

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

In re:

VIEW, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-10692 (CTG)

(Joint Administration Requested)

**DECLARATION OF THOMAS KING IN SUPPORT OF  
CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS**

I, Thomas H. King, declare and state as follows:

1. I am the Interim Chief Financial Officer for View, Inc (“View”) and each of its direct and indirect debtor and non-debtor subsidiaries, including debtors, View, Inc., View Operating Corporation, and Iotium, Inc. (collectively, the “Debtors” or the “Company”) that have filed voluntary petitions (the “Chapter 11 Petitions”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) commencing these chapter 11 cases (the “Chapter 11 Cases”).

2. I have served as the Interim Chief Financial Officer of View since February 21, 2024. In my capacity as Interim Chief Financial Officer, I have been actively involved in preparing the Chapter 11 Cases and managing the day-to-day activities of the Debtors. I have also been actively engaged with key stakeholders on the terms of these prepackaged Chapter 11 Cases. I am generally familiar with the Debtors’ day-to-day operations, financial affairs, and books and records. As part of my duties in the Chapter 11 Cases, and with the support of the Debtors’ management personnel and advisors, I will be overseeing and advising the Debtors on their day-

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: View, Inc. (5065), View Operating Corporation (4899), and Iotium, Inc. (4600). The Debtors’ corporate headquarters is 6280 America Center Drive, Suite 200, San Jose, CA 95002.

to-day business operations, budgets, cash flows, financial analysis and overall restructuring and reorganization efforts.

3. To minimize the adverse effects of filing chapter 11 while at the same time preserving value for the benefit of stakeholders, the Debtors have filed a number of pleadings requesting various kinds of “first day” relief (collectively, the “First Day Pleadings”).<sup>2</sup> The facts set forth in the First day Pleadings are incorporated herein by reference. I submit this declaration (the “Declaration”) in support of the Chapter 11 Petitions and the First Day Pleadings. I am familiar with the contents of each First Day Pleading (including the exhibits and other attachments thereto) and, to the best of my knowledge, after reasonable inquiry, believe the relief sought in each First Day Pleading: (a) is necessary to enable the Debtors to operate in chapter 11 with minimal disruption; (b) is critical to the Debtors’ efforts to preserve value and maximize the likelihood of the successful restructuring of their businesses; and (c) best serves the Debtors’ estates and creditors’ interests. Further, it is my belief that the relief sought in the First Day Pleadings is narrowly tailored and necessary to achieve the goals of the Chapter 11 Cases.

4. Except as otherwise indicated, all statements set forth in this Declaration are based upon: (a) my personal knowledge; (b) information supplied to me by other members of the Debtors’ management or the Debtors’ advisors that, in some circumstances, predated my tenure with the Company but I believe in good faith to be reliable; (c) my review of relevant documents, including the Debtors’ books and records; or (d) my opinion based upon my experience and knowledge of the Debtors’ operations and financial condition. If called upon to testify, I could

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<sup>2</sup> Unless otherwise defined herein, capitalized terms in this Declaration shall have the meanings ascribed to such terms in the relevant First Day Pleading or the Restructuring Support Agreement (as defined below), as applicable.

and would testify competently to the facts set forth in this Declaration. The Debtors have authorized me to submit this Declaration.

### **INTRODUCTION**

5. View, headquartered in San Jose, California, is a smart buildings platform and technology company that transforms buildings to improve human health and experience, reduce energy consumption and carbon emissions, and generate additional revenue for building owners. View designs, manufactures, and provides electrochromic or “smart glass” panels to which it adds a 1 micrometer (~1/100th the thickness of human hair) proprietary electrochromic coating. These “smart glass” panels, in combination with View’s proprietary network infrastructure, software and algorithms, intelligently adjust in response to the sun by tinting from clear to dark states, and vice versa, to minimize heat and glare without ever blocking the view. View also sells a Smart Building Cloud platform to building owners, a suite of products that allows building owners and operators to secure and connect building operations data to the cloud. Across View’s combined product lines, the Company’s products are installed in over 100 million square feet of buildings.

6. The Company has not sought bankruptcy protection due to shortcomings in its products, services, or technology; rather, the Company has a need for an additional liquidity infusion and a need to right-size its balance sheet. The Company remains an emerging growth company and, as is typical of such companies at this phase in their life cycle, the Company continues to experience negative cash flow from operations. Although the Company has continued to grow revenue and has made strides in reducing costs to improve profitability and cash flows, the Company has been unable to obtain sufficient funding and has an immediate cash need to fund operations including manufacturing costs, research and development, selling general and

administrative, and capital investment requirements. The Company is facing a liquidity shortfall and needs a comprehensive restructuring of its balance sheet.

