

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 9:20-cv-80102-CANNON/Reinhart

TING PENG and LIN FU, on behalf of
themselves individually and all others similarly
situated, and derivatively on behalf of
HARBOURSIDE FUNDING, LP, a Florida
limited partnership,

Plaintiffs,

vs.

NICHOLAS A. MASTROIANNI II;
HARBOURSIDE FUNDING GP, LLC, a
Florida limited liability company; and
HARBOURSIDE PLACE, LLC, a Delaware
limited liability company,

Defendants,

and

HARBOURSIDE FUNDING, LP, a Florida
limited partnership,

Nominal Defendant.

**DECLARATION OF JEFFREY L. FAZIO IN SUPPORT OF RENEWED
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT**

I, Jeffrey L. Fazio, declare as follows:

1. I am Of Counsel with DeHeng Law Offices, P.C. (“DeHeng”), counsel of record for Plaintiffs Ting Peng and Lin Fu and the court-appointed Class Counsel in the above-titled action. Except where noted, the testimony set forth in this declaration is based on first-hand knowledge, about which I would and could testify competently in court if called upon to do so.

2. Approximately two weeks after filing their initial Complaint, Plaintiffs served Defendants with their first sets of interrogatories and requests for production of documents. Over the course of nearly two years, Plaintiffs served Defendants with several more sets of interrogatories and requests for production as well as requests for admissions, and Defendants ultimately produced approximately 116,000 pages of documents before Plaintiffs deposed Mastroianni on September 8 and November 17, 2021, and Ashley Flucas (General Counsel of former Defendant Florida Regional Center, LLC) on November 18, 2021.

3. With the assistance of others in my office, I reviewed those documents and conducted additional research for the purpose of understanding the EB-5 Program and the transactions underlying this litigation. (Among the documents produced in discovery is an email message by which Defendant Mastroianni transmitted a memorandum to then-current investors in Nominal Defendant Harbourside Funding, LP (the “Funding Partnership”), which bears Bates numbers LF0002513-18, a copy of which is attached hereto as **Exhibit 1**.) We also prepared Plaintiffs’ responses to written discovery propounded by Defendants, and both Plaintiffs (*i.e.*, Ms. Fu and Ms. Peng) sat for depositions on March 1 and March 8, 2021, respectively.

4. After Class Notice was distributed on or about November 1, 2021, I am informed that six (6) Class Members entered into individual settlement agreements with Defendants.

5. Although the Parties retained two experienced mediators to assist them with settling this action, no progress was made with the first mediator and equally little progress was made with the second mediator.

6. The Parties continued to negotiate through their counsel and, although they were unable to reach an agreement on terms that were acceptable to Plaintiffs, I decided that Defendants' proposal was substantial enough to present to the Class as a whole for the purpose of allowing Class Members to decide whether they wished to accept the terms on an individual basis.

7. After working together with Defendants' counsel to ensure that the proposal was accurate, I arranged for Settlement Services, Inc. ("SSI"), the service that Plaintiffs had retained to administer Notice to the Class that the Court had certified the action, to distribute a memorandum describing Defendants' settlement proposal to all Class Members. SSI distributed the memorandum to the entire Class, at the DeHeng firm's expense, in early May 2022.

8. When only seven Class Members expressed an interest in Defendants' settlement proposal, Defendants' counsel advised the Court that Defendants wished to make the same proposal to Class Members directly. After Plaintiffs' motion to preclude Defendants from communicating *ex parte* with Class Members was denied, Defendants discussed the terms of their proposal with individual Class Members. When the parties appeared for trial on June 14, 2022, Defendants' counsel advised the Court that a majority of Class Members had expressed an interest in Defendants' settlement proposal and requested that the trial be postponed to enable Class Members who expressed an interest in settlement to settle their claims.

9. If a majority of Class Members actually had expressed interest in settlement, the Class may have been subject to decertification, so I had to agree with Defendants' request for a

continuance of the trial. As it turned out, however, fewer than 10 Class Members expressed interest in settlement and even fewer entered into individual settlement agreements with Defendants.

10. Although the Parties reached agreement on all essential terms of a settlement on July 11, 2022, Defendants refused to proceed with the settlement. Plaintiffs responded with a motion to enforce the settlement, which Defendants opposed and moved to disqualify Class Counsel and for an award of sanctions. The Court denied the motion to enforce the settlement and the motion to disqualify Class Counsel, but granted the motion for sanctions.

11. On December 12, 2022, Defendants' counsel sought to resume settlement discussions. While those discussions were ongoing, David Stahl, counsel for plaintiffs in the parallel state case (*Fu v. Mastroianni*, No. 50-2018-CA-012883-XXXX-MB (Palm Beach Cty.) (the "State Action")) sent a message to the Parties' counsel to express concern that resolving the derivative claims in the present action without recovering on behalf of all Limited Partners, regardless of whether they were Class Members, could interfere with his clients' ability to recover on their derivative claims in the State Action.

12. Having discussed the issue many times with Defendants' counsel, I knew that the Parties had no such intention. Accordingly, I explained to Mr. Stahl that only the claims of Settlement Class Members will be resolved by the settlement of this action, and nothing in the Release or any other aspect of the Settlement Agreement would adversely affect valid claims by anyone other than Settlement Class Members.

13. During the same time frame, I also advised Defendants' counsel that, aside from making clear that the settlement of the present case will have no impact on claims by anyone other than Settlement Class Members.

14. On January 3, 2023, the proposed Settlement Agreement was executed by all Parties. On January 4, 2023, the Parties signed a Joint Motion to Seal (Partially Redact) Settlement Documents (ECF No. 239) in accordance with the Parties' agreement to seek the Court's approval to redact the economic terms of the Settlement Agreement.

15. A true and correct copy of the redacted version of the Settlement Agreement and Exhibits A through C attached thereto is attached to this declaration as **Exhibit 2**.¹

16. I have been primarily responsible for prosecuting class actions and other forms of complex litigation, including the present case, for approximately 25 years. Therefore, while negotiating the terms of the proposed Settlement Agreement, I remained keenly aware of the complexity of this case, the expense involved in continuing the litigation, and the risk of loss at trial or on appeal. I also remained keenly aware of the amount of money each Class Member seeks to recover in this action and the strengths and weaknesses of the claims Plaintiffs are prosecuting in this action on behalf of the Class and derivatively on behalf of the Funding Partnership. Plaintiffs are aware of these issues as well. With all those considerations in mind, I believe that the proposed Settlement Agreement confers exceptional benefits on Class Members and that its terms are fair, reasonable, and adequate.

17. Among the provisions the Parties negotiated in the proposed Settlement Agreement is that SSI would serve as the Notice Administrator. SSI served in the same capacity when Plaintiffs retained it to distribute the Class Notice in November 2021 and when Defendants sought to distribute a proposal for individual settlements with Class Members in mid-2022.

¹ Blue highlighting in the version of Exhibit 2 that has been filed under seal in accordance with the Court's order (ECF No. 240) denotes the portions of that document that Defendants propose to redact.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed at Danville, California, on February 13, 2023.

/s/ Jeffrey L. Fazio

Jeffrey L. Fazio

EXHIBIT 1

From: Erica Hull <Erica@usifund.com>
Sent: Wednesday, May 15, 2013 11:49 AM EDT
To: Sandy Albanese <sandy@usifund.com>
Subject: Harbourside Funding, LP
Attachment(s): "Harbourside Funding, LP.PDF"

Dear Investor:

Attached is a letter from the Florida Regional Center and Harbourside Funding, LP that provides important information and updates regarding the Harbourside Place project. We would appreciate your confirming receipt of the attached.

Thank you,

Erica Hull
U.S. Immigration Fund™

1295 US Highway
North Palm Beach, Florida 33408

Toll: 1.855.EB5.USIF
Tel: +001.561.799.1883
Fax: +001.561.799.0061
Erica@USIFUND.com

—
www.USIFUND.com



U.S. IMMIGRATION FUND

**All information in this email, as well as any attachments and/or references herein, shall not constitute an offer to sell or a solicitation of an offer to buy any interest in any security or any security derivative products of any kind, or any type of trading or investment advice, recommendation or strategy. No offer to sell or solicitation of an offer to buy an interest in any security [or other such product] may be made to a prospective subscriber (i) until a copy of the applicable subscription materials have been provided to and reviewed by such prospective purchaser, which must be completed and returned in accordance with the terms thereof, (ii) unless made exclusively outside the United States to a prospective subscriber who is a non-U.S. citizen or non-U.S. permanent resident in accordance with Regulation S of the Securities Act of 1933, as amended; and (iii) in any jurisdiction in which such offer or solicitation is unlawful. Any representations to the contrary are unlawful.*

*All information in this email, as well as any attachments and/or references, are highly confidential and not to be shared with anyone other than the original intended recipient. If you are not an intended recipient of confidential and privileged information in this email, please delete it, notify us immediately by return email, and do not use or disseminate such information. Pursuant to IRS Circular 230, any tax advice in this email may not be used to avoid tax penalties or to promote, market or recommend any matter herein. This email does not constitute an offer or solicitation to buy or sell any security.**

Florida Regional Center, LLC
11770 U.S. Highway 1, Suite 301
Palm Beach Gardens, FL 33408
United States of America

Harbourside Funding, LP
1295 U.S. Highway 1
North Palm Beach, FL 33408
United States of America

April 15, 2013

2013年4月15日

Re: Harbourside Funding, LP

回复：朱庇特市政中心基金有限责任公司

Dear Investor:

致投资人：

Thank you for your investment in a Unit of limited partnership interest (the "Unit") issued by Harbourside Funding, LP (the "Partnership"), a project of the Florida Regional Center ("FRC"). We are pleased to report a number of important developments regarding the financing and construction of Harbourside Place since the date of the confidential, numbered and registered Offering Memorandum (the "Offering Memorandum") you received describing the terms and conditions of the offering of Units (the "Offering"). All terms not otherwise defined in this letter have the meanings provided in the Offering Memorandum.

首先感谢您对朱庇特市政中心基金有限责任公司 ("合伙关系") 的投资，并成为其中的一名有限合伙人成员。该项目是由佛罗里达区域中心 ("FRC") 推出的。我们现在很高兴与您分享本项目自你收到《发行备忘录》 ("发售录") 以来的一些有关项目资金和建设方面的进展。《项目发售录》属于有注册编号的机密文件，具体明细了项目发行 ("发售") 的具体条款和条件。投资人之前也已经收到了。本函条款除如有特殊界定，均按之前的《发售录》同样意思理解。

As you may know, USCIS has approved a number of the I-526 Petitions that you and your fellow investors have filed. To date, USCIS has approved 100% of the I-526 Petitions it has adjudicated in the Offering. Our immigration counsel advises us that these approvals reflect a USCIS determination that the Partnership and the Harbourside project meet USCIS requirements, entitling each investor in the Offering to seek conditional permanent residence in the United States. Counsel further advises us that it is USCIS policy not to revisit this determination in connection with subsequent I-526 Petitions relating to the same project. Therefore, the Partnership anticipates that USCIS will ultimately approve all properly prepared I-526 Petitions submitted by investors in the Offering.

正如大家所知，美国移民局已经批准了本项目的大量递交的 I-526 申请。截止到目前，项目 I-526 获批达到 100%。我方的移民律师告知我们：I-526 获批即意味着美国移民局认可本公司私募的有限合伙人以及项目本身，同意发售录里的投资人获得美国条件性永久绿卡。移民律师进一步告知我们：美国移民局的政策和做法是一旦同项目的 I-526 申请获批，则它们不会再审核此项目并视同之后的此项目 I-526 申请自然获批。因此，有限合伙人成员可以预期美国移民局会最终批准所有符合条件的已递交的 I-526 申请。

We would also like you to know about the following developments intended to help ensure construction of Harbourside Place continues on schedule and in accordance with the budget:

此外，□□□□□□□□□□知晓以下几个旨在项目如期、有序且严格按照项目预算的信息：

A. Pursuant to Article VIII of the Offering Memorandum (Subscription Procedures), the General Partner of **the Partnership has elected to extend the date for acceptance of Subscription Agreements from new investors from November 15, 2012 to May 15, 2013.**

根据《发售录》（认购程序）的第八条，合伙企业的普通合伙人选定延长《认购协议》的接收日期，延长时间从 2012 年 11 月 5 日至 2013 年 5 月 15 日。

B. Utilizing bridge financing, in July 2012, Developer acquired the Property from its previous owners.

通过过渡性融资，开发商已于 2012 年 7 月从前业主处购得项目。

C. **As contemplated by the Offering Memorandum, in December 2012, a mortgage was recorded against the Property in favor of the Partnership to secure repayment of the Loan. At that time, subscription proceeds of investors whose I-526 Petitions have been approved were released from escrow, and the Partnership made an initial \$26.0 million disbursement of the Loan to fund construction of Harbourside Place. As a result, the initial Maturity Date of the Loan will be November 30, 2017.**

根据《发售录》，出于对有限合伙人的保护，已于 2012 年 12 月对项目本身做抵押以确保偿还借款。在那个时候，本项目已 I-526 申请已获批的认购资金已由监管方释放，并以有限合伙关系将此 2600 万美金借款投入到本项目中施工使用。因此，相应的借款到期日即为 2017 年 11 月 30 日。

D. As contemplated by the Offering Memorandum, in December 2012 the Developer obtained an Additional Loan of up to \$18 million from Putnam Bridge Funding III, LLC as Senior Lender, to provide the Developer with additional construction funds.

