

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

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In re: : Chapter 11  
: :  
LINCOLN POWER, L.L.C., *et al.*, : Case No. 23-10382 (LSS)  
: :  
Debtors.<sup>1</sup> : (Jointly Administered)  
: :  
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**FIRST REVISED JOINT PLAN OF  
REORGANIZATION OF LINCOLN POWER, L.L.C. AND ITS  
DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Lincoln Power, L.L.C. (6449); Cogentrix Lincoln Holdings, LLC (6060); Cogentrix Lincoln Holdings II, LLC (4004); Elgin Energy Center Holdings, LLC (N/A); Elgin Energy Center, LLC (4819); Valley Road Holdings, LLC (N/A); Valley Road Funding, LLC (1587); and Rocky Road Power, LLC (2701). The Debtors' address is 13860 Ballantyne Corporate Place, Suite 300, Charlotte, North Carolina 28277.

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## **INTRODUCTION**

Lincoln Power, L.L.C. and certain of its direct and indirect affiliates and subsidiaries that are debtors and debtors in possession in the above-captioned Chapter 11 Cases jointly propose the Plan pursuant to section 1121(a) of the Bankruptcy Code for the resolution of outstanding Claims against, and Interests in, the Debtors. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in Article 1.1 of this Plan.

Although proposed jointly for administrative purposes, the Plan constitutes a separate plan for each of the foregoing entities and each of the foregoing entities is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The classifications of Claims and Interests set forth in Article III of the Plan shall be deemed to apply separately with respect to each Plan proposed by each Debtor, as applicable, except as otherwise set forth herein. The Plan does not contemplate substantive consolidation of any of the Debtors.

Reference is made to the accompanying Disclosure Statement (as defined below) for a discussion of the Debtors' history, businesses, properties, operations, projections, risk factors, a summary and analysis of the Plan and the transactions contemplated herein, and certain other related matters.

ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

## **ARTICLE I**

### **DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW, AND OTHER REFERENCES**

#### **1.1 Defined Terms**

1. “*Administrative Agent*” means Investec Bank plc, in its capacity as (and including any successor or assign in its capacity as) administrative agent under the Credit Agreement.

2. “*Administrative Claim*” means a Claim against any of the Debtors arising on or after the Petition Date and before the Effective Date for a cost or expense of administration of the Chapter 11 Cases pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (i) the actual and necessary costs and expenses of preserving the Estates and operating the businesses of the Debtors incurred on or after the Petition Date and through the Effective Date; (ii) the Allowed Professional Fee Claims; (iii) Cure Claims; and (iv) all fees and charges assessed against the Estates under chapter 123 of the Judicial Code.

3. “*Administrative Claims Bar Date*” means the deadline for Filing requests for payment of Administrative Claims (other than requests for payment of Professional Fee Claims, Cure Claims, and Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code), which shall be 30 days after the Effective Date.

4. “*Affiliate*” has the meaning set forth in section 101(2) of the Bankruptcy Code as if such Entity was a debtor in a case under the Bankruptcy Code.

5. “*Allowed*” means, with respect to a Claim or Interest, any Claim or Interest (or portion thereof) against any Debtor that: (i) is not Disputed within the applicable period of time, if any, fixed by the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court; (ii) is allowed, compromised, settled, or otherwise resolved pursuant to the terms of the Plan, in any stipulation that is approved by a Final Order of the Bankruptcy Court, or pursuant to any contract, instrument, indenture, or other agreement entered into or assumed in connection herewith; or (iii) has been allowed by a Final Order of the Bankruptcy Court. For the avoidance of doubt, any Claim or Interest (or portion thereof), that has been disallowed pursuant to a Final Order shall not be an “Allowed” Claim; *provided* that no Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it owes such Debtor or Reorganized Debtor, as applicable. Any Claim or Interest that has been or is hereafter categorized as contingent, unliquidated, or Disputed, and for which no Proof of Claim or Proof of Interest, as applicable, is or has been timely Filed, is not considered Allowed, as set forth in the Plan and the Confirmation Order. For the avoidance of doubt, a Proof of Claim or Proof of Interest Filed after the Bar Date shall not be Allowed for any purposes whatsoever absent entry of a Final Order allowing such late-Filed Claim. “*Allow*,” “*Allowing*,” and “*Allowance*” shall have correlative meanings.

6. “*Assumed Contracts*” means those Executory Contracts and Unexpired Leases that are to be (i) assumed by the Debtors or (ii) assumed and assigned by the Debtors to the Purchaser or its designee pursuant to and as set forth in the Confirmation Order and any applicable Sale Transaction Documentation; *provided* that the Assumed Contracts shall not include any Executory Contracts or Unexpired Leases of the Non-Obligor Debtor (except to the extent that the Non-Obligor Debtor is a party to an Executory Contract or Unexpired Lease of an Obligor Debtor, in which case such Executory Contract or Unexpired Lease may be assumed by the applicable Obligor Debtor).

7. “*Assumed Contracts List*” means the list (including any amendments or modifications thereto) of Assumed Contracts, which will be included in preliminary form in the Plan Supplement, as amended by the Debtors from time to time in accordance with the Plan, and which, in the event the Purchaser is Newco, shall be acceptable to the Debtors and the Required Consenting Lenders.

8. “*Assumed Liabilities*” has the meaning set forth in any Sale Transaction Documentation (or such other similar term as may be used in such Sale Transaction Documentation).

9. “*Avoidance Action*” means, collectively, any and all actual or potential avoidance, recovery, subordination, or other similar Claims and Causes of Action, or remedies that may be brought by or on behalf of the Debtors or their Estates or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, Claims, Causes of Action, or remedies arising under chapter 5 of the Bankruptcy Code or under similar or related local, state, federal, or foreign statutes or common law, including fraudulent transfer laws.

10. “*Ballot*” means the ballots accompanying the Disclosure Statement upon which certain Holders of Impaired Claims entitled to vote shall, among other things, indicate their acceptance or rejection of the Plan in accordance with the Plan and the procedures governing the solicitation process.

11. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time.

12. “*Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware or such other court having jurisdiction over the Chapter 11 Cases.

13. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure promulgated under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court, each, as amended from time to time.

14. “*Bar Date*” means, collectively, the dates established by the Bankruptcy Court pursuant to an order by which Proofs of Claim and Proofs of Interest must be Filed pursuant to an order of the Bankruptcy Court establishing a bar date.

15. “*Bidding Procedures*” means the bidding procedures attached as Exhibit 1 to the Bidding Procedures Order, as such bidding procedures may be amended from time to time in accordance with its terms.

16. “*Bidding Procedures Order*” means the *Order (I) Approving Bid Procedures in Connection with the Sale of All or Substantially All of the Debtors’ Assets, (II) Scheduling Bid Deadlines and an Auction, (III) Approving the Form and Manner of Notice Thereof, (IV) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (V) Granting Related Relief* [Docket No. 205], as such order may be amended, supplemented, or modified from time to time.

17. “*Business Day*” means any day, other than a Saturday, Sunday, or a legal holiday in New York, as defined in Bankruptcy Rule 9006(a).

18. “*Cash*” means cash in legal tender of the United States of America and cash equivalents, including bank deposits, checks, and other similar items.

19. “*Cash Collateral*” means all of the Debtors’ “cash collateral” as defined in section 363 of the Bankruptcy Code, in which the Holders of Credit Agreement Claims have valid, perfected security interests, liens, or mortgages as set forth in the Cash Collateral Order.

20. “*Cash Collateral Order*” means, collectively, the Interim Cash Collateral Order and the Final Cash Collateral Order, as such orders may be modified from time to time in accordance with the terms thereof.

21. “*Cash Reserve*” means, collectively and without duplication, the Wind-Down Amount and the Professional Fee Reserve Amount, in each case which reserve shall be acceptable to the Debtors, the Required Consenting Lenders, and, to the extent set forth in the Restructuring Support Agreement, the Consenting Sponsor.

22. “*Causes of Action*” means, collectively, any and all claims, interests, controversies, actions, proceedings, reimbursement claims, contribution claims, recoupment rights, debts, third-party claims, indemnity claims, damages, remedies, causes of action, demands, rights, suits, obligations, liabilities, accounts, judgments, defenses, offsets, powers, privileges, licenses, franchises, Liens, guaranties, Avoidance Actions, agreements, counterclaims, and cross-claims, of

any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, asserted or unasserted, direct or indirect, assertable directly or derivatively, choate or inchoate, reduced to judgment or otherwise, secured or unsecured, whether arising before, on, or after the Petition Date, in tort, law, equity, or otherwise pursuant to any theory of civil law (whether local, state, or federal United States law or non-United States law). Causes of Action also include, without limitation: (i) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law or in equity; (ii) any Claim (whether under local, state, federal United States law or non-United States law) based on or relating to, or in any manner arising from, in whole or in part, tort, breach of contract, breach of fiduciary duty, fraudulent transfer or fraudulent conveyance or voidable transaction law, violation of local, state, or federal non-United States civil law or breach of any duty imposed by law or in equity, including securities laws, negligence, and gross negligence; (iii) the right to object to or otherwise contest Claims or Interests; (iv) claims pursuant to section 362 or chapter 5 of the Bankruptcy Code; and (v) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code.

23. “*Certificate*” means any instrument evidencing a Claim or an Interest.

24. “*Chapter 11 Cases*” means (i) when used with reference to a particular Debtor, the chapter 11 case filed for that Debtor pursuant to chapter 11 of the Bankruptcy Code in the Bankruptcy Court and, (ii) when used with reference to all Debtors, the jointly administered chapter 11 cases for all of the Debtors.

25. “*Claim*” has the meaning set forth in section 101(5) of the Bankruptcy Code. Except where otherwise provided in context, “Claim” refers to such a claim against the Debtors.

26. “*Claims Objection Deadline*” means the deadline for objecting to a Claim, which shall be on the date that is the later of (i) (a) with respect to Administrative Claims, 120 days after the Administrative Claims Bar Date, or (b) with respect to all other Claims, 180 days after the Effective Date, and (ii) such other deadline as may be specifically fixed by the Debtors or the Reorganized Debtors, as applicable, or by an order of the Bankruptcy Court for objecting to such Claims.

27. “*Class*” means a class of Claims or Interests as set forth in the Plan pursuant to section 1122(a) of the Bankruptcy Code.

28. “*CLH*” means Cogentrix Lincoln Holdings, LLC.

29. “*CLH II*” means Cogentrix Lincoln Holdings II, LLC.

30. “*CLH Cash*” means all Cash held by CLH as of the Effective Date.

31. “*Closing*” has the meaning set forth in any Sale Transaction Documentation (or such other similar term as may be used in such Sale Transaction Documentation).

32. “*Closing Date*” has the meaning set forth in any Sale Transaction Documentation (or such other similar term as may be used in such Sale Transaction Documentation).



33. “*Cogentrix*” means, collectively, Cogentrix Energy Power Management, LLC, and Lincoln Operating Services, LLC.

34. “*Cogentrix Claims*” means all Claims held by Cogentrix or the Consenting Sponsor against CLH (including claims for accrued and unpaid management fees payable by CLH).

35. “*Collateral Agent*” means First-Citizens Bank & Trust Company (successor by merger to CIT Bank, N.A.), together with its affiliates, in its capacity as (and including any successor or assign in its capacity as) collateral agent under the Credit Agreement.

36. “*Confirmation*” means the Bankruptcy Court’s entry of the Confirmation Order on the docket of the Chapter 11 Cases.

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

38. “*Confirmation Hearing*” means the hearing to be held by the Bankruptcy Court to consider Confirmation of the Plan, pursuant to Bankruptcy Rule 3020(b)(2) and sections 1128 and 1129 of the Bankruptcy Code, as such hearing may be continued from time to time.

39. “*Confirmation Order*” means the order entered by the Bankruptcy Court confirming the Plan, which shall be (i) in form and substance acceptable to the Debtors, the Required Consenting Lenders, and, to the extent set forth in the Restructuring Support Agreement, the Consenting Sponsor, and (ii) consistent in all respects with the Restructuring Support Agreement, including the consent rights contained therein.

40. “*Consenting Lenders*” means the Holders of certain Credit Agreement Claims signatory to the Restructuring Support Agreement, including by way of joinder.

41. “*Consenting Sponsor*” means, collectively, Carlyle Power CPP II Lincoln, L.L.C., Carlyle Power Partners II-C, L.P., CPP II General Partners, L.P., and TC Group CPP II, L.L.C., in their respective capacities as direct or indirect Holders of Existing CLH Interests.

42. “*Consummation*” means the occurrence of the Effective Date.

43. “*Credit Agreement*” means that certain Credit Agreement, dated as of July 5, 2017, among Lincoln Power, L.L.C., a Delaware limited liability company, as borrower, the several banks and other financial institutions or entities from time to time party thereto, Investec Bank plc, as administrative agent, and ABN AMRO Capital USA LLC, as issuing lender and revolving lender, as amended, supplemented, or modified from time to time.

44. “*Credit Agreement Claims*” means, collectively, any (i) Revolving Loan Claims, (ii) Term Loan Claims, (iii) LC Claims, and (iv) any Claim against any Debtor not duplicative of the foregoing clauses (i) – (iii), derived from, based upon, or arising under the Credit Agreement Facilities or the Credit Agreement Documents.

45. “*Credit Agreement Deficiency Claims*” means the unsecured portion of any Credit Agreement Claims to the extent that the value of the Collateral securing such Credit Agreement Claims is less than the amount of the interest of such Credit Agreement Claims in such Collateral

as determined in accordance with section 506 of the Bankruptcy Code. The Allowed amount of the Credit Agreement Deficiency Claims, in the aggregate, shall be calculated as the Allowed amount of the Credit Agreement Claims *minus* the Allowed amount of the Credit Agreement Secured Claims.

46. “*Credit Agreement Documents*” means, collectively, the Credit Agreement and all other agreements, documents, and instruments delivered or entered into in connection therewith, including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, subordination agreements, and other security documents, as amended, supplemented, or modified from time to time.

47. “*Credit Agreement Facilities*” means, collectively, the term loan facility and the revolving credit facility provided for under the Credit Agreement.

48. “*Credit Agreement Secured Claims*” means any Credit Agreement Claims that are Secured Claims.

49. “*Cure*” or “*Cure Claim*” means a Claim (unless waived or modified by the applicable counterparty) based upon a Debtor’s defaults under an Executory Contract or an Unexpired Lease assumed by such Debtor under section 365 of the Bankruptcy Code, other than a default that is not required to be cured pursuant to section 365(b)(2) of the Bankruptcy Code.

50. “*D&O Liability Insurance Policy*” means all unexpired directors’, managers’, and officers’ liability insurance policy (including any “tail policy” and all agreements, documents, or instruments related thereto) that has been issued or provides coverage to current and former directors, managers, officers, and employees of the Debtors.

51. “*Debtor*” means each of Lincoln Power, L.L.C., Cogentrix Lincoln Holdings, LLC, Cogentrix Lincoln Holdings II, LLC, Elgin Energy Center Holdings, LLC, Elgin Energy Center, LLC, Valley Road Holdings, LLC, Valley Road Funding, LLC, and Rocky Road Power, LLC.

52. “*Debtor Release*” means the releases set forth in Article 8.2.

53. “*Definitive Documents*” shall have the meaning set forth in the Restructuring Support Agreement.

54. “*Depositary Agent*” means First-Citizens Bank & Trust Company (successor by merger to CIT Bank, N.A.), together with its affiliates, in its capacity as (and including any successor or assign in its capacity as) depositary agent under the Credit Agreement.

55. “*Disclosure Statement*” means the disclosure statement in respect of the Plan, including all exhibits and schedules thereto, as approved or ratified by the Bankruptcy Court pursuant to sections 1125 and 1126 of the Bankruptcy Code.

56. “*Disclosure Statement Order*” means the order of the Bankruptcy Court approving the Disclosure Statement.

57. “*Disputed*” means, as to a Claim or an Interest, any Claim or Interest (or portion thereof): (i) that is not Allowed; (ii) that is not disallowed by the Plan, the Bankruptcy Code, or a Final Order, as applicable; and (iii) with respect to which a party in interest has Filed a Proof of

Claim or Proof of Interest, as applicable, or otherwise made a written request to a Debtor for payment, without any further notice to or action, order, or approval of the Bankruptcy Court.

58. “*Disputed Claims Reserve*” means any reserve established by the Debtors pursuant to Article 7.6.

59. “*Distribution Agent*” means, as applicable, the Debtors or any Entity or Entities chosen by the Debtors (with the consent of the Required Consenting Lenders and, to the extent set forth in the Restructuring Support Agreement, the Consenting Sponsor) or the Plan Administrator, which Entities may include the Solicitation Agent, the Administrative Agent, and the Plan Administrator, to make or to facilitate distributions in accordance with the Plan.

60. “*Distribution Date*” means, except as otherwise set forth herein, the date or dates determined by the Debtors or the Reorganized Debtors, on or after the Effective Date, upon which the Distribution Agent shall make distributions to Holders of Allowed Claims entitled to receive distributions under the Plan.

61. “*Distribution Record Date*” means the date for determining which Holders of Claims are eligible to receive initial distributions under the Plan, which date shall be the Confirmation Date; *provided, however*, that any Holder of Claims in Class 3 as of the Distribution Record Date may direct the transfer of distributions under the Plan to a separate entity communicated to the Debtors in advance of the Effective Date pursuant to procedures to be agreed by the Debtors and the Required Consenting Lenders.

62. “*Effective Date*” means the earliest date on which all conditions precedent to the occurrence of the Effective Date set forth in Article 9.1 have been (i) satisfied or (ii) waived in accordance with the Restructuring Support Agreement and Article 9.2.

63. “*Entity*” has the meaning set forth in section 101(15) of the Bankruptcy Code.

64. “*Environmental Law*” means any applicable federal, state, foreign, or local statute, law, rule, regulation, ordinance, code, and rule of common law now or hereafter in effect and in each case as amended, and any binding judicial or administrative interpretation thereof, including any binding judicial or administrative order, consent decree or judgment, relating to the protection of the environment or human health or safety (as such relates to exposure to Hazardous Substances) or Hazardous Substances.

65. “*Environmental Regulator*” means any federal, state, municipal, local, governmental agency, or regulatory body responsible for regulating (i) pollution, the protection of the environment, or the protection of human health and safety as it relates to exposure to Hazardous Substances or (ii) the use, treatment, storage, transport, handling, release, or disposal of any Hazardous Substances.

66. “*Estate*” means, as to each Debtor, the estate created for such Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code upon the commencement of such Debtor’s Chapter 11 Case.

67. “*Exculpated Parties*” means collectively, and in each case in its capacity as such: (i) the Debtors; (ii) the Professionals; and (iii) the Debtors’ officers, directors, and managers who served during any time between the Petition Date and the Effective Date.

68. “*Executory Contract*” means a contract to which one or more of the Debtors is a party and that is subject to assumption or rejection under section 365 or 1123 of the Bankruptcy Code.

69. “*Existing CLH Interests*” means the Interests in CLH.

70. “*Exit Facility*” means a new senior secured revolving credit facility, on terms acceptable to the Required Consenting Lenders and reasonably acceptable to the Debtors, that Newco will enter into on the Effective Date if the Purchaser is Newco and if determined by the Required Consenting Lenders as appropriate in their sole judgment and discretion.