7. Over the last year, View's management and Board of Directors actively pursued and examined a number of potential strategic alternatives. To this end, the Company engaged advisors to assist the Company in its effort to raise additional financing to fund operations until achievement of profitability and to explore initiatives to improve operational efficiency and strategic alternatives. In April 2023, the Company retained SOLIC Capital Advisors, LLC and SOLIC Capital, LLC (collectively, "SOLIC"), to assist the Company in analyzing its financial position and exploring potential strategic and operating restructuring initiatives. In August 2023, the Company also retained Cole Schotz P.C. ("Cole Schotz") to advise the Company in connection with its review of strategic alternatives and contingency planning.

8. As part of its engagement, SOLIC initiated on behalf of the Company a capital placement process to raise capital via a private placement of secured convertible PIK toggle notes. Working with the Company's management, SOLIC identified and conducted a targeted outreach, contacting fifty-two (52) prospective financial and/or strategic partners to gauge interest in a secured convertible PIK toggle notes placement. Thirteen (13) parties ultimately agreed to confidentiality agreements and were provided a confidential investment memorandum and access to additional confidential information. The prospective financing sources were provided with an opportunity to conduct diligence and have calls or meetings with the Company's management team.

9. Due to limited interest from prospective financing sources for funding the secured convertible PIK toggle notes, SOLIC then worked with the Company's management to facilitate a solicitation process to raise financing in the form of a senior secured term loan. This solicitation

process included a targeted outreach, with SOLIC contacting forty-eight (48) prospective financial and/or strategic partners. Twenty-one (21) parties agreed to confidentiality agreements and were provided a confidential investment memorandum and access to a virtual data room. These prospective financing sources conducted varying levels of diligence, and the Company held management meetings with eight (8) prospective financing sources.

10. Also commencing during the same period, SOLIC conducted a marketing process to identify potential parties for the sale or recapitalization of the Company. Working with the Company's management team, SOLIC contacted forty-two (42) prospective financial and/or strategic partners to solicit interest in a strategic transaction with the Company. Nine (9) parties executed non-disclosure agreements and were provided access to a virtual data room. The prospective buyers were offered the opportunity to have calls or meetings with the Company's management team. To date, this marketing process has not resulted in any offers to purchase the Company or another sale or recapitalization transaction.

11. The Company also successfully implemented various operating efficiencies and cost savings initiatives. Specifically, the Company reduced the shifts at its manufacturing facility, from four (4) to two (2), and reduced operating expenses including research and development, selling general and administrative expenses. The Company's estimated total operating expense cost reduction for the nine-month period ended in the third quarter of 2023 was approximately \$75 million, or 41%, from 2022.

12. Recognizing that additional financing was necessary for the Company to bridge to profitability, on October 16, 2023, the Company entered into a new senior secured term loan credit agreement with Cantor Fitzgerald Securities, as administrative and as collateral agent, and certain lenders party thereto. The credit agreement established (a) a \$12.5 million senior secured term

loan facility and (b) a \$37.5 million senior secured delayed draw term loan facility, each maturing on September 30, 2027 (the “Prepetition Term Loan”).

13. After the Prepetition Term Loan was partially funded in October 2023, the Company, believed it could deploy the Prepetition Term Loan to pay its expenses as they became due, and, coupled with further cost saving measures, move toward success. In the interest of maximizing value to all stakeholders, the Company, through SOLIC, continued to explore all strategic alternatives for the Company. In January 2024, SOLIC resumed its solicitation of potential financial and strategic acquirors. At the same time, the Debtors engaged with holders of the Prepetition Term Loan and the Convertible Notes concerning a potential financial restructuring and recapitalization of the Company. During this period, no prospective strategic or financial acquirors were willing to submit a proposal to acquire the Company’s assets or otherwise provide financing to the Company without the Company substantially reducing its operating losses.

14. In connection with the Company’s evaluation of potential strategic alternatives, on February 21, 2024, the Board of Directors of View, Inc. (the “Board”) appointed Patrick J. Bartels, Jr. as a disinterested director of the Board (the “Disinterested Director”). The Disinterested Director was delegated sole authority (i) on all matters in which a conflict of interest exists or is reasonably likely to exist between View, Inc. on the one hand, and any related party, on the other hand (each, a “Conflict Matter”), and (ii) to make a determination as to whether any matter constitutes a Conflict Matter. In addition, the Board delegated sole authority to the Disinterested Director, with the assistance of Cole Schotz as counsel, to conduct an independent review with respect to the potential causes of action of the Debtors, if any, against any related party, including the appropriateness or necessity of any releases in the Prepackaged Plan.