根据《发售录》，2012 年 12 月开发商已经从 Putnam Bridge Funding III 公司获得了高达 1800 万美金的额外贷款，Putnam Bridge Funding III 公司将成为高级贷款方给开发商提供额外项目建设资金。

E. **As also contemplated in the Offering Memorandum, in order to obtain the Additional Loan, in December 2012, the Partnership entered into an intercreditor agreement**

subordinating its security and payment rights to the rights of the Senior Lender. Among other things, the intercreditor agreement prohibits the Developer from making interest payments to the Partnership as long as any portion of the Additional Loan remains outstanding. As a result, the General Partner does not anticipate that the Partnership will make interim distributions of your annual two percent Preferred Return.

同时根据《发售录》，为获得额外贷款，2012年12月公司已与高级贷款方签订《债权协议》，以保证高级贷款方的资金安全和还款权利。此外，此《债权协议》规定只要高级贷款方的资金还有，禁止开发商利用利息支付有限合伙公司。因此，普通合伙人（“经理”）预计，有限合伙公司不会对投资人（公司成员）的2%的年优先收益做中期分配。

- F. The initial ten investors who subscribed to purchase Units in the Offering (the “Initial Limited Partners”) did so under a version of the Offering Memorandum providing for conversion of the Loan into a maximum 80% ownership interest in the Developer. Subsequent investors have subscribed and will subscribe to purchase Units in the Offering under a version of the Offering Memorandum providing for conversion of the Loan into a maximum 65% ownership interest in the Developer. As a result, the actual maximum ownership interest that the Partnership may acquire upon conversion of the Loan will be a blend of these two percentages.

项目的前10个投资人（初始有限合伙人成员）的发售录里的贷款转换给开发商的最高股份比例是80%。后来认购的投资人以及将会认购的投资人的最高股份比例是65%。因此，有限合伙公司可能获得的股份比例将会是这两个百分比的综合。

- G. The Partnership has entered into a revised Loan Agreement with the Developer, amending and restating earlier versions of the Loan Agreement dated as of July 22, 2011 and as of September 1, 2011, to effect changes to the Loan required by the intercreditor agreement and the different versions of the Offering Memorandum. As stated in the Offering Memorandum, Developer has the option to convert all outstanding principal into units of ownership interest in the Developer (the “Developer Units”). The actual number of Developer Units that would be acquired upon conversion will depend on the Appraised Value of Harbourside Place and the principal amount of the Loan outstanding at the time of conversion.

有限合伙公司已经与开发商签订了修改版的借款协议。该借款协议的早前版本是2011年7月22日的以及2011年9月1日的，新协议做了少量修改并重述了早前的条款。根据《发售录》，开发商可以将所有未偿本金转换成所有者权益（“开发商所有权益”）。实际权益数目届时将根据项目评估以及转换时候的未偿贷款本金额而定。

- H. Pursuant to Section 19.6.2 of the Partnership Agreement, the General Partner has amended and restated the Partnership Agreement, primarily to effect the following changes to the Partnership:

根据《有限合伙协议》的第 19.6.2 节，为落实以下几条变更，普通合伙人（“经理”）已就协议做简单修改和重述：

1. If the Partnership decides to distribute the Developer Units, or the proceeds of any sale of the Developer Units, to the Limited Partners, all Limited Partners will participate in the distribution pro rata in accordance with their Unit holdings until Developer Units, or the proceeds of any sale of the Developer Units, equal to 65% of all issued and outstanding Developer Units on the date of conversion have been distributed; and

如果有限合伙公司决定分配“开发商所有权权益”或将此转卖给普通合伙人，则所有有限合伙人成员（投资人）均应按实际比例参与分配，或如决定转卖，则应相当于自转卖日起的实际 65%来分配。

2. All remaining Developer Units (the “Excess Developer Units”), or the proceeds of any sale of Excess Developer Units, will be distributed to the Initial Limited Partners, pro rata in accordance with their holdings of Units.

所有剩余的开发单元（“额外开发商所有权权益”）的转卖等均应根据成员（投资人）所持有的比例实际分配。

- I. For purposes of the Pre-Subscription Letter Agreement, the Offering Memorandum, the Limited Partnership Agreement and the Subscription Agreement, the Partnership’s address for notices is: 1295 U.S. Highway 1, North Palm Beach, FL 33408.

如欲了解有关《预认购协议》、《发售备忘录》、《有限合伙协议》以及《认购协议》的有关问题，请通过邮寄方式联系有限合伙公司方，地址如下：

1295 U.S. Highway 1, North Palm Beach, FL 33408.

We look forward to communicating with you in the near future about the progress of this Project. If you have any questions concerning this letter, please feel free to contact Sandy Albanese at sandy@usifund.com or 1-561-799-0050.

□□□□以后就项目进展与您继续保持沟通。如对本函有任何问题，请随时联系 Sandy Albanese。邮箱：sandy@usifund.com 电话：1-561-799-0050

Very truly yours,

顺颂

商祺

FLORIDA REGIONAL CENTER, LLC

佛罗里达区域中心

By: _____

Name: Nicholas A. Mastroianni, II

Title: Managing Member



HABOURSIDE FUNDING, LP

By Harbourside Funding GP, LLC, its General Partner

朱庇特市政中心基金有限责任公司

By: _____

Name: Nicholas A. Mastroianni, II

Title: Managing Member



EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 9:20-cv-80102-CANNON/Reinhart

TING PENG and LIN FU, on
behalf of themselves individually
and all others similarly situated,
and derivatively on behalf of
HARBOURSIDE FUNDING, LP, a
Florida limited partnership,

Plaintiffs,

vs.

NICHOLAS A. MASTROIANNI II;
HARBOURSIDE FUNDING GP,
LLC, a Florida limited liability
company; and HARBOURSIDE
PLACE, LLC, a Delaware limited
liability company,

Defendants,

and

HARBOURSIDE FUNDING, LP, a
Florida limited partnership,

Nominal Defendant.

CONFIDENTIAL SETTLEMENT AGREEMENT

RECITALS

WHEREAS, Plaintiffs and Class Representatives Ting Peng and Lin Fu have alleged in their operative complaint (the Second Amended Complaint (ECF No. 77)), on behalf of themselves and the class that the Court certified on June 25, 2021 (ECF No. 113), and derivatively on behalf of Nominal Defendant Harbourside Funding, LP, that Defendants Nicholas Mastroianni II, Harbourside Place, LLC, and Harbourside Funding GP, LLC, engaged in breaches of contract and breaches of fiduciary duty;

WHEREAS, Class Counsel investigated the facts and underlying events relating to the subject matter of the claims, conducted substantial discovery, carefully analyzed the applicable legal principles and, taking into account the substantial benefits to be received pursuant to this Settlement Agreement as well as the risks, uncertainties, burdens and costs of further prosecution of their claims, has concluded that a resolution and compromise on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the Class Representatives and the Class;

WHEREAS, in compliance with Orders of the Court, the Parties have proceeded to mediation;

WHEREAS, Defendants, for the purpose of avoiding burden, expense, risk, and uncertainty of continuing to litigate the claims, and for the purpose of putting to rest all controversies with Class Representatives, the Class, and the Action, and claims that were or could have been alleged, except as otherwise set forth herein, and without any admission of liability or wrongdoing, desire to enter into this Settlement Agreement;

WHEREAS, Class Counsel represents and warrants that he is fully authorized to enter into this Settlement Agreement on behalf of Class Representatives and the Class, and that Class Counsel has consulted with and confirmed that Class Representatives fully support and have no objection to this Settlement Agreement;

WHEREAS, it is agreed that this Settlement Agreement shall not be deemed or construed to be an admission, concession, or evidence of any violation of any federal, state, or local statute, regulation, rule, or other law, or principle of common law or equity, or of any liability or wrongdoing whatsoever, by Defendants or any of the Released Parties (as defined below), or of the truth or validity of any of the claims that Class Representatives have asserted;

WHEREAS, it is agreed and acknowledged that this Settlement Agreement shall not be deemed or construed to affect any arguments, claims or rights of non-Class Members, whether direct or derivative; and

WHEREAS, as a result of extensive arm's length negotiations, including multiple mediation sessions amongst the Parties before JAMS Mediators Bruce A. Edwards and Magistrate Judge Elizabeth LaPorte (retired), Class Representatives, Class Counsel, and Defendants (all terms as defined below) have entered into this Settlement Agreement.

NOW, THEREFORE, without any admission or concession by Class Representatives or Class Counsel of any lack of merit to their allegations and claims, and without any admission or concession by Defendants of any liability or wrongdoing

or lack of merit in their defenses and counterclaims, in consideration of the mutual covenants and terms contained herein, and subject to both the preliminary and final approval by the Court, Class Counsel, Class Representatives, and Defendants agree as follows:

I. DEFINITIONS

A. As used in this Settlement Agreement and the attached exhibits (which are an integral part of this Settlement Agreement and are incorporated herein in their entirety by reference), the following terms have the following meanings, unless this Settlement Agreement specifically provides otherwise:

1. “Action” means the action titled *Peng, et al. v. Mastroianni, et al.*, No. 9:20-cv-80102-CANNON/Reinhart (S.D. Fla.).

2. “Agreement” or “Settlement Agreement” means this Settlement Agreement and the exhibits attached hereto or incorporated herein, as well as any and all subsequent amendments and any exhibits to such amendments.

3. “Attorneys’ Fees and Costs” means such funds awarded by the Court to compensate any and all attorneys representing Plaintiffs and the Class who have assisted in conferring the benefits upon the Class under this Settlement Agreement for their fees and expenses in connection with the Action and the Settlement Agreement, as described in Section VI. of this Agreement, which are to be paid exclusively out of the Settlement Payments.

4. “Class” means all persons who were included in the Class that the Court certified on June 25, 2021 (ECF No. 113).

-

5. “Class Counsel” means Jeffrey Fazio of DeHeng Law Offices, P.C.

6. “Class Member” means a member of the Class.

7. “Class Representatives” means Plaintiffs Ting Peng and Lin Fu.

8. “Court” means the United States District Court for the Southern District of Florida.

9. “Defendants” means Nicholas A. Mastroianni II, Harbourside Funding GP, LLC, and Harbourside Place, LLC.

10. “Defendants’ Counsel” means Richard G. Haddad and Gabriela S. Leon of Otterbourg P.C. and Eleni Kastrenakes Howard of Akerman LLP.

11. “Fairness Hearing” means the hearing for the purposes of the Court determining whether to approve this Settlement Agreement as fair, reasonable, and adequate.

12. “Final Effective Date” means the latest date on which the Final Judgment and Order approving this Settlement Agreement becomes final. For purposes of this Settlement Agreement:

(a) if no appeal has been taken from the Final Judgment and Order, “Final Effective Date” means the date on which the time to appeal therefrom has expired; or

(b) if any appeal has been taken from the Final Judgment and Order, “Final Effective Date” means the date on which all appeals therefrom, including petitions for rehearing or reargument, petitions for rehearing *en banc* and

petitions for *certiorari* or any other form of review, have been finally disposed of in a manner that affirms the Final Judgment and Order; or

(c) in the event of an appeal or other effort to obtain review, and subject to Court approval, if Class Counsel and Defendants agree in writing, the “Final Effective Date” can occur on a date prior to final resolution, however, there is no obligation to agree to advance the Final Effective Date.

13. “Final Judgment and Order” means the Court’s final judgment as described in Section V. of this Settlement Agreement, which is to be substantially in the form attached hereto as Exhibit A or such other form as may be agreed to by Class Counsel and Defendants’ Counsel in writing; however, there is no obligation to agree to a form of Final Judgment and Order that is not substantially in the form annexed hereto.