71. “*Exit Facility Documents*” means the Exit Facility credit agreement and any other documentation necessary to effectuate the incurrence of the Exit Facility and any Liens on or security interests in Newco’s or its Affiliates’ assets in connection with the Exit Facility, which shall be in form and substance acceptable to the Required Consenting Lenders; *provided* that the terms of the Exit Facility shall be reasonably acceptable to the Debtors.

72. “*Face Amount*” means (i) when used in reference to a Disputed Claim, the full stated amount of the Claim asserted by the applicable Holder in any Proof of Claim timely Filed with the Bankruptcy Court (or such lesser estimated amount approved by order of the Bankruptcy Court), and (ii) when used in reference to an Allowed Claim, the Allowed amount of such Claim.

73. “*Federal Judgment Rate*” means the federal judgment rate in effect pursuant to 28 U.S.C. § 1961 as of the Petition Date, compounded annually.

74. “*File,*” “*Filed,*” or “*Filing*” means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

75. “*Final Cash Collateral Order*” means the *Final Order (I) Authorizing the Debtors to Use Cash Collateral, (II) Granting Adequate Protection to the Prepetition Secured Parties, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* [Docket No. 125].

76. “*Final Decree*” means the decree contemplated under Bankruptcy Rule 3022.

77. “*Final Order*” means, as applicable, an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the relevant subject matter, that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, seek certiorari, or move for a new trial, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or other proceeding for a new trial, reargument, or rehearing has been timely taken; or as to which, any appeal that has been taken or any petition for certiorari that has been or may be filed has been withdrawn with prejudice, resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought, or the new trial, reargument, or rehearing has been denied, resulted in no stay pending appeal or modification of such order, or has otherwise been dismissed with prejudice; *provided* that the possibility that a motion under

Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order will not preclude such order from being a Final Order.

78. “*First Lien Claims*” means, collectively, any Credit Agreement Secured Claims, Macquarie Secured Claims, and Interest Rate Swap Secured Claims.

79. “*General Administrative Claim*” means any Administrative Claim, including Cure Claims, other than (i) a Professional Fee Claim or (ii) a Claim for fees and expenses pursuant to section 1930 of chapter 123 of the Judicial Code.

80. “*General Unsecured Claim*” means any Unsecured Claim against any of the Debtors, other than: (i) an Administrative Claim; (ii) a Priority Tax Claim; (iii) an Other Priority Claim; (iv) a Section 510(b) Claim; or (v) an Intercompany Claim. For the avoidance of doubt, General Unsecured Claims include (i) the PJM Penalty Claims, (ii) Claims resulting from the rejection of Executory Contracts and Unexpired Leases, including, if applicable, the PJM Operating Agreement, (iii) Unsecured Claims resulting from litigation against one or more of the Debtors, and (iv) the unsecured portion of any Secured Claims to the extent that the value of the Collateral securing such Claims is less than the value of the related claimant’s interest in the Estate’s interest in such property as determined in accordance with section 506 of the Bankruptcy Code (including any Credit Agreement Deficiency Claims).

81. “*Governmental Unit*” has the meaning set forth in section 101(27) of the Bankruptcy Code.

82. “*Hazardous Substances*” means, collectively, (i) any petroleum or petroleum products, radioactive materials, or asbestos containing materials, (ii) any chemicals, materials, or substances defined as or included in the definition of “hazardous substances,” “hazardous waste,” “hazardous materials,” “extremely hazardous waste,” “restricted hazardous waste,” “toxic substances,” “toxic pollutants,” “contaminants,” or “pollutants,” or words of similar import, under any Environmental Law, and (iii) any other chemical, material, or substance, which is prohibited, limited, or regulated by any Environmental Law.

83. “*Holder*” means an Entity holding a Claim against or an Interest in any Debtor, as applicable.

84. “*Impaired*” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

85. “*Indemnification Provisions*” means the Debtors’ indemnification provisions in effect as of the Petition Date (whether in the Debtors’ bylaws, certificates of incorporation or formation, limited liability company agreements, other organizational documents, board resolutions, indemnification agreements, employment contracts, or as provided in and by applicable law or otherwise) for any of the Debtors’ current and former directors, officers, managers, members, employees, accountants, investment bankers, attorneys, and other professionals of the Debtors, each of the foregoing solely in their capacity as such.

86. “*Intercompany Claim*” means any Claim held by a Debtor against another Debtor.

87. “*Intercompany Interest*” means any Interest in one Debtor held by another Debtor.

88. “*Intercreditor Agreement*” means that certain Collateral Agency and Intercreditor Agreement, dated as of July 5, 2017, by and among certain of the Debtors, the Administrative Agent, the Collateral Agent, and certain other secured parties party thereto.

89. “*Interest Rate Swaps*” means the interest rate swaps issued pursuant to any of the Interest Rate Swap Documents.

90. “*Interest Rate Swap Claims*” means any Claim against any Debtor derived from, based upon, or arising under the Interest Rate Swaps or the Interest Rate Swap Documents.

91. “*Interest Rate Swap Secured Claims*” means any Interest Rate Swap Claims that are Secured Claims.

92. “*Interest Rate Swap Documents*” means, collectively, (i) that certain 2002 ISDA Master Agreement, dated as of July 19, 2017, between Lincoln Power L.L.C. and CIT Bank, N.A., (ii) that certain Accession Agreement, dated as of July 19, 2017, between Lincoln Power L.L.C., CIT Bank, N.A., as an additional secured party, and the Collateral Agent, (iii) that certain Confirmation of Interest Rate Swap with Embedded Floor Transaction, dated as of August 31, 2018, between Lincoln Power L.L.C. and CIT Bank, N.A., (iv) that certain 2002 ISDA Master Agreement, dated as of July 19, 2017, between Lincoln Power L.L.C. and Investec Bank plc, (v) that certain Accession Agreement, dated as of July 19, 2017, between Lincoln Power L.L.C., Investec Bank plc, and the Collateral Agent, (vi) that certain Floored Interest Rate Swap Transaction, dated as of August 31, 2018, between Lincoln Power L.L.C. and Investec Bank plc, (vii) that certain 2002 ISDA Master Agreement, dated as of July 19, 2017, between Lincoln Power L.L.C. and Truist Bank (f/k/a SunTrust Bank), (viii) that certain Accession Agreement, dated as of July 19, 2017, between Lincoln Power L.L.C., Truist Bank (f/k/a SunTrust Bank), and the Collateral Agent, (ix) that certain Confirmation of Swap Transaction, dated as of August 31, 2018, between Lincoln Power L.L.C. and Truist, and (x) that certain Confirmation of Swap Transaction, dated as of November 17, 2020, between Lincoln and Truist Bank (f/k/a SunTrust Bank), and all other agreements, documents, and instruments delivered or entered into in connection with any of the foregoing, including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, subordination agreements, and other security documents, as amended, supplemented, or modified from time to time.

93. “*Interests*” means, collectively, any equity security (as defined in section 101(16) of the Bankruptcy Code) in any Debtor and any shares (or any class thereof), common stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits interests of any Debtor and American depositary shares, American depositary receipts, options, warrants, rights, restricted stock awards, performance share awards, performance share units, stock appreciation rights, phantom stock rights, stock settled restricted stock units, cash-settled restricted stock units, or other securities or agreements to acquire or subscribe for, or which are convertible into the shares (or any class thereof) of, common stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests of any Debtor (in each case whether or not arising under or in connection with any employment agreement, separation agreement, or employee incentive plan or program of a Debtor as of the Petition Date and whether or not certificated, transferable, preferred, common, voting, or denominated “stock” or similar security).

94. “*Interim Cash Collateral Order*” means the *Interim Order (I) Authorizing the Debtors to Use Cash Collateral, (II) Granting Adequate Protection to the Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 53].

95. “*Issuing Lender*” means ABN AMRO Capital USA LLC or any of its affiliates, in each case in its capacity as (and including any successor or assign in its capacity as) letter of credit issuer under the Credit Agreement.

96. “*Judicial Code*” means title 28 of the United States Code, as amended from time to time.

97. “*LC Claims*” means any Claim against any Debtor arising from or based upon the letters of credit issued pursuant to the Credit Agreement Facilities or the Credit Agreement Documents.

98. “*Lien*” has the meaning set forth in section 101(37) of the Bankruptcy Code.

99. “*Local Bankruptcy Rule*” means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

100. “*Macquarie*” means Macquarie Bank Limited.

101. “*Macquarie Agreements*” means, collectively, the Debtors’ agreements with Macquarie Bank Limited, including that certain Confirmation for Heat Rate Option, dated as of March 3, 2021.

102. “*Macquarie Secured Claim*” means the Secured Claim against the Debtors held by Macquarie as a result of the termination of the Macquarie Agreements (consistent with the Bankruptcy Code safe harbor provisions and subject to the applicable limitations in the Intercreditor Agreement and the Macquarie Agreements, as applicable), which, subject and pursuant to the Macquarie Settlement, is an Allowed First Lien Claim in the agreed amount of \$25.5 million.

103. “*Macquarie Settlement*” means the settlement of issues, for good and valuable consideration, between Macquarie and the Debtors, as set forth and contemplated by the Plan, including, without limitation, with respect to Macquarie’s potential objections to confirmation of the Plan, the Macquarie Secured Claim, and the Macquarie Unsecured Claim, which shall be (a) subject to approval by Final Order (which may be the Confirmation Order) and (b) subject to and effective solely upon the occurrence of the Effective Date. Pursuant to and subject to approval of the Macquarie Settlement, Macquarie agrees to waive further payment of postpetition fees due Macquarie as a Prepetition Secured Party pursuant to the Cash Collateral Order or otherwise to the extent not already paid as of July 19, 2023, and Macquarie shall be both a Released Party and a Releasing Party as specifically provided in the definition of such terms.

104. “*Macquarie Unsecured Claim*” means the Unsecured Claim (if any) against the Debtors held by Macquarie as a result of the termination of the Macquarie Agreements (consistent with the Bankruptcy Code safe harbor provisions), which, subject and pursuant to the Macquarie Settlement, shall be deemed to be waived by Macquarie.

105. “*Newco*” means one or more newly formed limited liability companies or corporations formed to, among other things, in the event that there is not a Successful Bidder whose bid is not a Qualified Credit Bid, directly or indirectly acquire all or substantially all of the assets of the Obligor Debtors pursuant to the Sale Transaction pursuant to steps to be set forth in the Restructuring Transaction Steps.

106. “*Newco Board*” means the initial board of managers or similar governing body of Newco, as determined in the sole discretion of the Required Consenting Lenders.

107. “*Newco Common Equity*” means the common equity in Newco to be authorized, issued, or reserved on the Effective Date pursuant to the Plan in the event the Purchaser is Newco.

108. “*Newco Corporate Governance Documents*” means, if applicable, the form of certificate or articles of incorporation, bylaws, limited liability company agreement, partnership agreement, shareholders’ agreement, and such other applicable formation, organizational and governance documents (if any) of Newco, the material terms of each of which, if applicable, shall be included in the Plan Supplement and be in form and substance acceptable to the Required Consenting Lenders.

109. “*Non-Obligor Debtor*” means CLH.

110. “*Obligor Debtors*” means, collectively, CLH II, Lincoln Power, L.L.C., Elgin Energy Center Holdings, LLC, Elgin Energy Center, LLC, Valley Road Holdings, LLC, Valley Road Funding, LLC, and Rocky Road Power, LLC.

111. “*Obligor Debtors GUC Cash Pool*” means \$50,000 in Cash for distribution to Holders of Allowed General Unsecured Claims against the Obligor Debtors.

112. “*Other Priority Claim*” means any Claim, other than an Administrative Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

113. “*Other Secured Claim*” means any Secured Claim other than the First Lien Claims.

114. “*Person*” means a person as defined in section 101(41) of the Bankruptcy Code.

115. “*Petition Date*” means March 31, 2023.

116. “*PJM*” means, collectively, PJM Interconnection, L.L.C. and PJM Settlement, Inc., or any successor.

117. “*PJM Operating Agreement*” means the Amended and Restated Operating Agreement between PJM and the applicable Debtors.

118. “*PJM Penalty*” means any “Performance Assessment Interval” or “Capacity Performance” non-performance charge, or any other penalty assessed by PJM pursuant to the PJM Operating Agreements, which has accrued prior to the Effective Date.

119. “*PJM Penalty Claims*” means any and all Claims derived from, based upon, or arising under a PJM Penalty.



120. “*PJM Settlement*” means the settlement, the terms of which are set forth in that certain Settlement Term Sheet, dated as of May 3, 2023, by and among PJM and the Debtors, which was approved pursuant to the *Order (I) Approving The Settlement With PJM Interconnection, L.L.C. and PJM Settlement, Inc. and (II) Granting Related Relief* [Docket No. 198].

121. “*Plan*” means this joint plan of reorganization under chapter 11 of the Bankruptcy Code, including all appendices, exhibits, schedules, and supplements hereto (including the Plan Supplement and all appendices, exhibits, schedules, and supplements thereto), as it may be amended, modified, or supplemented from time to time in accordance with the terms hereof and the Restructuring Support Agreement, including any consent rights set forth therein.

122. “*Plan Administrator*” means the person or Entity, or any successor thereto, who on and after the Effective Date shall have the rights, powers, and duties set forth in the Plan. The identity and compensation of the Plan Administrator shall be agreed to by the Debtors and the Required Consenting Lenders and shall be set forth in the Plan Supplement.

123. “*Plan Administrator Agreement*” means an agreement implementing the rights, powers, duties, and responsibilities provided to the Plan Administrator under the Plan, which agreement shall be filed with the Plan Supplement and in any event shall be in form and substance acceptable to the Debtors, the Required Consenting Lenders, and, to the extent set forth in the Restructuring Support Agreement, the Consenting Sponsor.

124. “*Plan Supplement*” means a supplement or supplements to the Plan containing certain documents and forms of documents, agreements, schedules, and exhibits relevant to the implementation of the Plan, to be filed no later than the Plan Supplement Filing Date, as amended, modified or supplemented from time to time in accordance with the terms hereof and in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Restructuring Support Agreement, including the consent rights set forth therein, including the following documents, which documents shall constitute part of the Plan: (i) the Assumed Contracts List; (ii) the identity of the Plan Administrator and the compensation of the Plan Administrator; (iii) the Plan Administrator Agreement; (iv) the Sale Transaction Documentation; (v) the Wind-Down Budget; (vi) a list of retained Causes of Action; (vii) the Newco Corporate Governance Documents, if applicable; (viii) to the extent known, the identity of the members of the Newco Board, if applicable; (ix) the Takeback Debt Documents, if applicable, (x) the Exit Facility Documents, if applicable; (xi) the Restructuring Transaction Steps; and (xii) any and all other documentation necessary to effectuate the Restructuring Transactions or that is contemplated by the Plan. The Restructuring Transaction Steps shall be subject to modification up to and including the Effective Date. Except as otherwise expressly set forth herein, the documents and forms contained within the Plan Supplement shall be in form and substance acceptable to the Required Consenting Lenders.

125. “*Plan Supplement Filing Date*” means the date that is at least seven (7) calendar days before the date on which objections to Confirmation are due pursuant to the Disclosure Statement Order; *provided, however*, that the Restructuring Transaction Steps shall be subject to modification up to and including the Effective Date.

126. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

127. “*Pro Rata*” means the proportion that an Allowed Claim or Interest in a particular Class bears to the aggregate amount of Allowed Claims or Interests in that respective Class.

128. “*Professional*” means an Entity: (i) employed in the Chapter 11 Cases pursuant to a Bankruptcy Court order in accordance with sections 327, 328, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or as of the Confirmation Date, pursuant to sections 327, 328, 329, 330, or 331 of the Bankruptcy Code; or (ii) awarded compensation and reimbursement by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

129. “*Professional Fee Claim*” means any Claim by a Professional for compensation for services rendered or reimbursement of expenses incurred by such Professionals through and including the Effective Date to the extent such fees and expenses have not been paid pursuant to an order of the Bankruptcy Court. To the extent the Bankruptcy Court denies or reduces by a Final Order any amount of a Professional’s requested fees and expenses, then the amount by which such fees or expenses are reduced or denied shall reduce the applicable Professional Fee Claim.

130. “*Professional Fee Escrow Account*” means an interest-bearing account funded by the Debtors with Cash on the Effective Date in an amount equal to the Professional Fee Reserve Amount as set forth in Article 2.1.2(ii).

131. “*Professional Fee Reserve Amount*” means the aggregate amount of Professional Fee Claims and other unpaid fees and expenses that the Professionals estimate they have incurred or will incur in rendering services to the Debtors prior to and as of the Effective Date, which estimates Professionals shall deliver to the Debtors as set forth in Article 2.1.2(iii).

132. “*Proof of Claim*” means a proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

133. “*Proof of Interest*” means a proof of Interest in any of the Debtors Filed in the Chapter 11 Cases.

134. “*Purchase Price*” has the meaning set forth in any Sale Transaction Documentation (or such other similar term as may be used in such Sale Transaction Documentation).

135. “*Purchased Assets*” has the meaning set forth in any Sale Transaction Documentation (or such other similar term as may be used in such Sale Transaction Documentation); *provided* that the Purchased Assets shall not include any assets of the Non-Obligor Debtor.

136. “*Purchased Letters of Credit*” means any and all letters of credit posted by, for, or on behalf of any of the Obligor Debtors that are transferred to the Purchaser as part of the Sale Transaction or relate to any Purchased Assets.

137. “*Purchaser*” means (i) if there is one or more Successful Bidder(s) whose bid is not a Qualified Credit Bid, the Successful Bidder(s), or (ii) if there is not a Successful Bidder whose bid is not a Qualified Credit Bid, Newco.

138. “*Qualified Credit Bid*” has the meaning set forth in the Bidding Procedures.

139. “Reinstate,” “Reinstated,” or “Reinstatement” means leaving a Claim or Interest Unimpaired under the Plan.

140. “Released Parties” means, collectively, and in each case in its capacity as such: (i) the Debtors; (ii) the Reorganized Debtors; (iii) the Administrative Agent; (iv) the Collateral Agent; (v) the Depository Agent; (vi) the Issuing Lender; (vii) the Consenting Lenders; (viii) the Consenting Sponsor; (ix) the Purchaser; (x) Macquarie; and (xi) with respect to each of the foregoing entities in clauses (i) through (ix), each of such Entities’ predecessors, successors and assigns, subsidiaries, Affiliates, managed accounts or funds, and each of their current and former (a) officers, (b) directors, (c) managers, (d) principals, (e) shareholders, (f) members, (g) partners, (h) employees, (i) agents, (j) advisory board members, (k) financial advisors, (l) attorneys, (m) accountants, (n) investment bankers, (o) consultants, (p) representatives, (q) management companies, (r) fund advisors and (s) other professionals, and such Entities’ respective heirs, executors, Estate, servants, and nominees; *provided, however*, that with respect to any release provided by Macquarie to any Released Party pursuant to the Plan, including in Article VIII.3, such release shall be solely granted to such Entity identified in clauses (i) through (ix) hereof and not the related parties identified in clause (xi) of this definition of such Entity.

