchange for such Claim; (b) the nature of such Claim; (c) whether the Holder has previously claimed a bad debt or worthless security deduction in respect of such Claim; (d) whether such Claim constitutes a security; (e) whether the Holder of such Claim is a citizen or resident of the United States for tax purposes, or otherwise subject to U.S. federal income tax on a net income basis; (f) whether the Holder of such Claim reports income on the accrual or cash basis; and (g) whether the Holder of such Claim receives Distributions under the Plan in more than one taxable year. For tax purposes, the modification of a Claim may represent an exchange of the Claim for a new Claim, even though no actual transfer takes place. In addition, where gain or loss is recognized by a Holder, the character of such gain or loss as long-term or short-term capital gain

or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the Holder, whether the Claim constitutes a capital asset in the hands of the Holder and how long it has been held or is treated as having been held, whether the Claim was acquired at a market discount, and whether and to what extent the Holder previously claimed a bad debt deduction with respect to the underlying Claim. A Holder who purchased its Claim from a prior Holder at a market discount may be subject to the market discount rules of the Tax Code. Under those rules, assuming that the Holder has made no election to amortize the market discount into income on a current basis with respect to any market discount instrument, any gain recognized on the exchange of its Claim (subject to a de minimis rule) generally would be characterized as ordinary income to the extent of the accrued market discount on such Claim as of the date of the exchange.

### **C. Information Reporting and Backup Withholding**

Certain payments, including certain payments of Claims pursuant to the Plan, payments of interest, and the proceeds from the sale or other taxable disposition of the Claims and Equity Interests may be subject to information reporting to the IRS. Moreover, such reportable payments may be subject to backup withholding unless the taxpayer: (i) comes within certain exempt categories (which generally include corporations) or (ii) provides a correct taxpayer identification number and otherwise complies with applicable backup withholding provisions. In addition, Treasury regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds. Holders are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and require disclosure on the Holders' tax returns.

### **D. Importance of Obtaining Your Own Professional Tax Assistance**

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ASSOCIATED WITH THE PLAN ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S INDIVIDUAL CIRCUMSTANCES. ACCORDINGLY, HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE U.S. FEDERAL, STATE, LOCAL AND NON-U.S. INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

## **XI. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

Navillus believe that the Plan affords Holders of Claims and Equity Interests in Classes 4 - 6 the potential for the greatest realization on Navillus' assets and, therefore, is in the best interests of such Holders. If, however, the requisite acceptances are not received or the Plan is not confirmed and consummated, the theoretical alternatives include (a) formulation of an

alternative plan or plans of reorganization or (b) liquidation of Navillus under chapter 7 or chapter 11 of the Bankruptcy Code.

**A. Alternative Plan(s) of Reorganization**

If the requisite acceptances are not received or if the Plan is not confirmed, Navillus could formulate and propose a different plan of reorganization. Such a plan might involve either a reorganization and continuation of Navillus' businesses or a liquidation of assets.

Navillus believes that the Plan enables creditors to realize the greatest possible value under the circumstances and has the greatest chance to be confirmed and consummated.

**B. Liquidation Under Chapter 7 or Chapter 11**

If no plan is confirmed, Navillus' case may be converted to a case under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be elected or appointed to liquidate Navillus' assets for distribution in accordance with the priorities established by the Bankruptcy Code. It is impossible to predict precisely how the proceeds of the liquidation would be distributed to the respective Holders of Claims against or Interests in Navillus. As set forth in Section VII.G above, Navillus believes that liquidation under chapter 7 would result in significantly smaller distributions being made to Holders of Claims than those provided for in the Plan.

Navillus could also be liquidated pursuant to the provisions of a chapter 11 plan of liquidation. If no plan is confirmed, Navillus may pursue a sale of substantially all of its assets pursuant to section 363(b) of the Bankruptcy Code. Alternatively, Navillus may sell its assets in an orderly fashion over a more extended period of time than in a liquidation under chapter 7, thus resulting in a potentially greater recovery. Conversely, to the extent Navillus incurs operating losses, Navillus' effort to liquidate its assets over a longer period of time theoretically could result in a lower net distribution to creditors than they would receive through chapter 7 liquidation. Any recovery in a chapter 11 liquidation, while potentially greater than in a chapter 7 liquidation, would also be highly uncertain.

Although preferable to a chapter 7 liquidation, Navillus believe that any alternative liquidation under chapter 11 is a less attractive alternative to creditors than the Plan because of the greater return anticipated by the Plan.

## **XII. RECOMMENDATION AND CONCLUSION**

For all of the reasons set forth in this Disclosure Statement, Navillus believes that confirmation and implementation of the Plan will provide each creditor with a greater recovery than it would receive if Navillus was to liquidate and distribute their assets under chapter 7. Thus, Navillus recommends confirmation and implementation of the Plan as the best possible outcome for creditors.

Navillus urges holders of Impaired Claims to vote to accept the Plan and to evidence such acceptance by returning their Ballots so they will be received by the Voting Deadline.

DATED: May 29, 2018

NAVILLUS TILE, INC. DBA  
NAVILLUS CONTRACTING

/s/ Christopher K. Wu

Name: Christopher K. Wu

Title: Chief Restructuring Officer

CULLEN AND DYKMAN LLP  
Attorneys for the Debtor

/s/ C. Nathan Dee

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Garden City, New York 11530

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**Exhibit A**  
**Chapter 11 Plan**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:
In re:	: Chapter 11
	:
NAVILLUS TILE, INC., DBA NAVILLUS	: Case No. 17-13162 (SHL)
CONTRACTING	:
	:
Debtor.	:
	:
-----X	:

**CHAPTER 11 PLAN OF REORGANIZATION OF  
NAVILLUS TILE, INC. D/B/A NAVILLUS CONTRACTING  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

**Dated as of May 29, 2018**

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## INTRODUCTION

Navillus Tile, Inc. d/b/a Navillus Contracting, as debtor and debtor-in-possession (“Navillus” or the “Debtor”), hereby proposes this Chapter 11 Plan of Reorganization (the “Plan”) pursuant to section 1121 of title 11 of the United States Code for the resolution of the outstanding Claims against and Equity Interests in Navillus.

Reference is made to the Disclosure Statement for a discussion of (i) Navillus’ history, business, the administration of the Chapter 11 Case, results of operations, and projections for future operations, (ii) a summary of this Plan, and (iii) certain related matters, including risk factors relating to the consummation of this Plan and Distributions to be made under this Plan.

Capitalized terms herein shall have the meanings set forth in Article I hereof. Navillus is the proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

## SUMMARY OF THE PLAN

This Plan is a plan of reorganization that provides for the reorganization of Navillus as a going concern with the support of Liberty for future operations. The Plan will be funded by one or more of the following sources: Cash on hand, the Exit Facility, the Reorganized Navillus Notes and/or the New Capital Contribution. Alternatively, Navillus reserves the right in its sole discretion to seek to fund Distributions under the Plan through the proceeds of the liquidation of its assets, either through (x) a sale of substantially all of its assets pursuant to section 363 of the Bankruptcy Code or (y) the wind-down of its construction operations and orderly liquidation of assets. The Plan divides Holders of Claims against and Equity Interests in Navillus into seven (7) separate Classes based on the nature of their legal rights, three (3) of which are Impaired, three (3) of which are Unimpaired and one (1) with respect to which Impaired or Unimpaired status is contingent on the outcome of the Navillus Appeal and the Auction. The Plan also provides for Distributions to Holders of Claims in four (4) unclassified categories comprised of Administrative Claims, Professional Fee Claims, Priority Tax Claims and the Liberty DIP Loan Claim. Distributions to certain Classes of Claims and Equity Interests will be contingent on the outcome of the pending Navillus Appeal and will be held in a Distribution Reserve until the Navillus Appeal is decided.

**ALL HOLDERS OF CLAIMS AGAINST OR EQUITY INTERESTS IN NAVILLUS ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. SUBJECT TO CERTAIN RESTRICTIONS AND REQUIREMENTS SET FORTH IN SECTION 1127 OF THE BANKRUPTCY CODE, BANKRUPTCY RULE 3019, AND THE PLAN, NAVILLUS RESERVES THE RIGHT TO ALTER, AMEND, MODIFY, REVOKE OR WITHDRAW THE PLAN PRIOR TO ITS SUBSTANTIAL CONSUMMATION.**

## ARTICLE I

### **DEFINED TERMS AND RULES OF INTERPRETATION**

**Section 1.01. Defined Terms.** Unless otherwise provided in this Plan, all terms used herein have the meanings assigned to such terms in the Bankruptcy Code. For the purposes of this Plan, the following terms have the meanings set forth below:

1. **“ADR Procedures”** has the meaning ascribed in section 9.03 of this Plan.
2. **“Administrative Claim”** means a Claim (other than a Professional Fee Claim or Liberty DIP Loan Claim) for payment of costs or expenses of administration specified in sections 503(b) and 507(a)(2) of the Bankruptcy Code including, without express or implied limitation: (a) any actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate and operating the business of Navillus; (b) any payment to be made under the Plan to cure a default on an assumed Executory Contract or assumed Unexpired Lease; (c) any postpetition cost, indebtedness or contractual obligation duly and validly incurred or assumed by Navillus in the ordinary course of its business; and (d) any fees and charges assessed against the Estate under chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911-1930. For the avoidance of doubt, Article 3A Claims shall not be considered Administrative Claims under this Plan.
3. **“Administrative Claims Bar Date”** means that date which is thirty (30) days after the Confirmation Date and will be the deadline for filing a request for payment of an Administrative Claim, unless otherwise ordered by the Bankruptcy Court.
4. **“Affiliate”** means “affiliate” as defined in section 101(2) of the Bankruptcy Code.
5. **“Allowed”** means, with respect to any Claim (including any Administrative Claim) or portion thereof (to the extent such Claim is not Disputed or Disallowed) or any Equity Interest, (a) any Claim or Equity Interest that has been, or hereafter is, listed in the Schedules as liquidated in an amount other than zero or unknown and not Disputed or contingent and for which no contrary Proof of Claim has been filed (or as to which the applicable Proof of Claim has been withdrawn or Disallowed); (b) any timely filed, liquidated, non-contingent Claim or Equity Interest; (c) any Claim or Equity Interest which has been allowed (whether in whole or in part) by a Final Order (but only to the extent so allowed), and, in (a), (b) and (c) above, as to which no objection to the allowance thereof, or action to subordinate, avoid, classify, reclassify, expunge, estimate or otherwise limit recovery with respect thereto, has been filed within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules or a Final Order; and (d) any Claim or Equity Interest allowed under or pursuant to the terms of the Plan; provided, however, that Claims or Equity Interests allowed solely for the purpose of voting to accept or reject the Plan pursuant to an order of the Bankruptcy Court shall not be considered “Allowed” hereunder.
6. **“Appeal Determination Date”** means the date of final resolution of the Navillus Appeal by entry of a Final Order.
7. **“Article 3A”** means Article 3A of the New York Lien Law.

8. **“Article 3A Claim”** means any Claim with a right to payment from Navillus or the Estate which is protected by the trust fund established in favor of the claimant under Article 3A.

9. **“Assumption and Cure Schedule”** has the meaning ascribed in Section 7.01(b) of this Plan.

10. **“Auction”** means the auction of the Equity Interests conducted at the date and time and pursuant to the procedures approved by order of the Bankruptcy Court.

11. **“Available Cash”** means the actual aggregate sum of Cash in the possession, custody or control of Navillus’ Estate for distribution to Holders of Allowed Claims against the Estate, less the Minimum Working Capital and any Cash held in the Distribution Reserve.

12. **“Avoidance Actions”** means any and all Causes of Action (other than those which are released or dismissed as part of and pursuant to the Plan) which a trustee, a debtor-in-possession, the Estate or other appropriate party in interest may assert under sections 502(d), 510, 541, 542, 543, 544, 545, 547, 548, 549, 550, 551, or 553 of the Bankruptcy Code or under related state or federal statutes and common law (whether or not litigation is commenced to prosecute such Causes of Action).

13. **“Ballot”** means any ballot distributed with the Disclosure Statement for purposes of voting to accept or reject the Plan.

14. **“Bankruptcy Code”** means the Bankruptcy Reform Act of 1978, as codified in title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as in effect on the Petition Date, together with all amendments and modifications thereto that are subsequently made applicable to the Chapter 11 Case.

15. **“Bankruptcy Court”** means the United States Bankruptcy Court for the Southern District of New York or such other United States court as may have jurisdiction over the Chapter 11 Case or any aspect thereof.

16. **“Bankruptcy Rules”** means (i) the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended and promulgated under section 2075 of title 28 of the United States Code, (ii) the applicable Federal Rules of Civil Procedure, as amended and promulgated under section 2072 of title 28 of the United States Code, (iii) the applicable Local Rules of Bankruptcy Practice and Procedure for the Bankruptcy Court, and (iv) any standing orders governing practice and procedure issued by the Bankruptcy Court, each as in effect on the Petition Date, together with all amendments and modifications thereto that are subsequently made applicable to the Chapter 11 Case or proceedings therein, as the case may be.

17. **“Bar Date”** means February 14, 2018, the date set by the Bankruptcy Court as the last day for filing Proofs of Claim against Navillus in the Chapter 11 Case, and May 8, 2018, the deadline for governmental units to file Proofs of Claim.

18. **“Bonds”** means the payment and performance bonds issued by Liberty as set forth on Exhibit A to the DIP Financing Agreement.

**19. “Business Day”** means any day, excluding Saturdays, Sundays, or “legal holidays” (as defined in Bankruptcy Rule 9006(a)).

**20. “Cash”** means cash and cash equivalents, including, without express or implied limitation, bank deposits, checks and other similar items.

**21. “Causes of Action”** means any and all actions, causes of action, Avoidance Actions, Claims, rights, defenses, liabilities, obligations, executions, choses in action, controversies, rights (including rights to legal remedies, rights to equitable remedies, rights to payment), suits, debts, damages, judgments, remedies, demands, setoffs, defenses, recoupments, crossclaims, counterclaims, third-party claims, indemnity claims, contribution claims or any other claims whatsoever, whether known or unknown, reduced to judgment or not reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, secured or unsecured, choate or inchoate, existing or hereafter arising, suspected or unsuspected, foreseen or unforeseen, and whether asserted or assertable directly, indirectly or derivatively, at law, in equity or otherwise, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Chapter 11 Case, including through the Effective Date; provided, however, that “Causes of Action” will not include (a) causes of action with respect to any claim that has been released or waived by Navillus through the Plan or a Final Order of the Bankruptcy Court.

**22. “Chapter 11 Case”** means the chapter 11 case of Navillus pending before the Bankruptcy Court, styled *In re Navillus Tile, Inc. dba Navillus Contracting*, Case No. 17-13162.

**23. “Claim”** means any “claim” against Navillus, whether or not asserted, known or unknown, as such term is defined in section 101(5) of the Bankruptcy Code.

**24. “Claims Agent”** means Garden City Group, LLC, which was retained as Navillus’ claims and noticing agent in this Chapter 11 Case pursuant to an Order of the Bankruptcy Court dated January 16, 2018.

**25. “Claims Objection Bar Date”** means the date that is one hundred and twenty (120) days after the Effective Date or such later date as may be extended by order of the Bankruptcy Court.

**26. “Class”** means a category of Holders of Claims or Equity Interests in Navillus pursuant to section 1122(a) of the Bankruptcy Code, as described in Articles II and III of the Plan.