14. “Funding Partnership” means Nominal Defendant Harbourside Funding, LP.

15. “HSP-NM” means HSP-NM-Credit Entity, LLC, a Delaware limited liability company.

16. “Notice Administrator” means the Court-appointed third-party agent or administrator agreed to by the Parties and submitted to the Court for appointment to implement the plan to distribute the Notice of Proposed Settlement. The Parties agree that Settlement Services, Inc., shall serve as Notice Administrator, subject to approval by the Court.

17. “Notice of Proposed Settlement” is the notice that shall be distributed pursuant to the notice program described in Section III. of this Agreement.

18. “Notice Program” means the notice program described in Section III.A. of this Agreement.

19. “Parties” means Class Representatives and Defendants, collectively, as each of those terms is defined in this Settlement Agreement.

20. “Plaintiffs’ Counsel” means counsel for Plaintiffs in the Action, DeHeng Law Offices, P.C., and Kim Vaughan Lerner, LLP.

21. “Preliminary Approval Order” means the order to be entered by the Court preliminarily approving the settlement as outlined in Section VII. and to be substantially in the form attached hereto as Exhibit B or such other form as may be agreed to by Class Counsel and Defendants’ Counsel in writing; however, there is no obligation to agree to a form of Preliminary Approval Order that is not substantially in the form annexed hereto.

22. “Release” means the release and waiver set forth in Section V of this Settlement Agreement and in the Final Judgment and Order.

23. “Released Defendants” or “Released Defendant” means Defendants, and each of their past, present and future parents, predecessors, successors, spin-offs, assigns, holding companies, joint-ventures and joint-venturers, partnerships and partners, members, divisions, stockholders, bondholders, subsidiaries, related companies, affiliates, officers, directors, employees, associates,

dealers, representatives, suppliers, vendors, advertisers, service providers, distributors and sub-distributors, agents, attorneys, administrators and advisers (including each of their respective heirs, executors, administrators, and assigns acting in such capacities).

24. “Released Plaintiffs” or “Released Plaintiff” means Class Representatives, and each of their past, present and future parents, predecessors, successors, assigns, holding companies, joint-ventures and joint-venturers, partnerships and partners, members, divisions, stockholders, bondholders, subsidiaries, related companies, affiliates, officers, directors, employees, associates, dealers, representatives, suppliers, vendors, advertisers, service providers, distributors and sub-distributors, agents, attorneys, administrators and advisers (including each of their respective heirs, executors, administrators, and assigns acting in such capacities).

25. “Released Parties” means Released Defendants and Released Plaintiffs, collectively.

26. “Settlement Class Members” means Class Members who had not entered into a valid and binding settlement agreement, as deemed by a court of competent jurisdiction, with one or more Defendants in exchange for a release of their claims in the Action as of December 16, 2022.

27. “Settlement Payments” means the payments made in accordance with the terms and schedule described in Section II.A., below.

28. The terms “he or she” and “his or her” include “it” or “its” where applicable.

II. SETTLEMENT RELIEF

In consideration for the dismissal of the Action with prejudice, as contemplated in this Settlement Agreement, and for the full and complete Release, Final Judgment and Order, as further specified herein, Defendants or their designee shall provide the Settlement Payment specified in this Section. The costs and expenses associated with providing the relief and otherwise implementing the relief specified in Sections II and III of the Settlement Agreement shall be the sole obligation of, and paid by, Defendants, except for legal fees of Class Representatives and Class Members (which will be paid out of Class Members’ recovery, as determined by the Court in connection with Plaintiffs’ motion for attorneys’ fees and litigation expenses).

A. SETTLEMENT PAYMENTS

1. [REDACTED]

2. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Initial Payment and the three subsequent Installment Payments, are collectively referred to as the “Settlement Payments.”

3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. WITHDRAWAL FROM THE FUNDING PARTNERSHIP

1. **Partnership Withdrawal.** Upon the receipt of the Initial Payment, as confirmed in an affidavit delivered to Class Counsel certifying that the Initial Payment was transferred to the Settlement Class Member (if by wire transfer) or cashed by the Settlement Class Member (if by check), the Settlement Class Member receiving the Initial Payment shall be deemed to have granted, transferred, sold, conveyed, assigned and delivered to HSP-NM or its designee the Settlement Class Member's unit of membership interest in the Funding Partnership, and, subject to the exception described in Section II.B.2, below, the Settlement Class Member shall be deemed to have withdrawn from and dissociated as a partner in the Funding Partnership for all purposes under the Partnership documents and under applicable law pursuant to the terms of this Settlement Agreement.

2. In the event that [REDACTED] fail to timely make an Installment Payment in accordance with Section II.A.2., above, and the Installment Payment remains unpaid for thirty (30) days, the units of membership in the Funding Partnership that were granted, transferred, sold, conveyed, assigned and delivered to HSP-NM in accordance with Section II.B.1., above, shall be returned to Settlement Class Members in a percentage equal to the then-unpaid principal amount of the Settlement Payment (the "Reinstatement Percentage"), who shall be deemed to be reinstated in the Funding Partnership in accordance with the Reinstatement Percentage, with all rights attendant thereto, as though their withdrawal from the Funding Partnership had not occurred.

C. TAX CONSEQUENCES

The Parties make no representations regarding any tax consequences relating to the Settlement Agreement. Each Party agrees to refrain from asserting any claim against any other Party relating to any liability for taxes in connection with any Settlement Payment or other event relating to participation or involvement in this Settlement Agreement. All Settlement Class Members shall be made aware that they should retain their own legal counsel or other adviser if they have questions or concerns about potential tax consequences related to participation in this Settlement Agreement.

D. DISTRIBUTION AND PROCESSING OF SETTLEMENT PAYMENTS

1. Defendants shall be responsible for, without limitation, the following in connection with the distribution and processing of Settlement Payments to Settlement Class Members:

(a) making full and timely Settlement Payment to each Settlement Class Member through wire transfers or checks, including the payment of corresponding Attorney Fees and Costs to DeHeng Law Offices P.C.'s designated bank account;

(b) handling returned mail containing Settlement Payment checks not delivered to Settlement Class Members;

(c) obtaining wire-transfer information from Settlement Class Members for the purpose of distributing the Settlement Payment;

-

(d) updating Class Members' email and postal address information;

(e) making any additional mailings required under the terms of this Settlement Agreement;

(f) verifying the identity of each Settlement Class Member before distributing Settlement Payments;

(g) distributing Settlement Payments to each Settlement Class Member by wire transfer or, in the absence of wire-transfer information, by check; and

(h) providing Class Counsel with proof sufficient to establish the status of each Settlement Payment (*e.g.*, confirmation of each successful wire transfer and cashed check) within fifteen (15) calendar days of the Initial Payment and each Installment Payment.

2. Class Counsel shall cooperate with requests for assistance by Defendants to provide information to the extent available or obtainable.

3. Any dispute regarding the performance of the duties set forth in this Section II.D. shall be referred to the Court for resolution.

III. NOTICE OF PROPOSED SETTLEMENT

A. NOTICE PROGRAM

1. The Notice Administrator shall ensure that the Notice of Proposed Settlement is distributed to (a) all current Class Members, (b) all former Class Members who entered into an individual settlement agreement with

Defendants after the Notice of Class Action was distributed on November 1, 2021, and (c) all current Limited Partners who are not Settlement Class Members, by electronic mail and first-class U.S. mail in a form substantially similar to Exhibit C, as specified in the Preliminary Approval Order and this Settlement Agreement and in order to comply with all applicable laws, including, but not limited to, Fed. R. Civ. P. 23, the Due Process Clause of the United States Constitution, and all other applicable statutes, laws and rules. The Notice of Proposed Settlement shall be provided in English, Chinese, and Korean languages. The costs of disseminating the Notice of Proposed Settlement and otherwise implementing the Notice of Proposed Settlement shall be paid by Defendants.

2. The Notice of Proposed Settlement shall inform the recipients of the following:

(a) The amounts being sought by Plaintiffs' Counsel as Attorneys' Fees and Litigation Costs;

(b) That the Class Representatives shall not receive service awards, in accordance with *Johnson v. NPAS Sols., LLC*, 975 F.3d 1244 (11th Cir. 2020);

(c) The process for objecting to the Settlement Payment, as specified in Section IV, below;

(d) That individual Class Members should consult their own legal counsel or other adviser if they have questions or concerns about potential tax consequences related to this Settlement Agreement; and

-

(e) That individual Settlement Class Members have an obligation to maintain the confidentiality of the economic terms and conditions of the Settlement Agreement, as provided in Section IX.D., below.

2. The Notice Administrator shall file with the Court the details of the scope, method, and results of the Notice Program, at least twenty (20) calendar days before the date of the Fairness Hearing.

IV. OBJECTIONS TO SETTLEMENT

A. Any Settlement Class Member who wishes to object to the Settlement Agreement must mail a copy of their objection to the Notice Administrator. The Notice Administrator shall file objections with the Court in connection with Plaintiffs' motion for final approval and response to objections, and shall work with Class Counsel and Defendants' Counsel to ensure that any objection disclosing the economic terms of the Settlement Agreement, or the amount of the Settlement Payments, is redacted and filed under seal.

B. For an objection to be considered by the Court, the objection must be received by the Notice Administrator on or before the deadline established by the Court for submitting objections (unless, upon a showing of good cause as determined by the Court and provided that the Parties have an opportunity to respond, in which case an objector who has filed an untimely objection may appear and be heard), and must also set forth:

1. The case name and number of the Action;

-

2. The objector's full name, current residential address, mailing address (if different), telephone number, and e-mail address;

3. An explanation of the basis upon which the objector claims to be a Settlement Class Member or a current member of the Funding Partnership who is not a Settlement Class Member;

4. An explanation of the objection, including the legal and factual bases and copies of any documents supporting the objection;

5. The name and address of each lawyer (if any) who is representing an objector, or who may seek or claim entitlement to compensation for any reason in connection with the objection;

6. The number of times the objector and the objector's counsel (if any) has objected to a class action settlement within the five years preceding the date that the objector files the objection; and the name and case number of each case in which the objector and/or the objector's attorney has made such objection. If the objector or the objector's counsel has not made any prior objection in the past five years, the objector or the objector's counsel shall affirmatively so state in the written materials provided with the objection;

7. A statement as to whether the objector intends to appear at the Fairness Hearing either individually or through counsel;

8. The full name, telephone number and address of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement Agreement;

-

9. The identity of all counsel (if any) who will appear on behalf of the objector at the Fairness Hearing;

10. A list of all persons who will or may offer testimony in support of the objection; and

11. The objector's signature and date of signature.

C. The Parties shall request that the Court issue an order declaring that any objector who fails to comply with the provisions of Section IV.B., above, shall be deemed to have waived and forfeited any and all rights he or she may have to have his, her or their objection considered and/or to appear separately and object, whether by a subsequent objection, intervention, appeal, or any other process, and shall be bound by all the terms of this Settlement Agreement and by all proceedings, orders and judgments, including, but not limited to, the Release and the Final Judgment and Order. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of this Section IV. Without limiting the foregoing, any challenge to the Settlement Agreement, Final Judgment and Order shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through collateral proceedings.

D. The Parties will ask the Court to enter an order providing that the filing of an objection allows Class Counsel or Defendants' Counsel to, upon a showing of good cause and approval by the Court, notice the deposition of the objector and/or to seek the production of documents and tangible things relevant to the objections on an expedited basis, so as to promote and ensure the efficient administration of justice,

the timely resolution of objections and of this Settlement Agreement, and the orderly presentation of any objection to the settlement, in accordance with all applicable due process rights. Consistent with these objectives, service of a deposition notice and/or a request to produce documents and tangible things in lieu of a formal subpoena shall be sufficient. Likewise, any such deposition may take place remotely, or at an agreed upon location at an agreed upon date and time, but, in no event more than fifteen (15) calendar days following service of a deposition notice, a request to produce documents and other tangible things. Any objections to the scope of a deposition notice or a request to produce documents or other tangible things issued or served in connection with this provision shall be brought before this Court for resolution on an expedited basis.

E. In the event an objector fails to appear for deposition or comply with a request to produce documents or other tangible things, as allowed by the Court, may result in the Court striking the objection and denying the person the opportunity to be heard individually and/or through counsel.

F. If the Court determines the objection is frivolous or made for an improper purpose, the Court may tax the costs of any such discovery under this section to the objector or the objector's counsel. Prior to doing so, however, the objector shall be given the opportunity to withdraw his/her/their objection.