15. Ultimately, it became clear to the Debtors, the Debtors' management team, the Debtors' Board of Directors, and the Debtors' advisors that the best way to maximize value for the Debtors' stakeholders and minimize cost was to pursue prepackaged Chapter 11 Cases in the Bankruptcy Court. To that end, the Debtors executed a restructuring support agreement dated April 2, 2024 (the "Restructuring Support Agreement") attached as Exhibit B to the Disclosure Statement,<sup>3</sup> that forms the basis for the Prepackaged Plan<sup>4</sup> the Debtors seek to implement. Critically, the Prepackaged Plan contemplates:

- \$17.5 million of DIP Financing provided by the lenders under the Prepetition Term Loan that will be rolled into the New Exit Facility at closing of the Prepackaged Plan;
- In addition to the rolled DIP Claims, an additional \$32.5 million of new money to be funded pursuant to the New Exit Facility;
- Equitization of over \$274 million of Prepetition Term Loans and Convertible Notes into 64.2% of the equity of New Top Co (which may be either Reorganized Parent or a new entity holding 100% of the equity interest of Reorganized Parent);
- Issuance of 35.8% of New Common Interests to the Exit Lenders that provide the Tranche C Commitment, as more fully described in the Restructuring Support Agreement and the New Exit Facility Term Sheet;
- Payment in full in the ordinary course of the Company's ongoing business of all General Unsecured Claims, including employee and trade claims; and
- Prompt emergence from chapter 11.

16. As of the Petition Date, the parties to the RSA include, among others, (i) 100% of the outstanding principal of the Prepetition Term Loans, (ii) 90.3% of the outstanding principal of the Convertible Notes, and (iii) approximately 8% of the holders of Existing Equity Interests.

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<sup>3</sup> The "Disclosure Statement" means the *Disclosure Statement for the Joint Prepackaged Chapter 11 Plan of Reorganization of View, Inc. and its Debtor Affiliates*, filed in connection herewith.

<sup>4</sup> The "Prepackaged Plan" means the *Joint Prepackaged Chapter 11 Plan of Reorganization of View, Inc. and its Debtor Affiliates*, filed in connection herewith.

17. The Debtors believe that the Prepackaged Plan, consummated on the contemplated timeline, is the best alternative available to them to deleverage their capital structure, recapitalize their businesses, and position them for future success and growth. Indeed, the Debtors and their advisors, together with the Debtors stakeholders and their advisors, invested substantial time and effort considering alternatives available to the Debtors, including months of diligence and negotiations, to drive consensus regarding the best path to address the Debtors' capital structure and liquidity issues. As the broad consensus for the Prepackaged Plan demonstrates, the Debtors and their stakeholders with the greatest economic interest in these Chapter 11 Cases believe that the Prepackaged Plan is the best available alternative.

18. To familiarize the Court with the Debtors, their business, the circumstances leading to these Chapter 11 Cases, and the relief the Debtors are seeking in the First Day Pleadings, I have organized this declaration as follows:

- **Part I** provides a general overview of the Debtors' business, corporate history, and operations;
- **Part II** provides an overview of Debtors' capitalization and primary pre-petition indebtedness;
- **Part III** discusses the events leading to these Chapter 11 Cases;
- **Part IV** discusses the terms of the Prepackaged Plan and summary of the solicitation process; and
- **Part V** discusses the First Day Pleadings and the relief sought therein.

## **I. OVERVIEW OF THE DEBTORS' BUSINESS**

### **A. Company History**

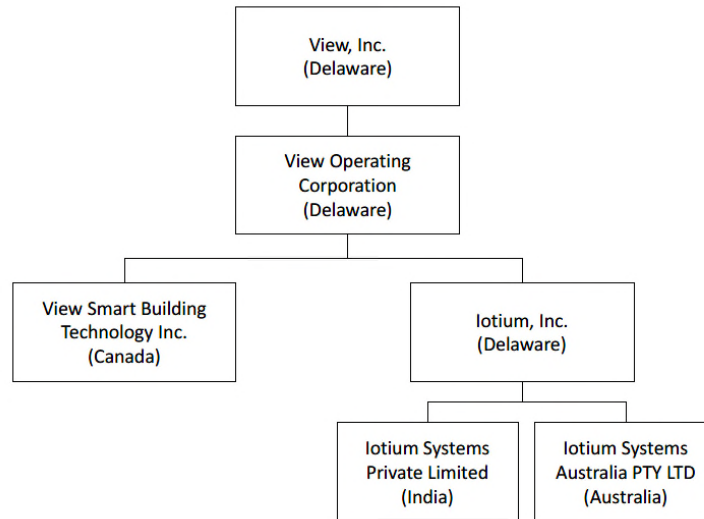
19. View was formed as a special purpose acquisition company incorporated on September 27, 2019, under the name CF Finance Acquisition Corp. II ("CF II") as a Delaware corporation. CF II was formed for the purpose of effecting a merger, capital stock exchange, asset