141. “Releasing Party” means, collectively, and in each case in its capacity as such: (i) the Administrative Agent; (ii) the Collateral Agent; (iii) the Depository Agent; (iv) the Issuing Lender; (v) the Consenting Lenders; (vi) the Consenting Sponsor; (vii) the Purchaser; (viii) each Holder of a Claim or Interest who votes to accept the Plan; (ix) each Holder of a Claim or Interest that is Unimpaired that has not formally or informally objected in writing to the Plan or to being included as a “Releasing Party;” (x) each Holder of a Claim or Interest in a voting class who abstains from voting but does not opt out of the releases provided in the Plan; (xi) each Holder of a Claim or Interest who votes to reject the Plan (or is deemed to reject the Plan) but does not opt out of the releases provided in the Plan; (xii) Macquarie; and (xiii) with respect to each of the foregoing Entities in clauses (i) through (xi), each of such Entities’ predecessors, successors and assigns, subsidiaries, Affiliates, managed accounts or funds, and each of their current and former (a) officers, (b) directors, (c) managers, (d) principals, (e) shareholders, (f) members, (g) partners, (h) employees, (i) agents, (j) advisory board members, (k) financial advisors, (l) attorneys, (m) accountants, (n) investment bankers, (o) consultants, (p) representatives, (q) management companies, (r) fund advisors, and (s) other professionals, and such Entities’ respective heirs, executors, Estate, servants, and nominees (each of the parties identified in (a)-(s), a “Related Party” and collectively, the “Related Parties”), but solely to the extent (X) the Releasing Party to whom a Related Party is related is entitled to bind such Related Party to the release provided in Article 8.3 of the Plan under applicable non-bankruptcy law or (Y) any Related Party holds Claims or Causes of Action that are derivative claims asserted or assertable on behalf of the Releasing Party to whom they are related or that such Related Party would have been legally entitled to assert on behalf of the Releasing Party; *provided, however*, that with respect to any release provided by a Releasing Party to Macquarie pursuant to the Plan, including Article VIII.3, such release shall be solely granted by such Entity identified in clauses (i) through (xi) hereof and not the related parties identified in clause (xiii) of such Entity; *provided further, however*, that any person or entity in a voting class whose solicitation package was returned as undeliverable, or as to whom the Debtors did not mail solicitation packages, pursuant to paragraph 46 of the Order approving the Disclosure Statement or otherwise, as well as each of their Related Parties, will not be deemed to

have consented to the releases by Holders of Claims and Interests provided in Article 8 of the Plan and will not be deemed to be a Releasing Party.

142. “*Reorganized Debtors*” means the Debtors, as reorganized pursuant to and under the Plan, on and after the Effective Date, or any successors or assigns thereto.

143. “*Required Consenting Lenders*” means, as of the relevant date, Consenting Lenders holding at least 50.01% of the aggregate outstanding principal amount of the Credit Agreement Claims that are held by the Consenting Lenders.

144. “*Restructuring*” means the restructuring of the Debtors on the terms set forth herein.

145. “*Restructuring Expenses*” means the accrued and unpaid reasonable and documented fees and expenses of the Consenting Lenders’, the Collateral Agent’s, the Issuing Lender’s, and the Consenting Sponsor’s professionals accrued since the inception of their respective engagements related to the Chapter 11 Cases and the implementation of the Restructuring Transactions.

146. “*Restructuring Support Agreement*” means that certain Restructuring Support Agreement, dated as of March 30, 2023, including the Restructuring Term Sheet, and all exhibits, schedules and attachments thereto, by and among the Debtors, the Consenting Lenders, and the Consenting Sponsor, attached as Exhibit B to the Disclosure Statement.

147. “*Restructuring Term Sheet*” shall have the meaning set forth in the Restructuring Support Agreement.

148. “*Restructuring Transaction Steps*” means the document setting forth the sequence of certain Restructuring Transactions, which shall be included in the Plan Supplement and shall be acceptable in form and substance to the Debtors, the Required Consenting Lenders and, to the extent set forth in the Restructuring Support Agreement, the Consenting Sponsor.

149. “*Restructuring Transactions*” means the transactions described in the Plan and Restructuring Transaction Steps, which shall be in form and substance acceptable to the Debtors, the Required Consenting Lenders, and, to the extent set forth in the Restructuring Support Agreement, the Consenting Sponsor.

150. “*Revolving Loan Claims*” means any Claim against any Debtor arising from or based upon the revolving loans issued pursuant to the Credit Agreement Facilities or the Credit Agreement Documents.

151. “*Sale Transaction*” means the transfer of the Purchased Assets to the Purchaser and the assumption by the Purchaser of the Assumed Liabilities free and clear of all Liens, Claims, charges, and other encumbrances (other than the Assumed Liabilities) under the Plan and the Confirmation Order and pursuant to section 1123 of the Bankruptcy Code on the terms and conditions set forth in the Sale Transaction Documentation.

152. “*Sale Transaction Documentation*” means the asset purchase agreement and related documents, including, without limitation, the Assumed Contracts List, in each case, in form and substance reasonably acceptable to the Debtors, and if the Purchaser is Newco, in form and

substance acceptable to the Required Consenting Lenders, pursuant to which the Obligor Debtors will effectuate the Sale Transaction; *provided* that, if the Purchaser is not Newco, with respect to any provision in the Sale Transaction Documentation that is expected to have a material impact on the Holders of Credit Agreement Claims, including their recovery pursuant to the Plan, the Sale Transaction Documentation shall be in form and substance acceptable to the Required Consenting Lenders; *provided, further*, that the Sale Transaction Documentation shall be subject to the consent of the Consenting Sponsor to the extent set forth in the Restructuring Support Agreement.

153. “*Sale Transaction Proceeds*” means any Cash or Cash equivalents that are proceeds from the Sale Transaction (if any, in the event the Purchaser is Newco).

154. “*Section 510(b) Claim*” means any Claim subject to subordination under section 510(b) of the Bankruptcy Code.

155. “*Secured Claim*” means a Claim that is: (i) secured by a Lien on property in which any of the Debtors has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the Debtors’ interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (ii) Allowed pursuant to the Plan, or separate order of the Bankruptcy Court, as a secured claim.

156. “*Secured Tax Claim*” means any Secured Claim that, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties.

157. “*Securities Act*” means the Securities Act of 1933, as amended, 15 U.S.C. §§ 77a-77aa, together with the rules and regulations promulgated thereunder, as amended from time to time, or any similar federal, state, or local law.

158. “*Security*” shall have the meaning set forth in section 101(49) of the Bankruptcy Code.

159. “*Solicitation Agent*” means Omni Agent Solutions, Inc., the noticing, claims, and solicitation agent retained by the Debtors in the Chapter 11 Cases by order of the Bankruptcy Court.

160. “*Solicitation Materials*” means any materials used in connection with the solicitation of votes on the Plan, including the Disclosure Statement, and any procedures established by the Bankruptcy Court with respect to solicitation of votes on the Plan.

161. “*Successful Bidder*” means, if applicable, the Entity whose bid for all or substantially all of the Obligor Debtors’ assets is selected by the Debtors and approved by the Bankruptcy Court as the highest and otherwise best bid pursuant to the Bidding Procedures.

162. “*Takeback Debt*” means takeback debt issued by Newco, if any, if the Purchaser is Newco, on the Effective Date, solely for the purpose of distribution to Holders of Allowed First Lien Claims, on terms and conditions acceptable to the Required Consenting Lenders; *provided* that the terms of the Takeback Debt shall be reasonably acceptable to the Debtors.

163. “*Takeback Debt Documents*” means the Takeback Debt credit agreement and any other documentation necessary to effectuate the issuance of the Takeback Debt and any Liens on or security interests in Newco’s or its Affiliates’ assets in connection with the Takeback Debt, which shall be in form and substance acceptable to the Required Consenting Lenders; *provided* that the terms of the Takeback Debt shall be reasonably acceptable to the Debtors.

164. “*Term Loan Claims*” means any Claim against any Debtor arising from or based upon the term loan issued pursuant to the Credit Agreement Facilities or the Credit Agreement Documents.

165. “*Third-Party Releases*” means the releases set forth in Article 8.3 of the Plan.

166. “*Unsecured Claim*” means any Claim that is not a Secured Claim.

167. “*U.S. Trustee*” means the Office of the United States Trustee for the District of Delaware.

168. “*Unclaimed Distribution*” means any distribution under the Plan on account of an Allowed Claim to a Holder that has not: (i) accepted a particular distribution; (ii) given notice to the Reorganized Debtors of an intent to accept a particular distribution; (iii) responded to the Debtors’ or Reorganized Debtors’ requests for information necessary to facilitate a particular distribution; or (iv) taken any other action necessary to facilitate such distribution.

169. “*Unexpired Lease*” means a lease of nonresidential real property to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

170. “*Unimpaired*” means with respect to a Class of Claims or Interests, a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

171. “*Voting Deadline*” means the date and time by which the Solicitation Agent must actually receive the Ballots, as set forth on the Ballots.

172. “*Wind-Down Amount*” means an amount sufficient to fund (i) the payment in full of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Secured Claims, and Allowed Other Priority Claims to the extent unpaid as of the Effective Date and not otherwise assumed under the Sale Transaction Documentation, (ii) the Disputed Claims Reserve, and (iii) the costs to wind down the Estates and Chapter 11 Cases in accordance with the Wind-Down Budget, which, for the avoidance of doubt, shall not be duplicative of clause (i) or (ii).

173. “*Wind-Down Budget*” means a budget for the reasonable activities and expenses to be incurred in winding down the Chapter 11 Cases, as set forth in the Plan Supplement, which in any event shall be in form and substance acceptable to the Debtors, the Required Consenting Lenders, and, to the extent set forth in the Restructuring Support Agreement, the Consenting Sponsor.

## **1.2 Rules of Interpretation**

For purposes of the Plan: (i) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the

masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (ii) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (iii) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (iv) unless otherwise specified, all references herein to “Articles” and “Sections” are references to Articles and Sections, respectively, hereof or hereto; (v) the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to any particular portion of the Plan; (vi) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (vii) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (viii) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (ix) references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court’s CM/ECF system; (x) references to statutes, regulations, orders, rules of court and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases, unless otherwise stated; (xi) references to “shareholders,” “directors,” and/or “officers” shall also include “members” and/or “managers,” as applicable, as such terms are defined under the applicable state limited liability company laws; (xii) any immaterial effectuating provisions may be interpreted by the Debtors or the Reorganized Debtors in such a manner that is consistent with the overall purpose and intent of the Plan and without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity; and (xiii) the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, and shall be deemed to be followed by the words “without limitation.”

### **1.3 Computation of Time**

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day. Unless otherwise specified herein, any references to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter.

### **1.4 Governing Law**

Except to the extent a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and the Bankruptcy Rules), and subject to the provisions of any contract, lease, instrument, release, indenture, or other agreement or document entered into expressly in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to conflict of laws principles.

### **1.5 Reference to Monetary Figures**

All references in the Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

### **1.6 Reference to the Debtors or the Reorganized Debtors**

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or to the Reorganized Debtors mean the Debtors and the Reorganized Debtors, as applicable, to the extent the context requires.

### **1.7 Controlling Document**

To the extent that any provision of the Disclosure Statement, or any order entered prior to Confirmation (for avoidance of doubt, not including the Confirmation Order) referenced in the Plan (or any exhibits, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control. In the event of an inconsistency between the Plan and any document included in the Plan Supplement, or any other Definitive Document, the terms of the applicable document included in the Plan Supplement or other Definitive Document shall control. In the event of an inconsistency between the Plan, any document included in the Plan Supplement, or other Definitive Document, on the one hand, and the Confirmation Order, on the other hand, the Confirmation Order shall control.

### **1.8 Consent Rights**

Notwithstanding anything herein to the contrary, any and all consultation, notice, and consent rights of the parties to the Restructuring Support Agreement set forth therein with respect to the form and substance of this Plan, any Definitive Document, all exhibits to the Plan, and the Plan Supplement, or any other document with respect to the implementation of the Plan and the Restructuring Transactions, including any amendments, restatements, supplements, or other modifications to such agreements and documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference and be fully enforceable as if stated in full herein. Failure to reference in this Plan the rights referred to in the immediately preceding sentence as such rights relate to any document referenced in the Restructuring Support Agreement shall not impair such rights and obligations. In case of a conflict between the consent rights of the parties to the Restructuring Support Agreement that are set forth in the Restructuring Support Agreement, with those parties' consent rights that are set forth in the Plan or the Plan Supplement, the consent rights in the Restructuring Support Agreement shall control.



## ARTICLE II

### ADMINISTRATIVE AND PRIORITY CLAIMS

#### 2.1 Administrative Claims

In accordance with section 1123(a)(1) of the Bankruptcy Code, General Administrative Claims, Professional Fee Claims, and Priority Tax Claims have not been classified, and thus are excluded, from the Classes of Claims and Interests set forth in Article III.

##### 2.1.1 General Administrative Claims

Except to the extent that a Holder of an Allowed General Administrative Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed General Administrative Claim, each Holder of an Allowed General Administrative Claim, which, for the avoidance of doubt, excludes Holders of Professional Fee Claims and Claims for fees and expenses pursuant to section 1930 of chapter 123 of the Judicial Code, will receive in full and final satisfaction of its General Administrative Claim an amount of Cash equal to the amount of such Allowed General Administrative Claim in accordance with the following: (i) if a General Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed General Administrative Claim is due or as soon as reasonably practicable thereafter); (ii) if such General Administrative Claim is not Allowed as of the Effective Date, no later than thirty (30) days after the date on which an order Allowing such General Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (iii) if such Allowed General Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date in accordance with the terms and conditions of the particular transaction giving rise to such Allowed General Administrative Claim without any further action by the Holders of such Allowed General Administrative Claim; (iv) at such time and upon such terms as may be agreed upon by such Holder and the Debtors, the Reorganized Debtors or Plan Administrator, as applicable; or (v) at such time and upon such terms as set forth in an order of the Bankruptcy Court; *provided* that any Allowed General Administrative Claim that has been assumed by the Purchaser under the applicable Sale Transaction Documentation shall not be an obligation of the Debtors and shall not be entitled to any recovery from the Estates under the Plan.

##### 2.1.2 Professional Fee Claims

###### (i) Final Fee Applications

All final requests for Professional Fee Claims shall be filed no later than forty-five (45) days after the Effective Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior Bankruptcy Court orders, the Allowed amounts of such Professional Fee Claims shall be determined by the Bankruptcy Court.

###### (ii) Professional Fee Escrow Account

No later than the Effective Date, the Debtors or the Reorganized Debtors, as applicable, shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional

Fee Reserve Amount. The Professional Fee Escrow Account shall be maintained by the Reorganized Debtors or the Plan Administrator, as applicable, in trust solely for the benefit of the Professionals. No Liens, claims, or interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. Such funds shall not be considered property of the Estates of the Debtors or the Reorganized Debtors. The amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals by the Reorganized Debtors from the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by a Final Order; *provided* that the Debtors' and the Reorganized Debtors' obligations to pay Allowed Professional Fee Claims shall not be limited or deemed limited to funds held in the Professional Fee Escrow Account. When all such Professional Fee Claims have been resolved (either because they are Allowed Professional Fee Claims that have been paid or because they have been disallowed, expunged, or withdrawn), any remaining amount in the Professional Fee Escrow Account shall promptly be paid to the Reorganized Debtors without any further action or order of the Bankruptcy Court and distributed as set forth herein, including in accordance with Article 4.22. To the extent that funds held in the Professional Fee Escrow Account are insufficient to satisfy the Allowed amount of Professional Fee Claims owing to the Professionals, the Reorganized Debtors shall pay such amounts within ten (10) Business Days after entry of the order approving such Professional Fee Claims.

**(iii) Professional Fee Reserve Amount**

To receive payment for unbilled fees and expenses incurred through the Effective Date, the Professionals shall estimate their Professional Fee Claims prior to and as of the Effective Date and shall deliver such estimate to the Debtors, on or before the date that is five days prior to the Effective Date. If a Professional does not provide such estimate, the Reorganized Debtors may estimate the unbilled fees and expenses of such Professional; *provided* that such estimate shall not be considered an admission or limitation with respect to the fees and expenses of such Professional. The total amount so estimated as of the Effective Date shall comprise the Professional Fee Reserve Amount; *provided* that the Reorganized Debtors shall use Cash on hand to increase the amount of the Professional Fee Escrow Account to the extent fee applications are Filed after the Effective Date in excess of the amount held in the Professional Fee Escrow Account based on such estimates.

**(iv) Post-Effective Date Fees and Expenses**

Except as otherwise specifically provided in the Plan, from and after the Effective Date, each Reorganized Debtor shall pay (subject to the receipt of a detailed invoice) in Cash the reasonable legal fees and expenses incurred by such Debtor or Reorganized Debtor (as applicable) after the Effective Date in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and each Reorganized Debtor may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

**(v) Substantial Contribution Compensation and Expenses**

Except as otherwise specifically provided in the Plan, any Entity that requests compensation or expense reimbursement for making a substantial contribution in the Chapter 11

Cases pursuant to sections 503(b)(3), (4), and (5) of the Bankruptcy Code must file an application and serve such application on counsel for the Debtors or the Reorganized Debtors, as applicable, the Consenting Lenders, the Consenting Sponsor, and as otherwise required by the Bankruptcy Court, the Bankruptcy Code, and the Bankruptcy Rules on or before the Administrative Claims Bar Date.

### **2.1.3 Administrative Claims Bar Date**

All requests for payment of an Administrative Claim (other than Cure Claims or Professional Fee Claims) that accrued on or before the Effective Date that were not otherwise satisfied in the ordinary course of business must be Filed with the Bankruptcy Court or the Solicitation Agent, as applicable, and served on the Debtors no later than the Administrative Claims Bar Date. Holders of Administrative Claims (other than Cure Claims, Professional Fee Claims, or U.S. Trustee quarterly fees payable pursuant to Article 2.3 below) that are required to, but do not, file and serve a request for payment of such Administrative Claims by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors or their property and such Administrative Claims shall be deemed discharged as of the Effective Date.

The Reorganized Debtors, in their sole and absolute discretion, may settle Administrative Claims in the ordinary course of business without further Bankruptcy Court approval. The Reorganized Debtors may also choose to object to any Administrative Claim no later than 120 days after the Administrative Claims Bar Date or such other period of limitation as may be specifically fixed by the Debtors or the Reorganized Debtors, as applicable, subject to extensions by the Bankruptcy Court upon motion of the Debtors or the Reorganized Debtors, as applicable, or agreement in writing of the parties. Unless the Debtors or the Reorganized Debtors object to a timely filed and properly served Administrative Claim, such Administrative Claim will be deemed Allowed in the amount requested. In the event that the Debtors or the Reorganized Debtors object to an Administrative Claim, the parties may confer to try to reach a settlement and, failing that, the Bankruptcy Court will determine whether such Administrative Claim should be Allowed and, if so, in what amount.

## **2.2 Priority Tax Claims**

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code; *provided* that any Allowed Priority Tax Claim that has been assumed by the Purchaser under the applicable Sale Transaction Documentation shall not be an obligation of the Debtors and shall not be entitled to any recovery from the Estates under the Plan. To the extent any Allowed Priority Tax Claim that has not been assumed by the Purchaser under the applicable Sale Transaction Documentation is not due and owing on the Effective Date, such Claim shall be paid in accordance with the terms of any agreement between the Reorganized Debtors and the Holder of such Claim, or as may be due and payable under applicable non-bankruptcy law, or in the ordinary course of business. On the Effective Date, any Liens securing any Allowed Priority Tax Claims shall be deemed released, terminated, and extinguished, in each case without further notice to or order of

the Bankruptcy Court, act, or action under applicable law, regulation, order or rule, or the vote, consent, authorization, or approval of any Person.