G. The Parties shall promptly inform the Court of any consideration sought by any objector and the circumstances of such a request. Any objector who seeks fees,

-

costs, or other consideration for their objection shall do so pursuant to Fed. R. Civ. P. 23(e)(5)(B).

H. Any Settlement Class Member who objects to the Settlement Agreement shall be entitled to all the benefits of the Settlement Agreement if the Settlement Agreement and the terms contained herein are approved, as long as the objecting Settlement Class Member complies with all requirements of this Settlement Agreement applicable to Settlement Class Members.

V. RELEASE AND WAIVER

A. The Parties agree to the following release and waiver, which shall take effect upon delivery of the Initial Payment.

B. In consideration for the Settlement Agreement, Class Representatives, and each Settlement Class Member, on behalf of themselves and any other legal or natural persons who may claim by, through or under them (including, but not limited to, the Funding Partnership), fully, finally and forever release, relinquish, acquit, and discharge the Released Defendants from any and all claims, demands, suits, petitions, liabilities, causes of action, rights, and damages of any kind and/or type regarding the subject matter of the Action and their investment in the Funding Partnership, including, but not limited to, compensatory, exemplary, punitive, expert and/or attorneys' fees or by multipliers, whether past, present, or future, mature, or not yet mature, known or unknown, suspected or unsuspected, contingent or non-contingent, derivative or direct, asserted or un-asserted, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law,

-

violations of any state's deceptive, unlawful, or unfair business or trade practices, false, misleading or fraudulent advertising, consumer fraud or consumer protection statutes, any breaches of express, implied or any other warranties, RICO, or any other source, or any claim of any kind related, arising from, related to, connected with, and/or in any way involving the subject matter of the Action and the Settlement Class Members' investment in the Funding Partnership, and which could have been defined, alleged or described in the Second Amended Complaint, the Action, or any amendments of the Action. The Final Judgment and Order will reflect these terms.

C. In consideration for the Settlement Agreement, Defendants, on behalf of themselves and any other legal or natural persons who may claim by, through or under them, fully, finally and forever release, relinquish, acquit, and discharge the Released Plaintiffs from any and all claims, demands, suits, petitions, liabilities, causes of action, rights, and damages of any kind and/or type regarding the subject matter of the Action and the Released Plaintiffs' investment in the Funding Partnership, including, but not limited to, compensatory, exemplary, punitive, expert and/or attorneys' fees or by multipliers, whether past, present, or future, mature, or not yet mature, known or unknown, suspected or unsuspected, contingent or non-contingent, derivative or direct, asserted or un-asserted, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, violations of any state's deceptive, unlawful, or unfair business or trade practices, false, misleading or fraudulent advertising, consumer fraud or consumer protection statutes, any breaches of express, implied or any other warranties, RICO, or any

other source, or any claim of any kind related, arising from, related to, connected with, and/or in any way involving the subject matter of the Answer to Second Amended Class-Action and Derivative Complaint and Counterclaims of Nicholas A. Mastroianni II, Harbourside Funding GP, LLC, and Harbourside Place, LLC (“Counterclaims”) and the Released Plaintiffs’ investment in the Funding Partnership, and which could have been defined, alleged or described in the Counterclaims or any amendments thereof. The Final Judgment and Order will reflect these terms.

D. Class Representatives, Settlement Class Members, and Defendants expressly agree that this Release and/or the Final Judgment and Order is, will be, and may be raised as a complete defense to, and will preclude any action or proceeding encompassed by, this Release.

E. Class Representatives and Settlement Class Members shall not now or hereafter institute, maintain, prosecute, commence, or file any suit, action, and/or proceeding, against the Released Defendants, on their own behalf, on behalf of a class or on behalf of any other person or entity with respect to the claims or causes of action released through this Settlement Agreement. This provision does not include any action brought to enforce the terms of this Settlement Agreement.

F. Defendants shall not now or hereafter institute, maintain, prosecute, commence, or file any suit, action, and/or proceeding, against the Released Plaintiffs, on their own behalf, on behalf of a class or on behalf of any other person or entity with respect to the claims or causes of action released through this Settlement Agreement.

-

This provision does not include any action brought to enforce the terms of this Settlement Agreement.

G. In connection with the Settlement Agreement, Class Representatives, Settlement Class Members, and Defendants acknowledge that they and other Class Members may hereinafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Action, their investment in the Funding Partnership and/or the Release herein. Nevertheless, it is the intention of Class Counsel, Class Representatives, Defendants' Counsel, and Defendants in executing this Settlement Agreement to fully, finally, and forever settle, release, discharge, and hold harmless all such matters, and all claims relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) against one another. Notwithstanding the foregoing, neither the Release, the dismissal of claims asserted on behalf of the Funding Partnership, nor any other provision of this Settlement Agreement is intended to preclude valid claims or causes of action asserted by members of the Funding Partnership who are not Settlement Class Members.

H. Class Representatives, Settlement Class Members, and Defendants expressly understand and acknowledge that they will be deemed, upon delivery of the Initial Payment, to acknowledge and waive Section 1542 of the California Civil Code ("Section 1542"), which provides that

-

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

I. Upon delivery of the Initial Payment, the Class Representatives, Settlement Class Members, and Defendants expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542, or any other law of any state or territory that is similar, comparable or equivalent to Section 1542, to the fullest extent they may lawfully waive such rights.

J. Upon the Final Effective Date, the Class Representatives, Settlement Class Members, and Defendants represent and warrant that they are the sole and exclusive owners of all their respective claims that they personally are releasing under this Settlement Agreement. Class Representatives (and, upon the Final Effective Date, the Settlement Class Members) and Defendants further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the claims they are personally releasing in this Action and the Counterclaims, including without limitation, any claim for benefits, proceeds or value under the Action and the Counterclaims, and that Class Representatives and, by accepting the Initial Payment, Settlement Class Members, and Defendants

represent and warrant that they are not aware of anyone other than themselves claiming any interest, in whole or in part, in the claims that they are personally releasing under the Settlement Agreement or in any benefits, proceeds or values in the claims that they are personally releasing under the Settlement Agreement.

K. Without in any way limiting its scope, and, except to the extent otherwise specified in the Agreement, this Release covers by example and without limitation, any and all claims for attorneys' fees, costs, expert fees, or consultant fees, interest, or litigation fees, costs or any other fees, costs, and/or disbursements incurred by Class Counsel, Plaintiffs' Counsel, Class Representatives, Class Members, Defendants' Counsel, or Defendants who claim to have assisted in conferring the benefits under this Settlement Agreement upon the Class.

L. In consideration for the Settlement Agreement, the Released Defendants and the Released Plaintiffs, including, but not limited to, the Parties and their respective past or present officers, directors, employees, agents, attorneys, predecessors, successors, affiliates, subsidiaries, divisions, and assigns shall be deemed to have, and by operation of the Final Judgment and Order shall have, released Plaintiffs' Counsel, Class Counsel, each current and former Class Representative, Defendants' Counsel, and Defendants from any and all causes of action that were or could have been asserted pertaining to the conduct in filing and prosecuting the litigation or in settling the Action and the Counterclaims, respectively.

-

M. Class Representatives and Plaintiffs' Counsel and Defendants and Defendants' Counsel acknowledge by their signatures below that they have conducted sufficient discovery to enter into this Settlement Agreement and, by executing this Settlement Agreement, state that they have not relied upon any statements or representations made by the Released Defendants and the Released Plaintiffs or any person or entity representing them, respectively, other than as set forth in this Settlement Agreement.

N. Nothing in this Release shall preclude any action to enforce the terms of the Agreement, including participation in any of the processes detailed herein.

O. Class Representatives and Class Counsel and Defendants and Defendants' Counsel hereby agree and acknowledge that the provisions of this Release together constitute an essential and material term of the Agreement and shall be included in any Final Judgment and Order entered by the Court.

VI. ATTORNEYS' FEES AND LITIGATION COSTS

Attorneys' fees and litigation expenses incurred by Plaintiffs' Counsel shall be paid out of the Settlement Payment in amounts to be determined by the Court. Attorneys' Fees and Costs shall be paid, by wire transfer, to DeHeng Law Offices, P.C., [REDACTED] not later than fifteen (15) calendar days after the Initial Payment and not later than fifteen (15) calendar days after each of the three Installment Payments that shall occur annually thereafter.

VII. PRELIMINARY APPROVAL ORDER, FINAL JUDGMENT AND ORDER, AND RELATED ORDERS

A. The Parties shall seek from the Court a Preliminary Approval Order in a form substantially similar to Exhibit B. The Preliminary Approval Order shall, among other things:

1. Preliminarily approve the Settlement Agreement;
2. Schedule a date for the filing of Plaintiffs' motion for attorneys' fees and litigation expenses;
3. Require the dissemination of the Notice of Proposed Settlement and the taking of all necessary and appropriate steps to accomplish this task;
4. Determine that the Notice of Proposed Settlement complies with all legal requirements, including, but not limited to, the Due Process Clause of the United States Constitution;
5. Schedule a date and time for a Fairness Hearing to determine whether the Settlement Agreement should be finally approved by the Court;
6. Require objectors to this Settlement Agreement to submit an appropriate and timely written statement as directed in this Settlement Agreement and in the Notice of Proposed Settlement;
7. Require objectors who wish to appear at the Fairness Hearing to submit an appropriate and timely written statement as directed in the Settlement Agreement and in the Notice of Proposed Settlement;

8. Require attorneys representing objectors to the Settlement Agreement, at such objectors' expense, to file a notice of appearance as directed in this Settlement Agreement and in the Notice of Proposed Settlement; and

9. Issue other related orders to effectuate the preliminary approval of the Settlement Agreement.

B. After the Fairness Hearing, the Parties shall seek to obtain from the Court a Final Judgment and Order in the forms substantially similar to Exhibit A.

VIII. TERMINATION

A. This Settlement Agreement shall terminate at the discretion of either Defendants or the Class Representatives, through Class Counsel, if: (1) the Court, or any appellate court(s), rejects, modifies, or denies approval of any portion of the Settlement Agreement that results in a substantial modification to a material term of the proposed Settlement, including, without limitation, the amount and terms of relief, permitting Settlement Class Members to opt out of the Class, the findings or conclusions of the Court, the provisions relating to notice, including, the definition of the Class, and/or the terms of the Release; or (2) the Court, or any appellate court(s), does not enter or completely affirm, or alters, narrows or expands, any portion of the Final Judgment and Order, or any of the Court's findings of fact or conclusions of law, that results in a substantial modification to a material term of the proposed Settlement. The terminating party must exercise the option to withdraw from and terminate this Settlement Agreement, as provided in this Section VIII, by a signed writing served on the other Parties no later than ten (10) business days after

receiving notice of the event prompting the termination. The Parties will be returned to their positions *status quo ante*.

B. If an option to withdraw from and terminate this Settlement Agreement arises under Section VIII.A., above, neither Defendants nor Class Representatives are required for any reason or under any circumstance to exercise that option, and any exercise of that option shall be in good faith.

C. Each Party agrees not to disparage the other Party, or any present or former officer, director, agent, attorney, or employee of either Party, whether to any current or former employee of any Party, individuals, the press or other media, including, but not limited to, making such statements via social media, forums, or chat applications, or to any other business entity or non-party (including to Limited Partners under the Partnership documents). Each Party acknowledges this is a material condition to this Settlement Agreement and any failure to comply with this provision may result in the termination of the Settlement Agreement in the manner described in Section VIII.D., below.