acquisition, stock purchase, reorganization or similar business combination with one or more businesses. On March 8, 2021 (the “Closing Date”), CF II consummated a previously announced merger pursuant to an Agreement and Plan of Merger, dated November 30, 2020 (the “Merger Agreement”), by and among CF II, PVMS Merger Sub, Inc., a Delaware corporation and wholly-owned subsidiary of CF II (“Merger Sub”), and View, Inc. (referred to in this paragraph as “Legacy View”). Pursuant to the Merger Agreement, a business combination between CF II and Legacy View was affected through the merger of Merger Sub with and into Legacy View, with Legacy View surviving as the surviving company and as a wholly-owned subsidiary of CF II. On the Closing Date, CF II changed its name from CF Finance Acquisition Corp. II to View, Inc. and Legacy View changed its name to View Operating Corporation.

#### **B. Corporate Structure**

20. View is a publicly held company, with its common stock listed on the NASDAQ. View Operating Corporation is a wholly-owned direct subsidiary of View. View Operating Corporation in turn, owns Iotium Inc., which provides secure, cloud-managed, software-defined IoT (Internet of Things) networks. View Operating Corp. also owns View Smart Building Technology Inc., which operates out of British Columbia. Iotium Inc. owns Iotium Systems Private Limited and Iotium Systems Australia PTY LTD, which operate out of India and Australia, respectively.

21. The Company’s corporate structure – including the Debtors and non-debtor foreign affiliates View Smart Building Technology Inc., Iotium Systems Private Limited and Iotium Systems Australia PTY LTD – is set forth below:



### C. Business Operations

22. The Debtors are headquartered in San Jose, California and have employees throughout the United States. The Company also maintains a facility in Olive Branch, Mississippi where it manufactures the insulating glass units included in the View Smart Glass and View Smart Buildings Platform product offerings. The Debtors do not own any real property.

23. For the three months ended September 30, 2023, View’s revenue was \$38.2 million, resulting in a 61% year-over-year improvement. For the period ending September 30, 2023, View’s balance sheet reflects approximately \$291,438,999 in total assets and approximately \$359,376,000 in total liabilities. As of the Petition Date, aggregate cash in the Company’s operating bank accounts was approximately \$7.29 million.

#### 1. **View Smart Glass**

24. As noted above, View designs, manufactures, and provides electrochromic or “smart glass” panels to which it adds a 1 micrometer (~1/100th the thickness of human hair) proprietary electrochromic coating. These smart glass panels, in combination with View’s proprietary network infrastructure, software and algorithms, intelligently adjust in response to the

sun by tinting from clear to dark states, and vice versa, to minimize heat and glare without ever blocking the view. In addition, View offers a suite of fully integrated, cloud-connected smart-building products that are designed to enable the Company to further optimize the human experience within buildings, improve cybersecurity, further reduce energy usage and carbon footprint, reduce real estate operating costs, provide real estate owners greater visibility into and control over the utilization of their assets, and provide a platform on which to integrate and deploy new technologies into buildings. View’s “smart glass” is primarily composed of three components – the insulating glass unit, the network infrastructure, and the software – that all work together to produce a solution.

25. View Smart Glass includes the following products and services:

- *Insulating Glass Units (“IGUs”)*: View electrochromic glass panels in the form of IGUs utilize View’s proprietary electrochromic technology to modulate ultraviolet, visible and infrared light simultaneously and on command. Electrochromism is the phenomenon by which the light transmission through a transparent material change when an electrical voltage is applied to it. This ability to control light transmittance enables View to automatically control the amount of light and heat entering a space, thus reducing the energy consumption of the building.
- *Controls, Software and Services (“CSS”)*: View’s CSS is a network infrastructure comprised of View’s proprietary wiring and controls system that provides a network addressable location to every glass panel, as well as software and algorithms that control the behavior of each glass panel in real time. The products and services that make up CSS include electrical connections schema, sky sensors, window controllers and control panels with embedded software, cables and connectors that enable the IGUs to tint.
- *View Net*: View Net is View’s next generation CSS, a cloud-connected, network infrastructure offering that powers the smart glass IGUs and can incorporate and power other smart building devices from View and other companies. View Net is a scalable, secure, fault-tolerant, enterprise-grade, smart building platform that can be upgraded remotely or “over-the-air” to incorporate performance improvements and new features. By having the ability to incorporate other smart building devices, View Net reduces redundant cabling, installation costs and materials. It also future-proofs buildings for technology upgrades by providing the capability to add smart devices and applications over an open IP protocol, thus providing integrated capabilities and saving future complexity, cost, time and materials.