**27. “Committee”** means the Official Committee of Unsecured Creditors of Navillus appointed by the U.S. Trustee on or around November 28, 2017 pursuant to section 1102(a) of the Bankruptcy Code.

**28. “Confirmation Date”** means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Case, within the meaning of Bankruptcy Rules 5003 and 9021.

**29. “Confirmation Hearing”** means the hearing held by the Bankruptcy Court to consider confirmation of the Plan pursuant to, among others, section 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

**30. “Confirmation Order”** means the order of the Bankruptcy Court confirming the Plan pursuant to, among others, section 1129 of the Bankruptcy Code.

**31. “Contingent Claim”** means a Claim that has not accrued or is not otherwise payable and the accrual of which, or the obligation to make payment on which, is dependent upon a future event that may or may not occur.

**32. “Debtor”** has the meaning ascribed to it in the Introduction to this Plan.

**33. “DIP Financing Agreement”** means the financing agreement (together with all schedules and exhibits thereto), by and among Navillus, Donal O’Sullivan, individually, and Kathleen O’Sullivan, individually, as borrowers and Liberty, as lender, as amended, restated, supplemented or otherwise modified from time to time.

**34. “DIP Documents”** means the DIP Financing Agreement and all security, pledge, guaranty, and other lien and loan documents entered into in connection therewith as amended, restated, supplemented or otherwise modified from time to time.

**35. “DIP Obligations”** means all of the obligations set forth in the DIP Financing Agreement and the DIP Order.

**36. “DIP Order”** means the *Final Order Pursuant To 11 U.S.C. §§ 105(a), 362, 363, and 364 of the Bankruptcy Code (I) Authorizing Post-Petition Secured Financing; (II) Granting Security Interests and Superpriority Claims; (III) Authorizing Use of Cash Collateral; and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(c)*, entered on December 21, 2017 (Dkt. No. 156).

**37. “Disallowed”** means, with respect to any Claim or Equity Interest, any Claim or Equity Interest or portion thereof that (i) has been disallowed pursuant to this Plan or by a Final Order of the Bankruptcy Court; (ii) is identified in the Schedules in an amount of zero dollars or as contingent, unliquidated, or disputed and as to which a Proof of Claim was not filed by the Bar Date; or (iii) is not identified in the Schedules and as to which no Proof of Claim has been filed or deemed filed by the Bar Date.

**38. “Disclosure Statement”** means the disclosure statement that relates to this Plan and has been approved by the Disclosure Statement Order, as such disclosure statement may be revised, amended, modified or supplemented (and all exhibits and schedules annexed thereto or referred to therein).

**39. “Disclosure Statement Order”** means the order of the Bankruptcy Court approving the Disclosure Statement pursuant to, among others, section 1125 of the Bankruptcy Code.

**40. “Disputed Claim”** means (a) if no Proof of Claim has been filed by the applicable Bar Date or has otherwise been deemed timely filed under applicable law: (i) a Claim that is listed on Navillus’ Schedules as other than disputed, contingent or unliquidated, but as to which Navillus or Reorganized Navillus or, prior to the Confirmation Date, any other party in interest, has filed an objection by the Claims Objection Bar Date, and such objection has not been withdrawn or denied by a Final Order; or (ii) a Claim that is listed on Navillus’ Schedules as disputed, contingent or unliquidated; or (b) if a Proof of Claim or request for payment of an Administrative Claim has been filed by the applicable Bar Date or has otherwise been deemed timely filed under applicable law, a Claim for which an objection has been filed by Navillus or Reorganized Navillus or, prior to the Confirmation Date, any other party-in-interest, by the Claims Objection Bar Date, and such objection has not been withdrawn or denied by a Final Order.

**41. “Distribution”** means any distribution pursuant to the Plan to the Holders of Allowed Claims against or Equity Interests in Navillus.

**42. “Distribution Address”** means the address set forth in the relevant Proof of Claim. If no Proof of Claim is filed in respect to a particular Claim, such defined term means the address set forth in Navillus’ Schedules.

**43. “Distribution Agent”** means Reorganized Navillus or any Person or Persons designated by Navillus or Reorganized Navillus, in its discretion, to serve as distribution agent under the Plan with respect to Distributions to Holders in particular Classes of Claims under Articles VIII and IX hereof.

**44. “Distribution Date”** means a date on which a Distribution is made to Holders of Allowed Claims and Equity Interests entitled thereto.

**45. “Distribution Reserve”** means the reserve created pursuant to Section 9.06 of this Plan to hold property for Distribution to Holders of Claims in Class 3 (Other Priority Claims), Class 4 (Liberty Unsecured Bond Claim), Class 5 (General Unsecured Trade Claims) and Class 6 (Pending Litigation Related Claims) pending occurrence of the Appeal Determination Date and resolution of Disputed Claims.

**46. “District Court”** means the United States District Court for the Southern District of New York.

**47. “District Court Judgment”** means the judgment entered by the District Court on September 22, 2017 in the consolidated action styled as *Moore v. Navillus Tile Inc., DBA Navillus Contracting, Advanced Construction Solutions LLC, DBA ACS-NY LLC, Times Square Construction, HDK Construction*, Case No. 14-08326 in the sum of \$76,222,733.32 as to Navillus.

**48. “DOS Employment Agreement”** means the employment agreement between Reorganized Navillus and Donal O’Sullivan, a copy of which will be included in the Plan Supplement.

**49. “Effective Date”** means the first Business Day on or after the Confirmation Date on which (i) no stay of the Confirmation Order is in effect and (ii) the conditions precedent to the effectiveness of the Plan set forth in Section 10.01 of the Plan have been satisfied or expressly waived.

**50. “Entity”** means a Person, estate, trust, governmental unit, and the U.S. Trustee, within the meaning of Bankruptcy Code section 101(15).

**51. “Equity Interests”** means shares of common stock, preferred stock, other forms of ownership interest, or any other equity security (as defined in section 101(16) of the Bankruptcy Code) in Navillus that was in existence immediately before the Petition Date.

**52. “Estate”** means the estate of Navillus in the Chapter 11 Case, created pursuant to section 541 of the Bankruptcy Code.

**53. “Exculpated Parties”** has the meaning ascribed in Section 12.04(a) of this Plan.

**54. “Exit Facility”** means a credit facility from Liberty or another lender to provide liquidity to Reorganized Navillus on or after the Effective Date.

**55. “Executory Contract”** means a contract to which Navillus is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

**56. “Final Order”** means an order, ruling, judgment, the operation or effect of a judgment or other decree issued and entered by the Bankruptcy Court or by any state or other federal court or other court of competent jurisdiction which has not been reversed, vacated, stayed, modified or amended and as to which (i) the time to appeal or petition for review, rehearing, certiorari, reargument, remand or retrial has expired and as to which no appeal or petition for review, rehearing, certiorari, reargument, remand or retrial is pending or (ii) any appeal or petition for review, rehearing, certiorari, reargument, remand or retrial has been finally decided and no further appeal or petition for review, rehearing, certiorari, reargument, remand or retrial can be taken or granted; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order or judgment shall not cause such order or judgment not to be a Final Order.

**57. “General Unsecured Trade Claim”** means any Unsecured Claim against Navillus that is not an Administrative Claim, Professional Fee Claim, Priority Tax Claim, Liberty DIP Loan Claim, Article 3A Claim, Other Secured Claim, Other Priority Claim, Liberty Unsecured Bond Claim or Pending Litigation Related Claim.

**58. “Holder”** means the legal or beneficial holder of a Claim or Equity Interest (and, when used in conjunction with a Class or type of Claim or Equity Interest, means a Holder of a Claim or Equity Interest in such Class or of such type).

**59. “Impaired”** means, when used with reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

**60. “Indemnitors”** means, *inter alia*, Navillus, Donal O’Sullivan, individually, and Kathleen O’Sullivan, individually, as signatories to the Indemnity Agreements.

**61. “Indemnity Agreements”** means the General Agreements of Indemnity executed by the Indemnitors in favor of Liberty (and any affiliate of Liberty) on or around October 24, 1995, December 12, 2006 and March 15, 2007.

**62. “Indenture”** means that certain indenture providing for the Reorganized Navillus Notes as set forth in Section 6.04 hereof, a copy of which will be filed with the Plan Supplement.

**63. “Insider”** has the meaning set forth in section 101(31) of the Bankruptcy Code.

**64. “Insurance Policy Documents”** has the meaning set forth in Section 7.06(b) of this Plan.

**65. “Insured Claim”** means any Claim or portion of a Claim as to which there is valid and enforceable insurance coverage, but only to the extent of such coverage.

**66. “Interim Compensation Order”** means the *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses For Retained Professionals and (II) Granted Related Relief* entered by the Bankruptcy Court on February 7, 2018.

**67. “KEIP”** has the meaning ascribed in the *Motion of Navillus Tile, Inc. for an Order (I) Authorizing Navillus to Make Payments to Eligible Employees under the Performance Bonus Program and (B) Continue the Performance Bonus Program in the Ordinary Course of Business; (II) Approving the Key Employee Incentive Program; and (III) Granting Related Relief* filed with the Bankruptcy Court on December 8, 2017 (Dkt. No. 100).

**68. “Liberty”** means Liberty Mutual Insurance Company.

**69. “Liberty DIP Loan Claim”** means all Claims of and obligations owing to Liberty with respect to the post-petition facility provided for in the DIP Financing Agreement.

**70. “Liberty Global Settlement”** has the meaning ascribed to it in Section 6.07 of this Plan.

**71. “Liberty Unsecured Bond Claim”** means Proof of Claim No. 82 filed by Liberty in this Chapter 11 Case.

**72. “Minimum Working Capital”** means fifteen million (\$15,000,000.00) dollars of liquidity required by Navillus and/or Reorganized Navillus to fund its construction operations.

**73. “Navillus”** has the meaning ascribed to it in the Introduction to this Plan.

**74. “Navillus Appeal”** means the appeal pending before the United States Court of Appeals for the Second Circuit (Docket Nos. 17-2985(L), 17-3028(Con.), 17-3182(Con.)) from the District Court Judgment.

**75. “New Bonding Agreement”** means any agreement between Liberty and Navillus regarding a post-confirmation bonding facility.

**76. “New Capital Contribution”** means an amount equal to \$\_\_\_\_\_ in Cash and non-Cash consideration, or such higher amount bid at the Auction to be contributed by the New Value Sponsor as of the Effective Date and held in the New Capital Contribution Reserve as provided in Section 9.06 of this Plan

**77. “New Capital Contribution Reserve”** has the meaning ascribed to it in Section 6.06 of this Plan.

**78. “New Value Sponsor”** means Donal O’Sullivan or his designee, or if a Qualified Bid is received and determined to be a higher and better bid following the Auction, then the bidder submitting such winning bid at the Auction.

**79. “Other Priority Claims”** means any Claim against Navillus entitled to priority in payment as specified in sections 507(a)(3), (4), (5), (6), (7) or (9) of the Bankruptcy Code.

**80. “Other Secured Claims”** means any Secured Claim against Navillus that is not a Liberty DIP Loan Claim.

**81. “Person”** means and includes a natural person, individual, partnership, corporation (as defined in section 101(a) of the Bankruptcy Code), or organization including, without limitation, corporations, limited partnerships, limited liability companies, general partnerships, joint ventures, joint stock companies, trusts, land trusts, business trusts, unincorporated organizations or associations, irrespective of whether they are legal entities, governmental bodies (or any agency, instrumentality or political subdivision thereof), or any other form of legal entities.

**82. “Petition Date”** means November 8, 2017, the date on which Navillus filed its petition for relief commencing the Chapter 11 Case.

**83. “Performance Bonus Program”** has the meaning ascribed in the *Motion of Navillus Tile, Inc. for an Order (I) Authorizing Navillus to Make Payments to Eligible Employees under the Performance Bonus Program and (B) Continue the Performance Bonus Program in the Ordinary Course of Business; (II) Approving the Key Employee Incentive Program; and (III) Granting Related Relief* filed with the Bankruptcy Court on December 8, 2017 (Dkt. No. 100).

**84. “Plan”** means this plan of reorganization under chapter 11 of the Bankruptcy Code, as it may be altered, amended, modified or supplemented from time to time in accordance with the provisions of the Bankruptcy Code, including any exhibits and schedules hereto and/or contained in the Plan Supplement.

**85. “Plan Supplement”** means the compilation of documents, including any exhibits and schedules to the Plan not included herewith, that Navillus may file with the Bankruptcy Court on or before the date set forth in the Disclosure Statement Order.

**86. “Priority Tax Claim”** means any and all Claims of a governmental unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

**87. “Professional”** means any professional employed in this Chapter 11 Case pursuant to sections 327, 328, 363, or 1103 of the Bankruptcy Code.

**88. “Professional Fee Claim”** means a Claim of a Professional for compensation for services rendered or reimbursement of costs, expenses, or other charges incurred after the Petition Date and on or before the Confirmation Date.

**89. “Professional Fee Claims Bar Date”** means a date, which shall be thirty (30) days after the Confirmation Date, by which date all applications for payment of Professional Fee Claims for services rendered through the Confirmation Date must be filed with the Bankruptcy Court.

**90. “Proof of Claim”** means a proof of claim filed with the Bankruptcy Court or the duly appointed Claims Agent in connection with the Chapter 11 Case.

**91. “Pro Rata”** means with respect to any Distribution to a Class under the Plan, the ratio (expressed as a percentage) of the amount of an Allowed Claim in such Class to the aggregate amount of all Allowed Claims plus the amount of all Disputed Claims in the same Class.

**92. “Qualified Bid”** means a bid for the Equity Interests submitted in connection with the Auction that conforms with all procedures and satisfies all requirements for such bid required by order of the Bankruptcy Court.

**93. “Rejection Damages Bar Date”** means a date, which shall be thirty (30) days after the Confirmation Date and will be the deadline for filing Proofs of Claim for damages that arise as a result of rejection of an Executory Contract or Unexpired Lease.

**94. “Released Party”** has the meaning ascribed to such term in Section 12.01(a) of the Plan.

**95. “Reorganized Navillus”** means Navillus on and after the Effective Date.

**96. “Reorganized Navillus Notes”** means the notes issued as of the Effective Date as described in Section 6.04 hereof.

**97. “Schedules”** means the schedules of assets and liabilities and statements of financial affairs filed by Navillus pursuant to section 521 of the Bankruptcy Code and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified or supplemented from time to time.

**98. “Secured Claim”** means, pursuant to section 506 of the Bankruptcy Code, that portion of a Claim that is secured by a valid, perfected and enforceable security interest, lien, mortgage or other encumbrance, that is not subject to avoidance or disallowance under applicable bankruptcy or non-bankruptcy law, in or upon any right, title or interest of Navillus’

interest in property of the Estate, to the extent of the value of Navillus' interest in such property as of the relevant determination date. The defined term Secured Claim includes any Claim that is: (i) subject to an offset right against the Holder of such Secured Claim under applicable law; and (ii) a secured claim against Navillus pursuant to sections 506(a) and 553 of the Bankruptcy Code.

**99. "Securities Act"** means the U.S. Securities Act of 1933, as amended.

**100. "Stock Purchase Agreement"** means that certain stock purchase agreement pursuant to which the New Value Sponsor will purchase the Equity Interests in Reorganized Navillus as set forth in Section 6.06 of this Plan.