### **2.3 Statutory Fees**

All fees pursuant to section 1930 of the Judicial Code, together with the statutory rate of interest set forth in section 3717 of title 31 of the United States Code to the extent applicable (“Quarterly Fees”), that are due and payable as of the Effective Date shall be paid by the Debtors on the Effective Date. After the Effective Date, the Reorganized Debtors shall be jointly and severally liable to pay any and all Quarterly Fees when due and payable. The Debtors shall file all monthly operating reports due prior to the Effective Date when they become due, using UST Form 11-MOR. After the Effective Date, the Reorganized Debtors shall file with the Bankruptcy Court separate UST Form 11-PCR reports when they become due. Notwithstanding anything called for in the Plan to the contrary, each Debtor or Reorganized Debtor, as applicable, shall remain obligated to pay Quarterly Fees to the Office of the U.S. Trustee and make such reports until the earliest of that particular Debtor’s or Reorganized Debtor’s case being closed, dismissed, or converted to a case under Chapter 7 of the Bankruptcy Code. The U.S. Trustee shall not be required to file any request for payment of Administrative Claim in the case and shall not be treated as providing any release under the Plan.

### **2.4 Payment of Restructuring Expenses**

The reasonable and documented fees and out-of-pocket expenses owed pursuant to the Restructuring Support Agreement as of the Effective Date shall be paid as of the Effective Date. The Restructuring Expenses incurred, or estimated to be incurred, up to and including the Effective Date shall be paid in full in Cash on the Effective Date (to the extent not previously paid during the course of the Chapter 11 Cases) in accordance with, and subject to, the terms set forth herein and in the Restructuring Support Agreement, without any requirement to File a fee application with the Bankruptcy Court or for Bankruptcy Court review or approval. On or before the date that is five days prior to the Effective Date, invoices for all Restructuring Expenses incurred or estimated to be incurred prior to and as of the Effective Date shall be submitted to the Debtors and paid within ten Business Days of receipt by the Debtors or the Reorganized Debtors, as applicable, in accordance with, and subject to, the terms set forth herein and in the Restructuring Support Agreement. In addition, the Debtors and the Reorganized Debtors (as applicable) shall continue to pay, when due and payable in the ordinary course, the Restructuring Expenses related to implementation, Consummation, and defense of the Plan, whether incurred before, on, or after the Effective Date, in accordance with the applicable engagement letter.

## **ARTICLE III**

### **CLASSIFICATION, TREATMENT, AND VOTING OF CLAIMS AND INTERESTS**

#### **3.1 Classification of Claims and Interests**

Except for the Claims addressed in Article II, all Claims and Interests are classified in the Classes set forth below in accordance with section 1122 of the Bankruptcy Code. In accordance

with section 1123(a)(1) of the Bankruptcy Code, the Debtors have not classified Administrative Claims and Priority Tax Claims, as described in Article II.

A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim is an Allowed Claim in that Class and has not been paid, released, or otherwise satisfied or disallowed by Final Order prior to the Effective Date.

The Plan constitutes a separate plan for each of the Debtors, each of which shall include the classifications set forth below, except as otherwise set forth herein. To the extent that a Class contains Claims or Interests only with respect to one or more particular Debtors, such Class applies solely to such Debtor(s). Subject to Article 3.6 of the Plan, below is a chart assigning each Class a number for purposes of identifying each separate Class:

### **Summary of Classification and Treatment of Claims and Interests**

<b><u>Class</u></b>	<b><u>Description</u></b>	<b><u>Status</u></b>	<b><u>Entitled to Vote</u></b>
1	Other Secured Claims	Unimpaired	No (presumed to accept)
2	Other Priority Claims	Unimpaired	No (presumed to accept)
3	First Lien Claims	Impaired	Yes
4A	General Unsecured Claims against the Non-Obligor Debtor	Unimpaired	No (presumed to accept)
4B	General Unsecured Claims against the Obligor Debtors	Impaired	Yes
5	Section 510(b) Claims	Impaired	No (deemed to reject)
6	Intercompany Claims	Impaired / Unimpaired	No (deemed to reject / presumed to accept)
7	Intercompany Interests	Impaired / Unimpaired	No (deemed to reject / presumed to accept)
8	Existing CLH Interests	Impaired	No (deemed to reject)

### **3.2 Treatment of Classes of Claims and Interests**

To the extent that a Class contains Allowed Claims or Interests, the treatment of Allowed Claims and Interests is specified below. Except to the extent that a Holder of an Allowed Claim or Interest, as applicable, agrees to less favorable treatment, each Holder of an Allowed Claim or Interest, as applicable, shall receive the treatment described below in full and final satisfaction, settlement, release, and discharge of and in exchange for such Holder's Allowed Claim or Interest. Unless otherwise indicated, the Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive such treatment on the Effective Date or as soon as reasonably practicable thereafter.

**(i) Class 1—Other Secured Claims**

- (a) *Classification:* Class 1 consists of Other Secured Claims.
- (b) *Treatment:* Except to the extent that a Holder of an Allowed Other Secured Claim agrees to a less favorable treatment, as determined by the Debtors (with the consent of the Required Consenting Lenders and, to the extent set forth in the Restructuring Support Agreement, the Consenting Sponsor) or the Reorganized Debtors, in full and final satisfaction of such Allowed Other Secured Claim, at the option of the applicable Debtors (with the consent of the Required Consenting Lenders and, to the extent set forth in the Restructuring Support Agreement, the Consenting Sponsor) or the Reorganized Debtors, each such Holder shall receive (i) payment in full in Cash of its Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, (iii) Reinstatement of its Allowed Other Secured Claim, or (iv) such other treatment so as to render such Holder's Allowed Other Secured Claim Unimpaired pursuant to section 1124 of the Bankruptcy Code; *provided* that any Allowed Other Secured Claim that has been assumed by the Purchaser under the applicable Sale Transaction Documentation shall not be an obligation of the Debtors and shall not be entitled to any recovery from the Estates under the Plan.
- (c) *Impairment and Voting:* Class 1 is Unimpaired. Holders of Claims in Class 1 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and, accordingly, are not entitled to vote to accept or reject the Plan.

**(ii) Class 2—Other Priority Claims**

- (a) *Classification:* Class 2 consists of Other Priority Claims.
- (b) *Treatment:* Except to the extent that a Holder of an Allowed Other Priority Claim agrees to a less favorable treatment, as determined by the Debtors (with the consent of the Required Consenting Lenders and, to the extent set forth in the Restructuring Support Agreement, the Consenting Sponsor) or the Reorganized Debtors, in full and final satisfaction of such Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim shall, at the option of the applicable Debtors (with the consent of the Required Consenting Lenders and, to the extent set forth in the Restructuring Support Agreement, the Consenting Sponsor) or the Reorganized Debtors, receive (i) payment in full in Cash of its Allowed Other Priority Claim or (ii) treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code; *provided* that any Allowed Other Priority Claim that has been assumed by the Purchaser under the applicable Sale Transaction Documentation shall not be an obligation of the Debtors and shall not be entitled to any recovery from the Estates under the Plan.

- (c) *Impairment and Voting:* Class 2 is Unimpaired. Holders of Claims in Class 2 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and, accordingly, are not entitled to vote to accept or reject the Plan.

**(iii) Class 3—First Lien Claims**

- (a) *Classification:* Class 3 consists of all First Lien Claims.
- (b) *Treatment:* In full and final satisfaction of their Claims, on the Effective Date, Holders of Allowed First Lien Claims shall receive

- i. In the event the Purchaser is not Newco, their Pro Rata share of Cash held by the Obligor Debtors immediately following consummation of the Sale Transaction, less, without duplication, (a) the Cash to be distributed to Holders of Claims on the Effective Date as provided herein, and (b) the Cash Reserve.

Any Cash remaining after facilitating all distributions pursuant to the Plan or any other order of the Bankruptcy Court (including, for the avoidance of doubt, amounts distributed on account of the Professional Fee Reserve Amount and the Wind-Down Amount) shall be paid to Holders of Allowed First Lien Claims on a Pro Rata basis until such time as Holders of Allowed First Lien Claims have been paid in full.

- ii. In the event the Purchaser is Newco, their Pro Rata share of (a) the Newco Common Equity in accordance with the Restructuring Transaction Steps, and (b) the Takeback Debt, if applicable. In the event the Purchaser is Newco, Holders of Allowed First Lien Claims shall also be given the right of first refusal to participate in the Exit Facility, if the Required Consenting Lenders determine such facility should be entered into, on a Pro Rata basis.

Any Cash remaining after facilitating all distributions pursuant to the Plan or any other order of the Bankruptcy Court (including, for the avoidance of doubt, amounts distributed on account of the Professional Fee Reserve Amount and the Wind-Down Amount) shall be paid to Holders of Allowed First Lien Claims on a Pro Rata basis until such time as Holders of Allowed First Lien Claims have been paid in full.

- (c) *Impairment and Voting:* Class 3 is Impaired. Holders of Claims in Class 3 are entitled to vote to accept or reject the Plan.

**(iv) Class 4A—General Unsecured Claims against the Non-Obligor Debtor**

- (a) *Classification:* Class 4A consists of all General Unsecured Claims against the Non-Obligor Debtor, including, subject to Article 3.3, the Cogentrix Claims.

- (b) *Treatment:* In full and final satisfaction of their Claims, on the Effective Date, Holders of Allowed General Unsecured Claims against the Non-Obligor Debtor shall receive payment in full in Cash from the CLH Cash of their Allowed General Unsecured Claims against the Non-Obligor Debtor.
- (c) *Impairment and Voting:* Class 4A is Unimpaired. Holders of Claims in Class 4A are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and, accordingly, are not entitled to vote to accept or reject the Plan.

**(v) Class 4B—General Unsecured Claims against the Obligor Debtors**

- (a) *Classification:* Class 4B consists of all General Unsecured Claims (including, for the avoidance of doubt, Credit Agreement Deficiency Claims) against the Obligor Debtors, including, if applicable, any Macquarie Unsecured Claims.
- (b) *Treatment:* In full and final satisfaction of their Claims, on the Effective Date, Holders of Allowed General Unsecured Claims against the Obligor Debtors shall receive their Pro Rata share of the Obligor Debtors GUC Cash Pool.
- (c) *Impairment and Voting:* Class 4B is Impaired. Holders of Claims in Class 4B are entitled to vote to accept or reject the Plan.

**(vi) Class 5—Section 510(b) Claims**

- (a) *Classification:* Class 5 consists of all Section 510(b) Claims.
- (b) *Treatment:* On the Effective Date, all Section 510(b) Claims shall be cancelled, released, discharged, and extinguished and shall be of no further force or effect, and Holders of Section 510(b) Claims shall not receive any distribution on account of such Section 510(b) Claims.
- (c) *Impairment and Voting:* Class 5 is Impaired. Holders of Claims in Class 5 are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code and, accordingly, are not entitled to vote to accept or reject the Plan.

**(vii) Class 6—Intercompany Claims**

- (a) *Classification:* Class 6 consists of all Intercompany Claims.
- (b) *Treatment:* On the Effective Date, all Intercompany Claims shall be discharged without any distribution on account of such Claims, unless otherwise agreed to by the Debtors and the Purchaser.
- (c) *Impairment and Voting:* Class 6 will be either Impaired with no distribution or Unimpaired under the Plan. In either case, Holders of Claims in Class 6 are not entitled to vote to accept or reject the Plan.



**(viii) Class 7—Intercompany Interests**

- (a) *Classification:* Class 7 consists of all Intercompany Interests.
- (b) *Treatment:* On the Effective Date, all Intercompany Interests shall be cancelled or otherwise eliminated and receive no distribution under the Plan, unless otherwise agreed to by the Debtors and the Purchaser.
- (c) *Impairment and Voting:* Class 7 will be either Impaired with no distribution or Unimpaired under the Plan. In either case, Holders of Claims in Class 7 are not entitled to vote to accept or reject the Plan.

**(ix) Class 8—Existing CLH Interests**

- (a) *Classification:* Class 8 consists of all Existing CLH Interests.
- (b) *Treatment:* On the Effective Date, all Existing CLH Interests shall be cancelled, released, discharged, and extinguished and shall be of no further force or effect, and Holders of Existing CLH Interests shall not receive any distribution on account of such Existing CLH Interests.
- (c) *Impairment and Voting:* Class 8 is Impaired. Holders of Existing CLH Interests in Class 8 are conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, accordingly, are not entitled to vote to accept or reject the Plan.

**3.3 Waiver of Cogentrix Claims**

Subject to, and solely upon the occurrence of, the Effective Date, (i) the Consenting Sponsor and Cogentrix shall be deemed to have waived the Cogentrix Claims solely to the extent that the amount of such Cogentrix Claims exceeds the amount of the CLH Cash, and (ii) to the extent unpaid as of the Effective Date, the Consenting Sponsor and Cogentrix shall be deemed to have waived any claims against CLH arising on or after the Petition Date; *provided, however*, that the foregoing (a) shall not limit, reduce, modify, or impair the Debtors' or the Reorganized Debtors' Indemnification Provisions, in each case, if any, with respect to the Consenting Sponsor, Cogentrix, or their Affiliates or the Consenting Sponsor's, Cogentrix's, or their Affiliates' rights under any D&O Liability Insurance Policy, and (b) shall not waive any Claim held by the Consenting Sponsor, Cogentrix, or their Affiliates against any Obligor Debtor.

**3.4 Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' or the Reorganized Debtors' rights regarding any Claim, including all rights regarding legal and equitable defenses to, or setoffs or recoupments against, any such Claim. Unless otherwise Allowed, all Claims shall remain Disputed Claims under the Plan.

### **3.5 Controversy Concerning Impairment**

If a controversy arises as to whether any Claims or Interests, or any Class thereof, is Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

### **3.6 Elimination of Vacant Classes**

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest entitled to vote on the Plan, or a Claim or Interest temporarily Allowed by the Bankruptcy Court for voting purposes in an amount greater than zero as of the date of the Confirmation Hearing, shall be considered vacant and deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

### **3.7 Voting Classes; Presumed Acceptance by Non-Voting Classes**

If a Class contains Claims eligible to vote and no Holder of Claims eligible to vote in such Class votes to accept or reject the Plan, the Plan shall be presumed accepted by the Holders of such Claims in such Class.

### **3.8 Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code**

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by an Impaired Class. The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article X and the terms of the Restructuring Support Agreement to the extent that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by (i) modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired, Impaired, or otherwise to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules and (ii) withdrawing the Plan as to an individual Debtor at any time before the Confirmation Date.

### **3.9 Subordination**

The allowance, classification, and treatment of satisfying all Claims and Interests proposed under the Plan takes into consideration any and all subordination rights, whether arising by contract or under general principles of equitable subordination, section 510(b) or 510(c) of the Bankruptcy Code, or otherwise. On the Effective Date, any and all subordination rights or obligations that a Holder of a Claim or Interest may have with respect to any distribution to be made under the Plan will be discharged and terminated, and all actions related to the enforcement of such subordination rights will be enjoined permanently. Accordingly, distributions under the Plan to Holders of Allowed Claims and Allowed Interests (including, for the avoidance of doubt, distributions to Holders of Allowed Claims in Class 3) will not be subject to turnover or payment to a beneficiary of such terminated subordination rights, or to levy, garnishment, attachment, or other legal process by a beneficiary of such terminated subordination rights; *provided* that any such subordination rights shall be preserved in the event the Confirmation Order is vacated, the Effective Date does not occur in accordance with the terms hereunder, or the Plan is revoked or withdrawn.

### **3.10 Intercompany Interests**

To the extent Reinstated under the Plan, the Intercompany Interests shall be Reinstated in exchange for the Debtors' and the Reorganized Debtors' agreement under the Plan to make certain distributions to the Holders of Allowed Claims. Distributions on account of the Intercompany Interests are not being received by Holders of such Intercompany Interests on account of their Intercompany Interests but for the purposes of administrative convenience and to maintain the corporate structure. For the avoidance of doubt, to the extent Reinstated pursuant to the Plan, on and after the Effective Date, all Intercompany Interests shall be owned by the same Reorganized Debtor that corresponds with the Debtor that owned such Intercompany Interests prior to the Effective Date.

## **ARTICLE IV**

### **PROVISIONS FOR IMPLEMENTATION OF THE PLAN**

#### **4.1 General Settlement of Claims and Interests**

Pursuant to sections 363 and 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, all compromises and settlements embodied in the Plan shall constitute a good-faith compromise and settlement of all Claims and Interests and controversies resolved pursuant thereto, including, without limitation, the PJM Settlement and the Macquarie Settlement. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Interests and is fair, equitable, and is within the range of reasonableness. Subject to Article VI, all distributions made to Holders of Allowed Claims in any Class are intended to be and shall be final.

#### **4.2 Restructuring Transactions**

On or about the Effective Date, the Debtors or the Reorganized Debtors, with the consent of the Required Consenting Lenders and, to the extent set forth in the Restructuring Support Agreement, the Consenting Sponsor, may take all actions as may be necessary or appropriate to effectuate the Restructuring Transactions (including the Sale Transaction), including: (i) the execution and delivery of any appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, conversion, disposition, transfer, formation, organization, dissolution, or liquidation containing terms that are consistent with the terms of the Plan, and that satisfy the requirements of applicable law and any other terms to which the applicable Entities may agree, including the documents comprising the Plan Supplement; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, contribution, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable Entities agree; (iii) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, amalgamation, consolidation, conversion, or dissolution pursuant to applicable law; (iv) such other transactions that are required to effectuate the Restructuring Transactions in a tax efficient manner for the Debtors, the Consenting Lenders, and the Consenting Sponsor, including any mergers,

consolidations, restructurings, conversions, dispositions, transfers, formations, organizations, dissolutions, or liquidations; (v) the execution, delivery, and filing, if applicable, of the Takeback Debt Documents and the Exit Facility Documents; and (vi) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law and that are consistent with the Plan and the Restructuring Support Agreement.

The Restructuring Transactions shall include, but not be limited to, the Restructuring Transactions set forth in the Restructuring Transaction Steps. Pursuant to sections 363 and 1123 of the Bankruptcy Code, the Confirmation Order shall and shall be deemed to authorize the Restructuring Transactions, including, without limitation, those set forth in the Restructuring Transaction Steps, which shall and shall be deemed to occur in the sequence set forth therein.

Pursuant to both sections 363 and 1123 of the Bankruptcy Code, the Confirmation Order shall and shall be deemed to authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan.

#### **4.3 Sale Transaction**

Following the Confirmation Date, the Obligor Debtors shall be authorized to consummate the Sale Transaction to the Purchaser pursuant to the terms of the Sale Transaction Documentation, the Plan, and the Confirmation Order.