D. If, but only if, this Settlement Agreement is terminated pursuant to this Section VIII.A., then:

1. This Settlement Agreement shall be null and void and shall have no force or effect, and no Party to this Settlement Agreement shall be bound by any of its terms, except for the terms of this Section VIII., herein;

2. The Parties will petition the Court to have any stay orders entered pursuant to this Settlement Agreement lifted;

-

3. All of its provisions, and all negotiations, statements, and proceedings relating to it shall be without prejudice to the rights of Defendants, Class Representatives, or any Settlement Class Member, all of whom shall be restored to their respective positions existing immediately before the execution of this Settlement Agreement, except that the Parties shall cooperate in requesting that the Court set a new scheduling order such that no Party's substantive or procedural rights are prejudiced by the settlement negotiations and proceedings;

4. Class Representatives and all other Settlement Class Members, on behalf of themselves and their heirs, assigns, executors, administrators, predecessors, and successors, expressly and affirmatively reserve and do not waive any and all motions as to, and arguments in support of, all claims, causes of actions or remedies that have been, could have been, or might later be asserted in the Action including, without limitation, any argument concerning liability, class certification, and entitlement to damages under any theory, including, but not limited to, treble, punitive or exemplary damages;

5. Defendants and the other Released Parties expressly and affirmatively reserve and do not waive all motions and positions as to, and arguments in support of, all defenses to the causes of action, counterclaims or remedies that have been sought or might be later asserted in the Action, including without limitation, any argument or position opposing class certification, liability or damages, or any argument that the Action may not be litigated as a class action;

-

6. Neither this Settlement Agreement, the fact of its having been made, nor the negotiations leading to it, nor any discovery or action taken by a Party or Class Member pursuant to this Settlement Agreement shall be admissible or entered into evidence for any purpose whatsoever, except as necessary to enforce the terms of this Settlement Agreement and then the Parties shall use best efforts to file such confidential terms and information under seal, *provided*, however, that in the event this Settlement Agreement is terminated, the Parties shall retain the right to conduct discovery in accordance with applicable law;

7. Any settlement-related order(s) or judgment(s) entered in this Action after the date of execution of this Settlement Agreement shall be deemed vacated and shall be without any force or effect; and

8. All costs incurred in connection with the Settlement Agreement, including, but not limited to, the Notice of Proposed Settlement and settlement administration are the sole responsibility of Defendants and will be paid by Defendants. Neither the Class Representatives nor Plaintiffs' Counsel shall be responsible for any of these costs or other settlement-related costs, except for their own legal fees.

IX. GENERAL MATTERS AND RESERVATIONS

A. Defendants have denied and continue to deny each and all of the claims and contentions alleged in the Action, and have denied and continue to deny that they committed any violation of law or engaged in any wrongful act that was alleged, or that could have been alleged, in the Action. Defendants believe that they have valid

and complete defenses to the claims asserted against them in the Action and deny that they committed any violations of law, engaged in any unlawful act or conduct, or that there is any basis for liability for any of the claims that have been, are, or might have been alleged in the Action. Nonetheless, Defendants have concluded that it is desirable that the Action be fully and finally settled in the matter and upon the terms and conditions set forth in this Settlement Agreement.

B. Plaintiffs have denied and continue to deny each and all of the claims and contentions alleged in the Counterclaims, and have denied and continue to deny that they committed any violation of law or engaged in any wrongful act that was alleged, or that could have been alleged, in the Counterclaims. Plaintiffs believe that they have valid and complete defenses to the claims asserted against them in the Counterclaims and deny that they committed any violations of law, engaged in any unlawful act or conduct, or that there is any basis for liability for any of the claims that have been, are, or might have been alleged in the Counterclaims. Nonetheless, Plaintiffs have concluded that it is desirable that the Action be fully and finally settled in the matter and upon the terms and conditions set forth in this Settlement Agreement.

C. The obligation of the Parties to conclude the Settlement Agreement is and shall be contingent upon each of the following:

1. Entry by the Court of the Final Judgment and Order approving the Settlement Agreement, from which the time to appeal has expired or which has remained unmodified after any appeal(s);

-

2. The Court's agreement to retain jurisdiction for the purpose of enforcing the terms and conditions of this Settlement Agreement; and

3. Any other conditions stated in this Settlement Agreement.

D. The Parties and their Counsel agree to keep the economic terms and contents of this Settlement Agreement confidential, and to request that all Court filings disclosing the amount of the Settlement Payments or other confidential terms be filed under seal and that the Notice of Proposed Settlement explain the obligation to maintain the confidentiality of the Settlement Agreement in accordance with the terms of this Agreement; provided, however, that this Section IX.D. shall not prevent the Parties or Settlement Class Members from disclosing such information to family members, state and federal agencies, independent accountants, actuaries, advisors, financial analysts, insurers or attorneys. Nor shall it prevent the Parties and their Counsel from disclosing such information to persons or entities (such as experts, courts, co-counsel, and/or administrators) to whom the Parties agree disclosure must be made in order to effectuate the terms and conditions of this Settlement Agreement.

E. Class Counsel represent that: (1) they are authorized by the Class Representatives to enter into this Settlement Agreement with respect to the claims in this Action; and (2) they are seeking to protect the interests of the Class.

F. Class Counsel further represent that the Class Representatives have authorized Class Counsel to execute this Settlement Agreement on their behalf.

G. The Parties acknowledge and agree that no opinion concerning the tax consequences of the Settlement Agreement to Settlement Class Members is given or

will be given by the Parties, nor are any representations or warranties in this regard made by virtue of this Settlement Agreement. Each Settlement Class Members' tax obligations, and the determination thereof, is the sole responsibility of the Settlement Class Members, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.

H. Defendants represent and warrant that the individual(s) executing this Settlement Agreement are authorized to enter into this Settlement Agreement on behalf of Defendants.

I. This Settlement Agreement, complete with its exhibits, sets forth the sole and entire agreement among the Parties with respect to its subject matter, and it may not be altered, amended, or modified except by written instrument executed by Class Counsel and Defendants' Counsel on behalf of Defendants. The Parties expressly acknowledge that no other agreements, arrangements, or understandings not expressed in this Settlement Agreement exist between them, and that in deciding to enter into this Settlement Agreement, they rely solely upon their judgment and knowledge. This Settlement Agreement supersedes any prior agreements, understandings, or undertakings (written or oral) by and between the Parties regarding the subject matter of this Settlement Agreement.

J. This Settlement Agreement and any amendments thereto shall be governed by and interpreted according to the law of the State of Florida notwithstanding its conflict-of-laws provisions.

-

K. The Parties shall request that the Court retain jurisdiction over the Action until all terms and conditions of this Settlement Agreement are fully complied with and thereby discharged. Settlement Class Members will have the right to enforce the terms of this Agreement. Any effort to enforce this Settlement Agreement shall be commenced and maintained only in the United States District Court for the Southern District of Florida.

L. Whenever this Settlement Agreement requires or contemplates that one of the Parties shall or may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding Saturdays, Sundays and Federal Holidays) express delivery service as follows:

1. If to Defendants, then to:

Richard G. Haddad
OTTERBOURG P.C.
230 Park Avenue
New York, New York 10169
Tel: (212) 661-9100
Fax: (212) 682-6104
Email: rhaddad@otterbourg.com

2. If to the Class, then to:

Jeffrey L. Fazio
DeHeng Law Offices, P.C.
7901 Stoneridge Drive, Suite 208
Pleasanton, CA 94588
Tel: (925) 399-5856
Fax: (925) 397-1976
E-mail: jfazio@dehengsv.com

3. The Parties may change the foregoing notice addresses by written notice to the other Parties in accordance with this Section IX.L.

-

M. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Settlement Agreement or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a Federal Holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days. As used herein, "Federal Holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Presidents' Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Columbus Day, Veterans Day, Patriot's Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President, the Congress of the United States or the Clerk of the United States District Court for the Southern District of Florida.

N. The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

O. The Class, Class Representatives, Class Counsel, Defendants and/or Defendants' Counsel shall not be deemed to be the drafter of this Settlement Agreement or of any particular provision, nor shall they argue that any particular provision should be construed against its drafter. All Parties agree that this Settlement Agreement was drafted by counsel for the Parties during extensive arm's

length negotiations. No parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Settlement Agreement was made or executed.

P. The Parties expressly acknowledge and agree that this Settlement Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state. In no event shall this Settlement Agreement, any of its provisions or any negotiations, statements or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Action, any other action, or in any judicial, administrative, regulatory or other proceeding, except in a proceeding to enforce this Settlement Agreement or the rights of the Parties or their counsel. Without limiting the foregoing, neither this Settlement Agreement nor any related negotiations, statements, or court proceedings shall be construed as, offered as, received as, used as, or deemed to be evidence or an admission or concession of any liability of wrongdoing whatsoever on the part of any person or entity, including, but not limited to, the Released Parties, Class Representatives, or the Class or as a waiver by the Released Parties, Class Representatives or the Class of any applicable privileges, claims, arguments, positions, or defenses.

Q. Class Representatives expressly affirm that the allegations contained in the operative complaint and in subsequent motion practice were made in good faith,

-

but consider it desirable for the Action to be settled and dismissed after considering the following: (1) the substantial benefits that the Settlement Agreement will provide to Settlement Class Members; (2) the attendant difficulties, inherent risks, and uncertainty of litigation in this complex case, including certifying and maintaining a class through trial and appeal, as well as the delays inherent in such litigation; (3) the desirability of providing relief to Settlement Class Members now, as opposed to several years from now, after trial and resolution of all appeals. Class Counsel agreed to this settlement only after being satisfied that their efforts in settlement discussions, including settlement discussions with the assistance of the mediators who assisted the Parties with settlement negotiations (*i.e.*, Bruce Edwards and retired Magistrate Judge Elizabeth LaPorte, both of Judicial Mediation and Arbitration Services (JAMS)), had achieved a fair, reasonable, and adequate recovery for Settlement Class Members.

R. The Parties, their successors and assigns, and their counsel undertake to implement the terms of this Settlement Agreement in good faith, to cooperate with, *inter alia*, obtaining final approval, and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Settlement Agreement.

S. The waiver by one Party of any breach of this Settlement Agreement by another Party shall not be deemed a waiver of any prior or subsequent breach of this Settlement Agreement.

T. If one Party to this Settlement Agreement considers another Party to be in breach of its obligations under this Settlement Agreement, that Party must provide

the breaching Party with written notice of the alleged breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under this Settlement Agreement. Unless a longer time is agreed to in writing by the parties, thirty (30) days is deemed a “reasonable opportunity to cure.”

U. The Parties, their successors and assigns, and their counsel agree to cooperate fully with one another in seeking Court approval of this Settlement Agreement and to use their best efforts to effectuate the prompt consummation of the Settlement Agreement.

V. This Settlement Agreement may be signed with a facsimile signature and in counterparts, each of which shall constitute a duplicate original.

W. In the event any one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision if Defendants and Class Counsel, on behalf of Class Representatives and Settlement Class Members, mutually agree in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Settlement Agreement. Any such agreement shall be reviewed and approved by the Court before it becomes effective.

Agreed to on the date indicated below.

APPROVED AND AGREED TO AS TO FORM
BY CLASS COUNSEL

-

BY 
JEFFREY L. FAZIO
DEHENG LAW OFFICES, P.C.

DATE: February 13, 2023

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto have caused this Settlement Agreement to be executed as of the date(s) set forth below.


TING PENG

Dated: 02-13-2023


LIN FU

Dated: 2/13/2023

NICHOLAS A. MASTROIANNI, II

Dated: _____

HARBOURSIDE PLACE, LLC

By: _____

Printed Name: _____

Title: _____

Dated: _____

HARBOURSIDE FUNDING GP, LLC

BY 
JEFFREY L. FAZIO
DEHENG LAW OFFICES, P.C.

DATE: February 13, 2023

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto have caused this Settlement Agreement to be executed as of the date(s) set forth below.

TING PENG

Dated: _____

LIN FU

Dated: _____


NICHOLAS A. MASTROIANNI, II

Dated: 2/14/23

HARBOURSIDE PLACE, LLC

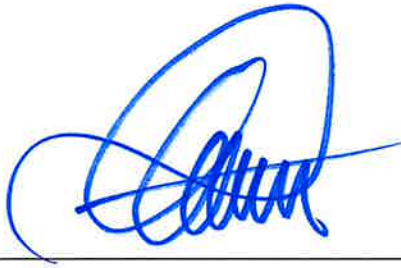
By: 

Printed Name: Nicholas A. Mastroianni, II

Title: Authorized Signatory

Dated: 2/14/23


HARBOURSIDE FUNDING GP, LLC

By:  _____

Printed Name: Nicholas A. Mastroianni, II

Title: Authorized Signatory

Dated: 2/14/23

 _____
HSP-NM-CREDIT ENTITY, LLC

Printed Name: Nicholas A. Mastroianni, II

Title: Authorized Signatory

Dated: 2/14/23

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 9:20-cv-80102-CANNON/Reinhart

TING PENG and LIN FU, on behalf of themselves individually and all others similarly situated, and derivatively on behalf of HARBOURSIDE FUNDING, LP, a Florida limited partnership,

Plaintiffs,

vs.

NICHOLAS A. MASTROIANNI II;
HARBOURSIDE FUNDING GP, LLC, a Florida limited liability company; and
HARBOURSIDE PLACE, LLC, a Delaware limited liability company,

Defendants,

and

HARBOURSIDE FUNDING, LP, a Florida limited partnership,

Nominal Defendant.