**101. "Unclaimed Property"** means any Cash or Reorganized Navillus Notes unclaimed after ninety (90) days following a Distribution Date in respect of the applicable Allowed Claim. Unclaimed Property shall include, without limitation: (a) checks (and the funds represented thereby) or Reorganized Navillus Notes mailed to a Distribution Address and returned as undeliverable without a proper forwarding address; (b) funds for uncashed checks; and (c) checks (and the funds represented thereby) or Reorganized Navillus Notes not mailed or delivered because no Distribution Address to mail or deliver such property was available, notwithstanding efforts to locate such address which were reasonable under the circumstances as provided for in the Plan.

**102. "Unexpired Lease"** means a lease of non-residential real property to which Navillus is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

**103. "Unimpaired"** means, when used with reference to a Claim or Equity Interest, a Claim or Equity Interest that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

**104. "U.S. Trustee"** means the Office of the United States Trustee for the Southern District of New York.

**105. "Voting Deadline"** means 5:00 p.m. prevailing Eastern Time on \_\_\_\_\_, 2018.

**106. "Voting Record Date"** means \_\_\_\_\_, 2018.

**Section 1.02. Rules of Construction.** (a) The words "herein," "hereof," "hereunder," and other words of similar import refer to this Plan as a whole, not to any particular Article, section, subsection or clause, unless the context requires otherwise; (b) whenever it appears appropriate from the context, each term stated in the singular or the plural includes the singular and the plural and each pronoun stated in the masculine, feminine or neuter includes the masculine, feminine and neuter; (c) captions and headings to Articles and sections (and subsections, where applicable) of this Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; (d) the rules of construction set forth in section 102 of the Bankruptcy Code will apply to this Plan unless superseded herein or in the Confirmation Order; (e) any reference in this Plan to an existing document or exhibit

means such document or exhibit as it may have been amended, restated, revised, supplemented or otherwise modified as of the Effective Date; (f) in computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006 will apply; and (g) whenever this Plan provides that a payment or other Distribution will occur on any date, it will mean on or as soon as reasonably practicable after such date.

**Section 1.03. Plan Supplement.** The Plan Supplement will be filed with the Bankruptcy Court in accordance with such deadline established in the Disclosure Statement Order. Upon such filing, all documents set forth in the Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy Court during normal business hours. Holders of Claims or Equity Interests may obtain a copy of the Plan Supplement, once filed, by a written request to the following:

Navillus Tile, Inc. Case Administration  
c/o GCG  
P.O. Box 10446  
Dublin, Ohio 43017-4046  
<http://cases.gardencitygroup.com/nvs>

## **ARTICLE II**

### **CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS IN NAVILLUS**

#### **Section 2.01. Introduction**

All Claims and Equity Interests in Navillus, except Administrative Claims, Professional Fee Claims, Priority Tax Claims and Liberty DIP Loan Claims, are placed in the Classes set forth below. In accordance with Bankruptcy Code section 1123(a)(1), Administrative Claims, Professional Fee Claims, Priority Tax Claims and the Liberty DIP Loan Claim have not been classified, and the respective treatment of such unclassified Claims is set forth below in Section 3.01 of the Plan.

#### **Section 2.02. Classes**

The following table designates the Classes of Claims and Equity Interests and specifies which of those Claims and Equity Interests 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, or (iii) deemed to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code.

<b>Class</b>	<b>Designation</b>	<b>Impairment</b>	<b>Entitled to Vote</b>
Class 1	Article 3A Claims	Unimpaired	No (Deemed to accept)
Class 2	Other Secured Claims	Unimpaired	No (Deemed to accept)
Class 3	Other Priority Claims	Unimpaired	No (Deemed to accept)

Class	Designation	Impairment	Entitled to Vote
Class 4	Liberty Unsecured Bond Claim	Impaired	Yes
Class 5	General Unsecured Trade Claims	Impaired	Yes
Class 6	Pending Litigation Related Claims	Impaired	Yes
Class 7	Equity Interests	Potentially Impaired/ Potentially Unimpaired	No

### **Section 2.03. General Rules of Classification**

The Claims asserted against Navillus and Equity Interests in Navillus are separated into Classes based on the nature of the Claims and the legal rights related to each Claim. A Claim or Equity Interest is placed in a particular Class only to the extent that the Claim or Equity Interest falls within the description of that Class, and is classified in another Class to the extent that any portion of the Claim or Equity Interest falls within the description of such Class. A Claim is also placed in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, or otherwise settled prior to the Effective Date.

## **ARTICLE III**

### **TREATMENT OF UNCLASSIFIED CLAIMS**

#### **Section 3.01. Administrative Claims**

(a) **Treatment.** Administrative Claims are Unimpaired. Each Holder of an Allowed Administrative Claim shall receive, in full and complete settlement, release, and discharge of such Claim, Cash in an amount equal to the Allowed amount of its Administrative Claim on or as soon as reasonably practicable after the Effective Date, or receive such less favorable treatment as may be agreed by such Holder and Navillus; provided, however, that the Allowed Administrative Claims representing liabilities incurred in the ordinary course of business by Navillus shall be paid in full and performed by Navillus in the ordinary course of business according to normal and customary terms existing between the parties. Notwithstanding the immediately preceding sentence, Administrative Claims of the U.S. Trustee for fees pursuant to 28 U.S.C. § 1930(a)(6) shall be paid in accordance with the applicable schedule for payment of such fees.

(b) **Administrative Claims Bar Date.** All requests for payment of Administrative Claims must be filed with the Bankruptcy Court, with copies to Reorganized Navillus' counsel, on or before the Administrative Claims Bar Date. Such request for payment of an Administrative Claim shall include, at a minimum, (i) the name, address, telephone number and email address of the Holder of such Claim; (ii) the amount of such Claim; (iii) the basis for such Claim; and (iv) any supporting documentation to the

extent such documentation would be required by Bankruptcy Rule 3001. Notwithstanding the foregoing, no application seeking payment of an Administrative Claim need be filed with respect to a postpetition liability paid or payable by Navillus in the ordinary course of business. Any Person that fails to file such request with the Bankruptcy Court on or before the Administrative Claims Bar Date shall be forever barred from asserting such Administrative Claim against Navillus, Reorganized Navillus, the Estate, or its property, and the Holder thereof shall be permanently enjoined from commencing or continuing any action, employment of process or act to collect, offset or recover such Administrative Claim.

### **Section 3.02. Professional Fee Claims**

(a) **Treatment.** Professional Fee Claims are Unimpaired. Each Holder of an Allowed Professional Fee Claim for services rendered through the Confirmation Date shall receive Cash in an amount equal to the Allowed amount of such Professional Fee Claim on or as soon as reasonably practicable after the later of (a) the Effective Date or (b) the date such Professional Fee Claim becomes Allowed, or receive such other less favorable treatment as may be agreed by such Holder and Navillus.

(b) **Professional Fee Claims Bar Date.** All final requests for payment of Professional Fee Claims must be made by application filed with the Bankruptcy Court and served on the notice parties listed in Interim Compensation Order, on or before the Professional Fee Claims Bar Date, unless otherwise ordered by the Bankruptcy Court. Any Person that fails to file such application with the Bankruptcy Court on or before the Professional Fee Claims Bar Date shall be forever barred from asserting such Professional Fee Claim against Navillus, Reorganized Navillus, the Estate, or its property, and the Holder thereof shall be permanently enjoined from commencing or continuing any action, employment of process or act to collect, offset or recover such Professional Fee Claim. To the extent necessary to give effect to this Section 3.02, entry of the Confirmation Order will amend and supersede any previously entered order of the Bankruptcy Court regarding procedures for the payment of Professional Fee Claims.

### **Section 3.03. Priority Tax Claims**

(a) **Treatment.** Priority Tax Claims are Unimpaired. Unless otherwise agreed to by Navillus and the Holder of an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall receive, in the sole discretion of Navillus, and in full and complete settlement, release, and discharge of such Claim: (i) Cash in the amount equal to such Allowed Priority Tax Claim on or as soon as reasonably practicable after the later of (a) the Effective Date or (b) the date such Priority Tax Claim becomes Allowed; or (ii) Cash equal to the amount of such Allowed Priority Tax Claim, together with interest at the applicable rate under section 511 of the Bankruptcy Code (or such lesser rate as is agreed to by the Holder of such Allowed Priority Tax Claim), payable over a period ending no later than five (5) years from the Petition Date; provided, however, that Navillus reserves the right to prepay such amounts at any time under the latter option.

#### **Section 3.04. Liberty DIP Loan Claim**

(a) **Treatment.** The Liberty DIP Loan Claim is Unimpaired. Unless otherwise agreed to by Navillus and Liberty, on or as soon as reasonably practicable after the Effective Date, Liberty shall be paid in full in Cash all outstanding DIP Obligations, if any, as of the Effective Date.

### **ARTICLE IV**

#### **TREATMENT OF CLAIMS AND EQUITY INTERESTS IN NAVILLUS**

##### **Section 4.01. Class 1 – Article 3A Claims**

(a) **Classification.** Class 1 consists of Article 3A Claims against Navillus.

(b) **Treatment.** On the Effective Date, each Holder of an Allowed Article 3A Claim shall receive in full, final and complete satisfaction, settlement, release, and discharge of such Claim, payment in full in Cash of the Allowed Article 3A Claim, or reinstatement and subsequent payment of such Allowed Article 3A Claim, in the ordinary course of business, each in accordance with the provisions of Article 3A and such agreements and terms as existing as of the Petition Date, which agreements will continue in full force and effect.

(c) **Impairment and Voting.** Class 1 is Unimpaired, and the Holders of Class 1 Claims will be conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims shall not be entitled to vote to accept or reject the Plan.

##### **Section 4.02. Class 2 – Other Secured Claims**

(a) **Classification.** Class 2 consists of all Other Secured Claims against Navillus.

(b) **Treatment.** On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Other Secured Claim shall receive, in full, final and complete satisfaction, settlement, release, and discharge of such Claim, in the sole discretion of Navillus: (i) reinstatement and Unimpairment of its Allowed Other Secured Claim in accordance with section 1124(2) of the Bankruptcy Code, or (ii) in exchange for such Other Secured Claim, either (a) Cash in the full amount of such Allowed Other Secured Claim, including any reasonable postpetition interest accrued pursuant to section 506(b) of the Bankruptcy Code, (b) the proceeds of the sale or disposition of the collateral securing such Allowed Other Secured Claim to the extent of the value of the Holder's secured interest in such collateral, (c) the collateral securing such Allowed Other Secured Claim and any reasonable interest on such Allowed Other Secured Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, or (d) such other distribution as necessary to satisfy the requirements of section 1129 of the Bankruptcy Code. In the event Navillus sells or otherwise disposes of the collateral securing any Allowed Other Secured Claim, all expenses relating thereto, including but not limited to transportation, shipping and storage expenses, shall be borne by the Holder of the Class 2 Other Secured Claim.

(c) **Impairment and Voting.** Class 2 is Unimpaired, and the Holders of Class 2 Claims shall be conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 2 Claims shall not be entitled to vote to accept or reject the Plan.

#### **Section 4.03. Class 3 – Other Priority Claims**

(a) **Classification.** Class 3 consists of nine (9) Other Priority Claims against Navillus. Five (5) of Claims classified as Other Priority Claims are based on alter ego liability allegedly arising out of or relating to the District Court Judgment and are Disputed Claims that are subject to objection on the grounds that such Other Priority Claims are incorrectly classified, among other things. The remaining four (4) Claims classified as Other Priority Claims assert direct Claims against Navillus not relating to the District Court Judgment.

(b) **Treatment.**

With respect to the four (4) Class 3 Other Priority Claims that are not arising out of or relating to the District Court Judgment, on the Effective Date or as soon as reasonably practicable thereafter, each Holder of an Allowed Other Priority Claim shall receive, in full, final and complete satisfaction, settlement, release, and discharge of such Claim, Cash in the amount equal to such Allowed Other Priority Claim.

With respect to the remainder of the Class 3 Other Priority Claims, the treatment of such Claims shall be contingent on the resolution of pending objections to Claims and/or the outcome of the Navillus Appeal from the District Court Judgment, as follows:

- i. In the event the Navillus Appeal results in the reversal of the District Court Judgment, there shall be no Allowed Claims in Class 3 arising out of or relating to the District Court Judgment and Navillus Appeal.
- ii. In the event the Navillus Appeal results in either: (x) a remand to the District Court, or (y) the District Court Judgment being affirmed, each Holder of an Allowed Other Priority Claim shall receive, in the sole discretion of Navillus, in full, final and complete satisfaction, settlement, release, and discharge of such Claim, unless any Holder agrees to less favorable treatment of its Claim: (i) Cash in the amount equal to such Allowed Other Priority Claim on or as soon as practicable after the later of (a) the Appeal Determination Date or (b) the date such Claim becomes Allowed; or (ii) Cash equal to the amount of such Allowed Other Priority Claim, together with interest at the applicable statutory rate (or such lesser rate as is agreed to by the Holder of such Allowed Other Priority Claim), payable over a period ending no later than five (5) years from the Petition Date; provided, however, that Navillus reserves the right to prepay such amounts at any time under the latter option.

(c) **Impairment and Voting.** Class 3 is Unimpaired, and the Holders of Class 3 Claims shall be conclusively deemed to have accepted the Plan pursuant to section

1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims shall not be entitled to vote to accept or reject the Plan.

**Section 4.04. Class 4 – Liberty Unsecured Bond Claim**

(a) **Classification.** Class 4 consists of the Liberty Unsecured Bond Claim against Navillus. The Liberty Unsecured Bond Claim shall be Allowed in the amount of \$907,792.88, comprised of: (i) \$243,509.41 in legal and consulting fees; and (ii) \$664,283.47 in unpaid bond premiums. Liberty also holds a Contingent Claim in the amount of \$801,149,367.00 based on Liberty's potential exposure under the Bonds. As part of the Liberty Global Settlement described in Section 6.07 of this Plan, Liberty has agreed to less favorable treatment of the Liberty Unsecured Bond Claim.

(b) **Treatment.** The treatment of the Class 4 Liberty Unsecured Bond Claim shall be contingent on the outcome of the Navillus Appeal from the District Court Judgment, as follows:

- i. In the event the Navillus Appeal results in the reversal of the District Court Judgment, Liberty shall receive payment in full of the non-Contingent portion of the Allowed amount of its Claim, either from Cash on hand and/or the Reorganized Navillus Notes from the Distribution Reserve. Distributions to the Holder of the Class 4 Claim will be made following the later of the Appeal Determination Date and when all objections to Claims are either resolved or ruled on by the Bankruptcy Court.
- ii. In the event the Navillus Appeal results in either: (x) a remand to the District Court, or (y) the District Court Judgment being affirmed, Liberty shall receive, on account of the non-Contingent portion of the Allowed amount of its Claim, its Pro Rata share of Reorganized Navillus Notes from the Distribution Reserve. Distributions to the Holder of the Class 4 Claim will be made following the later of the Appeal Determination Date and when all objections to Claims are either resolved or ruled on by the Bankruptcy Court.

(c) **Impairment and Voting.** Class 4 is Impaired and the Holder of the Class 4 Claim shall be entitled to vote to accept or reject the Plan.

**Section 4.05. Class 5 – General Unsecured Trade Claims**

(a) **Classification.** Class 5 consists of General Unsecured Trade Claims against Navillus.