Subject to the terms of the Sale Transaction Documentation, on the Effective Date, in consideration and in exchange for the Purchase Price, the Obligor Debtors shall consummate the Sale Transaction by, among other things, transferring the Purchased Assets to the Purchaser free and clear of all Liens, Claims, Interests, charges, and other encumbrances (other than the Assumed Liabilities) pursuant to sections 363, 365, and/or 1123 of the Bankruptcy Code, the Plan, and the Confirmation Order. Upon entry of the Confirmation Order by the Bankruptcy Court, all matters provided for under the Sale Transaction Documentation and the Plan, and any documents in connection herewith and therewith, shall be deemed authorized and approved without any requirement of further act or action by the Debtors, the Debtors' shareholders or boards of directors, or any other Entity or Person. The Obligor Debtors are authorized to execute and deliver, and to consummate the transactions contemplated by, the Sale Transaction Documentation and the Plan, as well as to execute, deliver, file, record, and issue any note, documents, or agreements in connection therewith, without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization, or approval of any Entity.

Effective as of the Closing of the Sale Transaction, the Debtors, the Reorganized Debtors, and the Plan Administrator shall have no obligation or liability on account of any Assumed Liabilities.

The transactions contemplated by the Sale Transaction Documentation and the Plan are undertaken by the Debtors and the Purchaser without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided therein to consummate the transactions contemplated

thereunder and hereunder shall not affect the validity of such transactions (including the assumption, assignment and/or transfer of any Executory Contract or Unexpired Lease to the Purchaser). The Purchaser is a good-faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

If the Purchaser is Newco then the steps of the Restructuring Transactions and the Sale Transaction will be set forth in the Restructuring Transaction Steps.

On or prior to the Effective Date, the Purchased Letters of Credit shall be deemed amended to refer to the Purchaser or its Affiliate(s), as applicable (in place of the applicable Obligor Debtor), and such Purchased Letters of Credit shall be fully enforceable as if they expressly referred to the Purchaser or its Affiliate(s), as applicable. On or prior to the Effective Date, all outstanding and undrawn letters of credit issued pursuant to the Credit Agreement Facilities or the Credit Agreement Documents (other than the Purchased Letters of Credit) shall be deemed canceled.

Notwithstanding anything in the Plan to the contrary, the Sale Transaction shall not include any assets or liabilities of the Non-Obligor Debtor, and the Non-Obligor Debtor shall not receive any portion of the Purchase Price.

#### **4.4 Newco Common Equity**

Subject to and in accordance with the Restructuring Transaction Steps, in the event that Newco is the Purchaser, Newco shall issue and distribute, or otherwise transfer, the Newco Common Equity pursuant to the Plan. The issuance of the Newco Common Equity shall be authorized without the need for any further corporate action and without any further action by the Debtors, the Reorganized Debtors, the Plan Administrator, Newco, or any of their equity holders, as applicable. The issuance and distribution, or other transfer, on the Effective Date (or as soon as reasonably practicable thereafter) of Newco Common Equity for the benefit of Holders of Allowed Claims in Class 3 in accordance with the terms of Article III of the Plan, if applicable, shall be authorized. All Newco Common Equity issued under the Plan shall be duly authorized, validly issued, fully paid, and non-assessable (as applicable).

Holder of Allowed Claims in Class 3 may (i) create one or more holding entities and/or blocker entities and (ii) solely if elected by any such Holders, transfer to any such entities such Holders' Allowed Claims in Class 3 or Newco Common Equity, in each case in accordance with the Restructuring Transaction Steps. The organizational documents for such holding and/or blocker entities shall be acceptable to the Required Consenting Lenders in their sole discretion.

#### **4.5 The Takeback Debt and the Exit Facility**

On the Effective Date, in the event the Purchaser is Newco, Newco shall, if it so elects at its sole discretion, (i) issue the Takeback Debt, the terms of which will be set forth in the Takeback Debt Documents, and (ii) enter into the Exit Facility, if applicable, the terms of which will be set forth in the Exit Facility Documents.

Confirmation of the Plan shall be deemed approval of (i) (a) the Takeback Debt and the Takeback Debt Documents and (b) the Exit Facility and the Exit Facility Documents and, in each case, all transactions contemplated thereby, and all actions to be taken, undertakings to be made,

and obligations to be incurred by Newco in connection therewith, including the payment of all fees, indemnities, expenses, and other payments provided for therein and (ii) authorization of Newco to enter into and execute the Takeback Debt Documents and the Exit Facility Documents and such other documents as may be required to effectuate the treatment afforded by the Takeback Debt and the Exit Facility.

On the Effective Date, all of the Liens and security interests to be granted in accordance with the Takeback Debt Documents and the Exit Facility Documents: (i) shall be deemed to be granted; (ii) shall be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Takeback Debt Documents and the Exit Facility Documents; (iii) shall be deemed automatically perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the Takeback Debt Documents and the Exit Facility Documents; and (iv) shall not be subject to recharacterization or equitable subordination for any purposes whatsoever and shall not constitute preferential transfers or fraudulent conveyances under the Bankruptcy Code or any applicable non-bankruptcy law. Newco and the persons and Entities granting such Liens and security interests shall be authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of the applicable state, federal, or other law that would be applicable in the absence of the Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order and that any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties.

#### **4.6 Exemption from Registration Requirements**

The offering, issuance, and distribution of any Securities, including, if applicable, all Newco Common Equity, pursuant to the Plan, will be exempt from the registration requirements of section 5 of the Securities Act or any similar federal, state, or local law in reliance on section 1145 of the Bankruptcy Code or, only to the extent such exemption under section 1145 of the Bankruptcy Code is not available, section 4(a)(2) of the Securities Act or any other available exemption from registration under the Securities Act.

All Newco Common Equity to be issued (directly or indirectly, as provided herein) to Holders of Allowed Claims in Class 3 will be issued under the Plan without registration under the Securities Act or any similar federal, state, or local law in reliance on section 1145(a) of the Bankruptcy Code to the maximum extent permitted by Law. Except as otherwise provided in the Plan or the governing certificates or instruments, any and all Newco Common Equity issued under the Plan will be freely tradable under the Securities Act by the recipients thereof, subject to: (i) the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act, and compliance with any applicable state or foreign securities laws, if any, and any rules and regulations of the United States Securities and Exchange Commission, if any, applicable at the time of any future transfer of such Securities or instruments; (ii) the restrictions, if any, on the transferability of such Securities and instruments, including as set forth in the Newco Corporate Governance Documents; and (iii) any other applicable regulatory approval. Recipients of the Newco Common Equity are advised to consult

with their own legal advisors as to the availability of any exemption from registration under the Securities Act and any applicable Blue Sky Laws.

The Newco Common Equity that may be issued pursuant to the exemption from registration set forth in section 4(a)(2) of the Securities Act or, solely to the extent section 4(a)(2) of the Securities Act is not available, any other available exemption from registration under the Securities Act, will be considered “restricted securities”, will bear customary legends and transfer restrictions, and may not be transferred except pursuant to an effective registration statement or under an available exemption from the registration requirements of the Securities Act.

Notwithstanding anything to the contrary in the Plan, no Entity shall be entitled to require a legal opinion regarding the validity of any transaction contemplated by the Plan, including, for the avoidance of doubt, whether the Newco Common Equity is exempt from registration. All Entities shall be required to accept and conclusively rely upon the Plan and Confirmation Order in lieu of a legal opinion regarding whether the Newco Common Equity to be issued under the Plan is exempt from registration.

#### **4.7 Vesting of Assets in the Reorganized Debtors**

Except as otherwise provided herein, in any Sale Transaction Documentation, or in any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement (including with respect to the Restructuring Transactions, the Takeback Debt Documents, and the Exit Facility Documents), on the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all property in each Debtor’s Estate, all Causes of Action, and any property acquired by any of the Debtors under the Plan, but in all cases excluding the Purchased Assets, shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, or other encumbrances. On and after the Effective Date, except as otherwise provided herein, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and pursue, compromise, or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

#### **4.8 Cancellation of Instruments, Certificates, and Other Documents**

On the Effective Date, except with respect to the Takeback Debt, the Exit Facility, and the Newco Common Equity, in each case if applicable, or any other document included in the Plan Supplement, as otherwise provided in the Plan: (i) the obligations of the Debtors under the Credit Agreement, the Credit Agreement Documents, the Interest Rate Swap Documents, the Existing CLH Interests, any certificate, share, note, bond, indenture, purchase right, option, warrant, or other instrument or document, directly or indirectly, evidencing or creating any indebtedness or obligation of, or ownership interest in, the Debtors giving rise to any Claim or Interest shall be cancelled, and the Debtors and the Reorganized Debtors shall not have any continuing obligations thereunder; and (ii) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificate or articles of incorporation, or similar documents governing the shares, certificates, notes, bonds, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtors shall be released and discharged; *provided* that notwithstanding Confirmation or the occurrence of the Effective Date, any such agreement that

governs the rights of the Holder of an Allowed Claim shall continue in effect solely for purposes of enabling such Holder to receive distributions under the Plan on account of such Allowed Claim as provided herein; *provided, further*, that the preceding proviso shall not affect the discharge of Claims or Interests pursuant to the Bankruptcy Code, the Confirmation Order, or the Plan or result in any expense or liability to the Reorganized Debtors, except to the extent set forth in or provided for under the Plan.

Notwithstanding Confirmation, the occurrence of the Effective Date, or anything to the contrary herein, only such matters that, (a) by their express terms, survive the termination of the Credit Agreement or (b) are required to permit the Administrative Agent and the Collateral Agent to appear and be heard in the Chapter 11 Cases or in any proceeding in the Bankruptcy Court shall survive the occurrence of the Effective Date, including the rights of the agents thereunder, as applicable, to expense reimbursement, indemnification, and similar amounts.

#### **4.9 Sources for Plan Distributions**

The Debtors shall fund distributions under the Plan with: (i) Cash on hand, including Cash from operations; (ii) the Sale Transaction Proceeds, if any; (iii) the Newco Common Equity, if applicable; (iv) the Takeback Debt, if applicable; (v) payments made directly by the Purchaser on account of any Assumed Liabilities under the Sale Transaction Documentation; and (vi) payments of Cure Claims made by the Purchaser; *provided* that to the extent the foregoing relate to the Non-Obligor Debtor, they shall be used solely to fund distributions on account of Claims against the Non-Obligor Debtor, and to the extent the foregoing relate to the Obligor Debtors, they shall be used solely to fund distributions on account of Claims against the Obligor Debtors. Cash payments to be made pursuant to the Plan will be made by the Distribution Agent. Unless otherwise agreed in writing by the Debtors and the Purchaser, distributions required by the Plan on account of Allowed Claims that are Assumed Liabilities shall be the sole responsibility of the Purchaser to the extent such Claim is Allowed against the Debtors.

#### **4.10 Corporate Action**

Upon the Effective Date, all actions contemplated by the Plan shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, directors, managers, or officers of the Debtors, the Reorganized Debtors, Newco, the Plan Administrator, or any other Entity, including: (i) rejection or assumption, as applicable, of Executory Contracts and Unexpired Leases; (ii) selection of the directors, managers, and officers for Newco, if applicable, including the appointment of the Newco Board, in each case as determined in the sole discretion of the Required Consenting Lenders; (iii) the issuance of the Takeback Debt and the execution, entry into, delivery, and filing of the Takeback Debt Documents, as applicable; (iv) the entry into the Exit Facility and the execution, entry into, delivery and filing of the Exit Facility Documents, as applicable; (v) the adoption and/or filing of the Newco Corporate Governance Documents, if applicable; (vi) the issuance and distribution, or other transfer, of the Newco Common Equity as provided herein, if applicable; (vii) the implementation of the Restructuring Transactions; (viii) the entry into the Sale Transaction Documentation; and (ix) all other acts or actions contemplated, or reasonably necessary or appropriate to promptly consummate the transactions contemplated by the Plan (whether proposed to occur before, on, or after the Effective Date). All matters provided for in the Plan involving the corporate structure of the Debtors, and any corporate action required by the



Debtors in connection therewith, shall be deemed to have occurred on, and shall be in effect as of, the Effective Date, without any requirement of further action by the security Holders, directors, managers, authorized persons, or officers of the Debtors. On or (as applicable) before the Effective Date, the appropriate officers of the Debtors, the Reorganized Debtors or Newco, as applicable, shall be authorized and (as applicable) directed to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated by the Plan (or necessary or desirable to effectuate the Restructuring Transactions consistent with the Plan) in the name of and on behalf of the Debtors, the Reorganized Debtors or Newco, as applicable, including the Takeback Debt Documents (if applicable), the Exit Facility Documents (if applicable), and any and all other agreements, documents, Securities, and instruments relating to the foregoing, to the extent not previously authorized by the Bankruptcy Court. The authorizations and approvals contemplated by this Article 4.10 shall be effective notwithstanding any requirements under non-bankruptcy law.

#### **4.11 Corporate Existence**

Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement (including the Restructuring Transactions, the Newco Corporate Governance Documents, the Exit Facility Documents, and the Takeback Debt Documents, in each case if applicable), on the Effective Date, each Debtor shall continue to exist after the Effective Date as a separate corporation, limited liability company, partnership, or other form of Entity, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form of Entity, as the case may be, pursuant to the applicable law in the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificate of incorporation and by-laws (or other analogous formation documents) in effect before the Effective Date, except to the extent such certificate of incorporation or bylaws (or other analogous formation documents) is amended and restated, converted or otherwise modified by the Plan, the Plan Supplement (including the Restructuring Transaction Steps, the Newco Corporate Governance Documents, the Exit Facility Documents and the Takeback Debt Documents, in each case if applicable), or otherwise, and to the extent any such document is amended, such document is deemed to be amended pursuant to the Plan and requires no further action or approval (other than any requisite filings required under applicable state or federal law).

#### **4.12 Newco Corporate Governance Documents**

To the extent required under the Plan or applicable non-bankruptcy law, Newco, if applicable, will file the Newco Corporate Governance Documents with the applicable Secretaries of State and/or other applicable authorities in accordance with the corporate laws of its place of incorporation. The Newco Corporate Governance Documents shall, if applicable, among other things: (i) authorize the issuance of the Newco Common Equity; and (ii) pursuant to and only to the extent required by section 1123(a)(6) of the Bankruptcy Code, include a provision prohibiting the issuance of non-voting equity Securities. Subject to Article 4.13, each Reorganized Debtor may amend and restate its certificate of incorporation and other formation and constituent documents as permitted by the laws of its respective jurisdiction of formation and the Plan.

#### **4.13 Indemnification Provisions in Organizational Documents**

Notwithstanding anything herein to the contrary, in the event the Purchaser is Newco, the Debtors (if necessary to continue all Indemnification Provisions in full force), as of the Closing Date, shall be deemed to have assumed all Indemnification Provisions and assigned such provisions to the Purchaser as though such Indemnification Provisions were to have full force and effect; *provided* that, the assumption by the Debtors of the Indemnification Provisions and the assignment thereof to the Purchaser shall not be deemed to be an assumption or assignment of the contract, agreement, resolution, instrument, or document in which such Indemnification Provisions are contained, memorialized, agreed to, embodied or created (or any of the other terms or provisions thereof) unless, and only to the extent that, such contract, agreement, resolution, instrument, or document is a Purchased Asset. All Indemnification Provisions in place on and prior to the Closing Date for current and former directors, officers, managers, members, employees, accountants, investment bankers, attorneys, and other professionals of the Debtors (each of the foregoing solely in their capacity as such) shall survive the Closing Date against any claims or Causes of Action, whether direct or derivative, liquidated or unliquidated, fixed, or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted. In the event the Purchaser is Newco, the Purchaser shall not amend and/or restate its certificate of incorporation, bylaws, or similar organizational document after the Closing Date to terminate or materially adversely affect (i) any Indemnification Provision or (ii) the rights of such current and former directors, officers, managers, members, employees, accountants, investment bankers, attorneys, and other professionals of the Debtors (each of the foregoing solely in their capacity as such) referred to in the immediately preceding sentence.

#### **4.14 Effectuating Documents; Further Transactions**

On and after the Effective Date, the Reorganized Debtors, and the officers and members of the boards of directors and managers (or other governing body) thereof, shall be authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, the Exit Facility Documents, and the Takeback Debt Documents, as applicable, and the Securities issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtors, without the need for any approvals, authorizations, or consents except for those expressly required under the Plan.

#### **4.15 Section 1146(a) Exemption**

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Reorganized Debtor, Newco, or to any other Person) of property under, in contemplation of, or in connection with the Plan (including the Restructuring Transactions), the Sale Transaction or the Sale Transaction Documentation, or pursuant to: (i) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors, Reorganized Debtors, or Newco; (ii) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (iii) the making, assignment, or recording of any lease or sublease; (iv) the grant of collateral as security for any or all of the Exit Facility or the Takeback Debt, as applicable; or (v) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including

any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan (including the Restructuring Transactions), shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, sales or use tax, or other similar tax or governmental assessment. All appropriate state or local government officials, agents or filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(a) of the Bankruptcy Code, shall forego the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

#### **4.16 Preservation of Causes of Action**

Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan (including, without limitation, by the Debtors), including pursuant to Article VIII or a Final Order, or transferred to the Purchaser pursuant to the Sale Transaction Documentation, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. For the avoidance of doubt, the foregoing shall not apply to any Cause of Action released or exculpated in the Plan (including, without limitation, by the Debtors). **No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action, including Avoidance Actions, against them as any indication that the Debtors, the Reorganized Debtors, or the Purchaser, will not pursue any and all available Causes of Action against them. The Debtors, the Reorganized Debtors and the Purchaser, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Entity, including Avoidance Actions, except as otherwise expressly provided herein.** Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan (including, without limitation, by the Debtors), including pursuant to Article VIII or a Final Order, the Reorganized Debtors or the Purchaser, as applicable, expressly reserve all Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation. For the avoidance of doubt, in no instance will any Cause of Action preserved pursuant to this Article 4.16 include any claim or Cause of Action with respect to, or against, a Released Party or Exculpated Party that is released and/or exculpated, as applicable, pursuant to Article XIII.

In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action preserved pursuant to the first paragraph of this Article 4.16 that a Debtor may hold against any Entity that is not otherwise transferred or conveyed to the Purchaser shall vest in the Reorganized Debtors. The applicable Reorganized Debtor, through its authorized agents or representatives,

shall retain and may exclusively enforce any and all such Causes of Action. The Reorganized Debtors or the Purchaser, as applicable, shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Bankruptcy Court.

#### **4.17 Dissolution of the Debtors**

As of the Effective Date, the Plan Administrator shall act as the sole officer, director, and manager, as applicable, of the Debtors with respect to their affairs. Subject in all respects to the terms of the Plan, the Plan Administrator shall have the power and authority to take any action necessary to wind down and dissolve any of the Debtors, and shall be authorized to (i) file a certificate of dissolution for any of the Debtors, together with all other necessary corporate and company documents, to effect the dissolution of the Debtors under the applicable laws of the applicable state(s) of formation, and (ii) complete and file all final or otherwise required federal, state, and local tax returns and shall pay taxes required to be paid for any of the Debtors, *provided, however,* that the Plan Administrator shall not take any actions to effect the dissolution of CLH or CLH II without the prior written consent of the Consenting Sponsor, and (iii) pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of any of the Debtors or their Estates for any tax incurred during the administration of such Debtor's Chapter 11 Case, as determined under applicable tax laws. To the extent any tax liability is assumed by Newco in a Sale Transaction, Newco shall have the right to act in the same capacity as the Plan Administrator with respect to such tax liability.