26. Today, View's Smart Glass products are installed into over 48 million square feet of buildings, including offices, hospitals, airports, educational facilities, hotels, and multi-family residences.

## **2. View Smart Building Platform**

27. After View completed installations of "smart glass" in hundreds of buildings, View identified an opportunity to use its network infrastructure and cabling to significantly improve the human experience, energy performance and carbon footprint in buildings, and real estate operating costs through adoption of technology. Beginning in 2021, View began selling a Smart Building Platform, which is a fully integrated smart window platform, to building owners. Concurrent with the commencement of the sales efforts, View also began hiring an extensive team of construction managers, project managers, and building specialists to enable View to work towards delivering the fully installed and integrated Smart Building Platform.

28. View Smart Building Platform is a complete interrelated and integrated platform that combines View's smart glass IGUs, the fabrication, unitization, and installation of the framing of those IGUs, any combination of View Smart Building Technologies, and installation of the completed smart glass windows and CSS components. The Smart Building Platform utilizes the View Net infrastructure to enable smart building applications, such as View Smart Glass, for which each IGU is a separate node on the network. Customers also have the option to integrate any of the View Smart Building Technologies product offerings, as more fully described further below, as additional nodes on the smart building network and tailored to the customer's specific needs depending upon their desired smart building functionality. View completes the design of the system based on the customer's specifications by manufacturing, fabricating, and unitizing the specific smart glass products required based on this design. It also installs these products in the

customer's building, and integrates of all the interrelated components, including any enhanced options, into the View Smart Building Platform. The end product to the customer is a single-solution Smart Building Platform that uses artificial intelligence to adjust the building environment to improve occupant health and productivity, as well as reduce building energy usage and carbon footprint.

### **3. View Smart Building Technologies**

29. View Smart Building Technologies products aggregates data from connected systems, sensors, and applications within a building and applies data normalization and spatial contexts. The View Smart Building Cloud is embedded into View's products, including View Secure Edge, View Remote Access, View Building Performance, and View Workplace Experience.

## **II. DEBTORS' CAPITALIZATION AND PRIMARY PRE-PETITION INDEBTEDNESS**

30. As of the Petition Date, the Debtors have approximately \$285 million of funded debt obligations, consisting of secured obligations under the MDA Term Loan and the Prepetition Term Loan, and unsecured obligations under the Convertible Notes.

### **A. MDA Term Loan**

31. On November 22, 2010, the Company entered into a debt arrangement with the Mississippi Development Authority (the "MDA"), in an amount of \$40 million (the "MDA Term Loan"), for the purpose of financing equipment and tenant improvements at its manufacturing facility in Olive Branch, Mississippi. Pursuant to the original terms, the MDA Term Loan provides for interest-free debt to be repaid in semi-annual payments due on June 30 and December 31 each year. The MDA Term Loan was originally being paid over 24 semi-annual installments through

June 30, 2024. The MDA Term Loan is secured by certain specified manufacturing equipment located in the Olive Branch facility.

32. On October 22, 2020, the Company entered into an amended and restated debt arrangement with the MDA, which temporarily suspended the payments until June 30, 2022. Starting June 30, 2022, the Company is required to make semi-annual payments of \$0.7 million through June 30, 2032. As of the Petition Date, the Company had \$12.491 million outstanding under the MDA Term Loan.

**B. Prepetition Term Loan**

33. On October 16, 2023, the Company entered into the Prepetition Term Loan credit agreement with Cantor Fitzgerald Securities, as administrative agent and as collateral agent, and the lenders party thereto (the “Credit Agreement”). The Credit Agreement established (i) a \$12.5 million senior secured term loan facility and (ii) a \$37.5 million senior secured delayed draw term loan facility, each maturing on September 30, 2027. The lenders include, among others: (i) RXR FP Investor IV LP, an affiliate of RXR Realty LLC, (ii) CF Principal Investments, LLC, and (iii) entities affiliated with Anson Funds and Affinius Capital, all of whom are also holders of the Convertible Notes.