(b) **Treatment.** The treatment of Class 5 General Unsecured Trade Claims shall be contingent on the outcome of the Navillus Appeal from the District Court Judgment, as follows:

- i. In the event the Navillus Appeal results in the reversal of the District Court Judgment, each Holder of a General Unsecured Trade Claim shall receive payment in full the Allowed amount of its Claim, either from Cash on hand and/or the Reorganized Navillus Notes from the Distribution Reserve. Distributions will be made to Holders of General Unsecured Trade Claims following the later of the Appeal Determination Date and when all objections to Claims are either resolved or ruled on by the Bankruptcy Court.
- ii. In the event the Navillus Appeal results in either: (x) a remand to the District Court, or (y) the District Court Judgment being affirmed, each Holder of a General Unsecured Trade Claim shall receive its Pro Rata share of Reorganized Navillus Notes from the Distribution Reserve. Distributions will be made to Holders of General Unsecured Trade Claims following the later of the Appeal Determination Date and when all objections to Claims are either resolved or ruled on by the Bankruptcy Court.

(c) **Impairment and Voting.** Class 5 is Impaired and the Holders of Class 5 Claims shall be entitled to vote to accept or reject the Plan.

#### **Section 4.06. Class 6 – Pending Litigation Related Claims**

(a) **Classification.** Class 6 consists of Pending Litigation Related Claims against Navillus.

(b) **Treatment.** The treatment of Class 6 Pending Litigation Related Claims shall be contingent on the outcome of the Navillus Appeal from the District Court Judgment or the resolution of any objections to Claims, as follows:

- i. In the event the Navillus Appeal results in the reversal of the District Court Judgment, then there shall be no Allowed Claims in Class 6.
- ii. In the event the Navillus Appeal results in either: (x) a remand to the District Court, or (y) the District Court Judgment being affirmed, each Holder of a Pending Litigation Related Claim shall receive its Pro Rata share of Reorganized Navillus Notes from the Distribution Reserve. Distributions will be made to Holders of Pending Litigation Related Claims following the later of the Appeal Determination Date and when all objections to Claims are either resolved or ruled on by the Bankruptcy Court.

(c) **Impairment and Voting.** Class 6 is Impaired, and the Holders of Class 6 Claims shall be entitled to vote to accept or reject the Plan.

**Section 4.07. Class 7 – Equity Interests**

(a) **Classification.** Class 7 consists of the Equity Interests in Navillus held by the Donal O’Sullivan Revocable Living Trust and Donal O’Sullivan IDGT II.

(b) **Treatment.** The treatment of Class 7 Equity Interests shall be contingent on the outcomes of the Navillus Appeal from the District Court Judgment and the Auction, as follows:

- i. In the event the Navillus Appeal results in the reversal of the District Court Judgment, and
  - a. the current Holders (or beneficial Holders) of the Equity Interests, or their designee, are the New Value Sponsor following an Auction (or if no other Qualified Bids are received and the Auction is cancelled), then the current Holders of the Class 7 Equity Interests shall retain their Equity Interests in Navillus.
  - b. the current Holders (or beneficial Holders) of the Equity Interests, or their designee, are not the New Value Sponsor following an Auction, then the Equity Interests in Navillus shall be cancelled and new Equity Interests shall be issued to the New Value Sponsor for and in consideration of the New Capital Contribution.
- ii. In the event the Navillus Appeal results in either: (x) a remand to the District Court, or (y) the District Court Judgment being affirmed, then the Equity Interests in Navillus shall be treated as follows:
  - a. The Equity Interests in Navillus shall be cancelled and new Equity Interests shall be issued to the New Value Sponsor for and in consideration of the New Capital Contribution. In this instance, the current Holders (or beneficial Holders) of the Equity Interests shall receive no Distribution under the Plan on account of their cancelled Equity Interests.

(c) **Impairment and Voting.** Potential impairment and voting of Class 7 is subject to the outcome of the Auction of the Equity Interests:

- i. If the current Holders (or beneficial Holders) of the Equity Interests, or their designee, are the New Value Sponsor following an Auction (or if no other Qualified Bids are received and the Auction is cancelled), Class 7 is Unimpaired, and the Holders of Class 7 Equity Interests shall be conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 7 Equity Interests shall not be entitled to vote to accept or reject the Plan.

- ii. If the current Holders (or beneficial Holders) of the Equity Interests, or their designee, are not the New Value Sponsor following an Auction, Class 7 shall not receive or retain any property under the Plan, and the Holders of Class 7 Equity Interests shall be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, the Holders of Class 7 Equity Interests shall not be entitled to vote to accept or reject the Plan.

#### **Section 4.08. Reservation of Rights Regarding Claims**

Except as otherwise explicitly provided in the Plan, nothing herein shall affect Navillus' rights and defenses, both legal and equitable, with respect to any Claims, including, but not limited to, all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment.

### **ARTICLE V**

#### **ACCEPTANCE OR REJECTION OF THE PLAN**

##### **Section 5.01. Voting of Claims**

Each Holder of an Allowed Claim in Classes 4, 5 and 6 shall be entitled to vote to accept or reject this Plan and to have its vote counted toward confirmation of the Plan.

##### **Section 5.02. Acceptance by a Voting Class**

In accordance with section 1126(c) of the Bankruptcy Code, and except as provided in section 1126(e) of the Bankruptcy Code, a voting Class of Claims shall have accepted the Plan if the Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims voted in such Class have timely and properly voted to accept or reject the Plan.

##### **Section 5.03. Presumed Acceptances or Rejections by Certain Classes**

Classes 1, 2, and 3 are Unimpaired under the Plan. Class 7 will also be Unimpaired under the Plan if the current Holders (or beneficial Holders) of the Equity Interests, or their designee, are the New Value Sponsor following an Auction (or if no other Qualified Bids are received and the Auction is cancelled). Under section 1126(f) of the Bankruptcy Code, Holders of such Unimpaired Claims and Equity Interests are conclusively presumed to have accepted the Plan.

If the current Holders (or beneficial Holders) of the Equity Interests, or their designee, are not the New Value Sponsor following an Auction, Class 7 will not receive or retain any property under the Plan. In that instance, under section 1126(g) of the Bankruptcy Code, the Holders of such Equity Interests are conclusively presumed to have rejected the Plan.

Accordingly, the votes of Holders of such Unimpaired Claims and Equity Interests in Classes 1, 2, 3 and 7 shall not be solicited.

**Section 5.04. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code**

To the extent that any Impaired Class rejects the Plan or is deemed to have rejected the Plan, Navillus reserves the right to request confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code. Navillus reserves the right to alter, amend, modify, revoke, or withdraw the Plan, the Plan Supplement, or any schedule or exhibit, including to amend or modify it to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

**Section 5.05. Elimination of Vacant Classes**

Any Class of Claims or Equity Interests in Navillus that does not contain, as of the date of the commencement of the Confirmation Hearing, a Holder of an Allowed Claim or Equity Interest, or a Holder of a Claim temporarily allowed under Bankruptcy Rule 3018, shall be deemed deleted from the Plan for all purposes, including for purposes of determining acceptance of the Plan by such Class under section 1129(a)(8) of the Bankruptcy Code.

**ARTICLE VI**

**MEANS FOR IMPLEMENTATION OF THE PLAN**

**Section 6.01. Reorganization of Navillus**

On the Effective Date, Navillus will be reorganized pursuant to the Plan, the Indenture, the Stock Purchase Agreement and other applicable governance, corporate and other documents to be included in the Plan Supplement.

(a) **Vesting of Assets.** On the Effective Date, with the exception of any Claims and Causes of Action released pursuant to Article XII of this Plan, all right, title and interest in and to the property and assets of the Estate will vest fully in Reorganized Navillus, free and clear of all liens, encumbrances and other liabilities including, without express or implied limitation, Claims against or Equity Interests in Navillus. All Claims against and Equity Interests in Navillus will be classified and treated pursuant to the terms of this Plan.

(b) **Sources of Plan Funding.** On the Effective Date, the Distributions required to be made to Holders of Claims under this Plan shall be funded by one or more of: (a) Cash on hand, (b) the Exit Facility, or (c) Reorganized Navillus Notes. Alternatively, Navillus reserves the right to fund Distributions under the Plan through the proceeds of the liquidation of its assets, either through (x) the sale of substantially all of its assets pursuant to section 363 of the Bankruptcy Code, or (y) the wind-down of its construction operations and orderly liquidation of assets.

**Section 6.02. Recovery Contingent on Navillus Appeal**

The treatment of Claims and Equity Interests in Classes 4 through 7 will be contingent on the outcome of the Navillus Appeal, and this Plan proposes alternative treatment scenarios for each affected Class based on whether the District Court Judgment is reversed, affirmed, or

remanded following the conclusion of the Navillus Appeal. For Holders of Claims whose recovery is not contingent on the Navillus Appeal, Distributions under this Plan shall be made on or as soon as reasonably practicable after the Effective Date. For Holders of Claims and Equity Interests whose Distributions under the Plan are contingent on the outcome of the Navillus Appeal, Distributions under this Plan shall be made following the later of the Appeal Determination Date and when all objections to Disputed Claims are either resolved or ruled on by the Bankruptcy Court.

In the event the District Court Judgment is reversed following the conclusion of the Navillus Appeal, all Claims in Class 6 shall be Disallowed in their entirety and the Plan will provide for payment of one hundred (100%) percent of the Allowed amount of Claims in Classes 1 through 5 and the retention of Equity Interests in Class 7 if the current Holders (or beneficial Holders) of the Equity Interests, or their designee, are the New Value Sponsor following an Auction (or if no other Qualified Bids are received and the Auction is cancelled). In the event the District Court Judgment is affirmed following the conclusion of the Navillus Appeal, or the District Court Judgment is remanded to the District Court for any purpose, Distributions to Holders of Claims in Classes 4 through 6 will be held in the Distribution Reserve following the later of the Appeal Determination Date and pending entry of a Final Order or other determination with respect to the allowance or disallowance of Claims in Classes 4 through 6.

**Section 6.03. Effective Date Transactions.** On the Effective Date, the following transactions will occur:

- (a) Navillus shall be authorized to consummate the Exit Facility (if obtained) on the terms to be set forth in the Plan Supplement.
- (b) Navillus shall be authorized to and shall issue the Reorganized Navillus Notes on the terms set forth in the Indenture, a copy of which will be included in the Plan Supplement.
- (c) Navillus shall be authorized to enter into the New Bonding Facility with Liberty on the terms and conditions set forth in the New Bonding Agreement, a copy of which will be included in the Plan Supplement.
- (d) The New Capital Contribution shall be made by the New Value Sponsor and deposited into the New Capital Contribution Reserve.
- (e) Navillus shall be authorized to enter into the Stock Purchase Agreement with the New Value Sponsor, a copy of which will be included in the Plan Supplement.

**Section 6.04. Reorganized Navillus Notes**

On the Effective Date, pursuant to the Indenture, Navillus shall issue the Reorganized Navillus Notes in an aggregate principal amount equal to the lesser of: (a) six million (\$6,000,000) dollars; or (b) the remainder of (x) the midpoint of Navillus' enterprise value, measured as of the date of the Confirmation Hearing, plus (y) Cash on hand less any outstanding DIP Obligations as of the Effective Date, less: (i) Minimum Working Capital; (ii) the aggregate

amount of Allowed Administrative Claims; (iii) the aggregate amount of Allowed Professional Fee Claims; (iii) the aggregate amount of Allowed Priority Tax Claims; and (iv) the aggregate amount of Allowed Class 3 Other Priority Claims.

Certain salient terms of the Reorganized Navillus Notes are summarized herein, and the Plan Supplement will contain a copy of the Indenture and the form of Reorganized Navillus Note setting forth the complete terms and conditions of such Reorganized Navillus Notes. The Reorganized Navillus Notes shall have a maturity date that is five (5) years after the Effective Date and shall bear interest at a six (6%) percent payment-in-kind contract rate. Distributions under the Reorganized Navillus Notes shall be made through annual cash flow sweeps payable on or around July 1st of each year, calculated based on the lesser of: (i) Cash on hand in excess Minimum Working Capital; and (ii) the outstanding principal amount of the Reorganized Navillus Notes, with a maximum annual cash flow sweep as set forth in the Indenture.

Following issuance, the Reorganized Navillus Notes shall be held in the Distribution Reserve pending Distribution to Holders of Allowed Claims as set forth in Section 9.06 hereof.

#### **Section 6.05. Exit Facility**

On the Effective Date, Navillus shall be authorized to either convert the DIP Facility into the Exit Facility or enter into an alternative Exit Facility. Confirmation of the Plan shall constitute an approval of the transactions contemplated thereby and all of the actions to be taken and obligations to be incurred by Reorganized Navillus in connection therewith without the need for any further corporate action or further order of the Bankruptcy Court. The proceeds of the Exit Facility (if obtained) will be available, among other things, for any purpose permitted by the governing documents, including the funding of obligations under the Plan and the satisfaction of Minimum Working Capital requirements on an after the Effective Date. The terms of any Exit Facility (if obtained) will be included in the Plan Supplement.

#### **Section 6.06. New Capital Contribution**

Pursuant to and subject to the terms and conditions of the Stock Purchase Agreement, on the Effective Date, the New Value Sponsor will purchase one hundred (100%) percent of the Equity Interests in Reorganized Navillus in exchange for New Capital Contribution. The New Capital Contribution will be utilized by Reorganized Navillus to fund obligations under the Plan and to satisfy Reorganized Navillus' Minimum Working Capital requirements on and after the Effective Date. Reorganized Navillus is hereby authorized to take all such actions and execute any agreements that will be necessary to consummate and give effect to the Stock Purchase Agreement without further order of the Bankruptcy Court.

The New Capital Contribution shall be deposited into a separate reserve (the "New Capital Contribution Reserve") on the Effective Date and shall be released to Reorganized Navillus as soon as practicable following the Appeal Determination Date; provided, however, that in the event that the District Court Judgment is reversed upon determination of the Navillus Appeal and the current Holders (or beneficial Holders) of the Equity Interests, or their designee, are the New Value Sponsor following an Auction, the New Capital Contribution shall be returned to the New Value Sponsor.

### **Section 6.07. Liberty Global Settlement**

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, the Plan incorporates a proposed compromise and settlement of numerous issues outstanding between Navillus and Liberty designed to achieve an economic settlement (the “Liberty Global Settlement”) of Liberty’s Claims against the Estate and enable Navillus to reorganize as a going concern with Liberty’s support for ongoing operations. The Plan constitutes a motion to approve the Liberty Global Settlement which will be implemented through the Plan as follows:

(a) Liberty shall consent to the assumption of the Bonds pursuant to Section 7.01 of this Plan notwithstanding the status of the Bonds as financial accommodations contracts;

(b) Liberty shall consent to treatment of any and all cure amounts due and owing as a result of the assumption of the Bonds, including the amounts set forth in the Liberty Unsecured Bond Claim, as an Unsecured Claim payable on the terms set forth in Section 4.04 of this Plan and shall waive its right to collect any such amounts from the non-debtor Indemnitors;

(c) Provided that Donal O’Sullivan is the New Value Sponsor following the Auction, Navillus and Donal O’Sullivan shall reaffirm any and all obligations under the Indemnity Agreements; in the event Donal O’Sullivan is not the New Value Sponsor following the Auction, then (i) Donal O’Sullivan shall be released from all obligations to Navillus (but not Liberty) in respect of the Bonds, and (ii) (A) the party that is the New Value Sponsor shall be required to indemnify Donal O’Sullivan for the obligations under the Indemnity Agreements, or (B) in the event the New Value Sponsor provides evidence of its financial wherewithal to Liberty, and other information that Liberty may request that is sufficient, in Liberty’s sole discretion, to cause Liberty to allow a substitution of the New Value Sponsor (and/or others as may be acceptable to Liberty) as indemnitors for bonds already executed on behalf of Navillus and that may be executed in the future on behalf of Navillus, in place of the Indemnitors, and the New Value Sponsor (and/or others as may be acceptable Liberty) provide Liberty with a duly-executed Agreement of Indemnity on Liberty’s standard form, Liberty shall consider, in good faith, terminating the Indemnity Agreements and releasing the Indemnitors from any and all obligations thereunder;

(d) Provided that Donal O’Sullivan is the New Value Sponsor following the Auction, Liberty shall issue the New Bonding Facility to Navillus on the terms set forth in the New Bonding Agreement, a copy of which is contained in the Plan Supplement, in exchange for the Navillus’ reaffirmation of its obligations under the Indemnity Agreements and the provision by Navillus and/or the non-debtor Indemnitors of such other collateral security as is agreed by the parties and set forth in the New Bonding Agreement;

(e) Liberty may, at its sole option, convert the DIP Facility into an Exit Facility or elect to continue to provide Navillus with post-confirmation liquidity through the alternative Exit Facility;

(f) Liberty shall consent to the reaffirmation of the obligations under the Indemnity Agreements and the collateral security provided for the New Bonding Facility as

adequate and sufficient reserve for the portion of the Liberty Unsecured Bond Claim that is a Contingent Claim; and

(g) Liberty shall receive the releases and exculpations set forth in Article XII of this Plan.