The filing by the Plan Administrator of any of the Debtors' certificate of dissolution shall be authorized and approved in all respects without further action under applicable law, regulation, order, or rule, including any action by the stockholders, members, board of directors, or board of managers of any of the Debtors or any of their Affiliates; *provided* that no certificate of dissolution for CLH or CLH II shall be deemed authorized or approved without the prior written consent of the Consenting Sponsor.

Notwithstanding the foregoing, the Consenting Sponsor shall have the authority to complete and file partnership income tax returns of CLH (which shall include CLH II as an entity disregarded as separate from CLH for U.S. federal income tax purposes) and any other applicable tax returns for each of CLH and CLH II.

#### **4.18 Funding and Use of Cash Reserve**

On or before the Effective Date, the Debtors shall fund the Cash Reserve in such amounts as are necessary in order to be able to pay in full in Cash the obligations and liabilities for which such reserves were established, including, without limitation, reserving an amount of Cash equal to 100% of distributions to which Holders of Disputed Claims in each such applicable Class would be entitled under the Plan as of such date if such Disputed Claims were Allowed Claims in their respective Face Amount (or based on the Debtors' books and records if the applicable Holder has not yet Filed a Proof of Claim and the applicable Bar Date has not yet expired); *provided, however,* that, solely with respect to the Disputed Claims Reserve, the Debtors may fund such Disputed Claims Reserve in such lesser amount as may be agreed by the Debtors and the Required

Consenting Lenders; *provided, further*, that the Debtors and the Reorganized Debtors, as applicable, shall have the right to file a motion seeking to estimate any Disputed Claims.

The Cash contained in the Cash Reserve shall be used solely to pay the obligations and liabilities for which such reserve, or such portion of such reserve, was established; *provided* that, once such obligations and liabilities are paid, any excess Cash in the Cash Reserve shall be paid to Holders of Allowed First Lien Claims on a Pro Rata basis until such time as Holders of Allowed First Lien Claims have been paid in full. The Debtors and the Reorganized Debtors, as applicable, shall maintain detailed records of all payments made from the Cash Reserve, such that all payments and transactions shall be adequately and promptly documented in, and readily ascertainable from, their respective books and records. After the Effective Date, neither the Debtors nor the Reorganized Debtors shall deposit any other funds or property into the Cash Reserve without further order of the Bankruptcy Court or otherwise commingle funds in the Cash Reserve.

#### **4.19 Plan Administrator**

On and after the Effective Date, the Plan Administrator shall act for the Debtors and the Reorganized Debtors in the same fiduciary capacity as applicable to a board of managers, directors, and officers, subject to the provisions hereof (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same). On the Effective Date, the authority, power, and incumbency of the persons acting as managers, directors, and officers of the Debtors shall be deemed to have terminated, the persons acting as managers, directors, and officers of the Debtors shall be deemed to have resigned, and a representative of the Plan Administrator shall be appointed as the sole manager and sole officer of the Debtors, and shall succeed to the powers of the Debtors' managers, directors, and officers. From and after the Effective Date, the Plan Administrator shall be the sole representative of, and shall act for, the Debtors and Reorganized Debtors. The Plan Administrator shall use commercially reasonable efforts to operate in a manner consistent with the Wind-Down Budget. The Plan Administrator shall carry out any necessary functions required by the Sale Transaction Documentation.

On and after the Effective Date, the Plan Administrator shall administer the Debtors' Estates for the purpose of effectuating the Claims reconciliation and settlement process, and making distributions to Holders of such Claims. The Plan Administrator and its designees or representatives shall have the right to object to, Allow, or otherwise resolve any Claims, subject to the terms hereof.

The Plan Administrator shall be compensated from the Wind-Down Budget pursuant to the terms of the Plan Administrator Agreement. Any professionals retained by the Plan Administrator shall be entitled to reasonable compensation for services rendered and reimbursement of reasonable fees, costs and expenses incurred from the Wind-Down Budget. The payment of the fees, costs, and expenses of the Plan Administrator and its retained professionals shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court; *provided, however*, that any disputes related to such fees, costs, and expenses shall be brought before the Bankruptcy Court.

The Reorganized Debtors shall indemnify and hold harmless (i) the Plan Administrator (in its capacity as such and as officer, director, and/or manager of the Debtors, and including any

natural person serving as a representative of the Plan Administrator in any of the foregoing capacities), and (ii) professionals retained by the Reorganized Debtors (collectively, the “*Indemnified Parties*”), from and against and with respect to any and all liabilities, losses, damages, claims, costs, and expenses, including but not limited to costs and expenses of investigating, analyzing and responding to claims, and attorneys’ fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, other than acts or omissions resulting from such Indemnified Party’s gross negligence, actual fraud, or willful misconduct, with respect to the Reorganized Debtors or the implementation or administration of the Plan or the Plan Administrator Agreement. To the extent an Indemnified Party asserts a claim for indemnification as provided above, the legal fees and related costs incurred by counsel to the such Indemnified Party in monitoring and participating in the defense of such claims giving rise to the asserted right of indemnification shall be advanced to such Indemnified Party (and such Indemnified Party undertakes to repay such amounts if it ultimately shall be determined through a Final Order that such Indemnified Party is not entitled to be indemnified therefor). The indemnification provisions of the Plan and the Plan Administrator Agreement shall remain available to and be binding upon any former Plan Administrator or the estate of any decedent Plan Administrator (including any natural person that serves or has served as a representative of a current, former, or, decedent Plan Administrator in its capacity as officer, director, or manager of the Reorganized Debtors) and shall survive the termination of the Plan Administrator Agreement.

#### **4.20 Wind-Down**

On and after the Effective Date, in accordance with the Wind-Down Budget, the Debtors shall (i) continue in existence for purposes of (a) winding down the Debtors’ businesses and affairs as expeditiously as reasonably possible, (b) resolving Disputed Claims as provided hereunder, (c) paying Allowed Claims not assumed by the Purchaser as provided hereunder, (d) filing appropriate tax returns, (e) complying with their continuing obligations under the applicable Sale Transaction Documentation (including with respect to the transfer of permits to the Purchaser as contemplated therein), and (f) administering the Plan in an efficacious manner and (ii) thereafter liquidate and dissolve as set forth in the Plan. The Plan Administrator shall carry out these actions for the Debtors.

#### **4.21 Wind-Down Amount**

On the Effective Date, the Debtors shall retain Cash from the Sale Transaction Proceeds (if any) or other Cash on hand in the Wind-Down Amount in accordance with the terms of the Wind-Down Budget. Any remaining amounts in the Wind-Down Amount following all required distributions therefrom in accordance with the terms of the Wind-Down Budget shall promptly be distributed in accordance with the Bankruptcy Code and the Plan, including [Article 4.22](#).

#### **4.22 Unused Cash Distribution**

Any Cash remaining after facilitating all distributions pursuant to the Plan or any other order of the Bankruptcy Court (including, for the avoidance of doubt, amounts distributed on account of the Professional Fee Reserve Amount and the Wind-Down Amount) shall be paid to Holders of Allowed First Lien Claims on a Pro Rata basis until such time as the Allowed First Lien Claims have been paid in full.

#### **4.23 Closing the Chapter 11 Cases**

When all Disputed Claims have become Allowed or disallowed, the Reorganized Debtors may seek authority from the Bankruptcy Court to close any remaining Chapter 11 Cases of the Debtors in accordance with the Bankruptcy Code and the Bankruptcy Rules.

Notwithstanding the foregoing, as of the Effective Date, the Reorganized Debtors may file one motion seeking authority to close the Chapter 11 Cases of all of the Debtors except for one Debtor and changing the caption of the Chapter 11 Cases accordingly. Nothing in the Plan shall authorize the closing of any case retroactive to a date that precedes the date any such order is entered. Any request for retroactive relief shall be made on motion served on the U.S. Trustee. Upon the Filing of a motion to close the last open Chapter 11 Case, the Reorganized Debtors shall file a final report with respect to all of the Chapter 11 Cases pursuant to Local Bankruptcy Rule 3022-1(c).

### **ARTICLE V**

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

##### **5.1 Assumption and Rejection of Executory Contracts and Unexpired Leases**

On the Effective Date, (i) the Assumed Contracts to be assumed and assigned in connection with the Sale Transaction will be deemed assumed and assigned to the Purchaser in accordance with the Sale Transaction Documentation and (ii) the Assumed Contracts that are assumed and not assigned to a third party (including in accordance with the Sale Transaction Documentation) shall be deemed assumed by the applicable Reorganized Debtor in accordance with the Plan.

On the Effective Date, except as otherwise provided herein, any Executory Contract or Unexpired Lease (i) not previously assumed, (ii) not assumed and assigned in accordance with the Sale Transaction Documentation, (iii) not identified in the Plan Supplement as an Assumed Contract, (iv) not previously rejected pursuant to an order of the Bankruptcy Court, and (v) not the subject of a pending motion to reject, assume, or assume and assign as of the Effective Date, will be deemed rejected.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, assumption and assignments, or rejections, all pursuant to sections 365(a) and 1123 of the Bankruptcy Code and effective on the occurrence of the Effective Date.

Except as otherwise provided herein or agreed to by the Debtors and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Each Executory Contract and Unexpired Lease assumed pursuant to the Plan or by Bankruptcy Court order, and not assigned to a third party on or prior to the Effective Date, shall re-vest in and be fully enforceable by the applicable Reorganized Debtor in accordance with its terms, except as such terms may have been modified by order of the Bankruptcy Court or agreement of the parties. To the maximum extent permitted by law, to the extent any provision in any Executory Contract or Unexpired Lease

assumed pursuant to the Plan restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the assumption or assumption and assignment of such Executory Contract or Unexpired Lease (including any “change of control” provision), then such provision shall be deemed modified such that the transactions contemplated by the Plan shall not entitle the non-Debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto. Notwithstanding anything to the contrary in the Plan, the Debtors and the Reorganized Debtors, as applicable, reserve the right to alter, amend, modify, or supplement the Assumed Contracts List at any time through and including the Effective Date. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith.

If certain, but not all, of a contract counterparty’s Executory Contracts and Unexpired Leases are assumed pursuant to the Plan, the Confirmation Order will be a determination that such counterparty’s Executory Contracts and Unexpired Leases that are being rejected pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and Unexpired Leases that are being assumed pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection on the grounds that their agreements are integrated and not severable.

Notwithstanding anything to the contrary herein, any Claims resulting from termination of the Macquarie Agreement will, (i) to the extent Secured and subject to applicable limitations in any intercreditor agreement, receive the same treatment as Claims in Class 3 and be included therein for purposes of calculating Pro Rata shares, and (ii) to the extent Unsecured, receive the same treatment as Claims in Class 4B and be included therein for purposes of calculating Pro Rata shares.

## **5.2 Cure of Defaults for Assumed Executory Contracts and Unexpired Leases**

Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure Claim in Cash on the Effective Date or as soon as reasonably practicable, subject to the limitations described below, or on such other terms as the parties to such Executory Contract or Unexpired Lease may otherwise agree, in each case subject to the Sale Transaction Documentation. Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable Cure pursuant to this Article 5.2, shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. **Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed in the Chapter 11 Cases, including pursuant to the Confirmation Order, and for which any Cure has been fully paid pursuant to this Article 5.2, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.**



In the event of an assumption or assumption and assignment under the Plan of an Executory Contract or Unexpired Lease that is in default, the Debtors will File and serve upon counterparties to such Executory Contracts and Unexpired Leases, a notice of the proposed assumption and assignment of the Executory Contracts and Unexpired Leases in accordance with the Bidding Procedures Order and the Disclosure Statement Order, as applicable.

Any such counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption, or proposed assumption and assignment, or Cure Claim amount in accordance with the Bidding Procedures Order or the Disclosure Statement Order, as applicable, will be deemed to have consented to such matters, will be deemed to have forever released and waived any objection to such proposed assumption, proposed assumption and assignment, and Cure Claim amount, and shall be forever barred from objecting to (i) the Debtors' proposed Cure, (ii) the assumption and assignment of such counterparty's Executory Contract or Unexpired Lease (including the adequate assurance of future performance), and (iii) the related relief requested in the Bidding Procedures Motion or provided for in the Plan. The Confirmation Order will constitute an order of the Bankruptcy Court approving each proposed assumption, or proposed assumption and assignment, of Executory Contracts and Unexpired Leases pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date.

Where a counterparty to an Executory Contract or Unexpired Lease timely files an objection asserting a higher Cure Claim than the amount listed in the notice of assignment, or an objection to the possible assignment of such Executory Contract or Unexpired Lease, and the parties are unable to consensually resolve the dispute, the amount (if any) to be paid under section 365 of the Bankruptcy Code or, as the case may be, the Debtors' ability to assign the Executory Contract or Unexpired Lease shall be determined at the Confirmation Hearing or such later date as fixed by the Court. Any such objection shall be resolved by a Final Order. To the extent any such objection shall be pending as of the date of the Closing of the Sale, the Executory Contract or Unexpired Lease subject to such objection shall not be assumed and assigned to the Purchaser until such time as (i) (a) the amount (if any) to be paid under section 365 of the Bankruptcy Code or (b) the Debtors', the Reorganized Debtors', or the Plan Administrator's, as applicable, ability to assign the Executory Contract or Unexpired Lease to the Purchaser is determined by the Court or (ii) the parties consensually resolve such objection in a manner that permits the assignment of the Executory Contract or Unexpired Lease to the Purchaser. Within ten (10) days after entry of a Final Order determining (i) the amount (if any) to be paid under section 365 of the Bankruptcy Code with respect to any Executory Contract or Unexpired Lease, the Debtors, the Reorganized Debtors, or the Purchaser, as applicable, may elect to (a) pay such amount and have the Executory Contract or Unexpired Lease assigned to it or (b) remove such Executory Contract or Unexpired Lease from the Assumed Contracts List, or (ii) that any Executory Contract or Unexpired Lease is nonassignable, such Executory Contract or Unexpired Lease shall be removed from the Assumed Contracts List; *provided* that at any time while a dispute is pending as to the assumption of or Cure with respect to any Executory Contract or Unexpired Lease, the Debtors, the Reorganized Debtors, or the Plan Administrator, as applicable, may remove such Executory Contract or Unexpired Lease from the Assumed Contracts List. Any Executory Contract or Unexpired Lease subsequently removed from the Assumed Contracts List, in accordance with the Plan and Bidding Procedures Order or pursuant to an agreement with the counterparty, shall be deemed to have been rejected as of the Confirmation Date. The Debtors or the Reorganized Debtors, as applicable, may settle any dispute regarding the assumption and

assignment of an Executory Contract or Unexpired Lease and shall pay any agreed-upon Cure without any further notice to any party or any action, order, or approval of the Bankruptcy Court. Notwithstanding anything to the contrary herein, the Debtors, the Reorganized Debtors, or the Plan Administrator, as applicable, reserve the right to File and serve a supplemental notice in accordance with the Bidding Procedures Order at any time after the service of the initial assumption and assignment notice and before the Closing of the Sale, to (i) supplement the list of Executory Contracts and Unexpired Leases to be assumed and assigned with previously omitted Executory Contracts or Unexpired Leases, (ii) remove Executory Contracts and Unexpired Leases from the list of Executory Contracts and Unexpired Leases ultimately selected to be included on the Assumed Contracts List, and/or (iii) modify the previously stated cure amount associated with any Executory Contract or Unexpired Lease.

If there is any dispute regarding any Cure, the ability of the Reorganized Debtors or the Purchaser to provide “adequate assurance of future performance” within the meaning of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption, then payment of the Cure Claim shall occur as soon as reasonably practicable after entry of a Final Order resolving such dispute, approving such assumption, or as may be agreed upon by the Debtors or the Reorganized Debtors, as applicable (in each case with the consent of the Required Consenting Lenders and, to the extent set forth in the Restructuring Support Agreement, the Consenting Sponsor), and the counterparty to the Executory Contract or Unexpired Lease.

### **5.3 Rejection Damages Claims**

In the event that the rejection of an Executory Contract or Unexpired Lease by any of the Debtors results in damages to the other party or parties to such contract or lease, a Claim for such damages shall be forever barred and shall not be enforceable against the Debtors or the Reorganized Debtors or their respective properties or interests in property as agents, successors, or assigns, unless a Proof of Claim is Filed with the Solicitation Agent and served upon counsel for the Debtors, the Reorganized Debtors, and the Consenting Lenders no later than thirty (30) days after the effectiveness of the rejection of the applicable Executory Contract or Unexpired Lease. **Any Proofs of Claim arising from the rejection of Executory Contracts or Unexpired Leases that are not timely filed shall be subject to disallowance by further order of the Bankruptcy Court upon objection on such grounds.** Any such Claims, to the extent Allowed, shall be classified as General Unsecured Claims and shall be treated in accordance with Article III.

### **5.4 Insurance Policies**

Notwithstanding anything to the contrary contained in the Plan, Confirmation of the Plan shall not discharge, impair, or otherwise modify any indemnity obligations under any D&O Liability Insurance Policy and each such indemnity obligation, and any rights of the Debtors’ and the Reorganized Debtors’ current and former directors, officers, managers, members, employees, accountants, investment bankers, attorneys, and other professionals of the Debtors (each of the foregoing solely in their capacity as such) under any D&O Liability Insurance Policy shall survive the Effective Date.

### **5.5 Contracts and Leases After the Petition Date**

To the extent any contract, agreement, or lease entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed under section 365 of the Bankruptcy Code, is a Purchased Asset, such contract, agreement, or lease shall be deemed assigned by the Debtors to the Purchaser on the Effective Date, without a need for any consent or approval of, or notice to, the counterparty to any such contract, agreement, or lease.

### **5.6 Reservation of Rights**

Nothing contained in the Plan or the Plan Supplement shall constitute an admission by the Debtors or any other party that any contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption, the Debtors or the Reorganized Debtors, as applicable (in each case with the consent of the Required Consenting Lenders and, to the extent set forth in the Restructuring Support Agreement, the Consenting Sponsor), shall have forth-five (45) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

### **5.7 Nonoccurrence of Effective Date**

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code, unless such deadline(s) have expired.

## **ARTICLE VI**

### **PROVISIONS GOVERNING DISTRIBUTIONS**

#### **6.1 Distributions on Account of Claims Allowed as of The Effective Date**

Except as otherwise provided herein, a Final Order, or as otherwise agreed to by the Debtors or the Reorganized Debtors, as the case may be, and the Holder of the applicable Claim, on the first Distribution Date, the Distribution Agent shall make initial distributions under the Plan on account of Claims Allowed on or before the Effective Date or as soon as reasonably practical thereafter; *provided, however*, that (i) Allowed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice, and (ii) Allowed Priority Tax Claims shall be paid in accordance with Article 2.2. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between the Debtors and the Holder of such Claim or as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business. A Distribution Date shall occur no more frequently than once in every ninety (90) day period after the Effective Date, as necessary, in the Reorganized Debtors' sole discretion.

## **6.2 Rights and Powers of The Distribution Agent**

### **(i) Powers of Distribution Agent**

The Distribution Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof, *provided, however*, that such Distribution Agent shall waive any right or ability to setoff, deduct from, or assert any lien or encumbrance against the distributions required under the Plan to be distributed by such Distribution Agent.