34. The Prepetition Term Loan has an annual rate equal to Term SOFR, plus (i) a margin of 7.50%, for interest paid in cash, or (ii) a margin of 14.0%, for interest paid in kind. The obligations under the Credit Agreement are guaranteed by the Company’s wholly-owned subsidiaries, subject to certain customary exceptions, and secured by a first-lien security interest in substantially all of the Company’s tangible and intangible assets, as well as substantially all of the tangible and intangible assets of the guarantors.

35. As of the Petition Date, the outstanding amount of the Prepetition Term Loan is approximately \$52.108 million.

**C. 6.00% / 9.00% Convertible Senior PIK Toggle Notes due 2027**

36. In October 2022, the Company completed the sale of \$200 million aggregate principal amount of the Company's 6.00% / 9.00% Convertible Senior PIK Toggle Notes (the "Convertible Notes"), with the option to sell an additional \$40 million of notes to the Purchasers (as defined in the indenture governing the Convertible Notes). The Convertible Notes were issued pursuant to that certain Indenture, dated as of October 26, 2022, between View, Inc. and Wilmington Trust, National Association, as Trustee. The Convertible Notes will mature on October 1, 2027 and bear interest at 6.00% per annum, to the extent paid in cash ("Cash Interest"), and 9.00% per annum, to the extent paid in kind through the issuance of additional Convertible Notes ("PIK Interest"). Interest is payable semi-annually in arrears on April 1 and October 1 of each year, beginning on April 1, 2023. The Company can elect to make any interest payment through Cash Interest, PIK Interest or any combination thereof.

37. As of the Petition Date, the outstanding principal amount of the Convertible Notes is approximately \$222.258 million.

**D. Unsecured Obligations**

38. As of the Petition Date, the Debtors broadly estimate that they have approximately \$27.160 million in outstanding obligations to employees, trade vendors, and other non-Convertible Notes unsecured creditors.

**E. Common Stock**

39. On March 9, 2021, the Company's common stock and warrants began trading on the Nasdaq Global Select Market under the ticker symbols "VIEW" and "VIEWW," respectively.

Pursuant to the Company's certificate of incorporation, the Company is authorized to issue 600,000,000 shares of common stock with a par value of \$0.0001 per share. As of the Petition Date, the Company had 4,113,403 shares of common stock issued and outstanding.

### **III. EVENTS LEADING TO THESE CHAPTER 11 CASES**<sup>5</sup>

40. The Debtors need for chapter 11 protection is driven primarily by its limited liquidity position and need for a deleveraged balance sheet in order to raise additional financing to fund its operations and maximize the value of the organization. As noted above, the Company, with the assistance of its advisors, began exploring financing and sale transactions in April 2023. During that time, the Company worked diligently to maintain operations in the face of declining liquidity and increasing financing challenges and believed it would achieve success under its current structure, with time, proper management, and additional liquidity. To this end, the Company implemented several cost-saving measures, including, but not limited to, selective reductions in workforce and discontinuation of investments in certain research and development and sales and marketing initiatives. Nevertheless, for the three months ended September 30, 2023, View suffered losses from the operation of their businesses exceeding \$208 million. The Company obtained an additional cash infusion in October 2023, which it believed it could deploy to pay its expenses as they became due and, coupled with further cost savings measures, move toward success. However, despite continuing efforts since that time, the Debtors have been unable to sustain their operations with their available cash resources.

41. In light of their waning financial position, beginning in January 2024, the Debtors began engaging with certain lenders under the Prepetition Term Loan and the Convertible Notes

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<sup>5</sup> The details concerning the Debtors' prepetition marketing and financing efforts described in the Introduction section above are incorporated herein by reference.

with the goal of negotiating a comprehensive and consensual balance sheet restructuring. On April 2, 2024, the Debtors executed the Restructuring Support Agreement with the vast majority of the holders of their funded indebtedness (entitled to vote 100% of the aggregate amount of the Prepetition Term Loan Claims and 90.3% of the Convertible Notes Claims to accept or reject the Prepackaged Plan). The Restructuring Support Agreement provides a comprehensive balance sheet restructuring and recapitalization of the Debtors' business through the Prepackaged Plan, which critically includes fresh liquidity during these Chapter 11 Cases and upon consummation of expedited chapter 11 proceedings that do not propose to impair general unsecured claims.