#### **Section 6.08. General Corporate Actions**

The entry of the Confirmation Order shall constitute authorization for Navillus and Reorganized Navillus to take or cause to be taken all corporate or other actions necessary or appropriate to consummate and implement the provisions of the Plan prior to, on, and after the Effective Date, and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court. All such actions shall be deemed to have occurred and shall be in effect pursuant to applicable non-bankruptcy law and the Bankruptcy Code, without any requirement of further action by the shareholders or directors of Navillus or Reorganized Navillus.

#### **Section 6.09. Continued Corporate Existence**

After the Effective Date, Reorganized Navillus may operate its business and use, acquire, dispose of property and settle and compromise Claims or Equity Interests without the supervision of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, subject to the terms of this Plan and the Plan Supplement, and all documents and exhibits thereto implementing the provisions of the Plan.

#### **Section 6.10. Board of Directors of Reorganized Navillus**

Provided that Donal O'Sullivan is the New Value Sponsor following the Auction, the board of directors of Reorganized Navillus will consist of those individuals constituting the current board of directors of Navillus. Otherwise, the board of directors of Reorganized Navillus will be identified in the Plan Supplement or the order of the Bankruptcy Court approving the sale of the Equity Interests to the New Value Sponsor at the Auction.

#### **Section 6.11. Officers of Reorganized Navillus**

Provided that Donal O'Sullivan is the New Value Sponsor following the Auction, (a) the officers of Navillus immediately prior to the Effective Date shall serve as the officers of Reorganized Navillus on and after the Effective Date, and (b) Donal O'Sullivan shall continue to serve as President and Chief Executive Officer of Reorganized Navillus on terms that will be set forth in the DOS Employment Agreement, a copy of which will be included in the Plan Supplement. Otherwise, the officers of Reorganized Navillus will be identified in the Plan Supplement or the order of the Bankruptcy Court approving the sale of the Equity Interests to the New Value Sponsor at the Auction.

#### **Section 6.12. Certificate of Incorporation and Bylaws**

The certificate of incorporation and by-laws of Navillus shall be modified in order to satisfy the requirements of the Plan and the Bankruptcy Code and shall include, among other

things, pursuant to section 1123(a)(6) of the Bankruptcy Code, a provision prohibiting the issuance of non-voting equity securities, subject to further amendment of such certificate of incorporation as permitted by applicable law.

#### **Section 6.13. Indemnification Obligations**

Upon the Effective Date, the obligations of Navillus as provided in Navillus' certificate of formation, certificate of incorporation, bylaws or other organizational documents, board resolutions, employment contracts, applicable law or other applicable agreements as of the Petition Date to indemnify, defend, reimburse, exculpate, advance fees and expenses to, or limit the liability of directors, officers, employees, attorneys, other professionals, and agents of Navillus who were in place as of the Petition Date against any claims or causes of action whether direct or derivative, liquidated or unliquidated, foreseen or unforeseen, asserted or unasserted, shall not be discharged or impaired by confirmation of the Plan, shall survive entry of the Confirmation Order and shall remain unaffected thereby after the Effective Date.

#### **Section 6.14. Preservation of Causes of Action**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code and to the fullest extent possible under applicable law, on the Effective Date, Reorganized Navillus shall retain the right to pursue, prosecute and enforce any Claims, demands, rights, and Causes of Action that Navillus may hold against any Entity including, without limitation, (i) any and all Avoidance Actions that belonged to Navillus prior to the Confirmation Date, other than any Avoidance Actions released pursuant to Article XII of this Plan; (ii) any and all Claims against any Entity, to the extent such Entity asserts a crossclaim, counterclaim and/or Claim for setoff that seeks affirmative relief against Navillus; (iii) any and all Claims and Causes of Action for turnover of any property of Navillus' estate; (iv) any and all Claims and Causes of Action that are subject to pending litigation in either the Bankruptcy Court or a non-bankruptcy forum as of the Effective Date; (v) any and all Claims and Causes of Action that are listed on Navillus' Schedules; and (vi) any and all breach of contract and other Claims and Causes of Action arising out of or relating to the construction projects on which Navillus has performed or presently performs including, without limitation those potential Claims described in Section VII.B.12 of the Disclosure Statement. On the Effective Date, Navillus' right to pursue, prosecute and enforce such Claims, demands, rights and Causes of Action shall transfer to Reorganized Navillus, which on and after the Effective Date shall have the exclusive right to pursue, prosecute and enforce such actions. Nothing in this Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights or Causes of Action that Navillus or Reorganized Navillus may have.

#### **Section 6.15. Effectuating Documents; Further Transactions**

On the Effective Date, the appropriate officers and directors of Reorganized Navillus and its counsel shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

#### **Section 6.16. Exemption from Certain Transfer Taxes**

Pursuant to section 1146(a) of the Bankruptcy Code: (i) the issuance, transfer or exchange of any securities, instruments or documents; (ii) the creation of any other lien, mortgage, deed of trust or other security interest; or (iii) the making or assignment of any lease or the making or delivery of any deed or other instrument of transfer under, pursuant to, in furtherance of or in connection with, the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, or other similar tax or governmental assessment, to the fullest extent provided for under section 1146(a) of the Bankruptcy Code. State or local governmental officials or agents are directed to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

#### **Section 6.17. Cancellation of Existing Securities and Agreements**

Except for purposes of evidencing a right to Distributions under the Plan or otherwise as provided hereunder, on the Effective Date, all the agreements and other documents evidencing any Claims or rights of any Holder of a Claim against or Equity Interest in Navillus shall be deemed automatically cancelled, terminated and of no further force or effect, without further act or action under any applicable agreement, law, regulation, order, or rule and the obligations of the parties, as applicable, under the agreements and other documents governing such Claims or Equity Interests shall be discharged.

#### **Section 6.18. Transactions on Business Days**

If the date on which a transaction may occur under this Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

#### **Section 6.19. Compromise and Settlement Under the Plan**

Pursuant to Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided under the Plan, the provisions of the Plan will constitute a good faith compromise and settlement of all Claims or controversies relating to the rights that a Holder of a Claim or Equity Interest may have with respect to such Claim or Equity Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's finding and determination that the settlements reflected in the Plan are (1) in the best interests of Navillus and its estate, (2) fair, equitable and reasonable, (3) made in good faith, and (4) approved by the Bankruptcy Court pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019.

## ARTICLE VII

### **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

#### **Section 7.01. General Assumption of Executory Contracts and Unexpired Leases**

(a) **General Assumption.** Except as otherwise specifically provided herein, or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan, as of the Effective Date, all prepetition Executory Contracts and Unexpired Leases are hereby assumed except for an Executory Contract or Unexpired Lease that (i) was previously assumed or rejected by Navillus pursuant to an order of the Bankruptcy Court entered on or prior to the Confirmation Date, (ii) previously expired or was terminated pursuant to its own terms, which termination has not been disputed by Navillus in writing, or (iii) is the subject of a motion to assume or reject filed by Navillus on or before the Confirmation Date. The Confirmation Order shall constitute an order of the Bankruptcy Court under section 365 of the Bankruptcy Code approving the assumption of Executory Contracts and Unexpired Leases described above, as of the Effective Date.

(b) **Assumption and Cure Schedule.** The Plan Supplement shall contain a schedule of Executory Contracts and Unexpired Leases (the “Assumption and Cure Schedule”) designating each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan and the cure amount, if any, related to such proposed assumption; provided, however, that Navillus reserves the right, on or prior to the Confirmation Date, to amend the Assumption and Cure Schedule. Navillus shall provide notice of any amendments to the Assumption and Cure Schedule to the parties affected thereby. The listing of a document on the Assumption and Cure Schedule shall not constitute an admission by Navillus that such document is an Executory Contract or an Unexpired Lease or that Navillus has any liability thereunder. If no cure amount for an assumed Executory Contract or Unexpired Lease is listed in the Assumption and Cure Schedule, the cure amount shall be deemed to be \$0.

(c) **Inclusiveness.** Unless otherwise specified on the Assumption and Cure Schedule, each Executory Contract and Unexpired Lease listed thereon shall include any and all modifications, amendments, supplements, restatements or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects the Executory Contract or Unexpired Lease, without regard to whether such agreement, instrument or other document is listed on the Assumption and Cure Schedule.

#### **Section 7.02. Payment of Cure Amounts Relating to Assumption of Executory Contract and Unexpired Leases**

(a) **Assumption and Cure Schedule.** Navillus shall file the Assumption and Cure Schedule with the Bankruptcy Court and serve such schedule by first class mail on each non-debtor counterparty to the Executory Contracts and Unexpired Leases listed thereon at least twenty (20) days prior to the Confirmation Hearing. The Assumption and Cure Schedule shall list the cure amount as to each Executory Contract or Unexpired Lease to be assumed under the Plan. The counterparties to such Executory Contracts and Unexpired Leases to be assumed by

Navillus shall have ten (10) days from the date of service of the Assumption and Cure Schedule (or the date of service of any amendment to the Assumption and Cure Schedule) to file and serve any objection to either the cure amount listed by Navillus or the assumption of such Executory Contract or Unexpired Lease. If there are objections filed, the Bankruptcy Court may either schedule such objection to be heard at the Confirmation Hearing or at a later hearing on a date to be set by the Bankruptcy Court. Notwithstanding anything to the contrary in the Plan, Navillus or Reorganized Navillus, as applicable, shall be authorized to reject any Executory Contract or Unexpired Lease that is subject to a dispute concerning amounts necessary to cure any defaults through the Effective Date. Each counterparty to an Executory Contract or Unexpired Lease that does not file an objection to the Assumption and Cure Schedule on or before the objection deadline set forth therein will be deemed to consent to the assumption of such Executory Contract or Unexpired Lease and the proposed cure amount (if any) with respect to such agreement.

(b) **Treatment of Cure Claims.** All Allowed Claims for cure amounts arising from the assumption of any Executory Contract or Unexpired Lease shall be treated as Administrative Claims pursuant to Section 3.01 of this Plan, except with respect to the cure costs incurred by Liberty which, pursuant to the Liberty Global Settlement, shall receive the treatment of the Liberty Unsecured Bond Claim as set forth in Section 4.04 of this Plan. Except as may otherwise be agreed to by the counterparty to the Executory Contract or Unexpired Lease, as soon as practicable after the Effective Date, Reorganized Navillus shall pay all undisputed cure amounts. All disputed defaults that are required to be cured shall be cured either within thirty (30) days of the entry of a Final Order determining the amount, if any, of Navillus' liability with respect to such cure amount, or as may otherwise be agreed to with the counterparty to such Executory Contract or Unexpired Lease.

### **Section 7.03. Rejection Damages Bar Date**

**If the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan results in a Claim, then such Claim must be filed with the Claims Agent and served upon counsel to Reorganized Navillus on or before the Rejection Damages Bar Date, and upon the failure of any Entity to file such Claim on or before such date, such Entity shall be forever barred from asserting a Claim on account of the rejection of such Executory Contract or Unexpired Lease, but shall nevertheless be bound by the provisions of the Plan. The foregoing applies only to Claims arising from the rejection of an Executory Contract or Unexpired Lease; any other Claims held by a party to a rejected contract or lease shall have been evidenced by a Proof of Claim filed by the applicable Bar Date or shall be barred and unenforceable. Nothing in this Section 7.03 will extend any prior Bar Date set by prior order of the Bankruptcy Court.**

All Allowed Claims arising from the rejection of an Executory Contract or Unexpired Lease shall be treated, to the extent applicable, as General Unsecured Trade Claims, unless otherwise ordered by Final Order of the Bankruptcy Court. There shall be no restriction on the right of Reorganized Navillus to object to any Claims relating to the rejection of Executory Contracts or Unexpired Leases, or to assert any defense or counterclaim to any such Claim, notwithstanding that such defenses or counterclaims may not have otherwise been identified in the Plan, Disclosure Statement or otherwise.

#### **Section 7.04. Postpetition Contracts and Leases**

Navillus shall not be required to assume or reject any contract or lease entered into by Navillus after the Petition Date. Any such contract or lease shall continue in effect in accordance with its terms after the Effective Date as set forth in the Plan, unless Reorganized Navillus has obtained a Final Order of the Bankruptcy Court approving termination of such contract or lease. Contracts or leases entered into after the Petition Date will be performed by Reorganized Navillus in the ordinary course of its business.

#### **Section 7.05. Compensation and Benefit Programs**

All compensation and benefit plans, policies and programs of Navillus applicable to its present and former employees, including, without express or implied limitation, all savings plans, retirement plans, health and welfare plans, performance-based incentive plans, retention plans, reimbursement plans, disability plans, severance benefit plans, paid time off plans and life, accidental death and dismemberment insurance plans, including, without express or implied limitation, and the Performance Bonus Program and KEIP, will be deemed to be, and will be treated as though they are, Executory Contracts and will, on the Effective Date, be deemed assumed under the Plan by Reorganized Navillus in accordance with sections 365(a) and 1123(b)(2) of the Bankruptcy Code, and Reorganized Navillus' obligations under such plans, policies and programs will survive confirmation of the Plan, remain unaffected thereby and not be discharged in accordance with section 1141 of the Bankruptcy Code.

#### **Section 7.06. Special Provisions Regarding Insured Claims**

##### **(a) Limitations on Distributions to Holders of Allowed Insured Claims.**

All prepetition Insured Claims not previously Allowed by Final Order shall be deemed Disputed Claims. Distributions under the Plan to each Holder of an Allowed Insured Claim will be in accordance with the treatment provided for under the Plan for the Class in which such Allowed Insured Claim is classified, but solely to the extent that such Allowed Insured Claim is not satisfied from Navillus' deductible under the Insurance Policy Documents or the proceeds of insurance payable to the Holder of such Allowed Claim under Navillus' Insurance Policy Documents or applicable law. Holders of Insured Claims that are eligible to be satisfied, in whole or in part, through insurance policies will be obligated, as a condition to receiving any Distributions under this Plan, to seek recovery or assist Navillus or Reorganized Navillus in seeking recovery under such insurance policies with regard to such Insured Claims.