### **(ii) Expenses Incurred On or After the Effective Date**

The Debtors or the Reorganized Debtors, as applicable, shall pay to the Distribution Agent all reasonable and documented fees and out-of-pocket expenses of such Distribution Agent without the need for any approvals, authorizations, actions, or consents, except as otherwise ordered by the Bankruptcy Court. The Distribution Agent shall submit detailed invoices to the Debtors or the Reorganized Debtors, as applicable, for all fees and expenses for which the Distribution Agent seeks reimbursement, and the Debtors or the Reorganized Debtors, as applicable, shall pay those amounts that they deem reasonable, and shall object in writing to those fees and expenses, if any, that the Debtors or the Reorganized Debtors, as applicable, deem to be unreasonable. In the event that the Debtors or the Reorganized Debtors, as applicable, object to all or any portion of the amounts requested to be reimbursed in a Distribution Agent's invoice, the Debtors or the Reorganized Debtors, as applicable, and such Distribution Agent shall endeavor, in good faith, to reach mutual agreement on the amount of the appropriate payment of such disputed fees and/or expenses. In the event that the Debtors or the Reorganized Debtors, as applicable, and a Distribution Agent are unable to resolve any differences regarding disputed fees or expenses, either party shall be authorized to move to have such dispute heard by the Bankruptcy Court.

## **6.3 Special Rules for Distributions to Holders of Disputed Claims**

Notwithstanding any provision otherwise in the Plan and except as otherwise agreed by the relevant parties, no partial payments and no partial distributions shall be made with respect to a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved by settlement or Final Order.

## **6.4 Delivery of Distributions**

### **(i) Record Date for Distributions**

On the Distribution Record Date, the various transfer registers for each Class of Claims entitled to distributions under the Plan as maintained by the Debtors or their respective agents shall be deemed closed, and there shall be no further changes in the record Holders of any Claims or Interests. The Distribution Agent shall have no obligation to recognize any transfer of Claims or Interests occurring on or after the Distribution Record Date; *provided, however*, that any Holder of Claims in Class 3 as of the Distribution Record Date may direct the transfer of distributions

under the Plan to a separate entity communicated to the Debtors in advance of the Effective Date pursuant to procedures to be agreed by the Debtors and the Required Consenting Lenders. In addition, with respect to payment of any Cure amounts or disputes over any Cure amounts, neither the Debtors nor the Distribution Agent shall have any obligation to recognize or deal with any party other than the non-Debtor party to the applicable Executory Contract or Unexpired Lease as of the Effective Date, even if such non-Debtor party has sold, assigned, or otherwise transferred its Claim for a Cure amount.

**(ii) Distribution Process**

Except as otherwise provided in the Plan, the Distribution Agent shall make distributions to Holders of Allowed Claims at the address for each such Holder as indicated on the applicable register or in the Debtors' records as of the date of any such distribution (as applicable), including the address set forth in any Proof of Claim filed by that Holder; *provided* that the manner of such distributions shall be determined at the discretion of the Debtors or Reorganized Debtors, as applicable.

**(iii) Delivery of Distributions on Credit Agreement Claims**

The Administrative Agent shall be deemed to be the Holder of all Allowed Credit Agreement Claims for purposes of distributions to be made hereunder, and all distributions on account of such Allowed Claims shall be made to the Administrative Agent or to the lenders under the Credit Agreement as authorized by the Administrative Agent. As soon as practicable following the Effective Date, the Administrative Agent shall arrange to deliver or direct the delivery of such distributions to or on behalf of the Holders of Allowed Credit Agreement Claims in accordance with the terms of the Credit Agreement and the Plan. Notwithstanding anything in the Plan to the contrary, and without limiting the exculpation and release provisions of the Plan, the Distribution Agent shall not have any liability to any Entity with respect to distributions made or directed to be made by the Administrative Agent, except liability resulting from gross negligence, actual fraud, or willful misconduct of the Administrative Agent or otherwise as set forth in the Credit Agreement.

**(iv) Compliance Matters**

In connection with the Plan, to the extent applicable, the Reorganized Debtors and the Distribution Agent shall comply with all applicable withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan and all related agreements shall be subject to any such withholding or reporting requirements. Notwithstanding the foregoing, each Holder of an Allowed Claim or any other Person that receives a distribution pursuant to the Plan shall have responsibility for any taxes imposed by any Governmental Unit, including, without limitation, income, withholding, and other taxes, on account of such distribution. Notwithstanding any provision in the Plan to the contrary, the Reorganized Debtors and the Distribution Agent shall have the right, but not the obligation, to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including (i) withholding distributions pending receipt of information necessary to facilitate such distributions and, (ii) in the case of a non-Cash distribution that is subject to withholding, withhold an appropriate portion of such property and either liquidate such withheld property to generate sufficient funds to pay applicable withholding taxes (or reimburse the distributing party for any

advance payment of the withholding tax) or pay the withholding tax using its own funds and retain such withheld property. The Reorganized Debtors reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances. Any amounts withheld or reallocated pursuant to this Article 6.4(iv) shall be treated as if distributed to the Holder of the Allowed Claim.

Any party entitled to receive any property as an issuance or distribution under the Plan shall, upon request, deliver to the Reorganized Debtors and the Distribution Agent, or such other Person designated by the Reorganized Debtors or the Distribution Agent, IRS Form W-9 or, if the payee is a foreign Person, an applicable IRS Form W-8, or any other forms or documents reasonably requested by the Reorganized Debtors or the Distribution Agent to reduce or eliminate any withholding required by any Governmental Unit. If such request is made by the Reorganized Debtors or the Distribution Agent, or such other Person designated by the Reorganized Debtors or the Distribution Agent, and the Holder fails to comply within ninety (90) days after not less than two (2) requests have been made, the amount of such distribution shall irrevocably revert to the applicable Reorganized Debtor and any Claim in respect of such distribution shall be forever barred from assertion against any Debtor or Reorganized Debtor, and their respective property.

**(v) Foreign Currency Exchange Rate**

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in *The Wall Street Journal, National Edition*, on the Petition Date.

**(vi) Fractional, Undeliverable, and Unclaimed Distributions**

- (a) *Fractional Distributions.* Whenever any distribution of fractional shares of Newco Common Equity would otherwise be required pursuant to the Plan, the actual distribution shall reflect a rounding down of such fraction to the nearest share or whole dollar. Any Cash distributions shall reflect a rounding down of such cash to the nearest penny.
- (b) *Undeliverable Distributions.* If any distribution to a Holder of an Allowed Claim is returned to the Distribution Agent as undeliverable, no further distributions shall be made to such Holder unless and until the Distribution Agent is notified in writing of such Holder's then-current address or other necessary information for delivery, at which time all currently due missed distributions shall be made to such Holder on the next Distribution Date. Undeliverable distributions shall remain in the possession of the Reorganized Debtors until such time as a distribution becomes deliverable, such distribution reverts to the Reorganized Debtors, or is cancelled pursuant to Article 6.4(vi)(d) below, and shall not be supplemented with any interest, dividends, or other accruals of any kind.
- (c) *Failure to Present Checks.* Checks issued by the Reorganized Debtors (or their Distribution Agent) on account of Allowed Claims shall be null and void if not negotiated within 90 days after the issuance of such check.

Requests for reissuance of any check shall be made directly to the Distribution Agent by the Holder of the relevant Allowed Claim with respect to which such check originally was issued.

Any Holder of an Allowed Claim holding an un-negotiated check that does not request reissuance of such un-negotiated check within 180 days of the Effective Date shall have its Claim for such un-negotiated check discharged and be discharged and forever barred, estopped, and enjoined from asserting any such Claim against the Reorganized Debtors or their property.

Within 90 days after the mailing or other delivery of any such distribution checks, notwithstanding applicable escheatment laws, all such distributions shall revert to the Reorganized Debtors. Nothing contained herein shall require the Reorganized Debtors to attempt to locate any Holder of an Allowed Claim.

- (d) *Reversion.* Any distribution under the Plan that is an Unclaimed Distribution for a period of six months after distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code, and such Unclaimed Distribution shall revert in the applicable Reorganized Debtor and, to the extent such Unclaimed Distribution is Newco Common Equity, shall be returned to Newco. Upon such revesting, the Claim of the Holder or its successors with respect to such property shall be cancelled, discharged, and forever barred notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws, or any provisions in any document governing the distribution that is an Unclaimed Distribution, to the contrary.

**(vii) Surrender of Cancelled Instruments or Securities**

On the Effective Date, each Holder of a Certificate shall be deemed to have surrendered such Certificate to the Distribution Agent. Such Certificate shall be cancelled solely with respect to the Debtors, and such cancellation shall not alter the obligations or rights of any non-Debtor third parties vis-à-vis one another with respect to such Certificate. Notwithstanding the foregoing paragraph, this Article 6.4(vii) shall not apply to any Claims and Interests Reinstated pursuant to the terms of the Plan.

**(viii) Minimum Distributions**

Notwithstanding anything herein to the contrary, the Reorganized Debtors and the Distribution Agents shall not be required to make distributions or payments of less than \$1.00 (whether Cash or otherwise).

**6.5 Claims Paid or Payable by Third Parties**

**(i) Claims Paid by Third Parties**

A Claim shall be correspondingly reduced, and the applicable portion of such Claim shall be disallowed without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim

receives a payment on account of such Claim from a party that is not a Debtor or a Reorganized Debtor. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor or a Reorganized Debtor on account of such Claim, such Holder shall, within fourteen (14) days of receipt thereof, repay or return the distribution to the Reorganized Debtors to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the Reorganized Debtors annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the fourteen (14) day grace period specified above until the amount is repaid.

**(ii) Claims Payable by Insurance Carriers**

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

**(iii) Applicability of Insurance Policies**

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Notwithstanding anything to the contrary herein (including Article VIII), nothing contained in the Plan shall constitute or be deemed a release, settlement, satisfaction, compromise, or waiver of any Cause of Action that the Debtors or any other Entity may hold against any other Entity, including insurers, under any policies of insurance or applicable indemnity, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

**6.6 No Postpetition or Default Interest on Claims**

Unless otherwise specifically provided for in the Cash Collateral Order, the Plan, or the Confirmation Order, and notwithstanding any documents that govern the Debtors' prepetition funded indebtedness to the contrary, (i) postpetition and/or default interest shall not accrue or be paid on any Claims and (ii) no Holder of a Claim shall be entitled to: (a) interest accruing on or after the Petition Date on any such Claim; or (b) interest at the contract default rate, as applicable.

**6.7 Setoffs**

Except as otherwise expressly provided for herein, each Reorganized Debtor, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable non-bankruptcy law, or as may be agreed to by the Holder of a Claim, may set off against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim), any claims, rights, and Causes of Action of any nature that such Debtor or Reorganized Debtor, as applicable, may hold against the Holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action against such Holder



have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); *provided, however*, that neither the failure to effect such a setoff nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by such Reorganized Debtor of any such Claims, rights, and Causes of Action that such Reorganized Debtor may possess against such Holder; *provided, further*, that no set off or recoupment against any distributions under the Plan shall be permitted on account of any Allowed Credit Agreement Claims. In no event shall any Holder of a Claim be entitled to set off any such Claim against any Claim, right, or Cause of Action of the Debtor or Reorganized Debtor (as applicable), unless such Holder has filed a motion with the Bankruptcy Court requesting the authority to perform such setoff on or before the Confirmation Date, and notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise.

### **6.8 Allocation Between Principal and Accrued Interest**

Except as otherwise provided herein or as otherwise required by law (as reasonably determined by the Reorganized Debtors), the aggregate consideration paid to Holders with respect to their Allowed Claims shall be treated pursuant to the Plan as allocated first to the principal amount of such Allowed Claims (to the extent thereof) and, thereafter, to interest, if any, on such Allowed Claim accrued through the Effective Date.

## **ARTICLE VII**

### **PROCEDURES FOR RESOLVING DISPUTED CLAIMS AND INTERESTS**

#### **7.1 Allowance of Claims**

After the Effective Date, and except as otherwise provided in the Plan, the Reorganized Debtors shall have and shall retain any and all available rights and defenses that the Debtors had with respect to any Claim, including, without limitation, the right to assert any objection to Claims based on the limitations imposed by section 502 of the Bankruptcy Code. The Debtors and the Reorganized Debtors may contest the amount and validity of any Disputed Claim or contingent or unliquidated Claim in the ordinary course of business in the manner and venue in which such Claim would have been determined, resolved or adjudicated if the Chapter 11 Cases had not been commenced.

#### **7.2 Objections to Claims**

Except as otherwise specifically provided in the Plan, the Debtors, the Reorganized Debtors, or the Plan Administrator, as applicable, shall have the sole authority: (i) to file, withdraw, or litigate to judgment objections to Claims; (ii) to settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (iii) to administer and adjust the Claims register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

#### **7.3 Estimation of Claims**

Before or after the Effective Date, the Debtors, the Reorganized Debtors, or the Purchaser, as applicable, may (but are not required to) at any time request that the Bankruptcy Court estimate

any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection; *provided* that if the Bankruptcy Court resolves the Allowed amount of a Claim, the Debtors, the Reorganized Debtors, or the Purchaser, as applicable, shall not be permitted to seek an estimation of such Claim. Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged from the Claims register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), and the relevant Reorganized Debtor or the Purchaser, as applicable, may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim.

#### **7.4 No Distribution Pending Allowance**

If an objection to a Claim is Filed, as set forth in Article 7.2, no payment or distribution provided under the Plan shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim.

#### **7.5 Distribution After Allowance**

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Distribution Agent shall provide to the Holder of such Claim the distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, without any interest to be paid on account of such Claim unless required under applicable bankruptcy law.

#### **7.6 Reserve for Disputed Claims**

The Debtors, the Reorganized Debtors, and the Plan Administrator, as applicable, shall, subject to the consent of the Required Consenting Lenders and, to the extent set forth in the Restructuring Support Agreement, the Consenting Sponsor, establish such appropriate reserves for Disputed Claims in Classes as it determines necessary or appropriate. Without limiting the foregoing, reserves for Disputed Claims shall equal an amount of Cash equal to 100% of distributions to which Holders of such Disputed Claims in each applicable Class would be entitled under the Plan as of such date if such Disputed Claims were Allowed Claims in their respective Face Amount (or based on the Debtors' books and records if the applicable Holder has not yet Filed a Proof of Claim and the applicable Bar Date has not yet expired); *provided, however*, that, solely with respect to the Disputed Claims Reserve, the Debtors may fund such Disputed Claims Reserve in such lesser amount as may be agreed by the Debtors and the Required Consenting Lenders; *provided, further*, that the Debtors, the Reorganized Debtors, the Plan Administrator, or the Purchaser, as applicable, shall have the right to file a motion seeking to estimate any Disputed Claims in accordance with Article 7.3 above.

**7.7 No Interest**

Unless otherwise specifically provided for herein or by order of the Bankruptcy Court, including, for the avoidance of doubt, the Cash Collateral Order, postpetition interest shall not accrue or be paid on Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim or right. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

**7.8 Adjustment to Claims Without Objection**

Any Claim that has been paid or satisfied, or any Claim that has been amended or superseded, including, without limitation, the Proof of Claim filed by Macquarie on account of the Macquarie Secured Claim and Macquarie Unsecured Claim, to the extent the Macquarie Settlement becomes effective, may be adjusted on the Claims register by the Reorganized Debtors without a claims objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

**7.9 Time to File Objections to Claims**

Any objections to Claims shall be Filed on or before the Claims Objection Deadline, subject to any extensions thereof approved by the Bankruptcy Court.

**ARTICLE VIII**

**EFFECT OF CONFIRMATION OF THE PLAN**

**8.1 Discharge of Claims and Termination of Interests; Compromise and Settlement of Claims, Interests, and Controversies**

**Except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan (including the Sale Transaction Documentation, the Exit Facility Documents, the Takeback Debt Documents, and the Newco Corporate Governance Documents, in each case as applicable): The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests to the fullest extent permitted by the Bankruptcy Code, subject to the occurrence of the Effective Date.**

**In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Reorganized Debtors may compromise and settle Claims against the Debtors and their Estates and Causes of Action against other Entities.**

**8.2 Releases by the Debtors**

**Notwithstanding anything contained in the Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code and Bankruptcy Rule 9019, for good and valuable consideration, as of the Effective Date, each Released Party is deemed released by the**

Debtors, the Reorganized Debtors, and their Estates from any and all Claims and Causes of Action, whether known or unknown, including any derivative claims, asserted by or on behalf of the Debtors, that the Debtors, the Reorganized Debtors, or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest (solely to the extent that the Debtors, the Reorganized Debtors, or their Estates would have been legally entitled under applicable non-bankruptcy law to compromise, settle, or release such Claims or Causes of Action on behalf of such Holder of a Claim or Interest without the consent of such Holder of a Claim or Interest), based on or relating to, or in any manner arising from, in whole or in part, (A) the Debtors (including the management, ownership or operation thereof), Restructuring (including, without limitation, the Debtors' in- or out-of-court restructuring efforts), any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), the formulation, preparation, dissemination, negotiation, or Filing of the Restructuring Support Agreement, or any transaction contemplated by the Restructuring, or any contract, instrument, release, or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, the Plan, the Plan Supplement, the Sale Transaction, the Exit Facility (if applicable), the Takeback Debt (if applicable), the Chapter 11 Cases, the Filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan, or (B) upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to the foregoing clause (A). Notwithstanding anything to the contrary in the foregoing, the releases set forth above (i) shall only be applicable to the maximum extent permitted by law and (ii) shall not be construed as (a) releasing any Released Party from Claims or Causes of Action arising from an act or omission that is judicially determined by a Final Order by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, or (b) releasing any post-Effective Date obligations of any party or Entity under the Plan, the Confirmation Order, any transaction contemplated by the Restructuring, any Definitive Document, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

### **8.3 Releases by Holders of Claims and Interests**

Notwithstanding anything contained in the Plan to the contrary, as of the Effective Date, each Releasing Party is deemed to have released and discharged each Debtor and Reorganized Debtor, and to have released every other Released Party from any and all Claims and Causes of Action, whether known or unknown, including any claims that are derivative of those of the Debtors, the Reorganized Debtors, or the Estates, or are asserted by or on behalf of the Debtors, that the Debtors, the Reorganized Debtors, or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest who is a Releasing Party, based on or relating to, or in any manner arising from, in whole or in part, (A) the Debtors

(including the management, ownership or operation thereof), Restructuring (including, without limitation, the Debtors' in- or out-of-court restructuring efforts), any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), the formulation, preparation, dissemination, negotiation, or Filing of the Restructuring Support Agreement, or any transaction contemplated by the Restructuring, or any contract, instrument, release, or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, the Plan, the Plan Supplement, the Sale Transaction, the Exit Facility (if applicable), the Takeback Debt (if applicable), the Chapter 11 Cases, the Filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan, or (B) upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to the foregoing clause (A). Notwithstanding anything to the contrary in the foregoing, the releases set forth above (i) shall only be applicable to the maximum extent permitted by law and (ii) shall not be construed as (a) releasing any Released Party from Claims or Causes of Action arising from an act or omission that is judicially determined by a Final Order by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, or (b) releasing any post-Effective Date obligations of any party or Entity under the Plan, the Confirmation Order, any transaction contemplated by the Restructuring, any Definitive Document, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

#### **8.4 Exculpation**

Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur liability for, and each Exculpated Party is hereby exculpated from any Cause of Action for any claim related to any act or omission on or after the Petition Date and prior to the Effective Date in connection with, relating to, or arising out of, the Chapter 11 Cases, including, without limitation, the formulation, preparation, dissemination, negotiation, or Filing of the Restructuring Support Agreement and related prepetition transactions, the Disclosure Statement, the Plan, the Plan Supplement, or any transaction contemplated by the Restructuring, or any contract, instrument, release, or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Disclosure Statement, the Plan, the Plan Supplement, the Restructuring Support Agreement, the Sale Transaction, the Exit Facility (if applicable), the Takeback Debt (if applicable), the Filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance of securities pursuant to the Plan, or the distribution of property under the Plan; provided that, in all respects, such Exculpated Parties shall be entitled to reasonably rely upon the advice of counsel with respect to their

duties and responsibilities. Notwithstanding anything to the contrary in the foregoing, the exculpations set forth above (i) shall only be applicable to the maximum extent permitted by law and (ii) shall not be construed as (a) exculpating any Exculpated Party from Claims or Causes of Action arising from an act or omission that is judicially determined by a Final Order to have constituted actual fraud, willful misconduct, or gross negligence, or (b) exculpating any post-Effective Date obligations of any party or Entity under the Plan, any Restructuring Transaction, any Definitive Document, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

### **8.5 Injunction**

Except as otherwise provided in the Plan or the Confirmation Order, all Entities who have held, hold, or may hold claims, interests, Causes of Action, or liabilities that: (i) are subject to compromise and settlement pursuant to the terms of the Plan; (ii) have been released pursuant to Article 8.2 of the Plan; (iii) have been released pursuant to Article 8.3 of the Plan, (iv) are subject to exculpation pursuant to Article 8.4 of the Plan, or (v) are otherwise discharged, satisfied, stayed, or terminated pursuant to the terms of the Plan, are permanently enjoined and precluded, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Released Parties, or the Exculpated Parties: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims, interests, Causes of Action, or liabilities; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such entities on account of or in connection with or with respect to any such claims, interests, Causes of Action, or liabilities; (c) creating, perfecting, or enforcing any encumbrance of any kind against such entities or the property or estates of such entities on account of or in connection with or with respect to any such claims, interests, Causes of Action, or liabilities; and (d) asserting any right of setoff or subrogation of any kind against any obligation due from such entities or against the property of such entities on account of or in connection with or with respect to any such claims, interests, Causes of Action, or liabilities unless such entity has timely asserted such setoff right in a document filed with the Bankruptcy Court explicitly preserving such setoff.

