

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

In re:)
) Chapter 11
PLASTIQ INC., et al.,¹)
) Case No. 23-10671 (BLS)
Debtors.)
) (Jointly Administered)
)
) Ref. Docket No. 23

**NOTICE OF FILING OF AMENDMENT NO. 1
TO EQUITY AND ASSET PURCHASE AGREEMENT**

PLEASE TAKE NOTICE that, on May 24, 2023, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Debtors’ Motion for Entry of (A) an Order (I) Approving Bidding Procedures in Connection with the Sale of the Debtors’ Assets and Related Bid Protections, (II) Approving Form and Manner of Notice, (III) Scheduling Auction and Sale Hearing, (IV) Authorizing Procedures Governing Assumption and Assignment of Certain Contracts and Unexpired Leases, and (V) Granting Related Relief; and (B) an Order (I) Approving the Purchase Agreements, and (II) Authorizing a Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests* [Docket No. 23] (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

PLEASE TAKE FURTHER NOTICE that, on June 21, 2023, the Court entered the *Order (I) Approving Bidding Procedures in Connection with the Sale of the Debtors’ Assets and Related Bid Protections, (II) Approving Form and Manner of Notice, (III) Scheduling Auction and Sale Hearing, (IV) Authorizing Procedures Governing Assumption and Assignment of Certain Contracts and Unexpired Leases, and (V) Granting Related Relief* [Docket No. 127] (the “**Bidding Procedures Order**”).²

PLEASE TAKE FURTHER NOTICE that, attached to the Motion as Exhibit B was the form Stalking Horse Agreement. Since filing the Motion, the parties have agreed to certain revisions to the Stalking Horse Agreement, as set forth in that certain *Amendment No. 1 to Equity and Asset Purchase Agreement* (the “**Amendment**”). A substantially final form of the Amendment is attached hereto as **Exhibit A**.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PlastiQ Inc. (6125), PLV Inc. d/b/a/ PLV TX Branch Inc. (5084), and Nearside Business Corp. (N/A). The corporate headquarters and the mailing address for the Debtors is 1475 Folsom Street, Suite 400, San Francisco, California 94103.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion or the Bidding Procedures Order, as applicable.



PLEASE TAKE FURTHER NOTICE that the Amendment remains subject to further review and comment by the Debtors and other interested parties, and all rights are reserved in connection therewith.

Dated: July 27, 2023
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Joseph M. Mulvihill _____

Michael R. Nestor (No. 3526)
Matthew B. Lunn (No. 4119)
Joseph M. Mulvihill (No. 6061)
Jared W. Kochenash (No. 6557)
1000 North King Street
Rodney Square
Wilmington, Delaware 19801
Tel.: (302) 571-6600
Facsimile: (302) 571-1253
Email: mnestor@ycst.com
mlunn@ycst.com
jmulvihill@ycst.com
jkochenash@ycst.com

Counsel for Debtors and Debtors in Possession

EXHIBIT A

Amendment

**AMENDMENT NO. 1
TO
EQUITY AND ASSET PURCHASE AGREEMENT**

This **AMENDMENT NO. 1 TO EQUITY AND ASSET PURCHASE AGREEMENT** (this "Amendment No. 1"), is effective as of July 31, 2023, by and among **PLASTIQ INC., PLV INC., NEARSIDE BUSINESS CORP.** (collectively, "Sellers") and **PLASTIQ, POWERED BY PRIORITY, LLC** (together with its permitted successors, designees and assigns, "Buyer"). Sellers and Buyer are referred to collectively herein as the "Parties." Capitalized terms used and not otherwise defined herein shall have the meanings assigned to them in the Agreement (as defined below).

WHEREAS, the Parties previously entered into that certain Equity and Asset Purchase Agreement, dated as of May 23, 2023 (the "Agreement");

WHEREAS, the Parties desire to amend the Agreement as set forth herein; and

WHEREAS, pursuant to Section 9.5 of the Agreement, the Agreement may be amended by a writing signed by each Party;

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the Parties, intending to be legally bound, agree as follows:

1. The sixth Whereas clause in the recitals to the Agreement is hereby amended and restated as follows:

“WHEREAS, concurrently with the Closing, Buyer will enter into an earnout agreement substantially in the form attached hereto as Exhibit A (the "Earnout Agreement") with Sellers and Blue Torch Finance LLC ("Blue Torch"), pursuant to which Sellers will have the right to receive cash consideration in the form of an earnout payment, in an amount to be calculated in accordance with the terms and conditions of the Earnout Agreement, which right to receive such earnout payment shall be assigned by Sellers to Blue Torch immediately following the Closing in exchange for Blue Torch's release of any and all Liens, Claims and encumbrances on the Purchased Assets, whether under the Secured Debt, the DIP Agreement or otherwise, and in satisfaction of Sellers' obligations under the Secured Debt and the DIP Agreement following any payments received by Blue Torch upon entry of the Sales Order by the Bankruptcy Court and consummation of the Contemplated Transactions;”

2. Section 2.5(b) of the Agreement (which was inadvertently made a part of Section 2.5(a) of the Agreement) is hereby amended and restated as follows:

“(b) grant Sellers the right to receive the cash consideration in the form of an earnout payment as described in the Earnout Agreement attached hereto as Exhibit A, which right to receive such earnout payment shall be assigned by Sellers to Blue Torch immediately following the Closing in exchange for Blue Torch's release of any and all Liens, Claims and encumbrances on the Purchased Assets, whether under the Secured Debt, the DIP Agreement or otherwise, and in satisfaction of Sellers' obligations under the Secured Debt and the DIP Agreement, in each case in accordance with the terms and conditions of the Earnout Agreement; and”

3. The text on Exhibit A of the Agreement is hereby deleted in its entirety and replaced with the Earnout Agreement attached hereto as Exhibit A.

4. Section 7.1(h) of the Agreement is hereby amended and restated as follows:

“(h) the Earnout Agreement shall be in full force and effect; and”

5. All other references to “Exchange Agreement” in the Agreement and not specifically identified in this Amendment are hereby amended to “Earnout Agreement”.
6. All other references to “Exchange Agreement Terms” in the Agreement and not specifically identified in this Amendment are hereby deleted.
7. Except as specifically amended by this Amendment, the Agreement remains in full force and effect.
8. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Amendment or any counterpart may be executed and delivered by facsimile or email with scan attachment copies, each of which shall be deemed an original.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Amendment No. 1 to be duly executed as of the date first above written.

SELLERS:

PLASTIQ INC.

By: _____
Name:
Title:

PLV INC.

By: _____
Name:
Title:

NEARSIDE BUSINESS CORP.

By: _____
Name:
Title:

BUYER:

PLASTIQ, POWERED BY PRIORITY, LLC

By: _____
Thomas C. Priore
Chief Executive Officer & President

EXHIBIT A

Form of Earnout Agreement

[attached]