[PROPOSED] FINAL ORDER AND JUDGMENT

This matter came before the Court on _____, 2023, for a duly noticed Fairness Hearing pursuant to Federal Rule of Civil Procedure 23. The Court, having considered the record and the arguments of counsel and being otherwise advised in the premises, finds as follows:

The Parties entered into a class action Settlement Agreement and related documents attached thereto as exhibits (collectively, the “Settlement Agreement”), which was filed with this Court on _____, 2023; and the Court entered an Order Preliminarily Approving the Settlement on _____, ____ [ECF No. ____] (the “Preliminary Approval Order”), preliminarily approving the proposed Settlement Agreement and ordering notice to Settlement Class Members, and scheduled the Fairness Hearing, which was conducted on _____, 2023.

Based on the submissions of the Parties and Settlement Class Members, any objections and testimony adduced at the Fairness Hearing, the pleadings on file, and the argument of counsel, the Court hereby finds, and it is hereby **ORDERED and ADJUDGED**, as follows:

1. Incorporation of Defined Terms. Except where otherwise noted, all capitalized terms used in this Final Judgment and Order shall have the meanings as set forth in the Definitions set forth in Section I. of the Settlement Agreement, a copy of which is attached hereto as **Appendix A**.

2. Jurisdiction. The Court has personal jurisdiction over all Settlement Class Members and has subject matter jurisdiction over this action, including, without limitation, jurisdiction to approve the proposed Settlement Agreement, to grant final certification of the Settlement Class, to settle and release all claims arising out of the events and transactions alleged in the pleadings, and to dismiss the claims and counterclaims alleged in this action on the merits and with prejudice.

3. Final Class Certification. The Class that this Court previously certified in its order dated June 25, 2021 (ECF No. 113) is hereby finally certified for litigation and settlement purposes pursuant to Federal Rule of Civil Procedure 23(b)(3). The Court adopts and incorporates its findings regarding class certification in ECF No. 113, hence the certified Class is composed as follows:

All persons who invested in the Funding Partnership (*i.e.*, “Limited Partners”). Excluded from this Class are Defendants, their affiliates, subsidiaries, agents, board members, directors, officers, and/or employees; the Court and its staff; any Limited Partner who has entered into an agreement to settle, waive, or otherwise resolve their claims against Defendants, whether in the State Court Action or through private resolution, arising from the same underlying subject matter in the instant case, and any Limited Partner who opted out of the Class on or before December 16, 2021.

4. Adequacy of Representation. The Court finds that Class Counsel and the Class Representatives have fully and adequately represented the Settlement Class for purposes of negotiating, entering into, and implementing the Settlement Agreement, and have satisfied the requirements of Federal Rule of Civil Procedure 23(a).

5. Notice of Proposed Settlement. The Court finds that the content and distribution of the Notice of Proposed Settlement (“Notice”) (ECF No. __), in accordance with the terms of the Settlement Agreement and this Court’s Preliminary Approval Order, and as explained in the declarations filed at or before the Fairness Hearing:

a. constituted the best practicable notice to Settlement Class Members and members of Harbourside Funding, LP (the “Funding Partnership”) under the circumstances of this action;

b. was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of this action; (ii) the right to object to any aspect of the

proposed Settlement Agreement (including, without limitation, the fairness, reasonableness or adequacy of the proposed settlement, the adequacy of the Settlement Class's representation by Plaintiffs' Counsel, the award of attorneys' fees and litigation expenses to Plaintiffs' Counsel; (iii) the right to appear at the Fairness Hearing (on their own or through counsel hired at their own expense); and (iv) the binding effect of the orders and Final Approval Order in this Action, whether favorable or unfavorable, on all Settlement Class Members;

c. was reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with the Notice of Proposed Settlement; and,

d. fully satisfied the requirements of the United States Constitution, the Florida Constitution, the Federal Rules of Civil Procedure, and any other applicable rules or law.

The Court hereby adopts and incorporates herein the Declaration of _____ with the list of Settlement Class Members and members of the Funding Partnership who were provided Notice of the Settlement, and Settlement Class Members are therefore bound by this Final Judgment and Order. The list of Settlement Class Members and members of the Funding Partnership who were provided with the Notice of Proposed Settlement is separately attached hereto as **Appendix B**, which is incorporated herein and made a part hereof for all purposes.

6. Final Settlement Approval. The terms and provisions of the proposed Settlement Agreement, including all amendments and exhibits, have been entered into in good faith and are hereby fully and finally approved as fair, reasonable, and adequate as to, and in the best interests of Plaintiffs and Settlement Class Members and the Funding Partnership, and in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, and any other applicable rules or law. The Court finds that the proposed Settlement Agreement provides relief that is fair, reasonable and adequate, and was negotiated and consummated at arm's length after mediation

sessions conducted by Bruce A. Edwards, a mediator with Judicial Arbitration and Mediation Services (“JAMS”) who is highly experienced in complex and class action and derivative litigation, after additional mediation sessions conducted by retired Magistrate Judge Elizabeth LaPorte, also of JAMS and also highly experienced in class action and derivative litigation, and after extensive subsequent negotiations between the Parties by and through their respective counsel, each of whom had thoroughly investigated and had engaged in extensive litigation of their respective positions in this action.

7. Objections. [No objections to the Settlement Agreement were pending as of the date on which the Fairness Hearing was conducted.] [The objection[s] to the Settlement Agreement by _____ are hereby overruled.]. The Parties and Settlement Class Members are hereby directed to implement and discharge the terms and conditions of the Settlement Agreement.

8. Binding Effect. The terms of the Settlement Agreement and of this Final Judgment and Order shall be forever binding on the Parties and all Settlement Class Members, as well as their heirs, representatives, executors and administrators, successors and assigns, and those terms shall have res judicata and full preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of any such persons or entities, to the extent those claims, lawsuits, or other proceedings involve matters that were or could have been raised in this Action or are otherwise encompassed by the Release described in the next paragraph of this Final Approval Order. Notwithstanding the foregoing, neither the Release, the dismissal of claims asserted on behalf of the Funding Partnership, nor any other provision of the Settlement Agreement is intended to preclude valid claims or causes of action asserted by members of the Funding Partnership who are not Settlement Class Members.

9. Releases. Upon the Effective Date, the Releases included in the Settlement Agreement shall be valid and binding.

10. Bar to Asserting Released Claims. The Parties and Settlement Class Members have released any and all Released Claims against the Released Parties. Upon the Effective Date, the Parties and Settlement Class Members are hereby permanently barred from asserting any Released Claim against the Released Parties. The Settlement Agreement is not, however, intended to bar valid claims by members of the Funding Partnership who are not Settlement Class Members.

11. No Admissions. Neither this Final Approval Order nor the Settlement Agreement (nor any other document referred to herein, nor any action taken to negotiate, effectuate and implement the Settlement Agreement) is, may be construed as, or may be used as an admission or concession by or against any Party hereto as to the validity or invalidity of any claim or defense, or of any actual or potential fault or liability, or of any lack of fault or liability. Additionally, neither the Settlement Agreement nor any negotiations, actions, or proceedings related to it, shall be offered or received in evidence in any action or proceeding against any Party in any court, administrative agency or other tribunal for any purpose, except to enforce the provisions of this Final Judgment and Order, the Settlement Agreement, and/or to support a defense of res judicata, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

12. No Representations Regarding Taxes. The Court finds that the Parties and their counsel have expressed no opinions concerning the tax consequences of the Settlement Agreement to Settlement Class Members and have made no representations, warranties or other assurances regarding any such tax consequences. No opinions, representations, warranties, or other assurances shall be deemed to have been made by the Parties or their counsel with respect to any such tax

consequences by virtue of the Settlement Agreement or by effectuating the provisions of the Settlement Agreement, and neither the Parties nor their counsel shall be responsible or liable for any such tax consequences that may occur.

13. Discovery. The confidentiality provisions of the Preliminary Approval Order shall remain in force. No discovery with regard to the Settlement Agreement or the proposed Settlement and its administration, including the manner in which Notice was provided to Settlement Class Members, shall be permitted by any Settlement Class Members or other Persons, other than as may be directed by this Court after the party seeking such discovery properly files a motion with this Court and served pursuant to applicable law.

14. Dismissal of Claims. The claims and counterclaims asserted in the Lawsuit, including all claims alleged therein and those identified as Released Claims, are hereby dismissed on the merits and with prejudice, without fees or costs to any person except as specifically provided in this Final Approval Order.

15. Enforcement of Settlement. Nothing in this Final Judgment and Order or any order entered in connection herewith shall preclude any action to enforce the terms of this Final Judgment and Order or the terms of the Settlement Agreement.

16. Attorneys' Fees and Litigation Expenses. Plaintiffs' Counsel are hereby awarded attorneys' fees and costs as set forth below. DeHeng Law Offices, P.C., is hereby awarded attorneys' fees amounting to ___% of the total amount paid to Settlement Class Members within seven (7) calendar days of the date on which the first Initial Payment and the first of each subsequent Installment Payment is made to Settlement Class Members, all of which shall be paid from the Settlement Payments.

17. Retention of Jurisdiction. Without affecting the finality of this Final Judgment and Order, the Court shall have exclusive and continuing jurisdiction over the implementation, interpretation, execution, and enforcement of the Settlement Agreement; of any orders, including this Final Judgment and Order, entered by the Court; of any questions regarding membership in the Settlement Class and/or of the conduct or the policies and procedures described herein, with respect to all Parties hereto and all beneficiaries hereof, including all Settlement Class Members.

DONE, ORDERED, and ADJUDGED in Chambers at Fort Pierce, Florida, this ____ day of _____, 2023.

AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 9:20-cv-80102-CANNON/Reinhart

TING PENG and LIN FU, on behalf of themselves individually and all others similarly situated, and derivatively on behalf of HARBOURSIDE FUNDING, LP, a Florida limited partnership,

Plaintiffs,

vs.

NICHOLAS A. MASTROIANNI II;
HARBOURSIDE FUNDING GP, LLC, a Florida limited liability company; and
HARBOURSIDE PLACE, LLC, a Delaware limited liability company,

Defendants,

and

HARBOURSIDE FUNDING, LP, a Florida limited partnership,

Nominal Defendant.

**[PROPOSED] ORDER GRANTING MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

This matter comes before the Court upon Plaintiff's Unopposed Motion for Preliminary Approval of Settlement (the "Motion"), which was filed on _____, 2023.

The parties, Plaintiffs and Class Representatives Ting Peng and Lin Fu and Defendants Nicholas A. Mastroianni II, Harbourside Place, LLC, and Harbourside Funding GP, LLC, through their respective counsel, and subject to the Court's approval, have agreed to resolve their respective claims and counterclaims in this lawsuit (the "Lawsuit") on the terms and conditions set forth in the parties' proposed Settlement Agreement after distributing notice of the Notice of Proposed Settlement to Settlement Class Members and to current members of Nominal Defendant Harbourside Funding, LP (the "Funding Partnership").

Upon review and consideration of Plaintiff's Motion, the Settlement Agreement, the evidence presented and arguments of counsel made during the hearing of the Motion, **IT IS HEREBY ORDERED AND ADJUDGED** as follows:

1. The Motion is hereby **GRANTED**.

2. Based on the Settlement Agreement and the files, records, and proceedings in this Lawsuit, the Court preliminarily finds that the proposed Settlement is fair, reasonable, and adequate, and is in the best interests of Settlement Class Members and of Funding Partnership, in light of the following:

a. The benefits that the Settlement Agreement confers on Class Members and the Funding Partnership are substantial, and have no preclusive effect on valid claims or causes of action of members of the Funding Partnership who are not Settlement Class Members;

b. The relative strength and weaknesses of the claims and defenses thereto;

c. The anticipated complexity, duration, and expense of continuing this Lawsuit;

- d. The risk and delay inherent in potential appeals; and
- e. The opinion of Class Counsel, who is experienced in class-action lawsuits.

3. The Parties and Settlement Class Members shall maintain the confidentiality of the economic terms of the Settlement Agreement, and shall request that all Court filings disclosing the amount of the Settlement Payments be filed under seal. In addition, the proposed Notice of Proposed Settlement shall explain to the Settlement Class Members and to members of the Funding Partnership who are not Settlement Class Members the obligation to maintain the confidentiality of economic terms of the Settlement Agreement in accordance with the terms of this Agreement. Accordingly, members of the Funding Partnership shall receive notice of the Settlement pursuant to Federal Rule of Civil Procedure 23.1(c), but the economic terms of the accompanying Settlement Agreement shall be redacted therefrom. Notwithstanding the foregoing, the Parties and Settlement Class Members are free to disclose the existence and contents of the Settlement Agreement to family members, state and federal agencies, independent accountants, actuaries, advisors, financial analysts, insurers or attorneys, or to persons or entities (such as experts, courts, co-counsel, and/or administrators) to whom the Parties agree disclosure must be made in order to effectuate the terms and conditions of this Settlement Agreement.