#### **IV. TERMS OF THE PREPACKAGED PLAN AND SUMMARY OF THE SOLICITATION PROCESS<sup>6</sup>**

42. Following months of arms' length negotiations, the Debtors and holders of the vast majority of their funded indebtedness established consensus on the terms of a value-maximizing balance-sheet restructuring, documented in the Prepackaged Plan. Critically, the broadly supported Prepackaged Plan contemplates an expedited chapter 11 process with emergence prior to the end of May 2024, pursuant to which all General Unsecured Claims will be unimpaired and paid in the ordinary course of business.

43. The key terms of the Prepackaged Plan include:

- i. \$17.5 million of DIP Financing;
- ii. Reinstatement of \$12.491 million of the MDA Claims;
- iii. Conversion of (a) approximately \$52.108 million of Prepetition Term Loan Claims to 54.2% of the New Common Interests, and (b) approximately

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<sup>6</sup> The following summary of the Prepackaged Plan is qualified in its entirety by reference to the applicable provisions of the Prepackaged Plan. To the extent there are any inconsistencies between this summary and the provisions of the Prepackaged Plan, the provisions of the Prepackaged Plan, shall control. Any capitalized terms used but not otherwise defined in this summary shall have the respective meanings ascribed to such terms in the Prepackaged Plan.

\$222.258 million of Convertible Notes to 10% of the New Common Interests;

- iv. Issuance of 35.8% of the total New Common Interests to the Tranche C Commitment Parties pursuant to the Prepackaged Plan on a fully diluted basis on the Effective Date;
- v. A \$50 million new money New Exit Facility (less any amounts funded under the DIP Financing) at closing of the Prepackaged Plan; and
- vi. Payment in full in the ordinary course of the Company's ongoing business of all General Unsecured Claims.

44. The Debtors and their advisors, together with their stakeholders and their respective advisors, devoted considerable time and effort to the formulation and documentation of the Prepackaged Plan and believe that the Prepackaged Plan represents the best alternative available to the Debtors under the circumstances. As the voting results demonstrate, the Debtors' stakeholders agree that the Prepackaged Plan is the best alternative for the Debtors to accomplish a swift balance sheet restructuring that positions their businesses for go-forward success.

45. Similarly, the Debtors and their advisors, together with the Debtors' stakeholders and their advisors, spent considerable time and effort working to ensure that parties in interest will receive adequate notice of the prepackaged Plan and detail regarding the proceedings. As detailed in the Debtors' Scheduling Motion,<sup>7</sup> filed in connection herewith, the Debtors commenced soliciting votes on the Prepackaged Plan from two Classes of impaired creditors.

46. Pursuant to the Scheduling Motion, the Debtors are requesting the following dates and deadlines be approved:

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<sup>7</sup> The "Scheduling Motion" means the Debtors' Motion For Entry of an Order (I) Scheduling Combined Hearing to Consider Approval of Disclosure Statement and Confirmation of Prepackaged Joint Plan, (II) Establishing the Prepackaged Plan and Disclosure Statement Objection Deadline and Related Procedures, (III) Approving the Solicitation Procedures and Forms of Ballots, (IV) Approving the Form and Manner of Notice of the Combined Hearing, Objection Deadline, and Notice of Commencement, and (V) Granting Related Relief.

| <b>Proposed Confirmation Schedule</b>      |                                                    |
|--------------------------------------------|----------------------------------------------------|
| Voting Record Date                         | April 1, 2024                                      |
| Prepetition Solicitation Commencement Date | April 2, 2024                                      |
| Mailing of Combined Hearing Notice         | April 8, 2024                                      |
| Plan Supplement Filing Deadline            | April 29, 2024                                     |
| Voting / Opt-Out Deadline                  | May 2, 2024                                        |
| Proposed Objection Deadline                | May 6, 2024                                        |
| Combined Hearing                           | May 13, 2024 (subject to the Court's availability) |

47. As detailed in the Scheduling Motion, expedited chapter 11 proceedings, and specifically the Debtors' ability to emerge from chapter 11 before the end of May 2024 (i.e., the milestone set forth in the Restructuring Support Agreement) is imperative. Given the nearly unanimous support for the Prepackaged Plan and the Debtors' severe liquidity needs to operate their businesses and execute their business plan on a go-forward basis, the Debtors and the Consenting Creditors elected to pursue a prepackaged chapter 11 bankruptcy on an expedient but properly-noticed timeline that significantly benefits all parties by minimizing potential uncertainty, impact on the Debtors' businesses, and implementation costs. Accordingly, the Debtors are seeking to confirm the Prepackaged Plan on an expedited basis on or about May 13, 2024. Moreover, the Debtors' failure to emerge from chapter 11 within sixty (60) calendar days following the Petition Date constitutes a termination event under the Restructuring Support Agreement and the DIP Facility.