**(b) Assumption and Continuation of Insurance Policies.** Each insurance policy and any agreements, documents or instruments relating thereto (collectively, the "Insurance Policy Documents") under which the insurer has a continuing obligation to pay Navillus or a third party on behalf of Navillus shall be either deemed assumed by Navillus pursuant to section 365 of the Bankruptcy Code and Section 7.01 of this Plan or continued in accordance with its terms such that each of the parties' contractual, legal and equitable rights under the Insurance Policy Documents shall remain unaltered, and the parties to Insurance Policy Documents will continue to be bound by such Insurance Policy Documents as if the Chapter 11 Case had not occurred. Nothing in the Plan shall affect, impair or prejudice the rights and defenses of any insurer or Reorganized Navillus under the Insurance Policy

Documents in any manner, and such insurers and Reorganized Navillus shall retain all rights and defenses under the Insurance Policy Documents, and the Insurance Policy Documents shall apply to, and be enforceable by and against, Reorganized Navillus and the applicable insurers as if the Chapter 11 Case had not occurred. The rights and obligations of Navillus, Reorganized Navillus and insurers shall be determined under the Insurance Policy Documents and under applicable non-bankruptcy law. Regardless of whether the Insurance Policy Documents are executory, Reorganized Navillus will perform Navillus' obligations thereunder, including any that remain unperformed as of the Effective Date.

#### **Section 7.07. Continuing Obligations Owed to Navillus**

(a) Any indemnity agreement entered into between Navillus and any other Person requiring the supplier of indemnity to provide insurance in favor of Navillus, to warrant or guarantee such supplier's goods or services, or to indemnify Navillus for claims arising from the goods or services shall be deemed to be, and shall be treated as though it is, an Executory Contract that is assumed pursuant to section 365 of the Bankruptcy Code and Section 7.01 of this Plan; provided, however, that if any party thereto asserts any cure amount, at the election of Navillus such agreement may not be deemed assumed, and Navillus instead reserves the right to reject such agreement pursuant to section 365 of the Bankruptcy Code under the Plan.

(b) Continuing obligations of third parties to Navillus under the Insurance Policy Documents and other contracts or leases that have ceased to be executory or have otherwise expired on or prior to the Effective Date, including, without limitation, continuing obligations to pay Insured Claims, to defend against and process claims, to refund premiums or overpayments, to provide indemnification, contribution or reimbursement, to grant rights of first refusal, to maintain confidentiality, or to honor releases, shall continue and shall be binding on such third parties unless otherwise specifically terminated by Navillus, under the Plan or otherwise by order of the Bankruptcy Court.

### **ARTICLE VIII**

#### **PROVISIONS GOVERNING DISTRIBUTIONS**

##### **Section 8.01. Distributions on the Effective Date**

Except as otherwise provided herein or as ordered by the Bankruptcy Court, all Distributions to Holders of Allowed Claims as of the Effective Date that are unclassified Claims as described in Article III hereof and Classes 1 and 2 shall be made on or as soon as practicable after the Effective Date. Distributions to Holders of Allowed Claims in Classes 3, 4, 5, 6 and 7 (if applicable) shall be made as soon as practicable after the later of (x) the Appeal Determination Date or (y) the date such Claim becomes Allowed. Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to Section 8.02 of the Plan.

**Section 8.02. Distributions After the Effective Date**

Distributions made after the Effective Date to Holders of Allowed Claims that are Disputed Claims as of the Effective Date will be deemed to have been made on the Effective Date. No interest will accrue or be payable on such Claims or any Distributions.

**Section 8.03. Interest on Claims**

Unless otherwise specifically provided for in the Plan or the Confirmation Order, postpetition interest shall not accrue or be paid on Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim.

**Section 8.04. Distribution Agent**

All Distributions under this Plan shall be made by the Distribution Agent. The Distribution Agent shall be empowered to (i) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan, (ii) make all Distributions contemplated by the Plan, and (iii) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions of the Plan. If a Distribution Agent is an independent third party designated to serve in such capacity, such Distribution Agent shall receive, without further approval from the Bankruptcy Court, reasonable compensation for distribution services rendered pursuant to the Plan and reimbursement of reasonable out of pocket expenses incurred in connection with such services from Reorganized Navillus.

**Section 8.05. Claims Filed After Bar Date**

Any Claim, including without limitation any Claim for alleged withdrawal liability, filed after the Bar Date shall, unless such Claim properly amends a Claim filed before the Bar Date or unless the Bankruptcy Court otherwise directs, be deemed Disallowed in full and expunged without further order of the Bankruptcy Court. Filed or Scheduled Claims may be amended or reconsidered only as provided in the Bankruptcy Code and Bankruptcy Rules. A Claim may be amended prior to the Confirmation Date only as agreed upon by Navillus and the Holder of such Claim, or as otherwise permitted by the Bankruptcy Court, the Bankruptcy Rules or applicable law. After the Confirmation Date, except as otherwise specifically set forth in the Plan, a Claim may not be filed or amended without the authorization of the Bankruptcy Court or consent of Reorganized Navillus.

**Section 8.06. Transmittal of Distributions and Notices**

(a) Any property or notice which a Person is or becomes entitled to receive pursuant to the Plan may be delivered by first class mail, postage prepaid, in an envelope addressed to that Person or authorized agent at the address indicated on the latest notice of appearance or the latest Proof of Claim or other paper filed by that Person or its authorized agent. Absent any of the foregoing, the address set forth in the relevant Schedule for that Person may be used. Property distributed in accordance with this Section shall be deemed delivered to such Person regardless of whether such property is actually received by that Person. Notwithstanding

anything in this Plan to the contrary, the Distribution Agent shall not have any obligation to attempt to locate any Person who is or becomes entitled to receive any Distribution under the Plan with regard to any undeliverable or uncashed Distributions.

(b) A Holder of a Claim or Equity Interest may designate a different address for notices and Distributions by notifying Navillus and the Distribution Agent of that address in writing. Any change of address of a party entitled to receive Distributions hereunder must be provided by registered mail to the address for notices set forth in Section 13.07 of this Plan in order to be effective. Such notification shall be effective upon receipt.

(c) If any Distribution to a Holder of a Claim or Equity Interest is returned as undeliverable (e.g., “forwarding time expired, “addressee unknown”, etc.), no further Distributions to such Holder shall be made unless and until the Distribution Agent is timely notified within ninety (90) days following the Distribution Date with respect to such Holder of a Claim, in writing, of such Holder’s then current address, at which time all missed Distributions shall be made to such Holder without interest.

#### **Section 8.07. Unclaimed Property**

If any Distribution remains unclaimed for a period of ninety (90) days following a Distribution Date to the Holder of an Allowed Claim or Equity Interest entitled thereto, the Distribution shall constitute Unclaimed Property and the Holder shall no longer be entitled to such Distribution. All such property shall be retained by the Distribution Agent in the Distribution Reserve for Distribution pursuant to the terms of the Plan, subject, however, to the Distribution Agent’s sole discretion to distribute Unclaimed Property to Holders entitled thereto if such Holders are subsequently located.

#### **Section 8.08. Withholding Taxes and Expenses of Distribution**

In connection with the Plan and all Distributions under the Plan, Reorganized Navillus and the Distribution Agent shall, to the extent applicable, comply with all tax withholding, payment, and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority, and all Distributions under the Plan shall be subject to any such withholding, payment, and reporting requirements. Reorganized Navillus and the Distribution Agent shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting requirements. Notwithstanding any other provision of the Plan, each Holder of an Allowed Claim that is to receive a Distribution of Cash or Reorganized Navillus Notes pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such Distribution, and including, in the case of any Holder of a Disputed Claim that has become an Allowed Claim, any tax obligation that would be imposed upon Reorganized Navillus in connection with such Distribution, and no Distribution of Cash or Reorganized Navillus Notes shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to Reorganized Navillus and the Distribution Agent for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon Reorganized Navillus in connection with such Distribution. If such information is not received

within ninety (90) days after the Distribution Date by the Distribution Agent, such Distribution shall be treated as Unclaimed Property.

#### **Section 8.09. Fractional Distributions**

Notwithstanding any other provision of the Plan to the contrary, no Cash payments or Distributions of Reorganized Navillus Notes of fractions of cents will be made. Whenever any payment of a fraction of a dollar would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar.

#### **Section 8.10. *De Minimis* Distributions**

Notwithstanding anything to the contrary contained in the Plan, the Distribution Agent shall not be required to distribute, and shall not distribute, Cash, Reorganized Navillus Notes or other property to the Holder of any Allowed Claim if the amount of Cash, Reorganized Navillus Notes or other property to be distributed on account of such Claim is less than \$50. Any Holder of an Allowed Claim on account of which the amount of Cash or other property to be distributed is less than such amount shall have such Claim discharged and shall be forever barred from asserting such Claim against Navillus, Reorganized Navillus or their respective property. Any Cash, Reorganized Navillus Notes or other property not distributed pursuant to this provision shall be the property of Reorganized Navillus, free of any restrictions thereon.

#### **Section 8.11. Setoffs and Recoupments**

Except as otherwise provided in the Plan, the Confirmation Order or in agreements previously approved by Final Order of the Court, Navillus may, pursuant to applicable law, setoff or recoup against any Claim (for purposes of determining the Allowed amount of such Claim on which Distribution shall be made and before any Distribution is made on account of such Claim), any and all of the Claims, rights and Causes of Action of any nature that Navillus or the Estate may hold against the Holder of such Claim.

Neither the failure to affect such a setoff or recoupment, the allowance of any Claim hereunder, any other act or omission of Navillus, nor any provision of this Plan, shall constitute a waiver or release by Navillus of any such Claims, rights and Causes of Action that Navillus may possess against such Holder. To the extent Navillus fails to setoff or recoup against a creditor and seeks to collect a Claim from such creditor after a Distribution to such creditor pursuant to the Plan, Navillus, if successful in asserting such Claim, shall be entitled to full recovery against such creditor. Navillus may seek periodic Bankruptcy Court approval for any such setoffs or recoupments.

#### **Section 8.12. Pre-Payment**

Except as otherwise provided in the Plan, the Plan Supplement, any ancillary documents entered into in connection herewith, or the Confirmation Order, Reorganized Navillus shall have the right to pre-pay, without penalty, all or any portion of an Allowed Claim entitled to payment in Cash or a Distribution on account of Reorganized Navillus Notes at any time; provided, however, that any such prepayment shall not be violative to or otherwise prejudice the relative priorities and parities among the Classes of Claims.

### **Section 8.13. No Distribution in Excess of Allowed Amounts**

Notwithstanding anything to the contrary herein, no Holder of an Allowed Claim shall receive in respect of such Claim any Distribution of a value as of the Effective Date in excess of the Allowed amount of such Claim (excluding payments on account of interest due and payable from and after the Petition Date pursuant to the Plan, if any).

### **Section 8.14. Disposition of Excess Funds**

If, after ninety (90) days following the final Distribution Date, any Unclaimed Property remains, or Cash of inconsequential value to the Estate remains in the possession or under the control of Reorganized Navillus or the Distribution Agent, and the Distribution Agent has satisfied and discharged all the expenses intended to be paid on behalf of the Estate, the Distribution Agent shall, at the sole option of Reorganized Navillus, either apply remaining Cash or Unclaimed Property for further Distribution in accordance with the Plan or abandon such funds in a commercially reasonable manner, including to a charitable organization.

## **ARTICLE IX**

### **PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT, AND UNLIQUIDATED CLAIMS AND DISTRIBUTIONS WITH RESPECT THERETO**

#### **Section 9.01. Prosecution of Objections to Claims**

From and after the Effective Date, Reorganized Navillus shall have the right to object to the allowance of any Claim and may file with the Bankruptcy Court any appropriate motion or adversary proceeding with respect thereto on or before the Claims Objection Bar Date. All Claim objections may be litigated to Final Order; provided, however, that Reorganized Navillus may compromise and settle, withdraw, or resolve by any other method approved by the Bankruptcy Court, any objections to any Claim. To the extent any Claims or Causes of Actions are pending before the Bankruptcy Court pursuant to filings made during the pendency of the Chapter 11 Case, Navillus shall be required to obtain an appropriate order of the Bankruptcy Court concluding any such filings.

#### **Section 9.02. Estimation of Claims**

Navillus may at any time request that the Bankruptcy Court estimate any Contingent Claim, unliquidated Claim or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether Navillus has previously objected to such Claim, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time, including during litigation concerning any objection to such Claim. On and after the Confirmation Date, subject to the Effective Date, Claims which have been estimated subsequently may be compromised, settled, withdrawn or otherwise resolved without further order of the Bankruptcy Court as provided in Section 9.01 of this Plan.

### **Section 9.03. Resolution of Disputed Insured Claims**

(a) **ADR Procedures.** Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, the Plan incorporates a request to approve alternative dispute resolution procedures (the “ADR Procedures”) to promote the resolution of prepetition Insured Claims that remain unliquidated or are Disputed Claims as of the Voting Record Date. A summary of the ADR Procedures is set forth below, and a copy of the ADR Procedures in their entirety will be included in the Plan Supplement.

- i. Offer Exchange Procedures. The first stage of the ADR Procedures is an offer exchange process (the “Offer Exchange Procedure”) requiring the parties to exchange settlement offers and thereby providing the opportunity to resolve the Disputed Insured Claims on a consensual basis without any further litigation.
- ii. Mediation Procedure. If the Offer Exchange Procedure does not result in settlement of a Disputed Insured Claim, the next step is mediation before a mediator chosen from a pre-selected list. Following the selection of a mediator and the preparation of mediation statements, and within thirty (30) days of the appointment of a mediator, a mediation conference will be held during which the mediator will work with the parties to resolve the Disputed Insured Claim. Claims not resolved through mediation will proceed to litigation as set forth in Section 9.03(b) of this Plan.

(b) **Disputed Insured Claims Not Resolved Through ADR Procedures.** After the Effective Date, at Reorganized Navillus’ option, any Disputed Insured Claim (as to which a Proof of Claim was timely filed in the Chapter 11 Case) not resolved through the ADR Procedures or a Final Order of the Bankruptcy Court will be determined in the administrative or judicial tribunal in which it is pending on the Effective Date or, if no action was pending on the Effective Date, in any administrative or judicial tribunal of appropriate jurisdiction. Reorganized Navillus may exercise this option by service upon the Holder of the applicable Insured Claim of a notice informing the Holder of such Insured Claim that Reorganized Navillus has exercised such option. Upon Reorganized Navillus’ service of such a notice, the discharge injunction provided for in Section 12.02 of this Plan will be deemed modified, without the necessity for further Bankruptcy Court approval, solely to the extent necessary to allow the parties to determine the Disputed Insured Claim in the applicable administrative or judicial tribunal. Notwithstanding the foregoing, at all times prior to and after the Effective Date, the Bankruptcy Court will retain jurisdiction relating to the Insured Claims, including Navillus and Reorganized Navillus’ right to have such Claims determined in the Bankruptcy Court (or the United States District Court for the Southern District of New York) pursuant to section 157(b)(2)(B) of title 28 of the United States Code, as may be applicable.