4. The Court hereby appoints Settlement Services, Inc. (“SSI”) as Notice Administrator.

5. The form, content, and procedures of notice to Settlement Class Members and to members of Funding Partnership, as set forth in the Settlement Agreement and in the proposed Notice of Settlement (“Notice”), which have been filed with the Court in support of the Motion, are approved in accordance with this Order.

6. The Court finds that the Notice Program set forth in Settlement Agreement as it relates to distributing by first-class U.S. Mail and by email the Notice of Proposed Settlement directly to Settlement Class Members and members of the Funding Partnership (or to counsel of record for members of the Funding Partnership who have agreed to accept service on behalf of Funding Partnership members) is the best notice practicable under the circumstances and satisfies the requirements of due process, Federal Rules of Civil Procedure 23(e)(1) and 23.1(c). Accordingly, the content of the Notice of Proposed Settlement is hereby authorized for distribution to Settlement Class Members and members of the Funding Partnership.

7. The Notice Administrator shall distribute the Notice of Proposed Settlement by first-class mail to the mailing addresses of any Settlement Class Member who does not have an email address or from whom an email is returned as undeliverable, and to any current member of the Funding Partnership whose counsel did not agree to accept service on their behalf and who does not have an email address or from whom an email is returned as undeliverable. If the U.S. Postal Service returns the Notice of Proposed Settlement as undeliverable, the Notice Administrator shall mail the Notice of Proposed Settlement to the forwarding address, if any, provided by the U.S. Postal Service on within a reasonable time. If the returned mail does not reflect a forwarding address, the Notice Administrator shall not be obligated to re-mail the Notice of Proposed Settlement, but shall provide the names and addresses of the affected Settlement Class Members to Class Counsel and to Counsel for the Defendants.

8. Anyone who objects to the Settlement, or any aspect of it, must submit a written objection to the Notice Administrator and postmarked no later than _____, 2023, which includes the following information:

- a. the case name and number of the Lawsuit;

b. the objector's full name, current residential address, mailing address (if different), telephone number, and e-mail address;

c. an explanation of the factual basis upon which the objector claims to be a Settlement Class Member or member of the Funding Partnership;

d. an explanation of the objection, including the legal and factual bases and copies of any documents supporting the objection;

e. the name and address of each lawyer (if any) who is representing the objecting Settlement Class Member, or who may seek or claim entitlement to compensation for any reason in connection with the objection;

f. the number of times the objector and the objector's counsel (if any) has objected to a class action settlement within the five years preceding the date that the objector files the objection; and the name and case number of each case in which the objector and/or the objector's attorney has made such objection. If the objector or the objector's counsel has not made any prior objection in the past five years, the objector or, if represented, the objector's counsel shall affirmatively so state in the written materials provided with the objection;

g. a statement as to whether the objector intends to appear at the Final Approval Hearing either individually or through counsel;

h. the full name, telephone number and address of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement Agreement;

i. the identity of all counsel (if any) who will appear on behalf of the objector at the Fairness Hearing;

j. a list of all persons who will or may offer testimony in support of the objection; and

k. the objector's signature and date of signature.

9. Any objection that is not timely submitted to the Notice Administrator will not be considered by the Court.

10. The Notice Administrator shall provide the Court with all objections it receives no later than _____, 2023.

11. The Court will conduct a Fairness Hearing on a Motion for Final Approval on _____, 2023 at _____.m. At that Fairness Hearing, the Court will rule on the following issues:

a. whether the proposed Settlement should be approved as fair, reasonable and adequate;

b. whether Settlement Class Members should be bound by the Release set forth in the Settlement Agreement;

c. whether this Lawsuit should be dismissed with prejudice in accordance with the terms set forth in the Settlement Agreement;

d. whether the Court should grant Plaintiffs' motion for an award of attorneys' fees and litigation expenses;

e. whether a Final Order and Judgment should be entered in this Lawsuit; and

f. any other issues the Court deems appropriate.

12. Settlement Class Members and members of the Funding Partnership need not appear at the Fairness Hearing nor need they take any other action to indicate their approval of the proposed Settlement.

13. Any Settlement Class Member or member of the Funding Partnership who is represented by counsel and intends to appear at the Fairness Hearing must file a Notice of Appearance with the Court and provide notice of the intention to appear to Class Counsel and Counsel for the Defendants. Settlement Class Members and members of the Funding Partnership who appear on a *pro se* basis need not file a Notice of Appearance.

14. Objectors shall not be permitted to raise matters at the Fairness Hearing that the objector could have raised in his or her written objection, but did not.

15. Any document filed with the Court must also be timely provided to Class Counsel and Counsel for the Defendants.

16. If the Court does not grant the Motion for Final Approval of the Settlement, or if the Settlement Agreement is terminated, the Settlement and all proceedings related to it shall be without prejudice to the *status quo ante* rights of the Parties, and all orders issued pursuant to the Settlement may be vacated upon a motion or stipulation from the Parties upon approval by the Court. In either event, the Settlement and all negotiations concerning it shall not be used or referred to in this Lawsuit for any purpose.

17. If the Court does not grant the Motion for Final Approval, nothing in this Order shall be construed or used as

a. an admission, concession, or declaration by or against any Party of any fault, wrongdoing, breach or liability;

b. a finding that any claim or counterclaim lacks merit;

c. an indication that the relief requested in this Lawsuit is inappropriate, improper, or unavailable; or

d. a waiver by any Party of any claims or defenses he, she or it might have

18. Except as expressly authorized by this Order or by the Settlement Agreement, the Parties shall not issue, or otherwise cause to be issued, any press release, advertisement, Internet posting or similar document concerning the Lawsuit or the facts and circumstances that were the subject of or disclosed in the Lawsuit, except documents disbursed as part of the Notice, nor shall the Parties make extrajudicial statements or seek media interviews concerning those matters. For purposes of this Paragraph, “Parties” shall refer to Plaintiffs and Class Representatives Ting Peng and Lin Fu, and Defendants Nicholas Mastroianni, Harbourside Place, LLC, and Harbourside Funding, GP, LLC.

19. Nothing in this Order shall be construed to suggest that Class Counsel is in any way limited or inhibited from discussing the issues related to the Lawsuit with Settlement Class Members in a manner that comports with the rules of the Florida Bar.

20. The Court hereby adopts the following schedule in connection with further proceedings related to the Settlement of this Lawsuit, and any change to the date or time of the Fairness Hearing shall be published on a website containing all information, documents, and Orders of the Court that are germane to the Settlement of this Action:

EVENT	DEADLINE
Defendants to Complete Distribution of CAFA Notice	Within 10 days of filing Motion for Order Granting Preliminary Approval
Notice of Proposed Settlement Distributed to Settlement Class Members	Within 7 days of Order Granting Preliminary Approval
Plaintiffs’ Motion in Support of their Requested Award of Attorneys’ Fees and Reimbursement of Litigation Expenses to be Filed with the Court	Within 14 days of Order Granting Preliminary Approval
Deadline for Notice Administrator to Submit All Objections by Settlement Class Members to Clerk of the Court	___ days after Order Granting Preliminary Approval

EVENT	DEADLINE
Parties' Motion in Support of Final Approval to be Filed with the Court	___ days after Order Granting Preliminary Approval
Fairness Hearing	At least 90 days after Order Granting Preliminary Approval

DONE AND ORDERED in Chambers at Fort Pierce, Florida, this ___ day of _____, _____.

AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

EXHIBIT C

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

If you are a member of the class of individual immigrants who invested in and became Limited Partners in Harbourside Funding, LP, (the “Funding Partnership”) by way of the EB-5 Immigrant Investor Program, which the Court certified in *Peng v. Mastroianni*, Case No. 9:20-cv-80102-CANNON/Reinhart, you are part of a federal class action settlement. And if you have opted out of the class, but are a member of the Funding Partnership who has not entered into a settlement agreement with Defendants, you are receiving this Notice pursuant to Federal Rule of Civil Procedure 23.1(c).

MORE INFORMATION IS AVAILABLE AT
www.HarboursideClassAction.com

PLEASE READ THIS NOTICE CAREFULLY
 THIS NOTICE RELATES TO THE PENDENCY OF A CLASS ACTION LAWSUIT AND, IF YOU ARE A SETTLEMENT CLASS MEMBER, CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS TO OBJECT TO THE SETTLEMENT

*A federal court has authorized this notice. This is not an advertisement.
 You are not being sued or restrained.*

This Notice is to inform you of a proposed settlement of a class action and derivative lawsuit (the “Settlement”) in the United States District Court for the Southern District of Florida against Defendants Nicholas A. Mastroianni II, Harbourside Funding GP, LLC (the “General Partner”), and Harbourside Place, LLC (the “Developer”).

YOUR LEGAL RIGHTS* AND OPTIONS IN THIS SETTLEMENT**	
DO NOTHING	By doing nothing, Settlement Class Members will remain in the Class and benefit from the terms of the Confidential Settlement Agreement (“Settlement Agreement”). There are no rights to “opt out” or exclude yourself from the Settlement. The proposed Settlement will bind Class Members if approved by the Court.
COMMENT OR OBJECT BY 	Write to the Court about why you do, or do not, like the proposed Settlement.
ATTEND A FAIRNESS HEARING ON 	Ask to speak to the Court about the fairness of the Settlement if you filed an objection to the Settlement to do so by . <i>(The date and time of the Fairness Hearing is subject to change by Court Order. Any change will be posted on the Settlement website. See Question Nos. 6 and 9 below.)</i>

****These rights, options, and the deadlines to exercise them are explained in this Notice.***

*****The Court overseeing this case still has to decide whether to approve the Settlement.***

1. What is this notice and why should I read it?

This Notice is to inform you of a proposed Settlement of a class action and derivative lawsuit titled *Ting Peng, et al. v. Nicholas Mastroianni, et al.*, Case No. 9:20-cv-80102-CANNON/Reinhart (the “Lawsuit”), which was brought on behalf of the Settlement Class (defined at page 3, below) and Nominal Defendant Harbourside Funding, LP (the “Funding Partnership”) and remains pending in the United States District Court for the Southern District of Florida. You do not need to reside in Florida to benefit from the Settlement. The Court has granted preliminary approval of the Settlement and has set a Fairness Hearing to take place on _____, at _____ a.m. in the Courtroom, which is located at the Alto Lee Adams, Sr. United States Courthouse, 101 South U.S. Highway 1, Fort Pierce, Florida 34950, to determine if the Settlement is fair, reasonable, and adequate. Note: this date and time are subject to change by Court Order and may change without further notice to the Class.

This Notice describes the proposed Settlement. Your rights and options – **and the deadlines to exercise them** – are explained in this Notice. If you are a Settlement Class Member your legal rights are affected, regardless of whether you act.

2. What is a class action lawsuit and what is this lawsuit about?

In a class action, one or more people, called Class Representatives, sue for themselves and for people who have similar claims. The people who brought the case—and all the Class Members like them—are called Plaintiffs. The people or entities they have sued are called Defendants. This case is a federal case. The case name is *Ting Peng, et al. v. Nicholas Mastroianni, et al.*, Case No. 9:20-cv-80102-CANNON/Reinhart. The court in charge of this case is the United States District Court for the Southern District of Florida, the Honorable Aileen M. Cannon presiding.

The Lawsuit is about whether Defendants were legally obligated to return the Limited Partners’ \$500,000 investments after the Maturity Date expired (on November 30, 2017). Plaintiffs allege that the \$99,500,000 that Class members invested in the Funding Partnership was used to fund a construction loan to the Developer for the purpose of building Harbourside Place, a mixed-use commercial development in Jupiter, Florida, as a result of a loan agreement between the Developer and the Funding Partnership (the “Loan Agreement”).

Plaintiffs contend that the Loan Agreement states that the \$99,500,000 loan principal was to be repaid to the Funding Partnership when the Maturity Date (November 30, 2017) expired unless the Developer had the right to convert the loan principal into multiple units of common membership interest in the Developer, which was a Florida limited liability company (“LLC”), unless an uncured Event of Default existed on the Maturity Date. In other words, Plaintiffs allege that if the Developer had breached the terms of the Loan Agreement and had done nothing to resolve the breach before the Maturity Date, the Developer was not permitted to convert the loan principal into units of common membership in the Developer’s LLC, and thereby violated the Funding Partnership’s Limited Partnership Agreement.