## **V. THE FIRST DAY PLEADINGS AND RELIEF SOUGHT THEREIN**

48. The Debtors filed the First Day Pleadings concurrently with the commencement of these Chapter 11 Cases.

49. A list of the First Day Pleadings is set forth below:

- i) *Debtors' Motion for Entry of an Order Directing Joint Administration of Chapter 11 Cases*
- ii) *Application for Appointment of Kroll Restructuring Administration LLC as Claims and Noticing Agent*
- iii) *Debtors' Motion for Entry of Order (I) Conditionally Waiving the Requirement to File Schedules of Assets and Liabilities, Statements of Financial Affairs, and Rule 2015.3 Financial Reports, (II) Directing that the United States Trustee for the District of Delaware Not Convene a Meeting of Creditors or Equity Security Holders, and (III) Granting Related Relief*
- iv) *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief*
- v) *Debtors' Motion for Entry of Interim and Final Orders (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness With Respect to Common Stock and (II) Granting Related*
- vi) *Debtors' Motion for Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Trade Claims in the Ordinary Course of Business, (II) Requiring Creditors to Maintain Customary Terms as a Condition to Payment, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief*
- vii) *Debtors' Motion for Entry of Interim and Final Orders Authorizing Continued (I) Use of Existing Cash Management System, Bank Accounts and Business Forms and Payment of Related Prepetition Obligations, (II) Performance of Intercompany Transactions and Foreign Affiliate Transactions in the Ordinary Course of Business and (III) Granting a Limited Waiver of Section 345(b) Deposit and Investment Requirements*
- viii) *Debtors' Motion for Entry of Interim and Final Orders (I) Approving Debtors' Proposed Form of Adequate Assurance of Payment, (II) Establishing Procedures for Resolving Objections By Utility Companies, and (III) Prohibiting Utility Companies from Altering, Refusing or Discontinuing Service*
- ix) *Debtors' Motion For Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Their Obligations Under Prepetition Insurance Policies, (B) Continue to Pay Certain Brokerage Fees, (C) Renew, Supplement,*

*Modify, or Purchase Insurance Coverage, and (D) Maintain Their Surety Bond Program and (II) Granting Related Relief*

- x) *Debtors' Motion For Entry of Interim and Final Orders (I) Authorizing the Payment of Certain Taxes and Fees and (II) Granting Related Relief*
- xi) *Debtors' Motion for Entry of an Order (I) Authorizing Debtors to (A) Reject Certain Unexpired Lease of Nonresidential Real Property and (B) Abandon Certain Personal Property in Connection Therewith and (II) Granting Related Relief*
- xii) *Debtors' Motion for an Order Authorizing Debtors to (I) File a Consolidated List of the Debtors' Thirty Largest Unsecured Creditors, (II) Prepare a Consolidated List of Creditors in Lieu of Submitting a Separate Mailing Matrix for Each Debtor, (III) Redact Certain Personally Identifiable Information for Individual Creditors, (IV) Waive the Requirement To File a List of Equity Security Holders and Modify Notice Thereto, and (V) Granting Related Relief*
- xiii) *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Status, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief*
- xiv) *Debtors' Motion for Entry of an Order (I) Scheduling Combined Hearing to Consider Approval of Disclosure Statement and Confirmation of Prepackaged Joint Plan, (II) Establishing the Plan and Disclosure Statement Objection Deadline and Related Procedures, (III) Approving the Solicitation Procedures and Forms of Ballots, (IV) Approving the Form and Manner of Notice of the Combined Hearing, Objection Deadline, and Notice of Commencement, and (V) Granting Related Relief*

50. The above First Day Pleadings seek authority to, among other things, secure debtor in possession financing, honor employee related compensation and benefit obligations, pay certain prepetition claims, continue using the Debtors' bank accounts, and continue other operations in the ordinary course of business.

51. As stated above, I have reviewed each of the First Day Pleadings (including the exhibits or other attachments thereto). The facts stated in each of the First Day Pleadings are true and correct to the best of my information and belief. I believe that the relief sought in each of the

First Day Pleadings: (a) is necessary to enable the Debtor to operate in chapter 11 with minimal disruption to its business operations, (b) is critical to the Debtors' efforts to preserve value and maximize the likelihood of the successful restructuring of their businesses; and (c) best serves the Debtors' estates and creditors' interests. Further, it is my belief that the relief sought in the First Day Pleadings is narrowly tailored and necessary to achieve the goals of the Chapter 11 Cases.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge, information and belief.

Dated: April 2, 2024

/s/ Thomas H. King  
Thomas King  
Interim Chief Financial Officer