(c) **Treatment of Insured Claims Upon Final Resolution.** Any Insured Claim determined pursuant to the ADR Procedures or a judgment obtained in accordance with this Section 9.03 of the Plan and applicable non-bankruptcy law will be deemed an Allowed Claim in the amount so determined, provided that only the amount of such Allowed Claim that is not satisfied from Navillus’ deductible under the Insurance Policy Documents or the proceeds

of insurance payable to the Holder of such Allowed Claim under Navillus' Insurance Policy Documents will be treated as an Allowed Claim for purposes of Distributions under the Plan. In no event will a Distribution be made under the Plan to the Holder of an Insured Claim on account of any portion of an Insured Claim in excess of Navillus' deductible under any applicable Insurance Policy Documents. In the event an Insured Claim is determined pursuant to a judgment obtained in accordance with this Section 9.03 of the Plan and applicable non-bankruptcy law provides for no recovery against Navillus, such Insured Claim will be deemed Disallowed and expunged without the necessity for further Bankruptcy Court approval upon Navillus or Reorganized Navillus' service of a copy of such judgment or Final Order upon the Holder of such Insured Claim. All Claims, demands, rights, defenses and Causes of Action that Navillus or Reorganized Navillus may have against any Person or Entity in connection with or arising out of any Insured Claim are expressly retained and preserved.

(d) The resolution of Disputed Insured Claims pursuant to this Section 9.03 of the Plan shall be subject to the provisions of Section 7.06 of this Plan.

#### **Section 9.04. No Distribution Pending Allowance**

No Distributions shall be made on account of a Disputed Claim or, if less than the entire Claim is a Disputed Claim, the portion of a Claim that is Disputed, until such Claim becomes an Allowed Claim. In lieu of making a Distribution to a Holder of a Disputed Claim, any Distribution to which such Holder would be entitled if that Claim had been Allowed in full shall be placed in the Distribution Reserve until the disposition thereof shall be determined by a Final Order or by written agreement between the Holder of the Claim and Navillus.

#### **Section 9.05. Distributions on Account of Disputed Claims Once They are Allowed**

The Distribution Agent shall, following the Appeal Determination Date and on any subsequent Distribution Date, make Distributions on account of any Disputed Claim that has become an Allowed Claim. Such Distributions shall be made pursuant to the provisions of the Plan governing the applicable Class. Such Distributions shall be based upon the Distributions that would have been made to the Holder of such Claim under the Plan if the Disputed Claim had been an Allowed Claim on the Effective Date in the amount ultimately Allowed.

#### **Section 9.06. Reserves for Plan Distributions**

Navillus or Reorganized Navillus may establish any reserves that they deem necessary or advisable to make Distributions to Holders of Allowed Claims and Equity Interests or otherwise to satisfy their obligations under the Plan.

##### **(a) Distribution Reserve**

On the Effective Date and on each subsequent Distribution Date, Navillus or Reorganized Navillus shall withhold on a Pro Rata basis from property that would otherwise be distributed to Classes of Claims entitled to Distributions under the Plan on such date, in the Distribution Reserve, an amount or property sufficient to make the Distributions to which Holders of such Disputed Claims would be entitled under this Plan if such Disputed Claims were Allowed as of

the Effective Date. Navillus or Reorganized Navillus may request, if necessary, estimation of any Disputed Claim that is contingent or unliquidated, or for which Navillus or Reorganized Navillus determine to reserve less than the amount of the Disputed Claim. Navillus or Reorganized Navillus shall withhold the applicable portion of the Distribution Reserve with respect to such Claims based upon the estimated amount of each such Claim as estimated by the Bankruptcy Court. If Navillus or Reorganized Navillus elect not to request such an estimation from the Bankruptcy Court with respect to a Disputed Claim that is contingent or unliquidated, Navillus or Reorganized Navillus shall withhold the applicable amount of the Disputed Claim based upon the good faith estimate of the amount of such Claim by Navillus or Reorganized Navillus.

**(b) Insured Claims Reserve**

On the Effective Date, the Distribution Agent shall reserve from Available Cash the amount of \$205,000 to fund any deductible costs incurred under the Insurance Policy Documents in connection with each Insured Claim.

**(c) New Capital Contribution Reserve**

As of the Effective Date, the New Value Sponsor shall deposit the New Capital Contribution into the New Capital Contribution Reserve. The New Capital Contribution shall be held in the New Capital Contribution Reserve until the Appeal Determination Date. As soon as practicable following the Appeal Determination Date, the New Capital Contribution shall be released to Reorganized Navillus as provided in Section 4.07 hereof.

**ARTICLE X**

**CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

**Section 10.01. Conditions Precedent to the Effective Date**

The Effective Date shall not occur and the Plan shall not become effective unless and until the following conditions are satisfied or waived in accordance with Section 10.02 of this Plan:

(a) The Confirmation Order shall have been entered and have become a Final Order;

(b) All actions, documents, and agreements necessary to implement the Plan shall have been effected or executed;

(c) The New Value Sponsor will have funded the New Capital Contribution to acquire the Equity Interests; and

(d) All payments and transfers to be made on the Effective Date will be made or duly provided for, and Reorganized Navillus will have sufficient Cash on such date to make such payments.

## **Section 10.02. Waiver of Conditions to Occurrence of Effective Date**

Each of the conditions set forth in the preceding section (other than entry of the Confirmation Order) may be waived in whole or in part by Navillus or Reorganized Navillus without any notice to other parties-in-interest or the Bankruptcy Court and without a hearing.

## **ARTICLE XI**

### **RETENTION OF JURISDICTION**

#### **Section 11.01. Scope of Retention of Jurisdiction**

Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, and except as otherwise ordered by the Bankruptcy Court, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Case and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

(a) allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured, or unsecured status of any Claim or Equity Interest not otherwise Allowed under the Plan (other than personal injury or wrongful death Claims, unless agreed by the Holder), including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims or Equity Interests in Navillus;

(b) hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 327, 328, 330, 331, 503(b), 1103, and 1129(a)(4) of the Bankruptcy Code; provided, however, that from and after the Confirmation Date, the payment of the fees and expenses of the Professionals of Reorganized Navillus shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;

(c) hear and determine all matters with respect to the assumption or rejection of any Executory Contract or Unexpired Lease to which Navillus is a party or with respect to which Navillus may be liable, including, if necessary, the nature or amount of any required cure or the liquidation or allowance of any Claims arising therefrom;

(d) effectuate performance of and payments under the provisions of the Plan and enforce remedies upon any default under the Plan;

(e) hear and determine any and all adversary proceedings, motions, applications, and contested or litigated matters arising out of, under, or related to, the Chapter 11 Case or the Plan, including without limitation the enforcement of the injunction provisions contained in Article XII of the Plan and any potential Claims or Causes of Action disclosed in Section VII.B.12 of the Disclosure Statement;

(f) enter such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases,

and other agreements or documents created in connection with the Plan, the Plan Supplement, the Disclosure Statement, or the Confirmation Order;

(g) hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

(h) consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(i) issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with the implementation, consummation, or enforcement of the Plan or the Confirmation Order;

(j) enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified, or vacated;

(k) hear and determine any matters arising in connection with or relating to the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Plan Supplement, the Disclosure Statement, or the Confirmation Order;

(l) enforce, interpret, and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Case (whether or not the Chapter 11 Case has been closed);

(m) except as otherwise limited herein, recover all assets of Navillus and property of the Estate, wherever located;

(n) hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

(o) hear and determine all disputes involving the existence, nature, or scope of Navillus' discharge;

(p) hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, the provisions of the Bankruptcy Code; and

(q) enter a final decree closing the Chapter 11 Case.

#### **Section 11.02. Failure of the Bankruptcy Court to Exercise Jurisdiction**

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the

Chapter 11 Case, the provisions of this Article XI shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

## **ARTICLE XII**

### **RELEASES, DISCHARGE, INJUNCTION AND EXCULPATION**

#### **Section 12.01. Releases and Related Matters**

##### **(a) Released Parties**

For purposes of this section, “**Released Parties**” means (i) Navillus, (ii) Reorganized Navillus, (iii) the Estate, (iv) the New Value Sponsor, (v) each direct or indirect and actual or beneficial Holder of Equity Interests in Navillus, including, without limitation, Donal O’Sullivan, the Donal O’Sullivan Revocable Living Trust, and Donal O’Sullivan IDGT II, (vi) Liberty, (vii) the Indemnitors, and (viii) with respect to the foregoing, each of their respective current and former officers and directors, managers, members, employees, agents, representatives, financial advisors, professionals, accountants, attorneys, affiliates, and each of their predecessors, successors and assigns.

##### **(b) Releases by Navillus and Reorganized Navillus**

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, Navillus, Reorganized Navillus, and any Person or Entity seeking to exercise the rights of Navillus’ Estate, shall be deemed to forever release, waive, and discharge each of the Released Parties from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action (including Avoidance Actions), and liabilities whatsoever in connection with or in any way relating to (a) Navillus, (b) the conduct of Navillus’ business, (c) the Chapter 11 Case, (d) the Disclosure Statement or the Plan, (e) any agreement, understanding, contract, instrument or other document which existed prior to the Effective Date relating in any way to the foregoing, and (f) any transaction, event, circumstance, action, failure to act or occurrence of any kind or nature which occurred, existed, was taken, permitted or begun at any time prior to the Effective Date relating in any way to Navillus, the conduct of Navillus’ business, the Chapter 11 Case, the Disclosure Statement or the Plan, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise, that are based in whole or part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date. Notwithstanding the foregoing, the obligations under the Plan are not released.

##### **(c) Releases by Holders of Claims and Equity Interests**

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, each Holder of a Claim against or Equity Interest in Navillus and Reorganized Navillus shall be deemed to forever release, waive, and discharge each of the Released Parties from any and all claims, obligations, suits, judgments, damages,

**demands, debts, rights, Causes of Action (including Avoidance Actions), and liabilities whatsoever in connection with or in any way relating to (a) Navillus, (b) the conduct of Navillus' business, (c) the Chapter 11 Case, (d) the Disclosure Statement or the Plan, (e) any agreement, understanding, contract, instrument or other document which existed prior to the Effective Date relating in any way to the foregoing, and (f) any transaction, event, circumstance, action, failure to act or occurrence of any kind or nature which occurred, existed, was taken, permitted or begun at any time prior to the Effective Date relating in any way to Navillus, the conduct of Navillus' business, the Chapter 11 Case, the Disclosure Statement or the Plan, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise, that are based in whole or part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date; provided, however, that nothing in this Section 12.01(c) shall operate as a release, waiver or discharge of any Causes of Action or liabilities unknown to such Person as of the Petition Date arising out of willful misconduct, gross negligence, fraud or criminal acts of any such Released Party as determined by a Final Order. Notwithstanding the foregoing, the obligations under the Plan are not released. Without limitation of the exculpation or other provisions of the Plan and the Confirmation Order, and for purposes of the release set forth in this Section 12.01(c) of the Plan only, such release will not apply to release the Released Parties from any Claims held by Holders of Claims or Equity Interests who (i) voted to reject the Plan; (ii) voted to accept the Plan but opted out of the foregoing release; or (iii) abstained from voting on the Plan but opted out of the foregoing release, all in accordance with the Disclosure Statement Order.**

#### **Section 12.02. Discharge of Claims and Equity Interests**

**(a) Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise provided herein, all consideration distributed under the Plan shall be in exchange for, and in complete satisfaction, settlement, discharge, and release, effective as of the Effective Date, of all Claims, Equity Interests and Causes of Action that arose before the Effective Date, and all debts of the kind specified in section 502 of the Bankruptcy Code, whether or not (i) a Proof of Claim based upon such debt is filed or deemed filed under section 501 of the Bankruptcy Code, (ii) a Claim based upon such debt is Allowed under section 502 of the Bankruptcy Code, (iii) a Claim based upon such debt is or has been Disallowed by order of the Bankruptcy Court, or (iv) the Holder of a Claim based upon such debt accepted the Plan. The Plan shall bind all Holders of Claims and Equity Interests, notwithstanding whether any such Holders failed to vote to accept or reject the Plan or voted to reject the Plan.**

**(b) As of the Effective Date, the Confirmation Order shall be a judicial determination of discharge of all such Claims and other debts and liabilities against Navillus and termination of all Equity Interests, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment obtained against Navillus at any time, to the extent that such judgment relates to a discharged Claim or terminated Equity Interest.**

### **Section 12.03. Injunction**

(a) Except as otherwise set forth herein, all Persons who have held, hold or may hold Claims, Causes of Action or Equity Interests and their successors and assigns, and all other parties in interest, along with their respective present or former directors, officers, principals, employees, agents, professionals, representatives and affiliates shall be permanently enjoined, from and after the Effective Date, from: (a) commencing or continuing in any manner any action or proceeding of any kind with respect to any such Claims, Causes of Action or Equity Interests against Navillus, Reorganized Navillus, the Estate or the Released Parties, (b) the enforcement, attachment, collection or recovery by any manner or means of a judgment, award, decree or order against Navillus, Reorganized Navillus, the Estate or the Released Parties on account of such Claims, Causes of Action or Equity Interests, (c) creating, perfecting or enforcing any encumbrance of any kind against Navillus, Reorganized Navillus, the Estate or the Released Parties or against the property or interests in the property of Navillus, Reorganized Navillus, the Estate or the Released Parties on account of any such Claims, Causes of Action or Equity Interests, (d) taking any action against, or interfering in any respect with, the Cash or property being distributed in accordance with the Plan or the Distributions being effectuated through the Plan (other than actions to enforce any rights or obligations under the Plan); (e) asserting any right of setoff or recoupment of any kind, directly or indirectly, against any obligation due Navillus, Reorganized Navillus, the Estate or the Released Parties, except as contemplated or allowed by the Plan; and (f) prosecuting or otherwise asserting any Claim, Cause of Action, right or interest that has been extinguished, discharged, released, settled or exculpated pursuant to the Plan or the Confirmation Order. Such injunction shall extend to all Persons protected by the discharge, release and exculpation provisions of the Plan and the Confirmation Order, as well as to the successors of such Persons and to the respective property and interests in property of such Persons.

(b) Without limiting the effect of the foregoing provisions of this Section 12.03 upon any Person, by accepting Distributions pursuant to the Plan, each Holder of an Allowed Claim or Equity Interest receiving a Distribution pursuant to the Plan shall be deemed to have specifically consented to the injunctions set forth in this Section 12.03.

### **Section 12.04. Exculpation and Limitations of Liability**

#### **(a) Exculpated Parties**

For purposes of this section, “Exculpated Parties” means (i) Navillus, (ii) Reorganized Navillus, (iii) the Estate, (iv) the New Value Sponsor, (v) each direct or indirect and actual or beneficial Holder of Equity Interests in Navillus, including, without limitation, Donal O’Sullivan, the Donal O’Sullivan Revocable Living Trust, and Donal O’Sullivan IDGT II, (vi) Liberty, (vii) the Indemnitors, and (viii) with respect to the foregoing, each of their respective current and former officers and directors, managers, members, employees, agents, representatives, financial advisors, Professionals, accountants, attorneys, affiliates, and each of their predecessors, successors and assigns.

(b) The Exculpated Parties who provided services to the Estate during this Chapter 11 Case will not have or incur any liability to any Person for any act taken or omission occurring on or after the Petition Date in connection with or related to the Estate, including but not limited to (i) the commencement and administration of the Chapter 11 Case, (ii) the operation of Navillus during the pendency of the Chapter 11 Case, (iii) formulating, preparing, disseminating, implementing, confirming, consummating or administering the Plan (including soliciting acceptances or rejections thereof); (iv) the Disclosure Statement or any contract, instrument, release or other agreement or document entered into or any action taken or omitted to be taken during the administration of the Chapter 11 Case or in connection with the Plan or Plan Supplement; or (v) any Distributions made pursuant to the Plan. Nothing in this section shall (i) be construed as a release of such Person's fraud, gross negligence, malpractice or willful misconduct with respect to the matters set forth in this Section 12.04(b), or (ii) limit the liability of Navillus' Professionals to their respective clients pursuant to DR 6-102 of the Code of Professional Responsibility. The Exculpated Parties are entitled to rely on, and act or refrain from acting on, all information provided by other Exculpated Parties without any duty to investigate the veracity or accuracy of such information.

## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

#### Section 13.01. Modifications and Amendments

(a) **Preconfirmation Amendment.** Navillus may modify this Plan at any time prior to the Confirmation Date; provided, however, that this Plan, as modified, and the Disclosure Statement pertaining thereto will meet applicable Bankruptcy Code requirements. A Holder of a Claim or Equity Interest that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified, or clarified, if the proposed alteration, amendment, modification, or clarification does not materially and adversely change the treatment of the Claim or Equity Interest of such Holder.

(b) **Post-Confirmation Amendment Not Requiring Resolicitation.** After the Confirmation Date, with the approval of the Bankruptcy Court, Navillus or Reorganized Navillus, as applicable, may modify this Plan to remedy any defect or omission or to reconcile any inconsistencies in this Plan or in the Confirmation Order as may be necessary to carry out the purposes and effects of this Plan, or in a manner that does not materially adversely affect the interests, rights, treatment or Distributions of any Class of Claims or Equity Interests.

(c) **Post-Confirmation, Pre-Consummation Amendment Requiring Resolicitation.** After the Confirmation Date and before substantial consummation of this Plan, Navillus or Reorganized Navillus, as applicable, may modify this Plan in a manner that materially and adversely affects the interests, rights or treatment of, or Distributions to, one or more Classes of Claims or Equity Interests, provided, however, that (a) this Plan, as modified, will satisfy all applicable Bankruptcy Code requirements; (b) Navillus or Reorganized Navillus, as applicable, will obtain Bankruptcy Court approval for such modification; (c) such modification will be accepted by each Class of Claims or Equity Interests adversely affected by

such modification pursuant to the standards for acceptance set forth in Article V above; and (d) Navillus or Reorganized Navillus, as applicable, will comply with section 1125 of the Bankruptcy Code with respect to the Plan as modified.

#### **Section 13.02. Severability of Plan Provisions**

If, prior to the Confirmation Date, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of Navillus, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

#### **Section 13.03. Successors and Assigns and Binding Effect**

The rights, benefits, and obligations of any Person or Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, personal representative, successor, or assign of such Person or Entity, including, but not limited to, Reorganized Navillus and all other parties-in-interest in the Chapter 11 Case.

#### **Section 13.04. Term of Injunctions or Stays**

Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code or otherwise, and existing on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date.

#### **Section 13.05. Injunction Against Interference With Plan**

Upon entry of the Confirmation Order, all Holders of Claims and Equity Interests, and other parties in interest, along with their respective present and former employees, agents, officers, directors, principals and affiliates shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

#### **Section 13.06. Revocation, Withdrawal, or Non-Consummation**

Navillus reserves the right to revoke or withdraw the Plan at any time prior to the Confirmation Date or, if Navillus is for any reason unable to consummate this Plan after the Confirmation Date, at any time prior to the Effective Date. If Navillus revokes or withdraws the Plan prior to the Confirmation Date, or if the Confirmation Date or the Effective Date does not occur, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of

Claims), 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, (c) the New Value Sponsor shall receive the return of the New Capital Contribution, and (d) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims against, or any Equity Interests in, Navillus, or any Causes of Actions or other Claims by or against Navillus or any Person or Entity, (ii) prejudice in any manner the rights of Navillus or any Person or Entity in any further proceedings involving Navillus, or (iii) constitute an admission of any sort by Navillus or any other Person or Entity.

### **Section 13.07. Notices**

Any notice, request, or demand required or permitted to be made or provided under the Plan shall be (a) in writing, (b) served by (i) certified mail, return receipt requested, (ii) hand delivery, (iii) overnight delivery service, (iv) first class mail, or (v) electronic transmission, and (c) deemed to have been duly given or made when actually delivered or, in the cases of notice by electronic transmission, when received and telephonically confirmed, addressed as follows:

If to Navillus or Reorganized Navillus:

CULLEN AND DYKMAN LLP  
C. Nathan Dee, Esq.  
Elizabeth M. Aboulafia, Esq.  
100 Quentin Roosevelt Blvd.  
Garden City, New York 11530  
Tel. (516) 357-3700  
Email: ndee@cullenanddykman.com  
eaboulafia@cullenanddykman.com

If to the Distribution Agent:

TBD

### **Section 13.08. Governing Law**

Except to the extent that the Bankruptcy Code, Bankruptcy Rules or other federal laws apply, the rights and obligations arising under this Plan and, except as may be provided otherwise in any such agreements, documents, or instruments, any agreements, documents, and instruments executed in connection with the Plan shall be governed by and construed and enforced in accordance with the laws of the State of New York, without giving effect to principles of conflict of laws.

### **Section 13.09. Post-Confirmation Date Professional Fees**

From and after the Confirmation Date, to the extent the Professionals retained by the Navillus during the Chapter 11 Case provide services to Reorganized Navillus in connection with this Plan and any other matters as to which such Professionals may be engaged,

Reorganized Navillus shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable fees and expenses incurred by the Professionals on behalf of Reorganized Navillus. In the event a dispute over the fees of any Professional cannot be resolved consensually, the dispute will be resolved through an appropriate application to the Bankruptcy Court. Reorganized Navillus may, without application to or approval by the Bankruptcy Court, retain professionals and pay reasonable professional fees and expenses in connection with services rendered to it after the Effective Date.

#### **Section 13.10. Payment of Statutory Fees**

All fees payable pursuant to section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on or before the Effective Date. All such fees that arise after the Effective Date shall be paid by Reorganized Navillus. The obligation of Reorganized Navillus to pay quarterly fees to the U.S. Trustee pursuant to section 1930 of title 28 of the United States Code shall continue until such time as Navillus' Chapter 11 Case is closed.

#### **Section 13.11. Post-Confirmation Date Service List - Persons Entitled to Notice**

From and after the Confirmation Date, any notices of appearance and demands for service of process filed by any Person with the Bankruptcy Court prior to such date shall no longer be effective. No further notices, other than notice of entry of the Confirmation Order, shall be required to be sent to such Persons unless such Persons file a new notice of appearance and demand for service of process dated subsequent to the Confirmation Date, which subsequent notice and demand must be filed with the Bankruptcy Court and served upon the Persons listed in Section 13.07 of the Plan.

#### **Section 13.12. Notice of Entry of Confirmation Order**

Notice of Entry of the Confirmation Order shall be sufficient if a copy of a notice indicating that said order has been entered by the Bankruptcy Court, without attaching said order, is mailed to those Persons who had filed a notice of appearance and request for service of process in the Chapter 11 Case and to Persons appearing on the Post-Confirmation Date Service List.

#### **Section 13.13. Post-Confirmation Reporting**

Reorganized Navillus shall file post-confirmation operating reports on a quarterly basis, upon the conclusion of each respective quarter, as follows: January 20, April 20, July 20 and October 20, until the earlier of the entry of a final decree, conversion or dismissal of the Chapter 11 Case.

#### **Section 13.14. Confirmation Order and Plan Control**

To the extent the Confirmation Order and/or this Plan is inconsistent with the Disclosure Statement, or any other agreement, the Plan controls the Disclosure Statement and any such agreements, and the Confirmation Order (and any later order of the Court) controls the Plan.

#### **Section 13.15. Dissolution of Committee**

On the Effective Date, the Committee shall be automatically dissolved and all members, Professionals and agents of the Committee shall be deemed released of their duties, responsibilities and obligations, and shall be without further duties, responsibilities and authority in connection with Navillus, the Chapter 11 Case, the Plan or its implementation. At such time, the Committee, its Professionals and any professionals employed by the members of the Committee shall use reasonable commercial efforts to return within seven (7) business days all copies of any confidential material in possession of the Committee, , its Professionals and any professionals employed by the members of the Committee, consistent with the terms of the confidentiality agreement between Navillus and the Committee.

#### **Section 13.16. Extension of Dates; Consent**

To the extent any provision or definition of the Plan provides for an act or event to take place on a certain date, such date may be extended upon the written consent of Navillus, other than a Distribution under this Plan. Any provision of the Plan which is conditioned upon, or subject to, the consent of any party shall be deemed satisfied if the consent is executed by counsel for such party.

#### **Section 13.17. Closing of Chapter 11 Case**

After the Chapter 11 Case of Navillus has been fully administered, Reorganized Navillus shall seek authority from the Court to close its Chapter 11 Case in accordance with the Bankruptcy Code and Bankruptcy Rules.

#### **Section 13.18. No Admission**

Notwithstanding anything herein to the contrary, nothing contained in this Plan will be deemed an admission by Navillus or any other Person with respect to any matter set forth herein, including, without express or implied limitation, liability on any Claim or the propriety of a Claim's classification.

DATED: May 29, 2018

NAVILLUS TILE, INC. DBA  
NAVILLUS CONTRACTING

/s/ Christopher K. Wu

Name: Christopher K. Wu

Title: Chief Restructuring Officer

CULLEN AND DYKMAN LLP  
Attorneys for Navillus Tile, Inc.

/s/ C. Nathan Dee

C. Nathan Dee, Esq.

Elizabeth M. Aboulafia, Esq.

100 Quentin Roosevelt Boulevard

Garden City, New York 11530

(516) 357-3700

**Exhibit B**  
**Financial Projections**

**Navillus Tile, Inc.**

Feasibility Analysis  
As of May 25, 2018

Standard:

Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan

Financial Analysis:

(\$mm)	Q4'18	CY2019	CY2020	CY2021	CY2022	CY2023
<u>Liquidity</u>						
Cash	\$ 2.0	\$ 2.0	\$ 19.3	\$ 25.4	\$ 25.5	\$ 27.2
Exit Revolving Credit Facility <sup>(1)</sup>	13.0	13.0	13.0	13.0	13.0	13.0
Exit Revolving Credit Facility Borrowings	(10.1)	(2.6)	-	-	-	-
Total Liquidity	\$ 4.9	\$ 12.4	\$ 32.3	\$ 38.4	\$ 38.5	\$ 40.2
<u>Cash Flow</u>						
Net Operating Cash Flow	\$ (2.9)	\$ 7.5	\$ 19.9	\$ 10.1	\$ 3.3	\$ 1.6
Cumulative NOCF	\$ (2.9)	\$ 4.6	\$ 24.5	\$ 34.6	\$ 37.9	\$ 39.5
<u>Debt Service</u>						
Exit RCF - Interest <sup>(2)</sup>	\$ 0.1	\$ 0.2	\$ 0.1	\$ -	\$ -	\$ -
Reorganized Navillus Notes - P&I	-	-	-	4.0	3.1	-
Cumulative Cash P&I	\$ 0.1	\$ 0.3	\$ 0.4	\$ 4.4	\$ 7.5	\$ 7.5
<u>Coverage Ratios</u>						
DSCR (Current Year)	na	33.8x	278.5x	2.5x	1.1x	na
DSCR (Cumulative)	na	15.3x	65.6x	7.9x	5.0x	na

(1) Assumed, actual amount TBD

(2) Interest rate assumed to be 5.00%

**Exhibit C**  
**Liquidation Analysis**

**Navillus Tile, Inc.**  
**Liquidation Analysis**  
As of May 23, 2018

The liquidation analysis is based on assumptions and estimates of the Debtor, that although developed and considered reasonable by management, are inherently subject to significant economic, business, competitive and governmental regulation uncertainties and contingencies beyond the control of the Debtor or management. Accordingly, there can be no assurance that the values reflected in the liquidation analysis would be realized if the Debtor were to undergo such a liquidation. Actual results could vary materially and adversely from those contained within

(\$ in 000s)

	Note	03/31/18 Book Value (unaudited)	Low		High	
			%BV	\$	%BV	\$
Cash & Marketable Securities	(A)	\$ 2,804	100.0%	\$ 2,804	100.0%	\$ 2,804
Contract AR	(B)	57,545	28.6%	16,469	42.6%	24,524
Contract Retainage	(C)	35,359	30.4%	10,759	47.1%	16,645
Costs and Estimated Earnings in Excess of Billings		10,709	0.0%	-	0.0%	-
PP&E		2,065	50.0%	1,033	50.0%	1,033
Prepays and Other		166	0.0%	-	0.0%	-
<b>Total Distributable Value</b>		<b>\$ 108,648</b>		<b>\$ 31,065</b>		<b>\$ 45,006</b>
Estimated Article 3A Claims				\$ 14,564		\$ 14,564
Recovery (\$)				(14,564)		(14,564)
Recovery (%)				100.0%		100.0%
Distributable Value Remaining After 3A Claims				\$ 16,500		\$ 30,442
Estimated Liquidation & Wind Down Costs						
Less: Ch. 11 Professional Fees and Expenses	(D)			\$ (4,216)		\$ (4,216)
Less: Ch. 7 Professional Fees				(2,000)		(2,000)
Plus: Billings of Active Projects to be Completed	(E)			7,654		7,654
Less: Cost to Complete of Active Projects to be Completed	(F)			(5,985)		(5,985)
Less: Wind Down Costs	(G)			(2,435)		(2,435)
Total Liquidation & Wind Down Costs				\$ (6,983)		\$ (6,983)
<b>Distributable Value Remaining After Liquidation &amp; Wind Down</b>				<b>\$ 9,518</b>		<b>\$ 23,459</b>
Class 2 - Other Secured Claims	(H)			\$ 347		\$ 347
Recovery (\$)				(347)		(347)
Recovery (%)				100.0%		100.0%
Distributable Value Remaining After Class 2				\$ 9,171		\$ 23,112
Estimated Liberty DIP Loan Claim	(I)			\$ 484,315		\$ 387,452
Recovery (\$)	(J)			(9,171)		(23,112)
Recovery (%)				1.9%		6.0%
Remaining Distributable Value After Liberty DIP Claim				\$ -		\$ -
Class 3 - Other Priority Claims				\$ 3,000		\$ 3,000
Recovery (\$)				-		-
Recovery (%)				0.0%		0.0%
<b>Distributable Value to General Unsecured Creditors</b>				<b>\$ -</b>		<b>\$ -</b>

Notes:

A: Net book cash balance per March 31, 2018 MOR, includes overdraft amounts

B: 15% - 85% recovery assumed in Low Case, 30% - 95% recovery assumed in High Case, based on whether the project is active and over 90% complete

C: 0% - 70% recovery assumed in Low Case, 25% - 85% recovery assumed in High Case, based on whether the project is active and over 90% complete

D: Accrued & unpaid as of March 31, 2018, plus one additional month

E: Assumes projects over 90% complete are completed during the Wind Down, assumes 85% of estimated billings remaining are collected

F: Assumes projects over 90% complete are completed during the Wind Down, assumes 100% of estimated costs remaining are realized

G: Assumes salaries and benefits for a reduced office staff for 9 months, rent at 633 Third Ave for 9 months of Wind Down

H: Various lessors of vehicles and equipment. Claim amount excludes AIG who has a collateral account to secure the insurance program.

I: Reflects 150% relet costs in Low Case, 120% in High Case

J: Per DIP Order (d. 156): Liberty is granted a first priority lien and security interest in all assets directly related to the bonded contracts, subject to certain carve-outs. Additionally, Liberty is granted an allowed superpriority administrative expense claim for, among other things, unreimbursed actual losses incurred by Liberty on any bonded projects due to a post-petition performance breach or default. Conversion of the case from Chapter 11 to Chapter 7 is a default under the Liberty DIP. The Company estimates actual losses would be between \$67 million and \$181 million.