Plaintiffs allege that, despite the existence of multiple uncured Events of Default as of the Maturity Date, Defendants converted the loan principal to a single unit of “preferred” interest in the Developer’s LLC in violation of Class members’ rights.

3. How do I know if I am part of the Settlement Class?

The Court certified the following class on June 25, 2021:

All persons who invested in the Funding Partnership (*i.e.*, all Limited Partners). Excluded from this Class are Defendants, their affiliates, subsidiaries, agents, board members, directors, officers, and/or employees; the Court and its staff; any Limited Partner who has entered into an agreement to settle, waive, or otherwise resolve their claims against Defendants, whether in the State Court Action or through private resolution, arising from the same underlying subject matter in the instant case.

You are part of the Class covered by the Settlement (“Settlement Class Member”) if you did **not** either (a) opt out of the Class by submitting an opt-out form by December 16, 2021, as described in the Notice of Pendency of Class Action that had been distributed in late October through early November 2021 or (b) enter into a valid and binding individual settlement agreement with one or more Defendants in exchange for a release of their claims in the Lawsuit on or before December __, 2022. The individuals who did **not** opt out of the Class and did **not** resolve their claims by entering into individual settlement agreements with Defendants are referred to herein collectively as the “Settlement Class.”

The Court has approved the present Notice to enable Settlement Class Members and members of the Funding Partnership to voice their support or opposition to final approval of the classwide Settlement, and to explain how members of the Settlement Class may obtain the benefits provided by the Settlement Agreement. Although the parties have agreed to dismiss the derivative claims, the Settlement Agreement is not intended to affect the prosecution of derivative or individual claims by Limited Partners who are not Settlement Class Members.

If the Settlement does not receive final approval by the Court, or the Parties terminate it in accordance with the terms of the Settlement Agreement, the Settlement will be void, and the prosecution of the Lawsuit will resume as if there had been no Settlement.

4. Why is there a settlement?

The Court has not decided in favor of either side in this case. Defendants deny all allegations of wrongdoing. The parties are settling their respective claims in the Lawsuit to avoid the substantial expense, inconvenience, and distraction of further protracted litigation, including trial and appeal. Plaintiffs and Class Counsel believe that the Settlement is in the best interests of the Settlement Class because it provides an appropriate recovery for Settlement Class Members now while avoiding the expense and delay of pursuing the case through trial and any appeals.

5. What does the settlement provide?

This Notice summarizes the terms and conditions of the proposed Settlement. A copy of the Settlement Agreement—which will be filed with the Court under seal—accompanies this Notice. Because it contains confidential information, it is intended for Settlement Class Members only. Accordingly, you may **not** distribute or share the Settlement Agreement with anyone who is not a Settlement Class Member or a member of the Settlement Class Member’s immediate family.

The principal terms of the Settlement Agreement are as follows:¹

- [REDACTED]
- [REDACTED]
- [REDACTED]
- Upon Settlement Class Members' receipt of the initial [REDACTED] the Settlement Class Members shall be deemed to have assigned and transferred their interest in Harbourside Funding, LP, to HSP-NM Credit Entity LLC, or its designee, and shall be deemed to have withdrawn from the Funding Partnership. If any subsequent payment is not made and remains unpaid for thirty (30) days, Defendants shall ensure that the units of membership and proportionate interests in the Funding Partnership are returned to Settlement Class Members.
- The Court shall retain jurisdiction until the Parties satisfy and properly discharge all the respective terms and conditions of the Settlement Agreement.
- No admissions of liability as a result of the Parties' agreement to settle their respective claims and counterclaims.
- A mutual non-disparagement provision in the Settlement Agreement.
- A mutual general release of all claims and causes of action (including a provision in compliance with California Civil Code section 1542) and covenants not to sue, and the dismissal of all claims and counterclaims with prejudice. Neither the release, the dismissal of claims asserted on behalf of the Funding Partnership, nor any other provision of the Settlement Agreement is intended to preclude valid claims or causes of action asserted by members of the Funding Partnership who are not Settlement Class Members.
- The Parties and their respective counsel shall maintain the confidentiality of the economic terms of the Settlement Agreement to the fullest extent allowable by applicable law.
- Class Counsel will move for an order awarding attorney fees and litigation expenses in an amount that is not more than 25% of the aggregate Settlement Payments and the amounts paid to Class Members who entered into individual settlement agreements with Defendants. The Court will decide whether to award the amount requested by Class Counsel or another amount determined by the Court. The portion

¹ The capitalized terms used in this Notice have the same meaning as those defined in the Settlement Agreement.

of the award of attorneys' fees and litigation expenses attributable to Settlement Payments will be paid with each Installment Payment to Settlement Class Members.

- In accordance with *Johnson v. NPAS Sols., LLC*, 975 F.3d 1244 (11th Cir. 2020), the Class Representatives shall not receive service awards.

6. What are my rights as a member of the Settlement Class?

If you are satisfied with the proposed Settlement, you do not have to do anything.

Class Members were provided an opportunity to opt out of the Class by December 16, 2021, as explained in the Notice of Pendency of Class Action that was distributed in October 2021, and were provided with opportunities to resolve their individual claims against Defendants by entering into individual settlements. Accordingly, Settlement Class Members do not have a second opportunity to opt out of the proposed Settlement.

If you are not satisfied with the proposed Settlement, you may **object** to any or all the terms of the Settlement or to Class Counsels' motion for attorneys' fees and litigation expenses (which will be filed with the Court no later than [REDACTED]) by submitting your objection to the Notice Administrator in writing, which must be postmarked no later than [REDACTED]. Specifically, you can ask the Court to reject the Settlement, or any aspect of the Settlement, by submitting an objection to the Notice Administrator (who will forward them to the Court) at the following address:

Notice Administrator
c/o Settlement Services, Inc.
P.O. Box 10269
Tallahassee, Florida 32302-2269

You cannot ask the Court to order a different settlement; the Court can only approve or reject the proposed Settlement. If the Court rejects the Settlement by denying the motion for final approval, the Lawsuit will continue. If that is what you want to happen, you must object by [REDACTED].

For an objection to be considered by the Court, the objection must be received on or before the deadline established by the Court for submitting objections, and must also set forth each of the following:

1. The case name and number of the Lawsuit;
2. The objector's full name, current residential address, mailing address (if different), telephone number, and e-mail address;
3. An explanation of the factual basis upon which the objector claims to be a Settlement Class Member;
4. An explanation of the objection, including the legal and factual bases and copies of any documents supporting the objection;

5. The name and address of each lawyer (if any) who is representing the objecting Settlement Class Member, or who may seek or claim entitlement to compensation for any reason in connection with the objection;

6. The number of times the objector and the objector's counsel (if any) has objected to a class action settlement within the five years preceding the date that the objector files the objection; and the name and case number of each case in which the objector and/or the objector's attorney has made such objection. If the Settlement Class Member or the Settlement Class Member's counsel has not made any prior objection in the past five years, the Settlement Class Member and Settlement Class Member's counsel shall affirmatively so state in the written materials provided with the objection;

7. A statement as to whether the objecting Settlement Class Member intends to appear at the Fairness Hearing either individually or through counsel;

8. The full name, telephone number and address of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement Agreement;

9. The identity of all counsel (if any) who will appear on behalf of the objecting Settlement Class Member at the Fairness Hearing;

10. A list of all persons who will or may offer testimony in support of the objection; and

11. The objector's signature and date of signature.

If you timely file a written objection that complies with the above-mentioned requirements, you may, but are not required to, appear at the Fairness Hearing, either in person or through your own attorney. The Fairness Hearing is scheduled for _____, at _____ a.m. at the Alto Lee Adams, Sr. United States Courthouse, 101 South U.S. Highway 1, Fort Pierce, Florida 34950, to determine if the Settlement is fair, reasonable, and adequate, and to consider the request by Class Counsel for attorneys' fees and litigation expenses. **Note: This date and time are subject to change by Court Order and any change to the date and/or time of the Fairness Hearing will be posted on the Settlement website (www.HarboursideClassAction.com).**

If you appear through your own attorney at the Fairness Hearing, you are responsible for hiring and paying that attorney. **Class Counsel represents the Settlement Class as a whole, but does not represent individual Settlement Class Members.**

If, after the hearing, the Court rejects the Settlement, the Parties will continue to litigate this dispute before the Court. If that happens, there is no guarantee that: (1) the Court will rule in favor of the Class Members; (2) a favorable Court decision, if any, would be as favorable to the Class Members as this Settlement; or (3) any favorable Court decision would be upheld if Defendants filed an appeal.

7. Who represents the Settlement Class?

All Class Members are represented by Class Counsel. The Court has decided that attorney Jeffrey L. Fazio of DeHeng Law Offices, P.C., in Pleasanton, California, is qualified to represent Class Members in the Lawsuit as Class Counsel. Class Counsel has decades of experience representing plaintiffs in class actions and other forms of complex litigation. If you have questions, you may direct them to Class Counsel at info@dehengsv.com.

From the beginning of the Lawsuit in January 2020 to the present, Class Counsel and other attorneys who assisted with the prosecution of this Lawsuit have not received any payment for their services in connection with the litigation or the negotiation of the Settlement, nor have they been reimbursed for any out-of-pocket expenses they have incurred. By way of a motion that will be filed with the Court no later than [REDACTED], Plaintiffs will seek an award of attorneys' fees and actual expenses (including court costs) from the settlement proceeds pursuant to the common fund doctrine, which authorizes payment of attorney fees and litigation expenses to compensate the attorneys for the work that enabled Class Members to resolve their claims by way of a settlement. Class Counsel will also file a motion for final approval of the Settlement on behalf of all Settlement Class Members.

You may hire your own lawyer to represent you in this case if you wish, but it will be at your own expense. **Settlement Class Members should consult their own legal counsel or other adviser if they have questions or concerns about potential tax consequences related to this Settlement Agreement.**

8. What is the effect of final settlement approval?

If the Court grants final approval of the Settlement during or after the Fairness Hearing, Plaintiffs will dismiss with prejudice their claims in the Lawsuit against Defendants, and Defendants will dismiss their counterclaims in the Lawsuit against Plaintiffs with prejudice.

The Court will retain exclusive jurisdiction over the Settlement Agreement for the purpose of enforcing any of its provisions and terms, and the Court's retention of jurisdiction shall be noted in the dismissal of this action. The Court's exclusive jurisdiction to enforce the Settlement Agreement shall continue after the Court enters the Final Judgment and Final Order approving the Settlement Agreement and until the Parties satisfy and discharge each of their respective obligations under the Settlement Agreement.

9. When and where will the Court hold a hearing on the fairness of the Settlement?

The Fairness Hearing is scheduled for [REDACTED], at [REDACTED] a.m. in the Courtroom located at the Alto Lee Adams, Sr. United States Courthouse, 101 South U.S. Highway 1, Fort Pierce, Florida 34950, to determine if the Settlement is fair, reasonable, and adequate, and to consider the request by Class Counsel for attorneys' fees and litigation expenses. **Note: this date and time are subject to change by Court Order and any change to the date and/or time of the Fairness Hearing will be posted on the Settlement website (www.HarboursideClassAction.com).**

At the hearing, the Court will hear any comments, objections, and arguments concerning the fairness of the proposed settlement, including the amount requested by Class Counsel for attorneys' fees and expenses. If you have filed an objection to the Settlement, the Court has the right to require your attendance at the Fairness Hearing. You will be contacted by the Court or by Class Counsel if the Court requires your appearance. If you intend to appear at the Fairness Hearing through your own attorney, your attorney will need to file a

notice of intent to appear with the Court. If you appear through your own attorney at the Fairness Hearing, you are responsible for hiring and paying that attorney.

10. Where do I get additional information?

This Notice provides only a summary of the matters relating to the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at <https://www.HarboursideClassAction.com>, by contacting Class Counsel (see Question No. 7, above, for contact information), by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.flsd.uscourts.gov>, or by visiting the office of the Clerk of Court for the United States District Court for the Southern District of Florida, Fort Pierce Division, between 9:00 am and 4:00 pm, Monday through Friday, excluding Court holidays.

PLEASE DO NOT CONTACT THE COURT OR THE JUDGE WITH QUESTIONS ABOUT THE SETTLEMENT