### **8.6 Protection Against Discriminatory Treatment**

In accordance with section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Governmental Unit shall discriminate against the Purchaser, any Reorganized Debtor, or any Entity with which any Debtor or Reorganized Debtor has been or is associated, solely because such Reorganized Debtor was a debtor under chapter 11, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before such Debtor was granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

### **8.7 Release of Liens**

Except as otherwise specifically provided in the Plan, the Sale Transaction Documentation, the Exit Facility Documents or the Takeback Debt Documents (in each case, including in

connection with any express written amendment of any mortgage, deed of trust, Lien, pledge, or other security interest under the Exit Facility Documents or Takeback Debt Documents, as applicable), or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtors and their successors and assigns, in each case, without any further approval or order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtors, the Administrative Agent and/or any other Holder of a Secured Claim.

To the extent that any Holder of a Secured Claim that has been satisfied or discharged in full pursuant to the Plan, or any agent for such Holder, has filed or recorded publicly any Liens and/or security interests to secure such Holder's Secured Claim, then as soon as practicable on or after the Effective Date, such Holder (or the agent for such Holder) shall take any and all steps requested by the Debtors, the Reorganized Debtors, the Purchaser, or any administrative agent, collateral agent, or indenture trustee under the Takeback Debt or the Exit Facility (at the expense of the Debtors or the Reorganized Debtors, as applicable) that are necessary or desirable to record or effectuate the cancellation and/or extinguishment of such Liens and/or security interests, including the making of Uniform Commercial Code termination statements, deposit account control agreement terminations, and any other applicable filings or recordings, and the Reorganized Debtors shall be entitled to file Uniform Commercial Code terminations or to make any other such filings or recordings on such Holder's behalf.

## **8.8 Recoupment**

In no event shall any Holder of a Claim be entitled to recoup such Claim against any Claim, right, or Cause of Action of the Debtors or the Reorganized Debtors, as applicable, unless such Holder actually has performed such recoupment and provided notice thereof in writing to the Debtors on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

## **ARTICLE IX**

### **CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

#### **9.1 Conditions Precedent to The Effective Date**

It shall be a condition to the Effective Date that the following conditions shall have been satisfied or, pursuant to Article 9.2, waived:

**9.1.1** The Restructuring Support Agreement shall remain in full force and effect and all conditions shall have been satisfied or waived thereunder, and there shall be no breach that would, after the expiration of any applicable notice or cure period, give rise to a right to terminate the Restructuring Support Agreement;

**9.1.2** Each document or agreement constituting a Definitive Document shall have been executed and/or effectuated, in form and substance acceptable to the Required Consenting Lenders to the extent required herein and subject to the consent rights set forth in the Restructuring Support Agreement and the Restructuring Term Sheet, and any conditions precedent related thereto or contained therein shall have been satisfied prior to or contemporaneously with the occurrence of the Effective Date or otherwise waived pursuant to the terms of the Restructuring Term Sheet and the applicable Definitive Document;

**9.1.3** The Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan, and all applicable regulatory or government-imposed waiting periods shall have expired or been terminated;

**9.1.4** In the event the Purchaser is Newco, the Newco Corporate Governance Documents shall have been executed and/or effectuated, shall be in form and substance acceptable to the Required Consenting Lenders, and any conditions precedent related thereto, shall have been satisfied prior to or contemporaneously with the occurrence of the Effective Date or otherwise waived;

**9.1.5** All Allowed Professional Fee Claims of Professionals approved by the Bankruptcy Court shall have been paid in full and the Professional Fee Escrow Account shall have been established and funded pending approval by the Bankruptcy Court;

**9.1.6** All invoiced professional fees, expenses, and other amounts required to be paid pursuant to the Restructuring Support Agreement and the Restructuring Term Sheet, in any Definitive Document, or in any order of the Bankruptcy Court (as applicable), including, for the avoidance of doubt, any and all fees and expenses described in Article 2.4, shall have been paid in full in Cash;

**9.1.7** The Bankruptcy Court shall have entered the Confirmation Order, in form and substance acceptable to the Required Consenting Lenders and subject to the consent rights set forth in the Restructuring Support Agreement, and such order shall have become a Final Order;

**9.1.8** All conditions precedent to the Effective Date set forth in the Plan shall have been satisfied, waived in accordance with the terms of the Plan and the Restructuring Support Agreement, or satisfied contemporaneously with the occurrence of the Effective Date;

**9.1.9** In the event the Purchaser is Newco, the Required Consenting Lenders shall have consented to the Executory Contracts to be assumed;

**9.1.10** The Sale Transaction Documentation, if applicable, shall have been executed and delivered by the Entities that are parties thereto, and all conditions precedent to the Closing of the Sale Transaction shall have been waived or satisfied in accordance with the terms of the Sale Transaction Documentation, and the Closing of the Sale Transaction shall have occurred or shall occur concurrently with the Effective Date.

**9.1.11** In the event the Purchaser is Newco, Newco shall have obtained approval to enter into the Exit Facility, if applicable, on terms and conditions acceptable to the Required Consenting Lenders and acceptable to the Debtors;



**9.1.12** In the event Purchaser is Newco, the Confirmation Order shall authorize the Debtors, as applicable or necessary, to, among other things, issue and distribute the Newco Common Equity pursuant to the exemption from registration under the Securities Act provided by section 1145 of the Bankruptcy Code or, to the extent that section 1145 of the Bankruptcy Code is either not permitted or not applicable, section 4(a)(2) of the Securities Act, and make all distributions and issuances as required under the Plan; and

**9.1.13** The Debtors shall have otherwise substantially consummated the Restructuring Transactions, and all transactions contemplated by the Plan, consistent in all respects with the Plan and the Restructuring Support Agreement, including the consent rights incorporated therein.

## **9.2 Waiver of Conditions Precedent**

The Debtors, with the consent of the Required Consenting Lenders and, to the extent set forth in the Restructuring Support Agreement, the Consenting Sponsor (with such consent not to be unreasonably withheld), may waive any of the conditions to the Effective Date set forth in Article 9.1 at any time, without any notice to any other parties in interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than a proceeding to confirm the Plan or consummate the Plan. The failure of the Debtors to exercise any of the foregoing rights shall not be deemed a waiver of such rights or any other rights, and each such right shall be deemed an ongoing right, which may be asserted at any time.

## **9.3 Effect of Non-Occurrence of Conditions to Consummation**

If the Effective Date does not occur simultaneously with or before the termination of the Restructuring Support Agreement, or if, prior to the Effective Date, the Confirmation Order is vacated pursuant to a Final Order, then (except as provided in any such Final Order): (i) the Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in the Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected under the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (iii) nothing contained in the Plan, the Confirmation Order, the Disclosure Statement, or the Restructuring Support Agreement shall: (a) constitute a waiver or release of any Claims, Interests, or Causes of Action except as otherwise set forth in the Restructuring Support Agreement; (b) prejudice in any manner the rights of the Debtors or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors or any other Entity.

# **ARTICLE X**

## **MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

### **10.1 Modification of Plan**

Effective as of the date hereof and subject to the Restructuring Support Agreement and the consent rights set forth therein: (i) the Debtors reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, and subject to the consent rights set forth in the Restructuring Support Agreement, and solely with respect to the Macquarie Settlement, with the consent of Macquarie, to amend or modify the Plan before the entry of the Confirmation Order consistent with the terms set forth herein; and (ii) after the entry of the Confirmation Order, the Debtors or

the Reorganized Debtors, as applicable, may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, remedy any defect or omission, or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan consistent with the terms set forth herein.

### **10.2 Effect of Confirmation on Modifications**

Entry of the Confirmation Order shall constitute (i) approval of all modifications to the Plan occurring after the solicitation of votes thereon pursuant to section 1127(a) of the Bankruptcy Code; and (ii) a finding that such modifications to the Plan do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

### **10.3 Revocation or Withdrawal of Plan**

To the extent permitted by the Restructuring Support Agreement and subject to any consent rights set forth therein, the Debtors reserve the right to revoke or withdraw the Plan with respect to any or all Debtors before the Confirmation Date and to file subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan, or if Confirmation or the Effective Date does not occur, then: (i) the Plan will be null and void in all respects; (ii) any settlement or compromise embodied in the Plan, assumption or rejection of Executory Contracts or Unexpired Leases effectuated by the Plan, and any document or agreement executed pursuant hereto will be null and void in all respects; and (iii) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims, Interests, or Causes of Action by any Entity, (b) prejudice in any manner the rights of any Debtor or any other Entity, or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by any Debtor or any other Entity.

## **ARTICLE XI**

### **RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim against a Debtor, including the resolution of any request for payment of any Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Interests;
2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;
3. resolve any matters related to Executory Contracts or Unexpired Leases, including: (i) the assumption or assumption and assignment of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure or Claims arising therefrom, including pursuant to section 365 of the Bankruptcy Code; (ii) the Reorganized Debtors amending, modifying, or

supplementing, after the Effective Date, the Assumed Contracts List; (iii) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; and (iv) any dispute regarding whether a contract or lease is or was executory or expired;

4. ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising from or relating to distributions under the Plan;

5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

6. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of (i) contracts, instruments, releases, indentures, and other agreements or documents approved by Final Order in the Chapter 11 Cases and (ii) the Plan, the Confirmation Order, the Sale Transaction Documentation, any other Definitive Document, and any other contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan;

7. enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

8. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code;

9. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

10. hear, determine, and resolve any cases, matters, controversies, suits, disputes, or Causes of Action in connection with or in any way related to the Chapter 11 Cases, including: (i) with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim for amounts not timely repaid pursuant to Article 6.5(i); (ii) with respect to the releases, injunctions, and other provisions contained in Article VIII, including entry of such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions; (iii) that may arise in connection with the Consummation, interpretation, implementation, or enforcement of the Plan, the Confirmation Order, contracts, instruments, releases, and other agreements or documents created in connection with the Plan; or (iv) related to section 1141 or 1145 of the Bankruptcy Code;

11. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

12. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

13. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

14. enter an order or Final Decree concluding or closing the Chapter 11 Cases;
15. enforce all orders previously entered by the Bankruptcy Court; and
16. hear any other matter not inconsistent with the Bankruptcy Code.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

#### **12.1 Immediate Binding Effect**

Subject to Article 9.1 hereof, and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors, and any and all Holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors.

#### **12.2 Additional Documents**

On or before the Effective Date, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and the Restructuring Support Agreement; *provided* that any and all such agreements and documents shall be in form and substance acceptable to the Debtors, the Required Consenting Lenders, and the Consenting Sponsor, to the extent set forth herein or in the Restructuring Support Agreement. The Debtors or the Reorganized Debtors, as applicable, and all Holders of Claims receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

#### **12.3 Reservation of Rights**

The Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Interests prior to the Effective Date.

#### **12.4 Successors and Assigns**

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

**12.5 Service of Documents**

After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered to the Reorganized Debtors shall be served on:

<b>Debtors</b>	<b>Counsel to the Debtors</b>
<p>Lincoln Power, L.L.C.  c/o Cogentrix Energy Power Management, LLC  9405 Arrowpoint Boulevard  Charlotte, NC 28273  Attention: General Counsel  Email: georgeknapp@kogentrix.com</p>	<p>Latham &amp; Watkins LLP  1271 Avenue of the Americas  New York, New York 10020  Attn: George A. Davis, Esq., Andrew D. Sorkin,  Esq., Brett Neve, Esq., and Randall Weber-  Levine, Esq.  Email: george.davis@lw.com,  andrew.sorkin@lw.com, brett.neve@lw.com,  randall.weber-levine@lw.com</p> <p>Latham &amp; Watkins LLP  330 North Wabash Avenue, Suite 2800  Chicago, Illinois 60654  Attn: Caroline Reckler, Esq.  Email: caroline.reckler@lw.com</p> <p>Young Conaway Stargatt &amp; Taylor, LLP  Rodney Square, 1000 North King Street  Wilmington, Delaware 19801  Michael Nestor, Esq., Kara Hammond Coyle,  Esq., Heather P. Smillie, Esq., Kristin L.  McElroy, Esq.  Email: mnestor@ycst.com, kcoyle@ycst.com,  hsmillie@ycst.com, kmcelroy@ycst.com</p>
<b>Office of United States Trustee</b>	<b>Counsel to the Administrative Agent</b>
<p>Office of United States Trustee for the District  of Delaware  844 King Street, Suite 2207  Wilmington, Delaware 19801  Attn: Richard L. Schepacarter  Email: Richard.Schepacarter@usdoj.gov</p>	<p>Kirkland &amp; Ellis LLP  601 Lexington Avenue  New York, NY 10022  Attention: Christopher Marcus, P.C.  Email: christopher.marcus@kirkland.com</p> <p>Kirkland &amp; Ellis LLP  300 North LaSalle Street  Chicago, IL 60654  Attention: Peter A. Candel  Email: peter.candel@kirkland.com</p> <p>Richards, Layton &amp; Finger, P.A.  One Rodney Square</p>

	920 North King Street Wilmington, DE 19801 Paul N. Heath (heath@rlf.com) David T. Queroli (queroli@rlf.com)
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After the Effective Date, the Reorganized Debtors have authority to send a notice to Entities that, to continue to receive documents pursuant to Bankruptcy Rule 2002, they must file a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Reorganized Debtors are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have filed such renewed requests.

In accordance with Bankruptcy Rules 2002 and 3020(c), within fourteen (14) calendar days of the date of entry of the Confirmation Order, the Debtors or Reorganized Debtors, as applicable, shall serve the Notice of Confirmation by United States mail, first-class postage prepaid, by hand, or by overnight courier service to all parties served with the Confirmation Hearing Notice; *provided* that no notice or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtors or Reorganized Debtors mailed a Confirmation Hearing Notice, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address” or “forwarding order expired,” or similar reason, unless the Debtors have been informed in writing by such Entity, or are otherwise aware, of that Entity’s new address. Mailing of the Notice of Confirmation in the time and manner set forth in this paragraph shall be good and sufficient notice under the particular circumstances and in accordance with the requirements of Bankruptcy Rules 2002 and 3020(c), and no further notice is necessary.

## **12.6 Term of Injunctions or Stays**

**Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases (pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court) and existing on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.**

## **12.7 Entire Agreement**

Except as otherwise indicated, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

## **12.8 Plan Supplement**

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. Except as otherwise provided in the Plan, such exhibits and documents included in the Plan Supplement shall initially be filed with the Bankruptcy Court on or before the Plan Supplement Filing Date to the extent practicable. After the exhibits and documents are filed, copies of such exhibits and documents shall have been

available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the Debtors' restructuring website at <https://omniagentsolutions.com/LincolnPower> or the Bankruptcy Court's website at [www.deb.uscourts.gov](http://www.deb.uscourts.gov).

### **12.9 Non-Severability**

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted; *provided* that any such alteration shall be consistent with the Restructuring Support Agreement and be in form and substance acceptable to the Debtors, the Required Consenting Lenders, and the Consenting Sponsor, to the extent set forth herein or in the Restructuring Support Agreement with respect to any such term or provision. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (i) valid and enforceable pursuant to its terms; (ii) integral to the Plan and may not be deleted or modified without the Debtors' prior consent; and (iii) nonseverable and mutually dependent.

### **12.10 Votes Solicited in Good Faith**

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of the Consenting Lenders and each of their respective Affiliates, agents, representatives, members, principals, equity holders (regardless of whether such interests are held directly or indirectly), officers, directors, managers, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities offered and sold under the Plan, and, therefore, neither any of such parties or individuals, Newco nor the Reorganized Debtors will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Plan.

### **12.11 Dissolution of Any Committee**

In the event a statutory committee of the Debtors' unsecured creditors is appointed by the U.S. Trustee, such official committee shall dissolve, and the members thereof shall be released and discharged from all rights and duties arising from, or related to, the Chapter 11 Cases on the Effective Date; *provided* that such official committee shall be deemed to remain in existence solely with respect to, and shall not be heard on any issue except, applications filed by the Professionals pursuant to sections 330 and 331 of the Bankruptcy Code.

**12.12 Closing of These Chapter 11 Cases**

The Reorganized Debtors shall, promptly after the full administration of the Chapter 11 Cases, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases.

**12.13 Waiver or Estoppel**

Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, the Restructuring Support Agreement, or papers filed with the Bankruptcy Court prior to the Confirmation Date.

*[Remainder of This Page Intentionally Left Blank]*



Dated: July 21, 2023

Lincoln Power, L.L.C.  
and each of its Debtor affiliates

By: /s/ Justin D. Pugh  
Name: Justin D. Pugh  
Title: Chief Restructuring Officer

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